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102 EM 2018

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

Nos. 102 EM 2018 & 103 EM 2018

JERMONT COX and KEVIN MARINELLI,

Petitioners,

v.

COMMONWEALTH OF PENNSYLVANIA,

Respondent.

PETITIONERS' APPENDIX

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February 22, 2019

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Pennsylvania Capital Case Reversals - By Year of Sentence

	Name	Year of offense	Year of sentence	Conviction (C) or sentencing (S) reversal?	Decision of reversal	Grounds for reversal	SCOPA docket #	Resentenced to death?	County of conviction
1	Karabin, Nicholas	1979	1979	S	*Commonwealth v. Karabin,* 521 Pa. 543, 559 A.2d 19 (1989)	Erroneous aggravating circumstance	49 MD 1987	N	Dauphin
2	Terry, Benjamin	1979	1979	C	*Commonwealth v. Terry,* 501 Pa. 626, 462 A.2d 676 (1983)	State law evidentiary ruling	80-3-595	Y	Montgomery
3	Frey, Roderick	1979	1980	S	*Frey v. Fulcomer,* 132 F.3d 916 (3d Cir. 1997)	*Mills v. Maryland,* 486 U.S. 367 (1988)		N	Lancaster
4	Baker, Lawrence	1979	1981	S	*Commonwealth v. Baker,* 511 Pa. 1, 511 A.2d 777 (1986)	*Caldwell v. Mississippi,* 472 U.S. 320 (1985) and improper prosecutorial argument	62 ED 1983	N	Philadelphia
5	Lesko, John	1980	1981	S	*Lesko v. Lehman,* 925 F.2d 1527 (3d Cir. 1991)	Improper prosecutorial argument	37 WD 1982	Y	Westmoreland
6	Moran, Willard	1980	1981	C	Order, *Commonwealth v. Moran,* No. CP-51-CR-3091-1981 (Phila. C.P. Jan. 25, 1999)	IAC guilt phase	141 ED 1991	N	Philadelphia
7	Smith, Donald	1980	1981	C	*Commonwealth v. Smith,* 502 Pa. 600, 467 A.2d 1120 (1983)	IAC guilt phase (failure to impeach witness)	9 WD 1983	N	Fayette
8	Szuchon, Joseph	1981	1981	S	*Szuchon v. Lehman,* 273 F.3d 299 (3d Cir. 2001)	*Witherspoon v. Illinois,* 391 U.S. 510 (1968)	137 CAP	N	Erie
9	Travaglia, Michael	1980	1981	S	Order, *Travaglia v. Morgan,* No. 2:90-cv-1469 (W.D. Pa. Nov. 7, 1996)	Erroneous aggravating circumstance	42 CAP	Y	Westmoreland
10	Wallace, William	1979	1981	C	*Commonwealth v. Wallace,* 500 Pa. 270, 455 A.2d 1187 (1983)	*Brady v. Maryland,* 373 U.S. 83 (1963)	20 & 50 WD 1982	Y	Washington
11	Aulisio, Joseph	1981	1982	S	*Commonwealth v. Aulisio,* 514 Pa. 84, 522 A.2d 1075 (1987)	Erroneous aggravating circumstance	105 ED 1984	N	Lackawanna
12	Clayton, Willie	1980	1982	C	*Commonwealth v. Clayton,* 506 Pa. 24, 483 A.2d 1345 (1984)	State law evidentiary ruling	46 ED 1983	Y	Philadelphia
13	Cross, Charles	1981	1982	S	*Cross v. Price,* No. 95-cv-614, 2005 WL 2106559 (W.D. Pa. Aug. 30, 2005)	IAC penalty phase (failure to object to erroneous instruction)	179 CAP	N	Beaver
14	Floyd, Calvin	1980	1982	C	*Commonwealth v. Floyd,* 506 Pa. 85, 484 A.2d 365 (1984)	Improper prosecutorial argument	91 ED 1982	N	Philadelphia
15	Goins, George	1981	1982	S	*Commonwealth v. Goins,* 508 Pa. 270, 495 A.2d 527 (1985)	Erroneous aggravating circumstance	30 ED 1984	N	Philadelphia
16	Green, William	1982	1982	S	*Commonwealth v. Green,* 525 Pa. 424, 581 A.2d 544 (1990)	State law evidentiary ruling	41 ED 1987	N	Philadelphia
17	Hall, Donald	1981	1982	S	*Commonwealth v. Hall,* 523 Pa. 75, 565 A.2d 144 (1989)	Improper prosecutorial argument	97 ED 1987	Y	Philadelphia

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	Name	Year of offense	Year of sentence	Conviction (C) or sentencing (S) reversal?	Decision of reversal	Grounds for reversal	SCOPA docket #	Resentenced to death?	County of conviction
18	Jones, Thomas	1982	1982	S	*Commonwealth v. Jones,* 520 Pa. 68, 550 A.2d 536 (1988)	IAC penalty phase	29 ED 1983	N	Philadelphia
19	Peterkin, Otis	1981	1982	C + S	*Peterkin v. Horn,* 176 F. Supp. 2d 342 (E.D. Pa. 2001)	Confrontation clause violation, prosecutorial misconduct , IAC guilt and sentencing phase, erroneous aggravating circumstance, and *Mills v. Maryland*	165 CAP	N	Philadelphia
20	Pursell, Alan	1981	1982	S	*Pursell v. Horn,* 187 F. Supp. 2d 260 (W.D. Pa. Feb. 1, 2002)	IAC penalty phase and instructional error	277 CAP	N	Erie
21	Whitney, Raymond	1981	1982	S	Order, *Commonwealth v. Whitney,* No. CP-51-CR-1114161-1981 (Phila. C.P. Jan. 16, 2008)	*Atkins v. Virginia,* 536 U.S. 304 (2002)	333 CAP	N	Philadelphia
22	Abu-Jamal, Mumia	1981	1983	S	*Abu-Jamal v. Sec'y, Pa. Dep't of Corr.,* 643 F.3d 370 (3d Cir. 2011)	*Mills v. Maryland*	119 CAP	N	Philadelphia
23	Albrecht, Alfred	1980	1983	S	*Albrecht v. Beard,* 636 F. Supp. 2d 468 (E.D. Pa. July 14, 2009)	IAC appellate counsel	138 CAP	N	Bucks
24	Bricker, Robert	1979	1983	C	*Commonwealth v. Bricker,* 506 Pa. 571, 487 A.2d 346 (1985)	Improper prosecutorial argument and IAC guilt phase	38 WD 1983	Y	Allegheny
25	Buehl, Roger	1982	1983	S	*Buehl v. Vaughn,* 166 F.3d 163 (3d Cir. 1999)	IAC penalty phase	63 CAP	N	Montgomery
26	Christy, Lawrence	1980	1983	C + S	*Christy v. Horn,* 28 F. Supp. 2d 307 (W.D. Pa. 1998)	*Ake v. Oklahoma,* 470 U.S. 68 (1985), IAC sentencing phase, and improper prosecutorial argument	48 CAP	N	Cambria
27	D'Amato, Joseph	1981	1983	S	Order, *Commonwealth v. D'Amato,* No. CP-51-CR-1219941-1981 (Phila. C.P. June 13, 2013)	Stipulated	332 CAP	N	Philadelphia
28	DeHart, Robert	1983	1983	S	*Commonwealth v. DeHart,* 539 Pa. 5, 650 A.2d 38 (1994)	IAC penalty phase (failure to object to erroneous verdict slip)	6 CAP	N	Huntingdon
29	Frederick, Edward Lee	1982	1983	S	*Commonwealth v. Frederick,* 508 Pa. 527, 498 A.2d 1322 (1985)	Erroneous aggravating circumstance	85 WD 1983	N	McKean

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30	Hughes, Kevin	1979	1983	S	Order, *Commonwealth v. Hughes,* No. CP-51-CR-116881-1980 (Phila. C.P. Mar. 21, 2005)	*Roper v. Simmons,* 543 U.S. 551 (2004)	313 CAP	N	Philadelphia
31	Morales, Salvador	1982	1983	S	*Commonwealth v. Morales,* 549 Pa. 400, 701 A.2d 516 (1997)	IAC penalty phase (failure to object to prosecutorial misconduct)	84 CAP	N	Philadelphia
32	Pirela, Simon	1981	1983	S	*Commonwealth v. Pirela,* 593 Pa. 312, 929 A.2d 629 (2007)	*Atkins v. Virginia*	448 CAP	N	Philadelphia
33	Sims, Bobby	1980	1983	C	*Commonwealth v. Sims,* 513 Pa. 366, 521 A.2d 391 (1987)	Confrontation clause violation	52 ED 1984	N	Philadelphia
34	Wheeler, Ronald	1982	1983	S	*Commonwealth v. Wheeler,* 518 Pa. 103, 541 A.2d 730 (1988)	State law evidentiary ruling	98 ED 1985	N	Bucks
35	Yarris, Nicholas	1981	1983	C	*Commonwealth v. Yarris,* No. CP-23-690-1982 (Del. C.P. Sept. 3, 2003)	Innocence	232 CAP	N	Delaware
36	Baker, Lee (Herbert)	1984	1984	C	*Baker v. Horn,* 383 F. Supp. 2d 720 (E.D. Pa. 2005)	IAC guilt phase (failure to object to unconstitutional jury instructions)	189 & 190 CAP	N	Philadelphia
37	Blystone, Scott	1983	1984	S	*Blystone v. Horn,* 664 F.3d 397 (3d Cir. 2011)	IAC penalty phase	136 CAP	N	Fayette
38	Bryant, James	1978	1984	C	*Commonwealth v. Bryant,* 515 Pa. 473, 530 A.2d 83 (1987)	State law evidentiary ruling	159 ED 1984	Y	Philadelphia
39	Carpenter, James	1983	1984	S	*Carpenter v. Vaughn,* 296 F.3d 138 (3d Cir. 2002)	IAC penalty phase (failure to object to instructional error)	178 CAP	N	York
40	Chmiel, David	1983	1984	C	*Commonwealth v. Chmiel,* 536 Pa. 244, 639 A.2d 9 (1994)	IAC guilt phase (failure to request corrupt source instruction)	111 ED 1991	Y	Lackawanna
41	Crawley, DeWitt	1983	1984	S	Order, *Crawley v. Horn,* No. 99-cv-5919 (E.D. Pa. Feb. 17, 2015)	IAC penalty phase	66 & 447 CAP	N	Philadelphia
42	Ferber, Neil	1981	1984	C	*Commonwealth v. Ferber,* No. CP-51-CR-710481-1981 (Phila. C.P. Mar. 7, 1986)	Innocence		N	Philadelphia
43	Griffin, Rodney	1983	1984	S	Order, *Commonwealth v. Griffin,* No. CP-23-CR-1655-1984 (Del. C.P Dec. 16, 2003)	Stipulated	24 CAP	N	Delaware
44	Marshall, Jerome	1983	1984	S	*Commonwealth v. Marshall,* 523 Pa. 556, 568 A.2d 590 (1989)	Erroneous aggravating circumstance	155 ED 1985	Y	Philadelphia

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45	Marshall, Jerome	1983	1984	S	*Marshall v. Wetzel,* No. 03-cv-3308, 2018 WL 5814633 (E.D. Pa. Nov. 6, 2018)	Stipulated	533 CAP	N	Philadelphia
46	Nelson, John	1983	1984	S	*Commonwealth v. Nelson,* 514 Pa. 262, 523 A.2d 728 (1987)	Erroneous aggravating circumstance and IAC penalty phase (failure to object to erroneous aggravator)	43 WD 1984	N	Erie
47	Strong, James	1983	1984	C	*Commonwealth v. Strong,* 563 Pa. 455, 761 A.2d 1167 (2000)	*Brady v. Maryland*	250 CAP	N	Luzerne
48	Terry, Benjamin	1979	1984	S	*Commonwealth v. Terry,* No. CP-46-CR-1565-79 (Montgomery C.P. Oct. 22, 1996)	IAC penalty phase	179 ED 1984	N	Montgomery
49	Edwards, George	1984	1985	S	*Commonwealth v. Edwards,* No. CP-35-CR-52919-1984 (Lackawanna C.P. June 16, 1999)	Stipulated	74 ED 1987	N	Lackawanna
50	Gibbs, Barry	1984	1985	C	*Commonwealth v. Gibbs,* 520 Pa. 151, 553 A.2d 409 (1989)	*Miranda v. Arizona,* 384 U.S. 436 (1966)		N	Pike
51	Jones, James	1980	1985	S	*Commonwealth v. Jones,* 583 Pa. 130, 876 A.2d 380 (2005)	IAC penalty phase, erroneous aggravating circumstance, and denial of mental health evaluation	350 & 360 CAP	N	Philadelphia
52	Lark, Robert	1978	1985	C	*Lark v. Sec'y, Pa. Dept. of Corr.,* 566 F. App'x 161 (3d Cir. 2014)	*Batson v. Kentucky,* 476 U.S. 79 (1986)	235 CAP	N	Philadelphia
53	Rolan, Florencio	1983	1985	S	*Commonwealth v. Rolan,* No. CP-51-CR-2893-1994 (Phila. C.P. Feb. 4, 1998)	IAC penalty phase		N	Philadelphia
54	Santiago, Salvador	1985	1985	C	*Commonwealth v. Santiago,* 528 Pa. 516, 599 A.2d 200 (1991)	*Miranda v. Arizona*	99 WD 1986	Y	Allegheny
55	Smith, Clifford	1983	1985	S	*Smith v. Horn,* 120 F.3d 400 (3d Cir. 1997)	*In re Winship,* 397 U.S. 358 (1970)	23 CAP	N	Bucks
56	Sneed, Willie	1980	1985	S	*Commonwealth v. Sneed,* 587 Pa. 318, 899 A.2d 1067 (2006)	IAC penalty phase	366 CAP	N	Philadelphia
57	Wallace, William	1979	1985	C	*Wallace v. Price,* 243 F. App'x 710 (3d Cir. 2007)	Confrontation clause violation	135 CAP	N	Washington
58	Williams, Kenneth	1983	1985	S	*Commonwealth v. Williams,* 597 Pa. 109, 950 A.2d 294 (2008)	IAC penalty phase and IAC appellate counsel	430 & 431 CAP	N	Lehigh

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59	Williams, Raymond	1984	1985	S	*Commonwealth v. Williams,* 514 Pa. 62, 522 A.2d 1058 (1987)	Juror misconduct	43 WD 1985	N	Butler
60	Williams, Ronald	1984	1985	S	*Commonwealth v. Williams,* 522 Pa. 287, 561 A.2d 714 (1989)	Juror misconduct	46 WD 1985	N	Butler
61	Appel, Martin	1986	1986	C	*Appel v. Horn,* 250 F.3d 203 (3d Cir. 2001)	IAC guilt phase (failure to investigate competency)	112 CAP	N	Northampton
62	Bannerman, Sam	1984	1986	C	*Commonwealth v. Bannerman,* 525 Pa. 264, 579 A.2d 1295 (1990)	State law instructional error	90 ED 1986	N	Philadelphia
63	Bryant, Robert	1984	1986	S	*Commonwealth v. Bryant,* No. CP-02-CR-7686-1984 (Allegheny C.P. Mar. 24, 1998)	IAC penalty phase		N	Allegheny
64	Caldwell, Christopher	1985	1986	S	*Commonwealth v. Caldwell,* 516 Pa. 441, 532 A.2d 813 (1987)	Erroneous aggravating circumstance	35 WD 1986	N	Allegheny
65	Hardcastle, Donald	1982	1986	C	*Hardcastle v. Horn,* 332 F. App'x 764 (3d Cir. 2009)	*Batson v. Kentucky*	100 CAP	N	Philadelphia
66	Holland, William	1984	1986	S	*Holland v. Horn,* 519 F.3d 107 (3d Cir. 2008)	*Ake v. Oklahoma* and IAC appellate counsel	153 CAP	N	Philadelphia
67	Jermyn, Frederick	1985	1986	S	*Jermyn v. Horn,* 266 F.3d 257 (3d Cir. 2001)	IAC penalty phase	134 CAP	N	Cumberland
68	Lambert, James	1982	1986	S	*Lambert v. Beard,* 537 F. App'x 78 (3d Cir. 2013)	*Brady v. Maryland*	427 CAP	N	Philadelphia
69	Murphy, Craig	1981	1986	C	*Commonwealth v. Murphy,* 527 Pa. 309, 591 A.2d 278 (1991)	IAC guilt phase (failure to cross-examine witness)	51 ED 1987	Y	Philadelphia
70	Proctor, Roger	1985	1986	S	Memorandum and Order, *Commonwealth v. Proctor,* No. CP-20-CR-759-1985 (Crawford C.P. Dec. 30, 2002)	*Brady v. Maryland*	218 CAP	N	Crawford
71	Smith, James	1979	1986	S	Order, *Commonwealth v. Smith,* No. CP-51-CR-717891-1983 (Phila. C.P. June 19, 2009)	IAC penalty phase	591 CAP	N	Philadelphia
72	Smith, Jay	1979	1986	C	*Commonwealth v. Smith,* 523 Pa. 577, 568 A.2d 600 (1989)	*Brady v. Maryland*	48 MD 1987	N	Dauphin
73	Thomas, Brian	1985	1986	S	Order, *Commonwealth v. Thomas,* No. 2:00-cv-803 (E.D. Pa. Dec. 20, 2011)	IAC penalty phase	552 CAP	N	Philadelphia
74	Wharton, Robert	1984	1986	S	*Commonwealth v. Wharton,* 530 Pa. 127, 607 A.2d 710 (1992)	IAC penalty phase (failure to object to erroneous instruction)	114 ED 1986	Y	Philadelphia

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75	Williams, Terrance	1984	1986	S	*Commonwealth v. Williams,* 641 Pa. 283, 168 A.3d 97 (2017)	*Brady v. Maryland*	560 CAP	N	Philadelphia
76	Zook, Robert Peter	1985	1986	C	*Commonwealth v. Zook,* 520 Pa. 210, 553 A.2d 920 (1989)	*Miranda v. Arizona*	37 ED 1987	N	Lancaster
77	Billa, Louis	1987	1987	C	*Commonwealth v. Billa,* 521 Pa. 168, 555 A.2d 835 (1989)	IAC penalty phase (failure to object to erroneous instruction)		N	Philadelphia
78	Chambers, Karl	1986	1987	S	*Commonwealth v. Chambers,* 528 Pa. 558, 599 A.2d 630 (1991)	Improper prosecutorial argument	14 MD 1989	N	York
79	Henry, Josoph	1986	1987	S	*Henry v. Horn,* 218 F. Supp. 2d 671 (E.D. Pa. 2002)	*Mills v. Maryland*	140 CAP	N	Northampton
80	Holloway, Arnold	1980	1987	S	*Holloway v. Horn,* 161 F. Supp. 2d 452 (E.D. Pa. 2001)	IAC penalty phase (failure to request mental health expert)	191 CAP	N	Philadelphia
81	Jones, Damon	1982	1987	S	Order, *Commonwealth v. Jones,* No. CP-51-CR-907121-1982 (Phila. C.P. Aug. 3, 2007)	IAC penalty phase and IAC appellate counsel	409 & 425 CAP	N	Philadelphia
82	Judge, Roger	1984	1987	S	*Judge v. Beard,* No. 02-cv-6798, 2012 WL 5960643 (E.D. Pa. Nov. 29, 2012)	IAC penalty phase	474 CAP	N	Philadelphia
83	Morris, Kelvin	1980	1987	S	*Morris v. Beard,* No. 01-cv-3070, 2007 WL 1795689 (E.D. Pa. June 20, 2007)	*Mills v. Maryland* and IAC penalty phase	289 CAP	N	Philadelphia
84	Rollins, Saharris	1986	1987	S	*Rollins v. Horn,* 386 F. App'x 267 (3d Cir. 2010)	IAC penalty phase	192 CAP	N	Philadelphia
85	Tilley, William	1985	1987	S	Order, *Commonwealth v. Tilley,* No. CP-51-CR-1210781-1985 (Phila. C.P. Nov. 2, 2007)	IAC penalty phase	9 ED 2000	N	Philadelphia
86	Breakiron, Mark	1987	1988	C	*Breakiron v. Horn,* No. 00-cv-300, 2008 WL 4412057 (W.D. Pa. Sept. 24, 2008)	*Brady v. Maryland*	323 CAP	N	Fayette
87	Bricker, Robert	1979	1988	C	*Commonwealth v. Bricker,* 525 Pa. 362, 581 A.2d 147 (1990)	State law instructional error and evidentiary ruling	111 WD 1988	N	Allegheny
88	Brode, Richard	1986	1988	S	*Commonwealth v. Brode,* 523 Pa. 20, 564 A.2d 1254 (1989)	State law evidentiary ruling	48 MD 1988	N	Lebanon
89	Graham, Harrison	1987	1988	S	Order, *Commonwealth v. Graham,* No. CP-51-CR-839481-1987 (Phila. C.P. Dec. 18, 2003)	*Atkins v. Virginia*	38 CAP	N	Philadelphia

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90	Jasper, Alfred	1984	1988	S	*Commonwealth v. Jasper,* 526 Pa. 497, 587 A.2d 705 (1991)	*Mills v. Maryland*	65 ED 1988	Y	Philadelphia
91	Lewis, Reginald	1983	1988	C	*Commonwealth v. Lewis,* 528 Pa. 440, 598 A.2d 975 (1991)	State law instructional error	170 ED 1988	Y	Philadelphia
92	Ly, Cam	1983	1988	S	*Commonwealth v. Ly,* No. CP-51-CR-1125561-1986 (Phila. C.P. Dec. 12, 2013)	Stipulated	465 CAP	N	Philadelphia
93	Mayhue, Frederick	1986	1988	S	*Commonwealth v. Mayhue,* 536 Pa. 271, 639 A.2d 421 (1994)	Erroneous aggravating circumstance	28 CAP	N	Allegheny
94	McNair, Nathaniel	1987	1988	S	Order, *Commonwealth v. McNair,* No. CP-51-CR-122459-1987 (Phila. C.P. Feb. 19, 2002)	IAC penalty phase	90 ED 1989	N	Philadelphia
95	Moore, Tyrone	1982	1988	S	*Commonwealth v. Moore,* 500 Pa. 279, 860 A.2d 88 (2004)	IAC penalty phase and IAC appellate counsel	316 & 317 CAP	N	Luzerne
96	Rompilla, Ronald	1988	1988	S	*Rompilla v. Beard,* 545 U.S. 374 (2005)	IAC penalty phase	152 CAP	N	Lehigh
97	Spence, Morris	1986	1988	C	Order, *Commonwealth v. Spence,* No. CP-51-CR-933911-1996 (Phila. C.P. Mar. 22, 2004)	*Batson v. Kentucky*	70 ED 1990	N	Philadelphia
98	Starr, Gary	1988	1988	C	*Commonwealth v. Starr,* 541 Pa. 564, 664 A.2d 1326 (1995)	Right to self-representation	32 CAP	N	Allegheny
99	Wilson, Zachary	1981	1988	C	*Wilson v. Beard,* 589 F.3d 651 (3d Cir. 2009)	*Brady v. Maryland*	230 CAP	N	Philadelphia
100	Young, Joseph	1986	1988	S	*Commonwealth v. Young,* 524 Pa. 373, 572 A.2d 1217 (1990)	*Mills v. Maryland*	107 ED 1988	Y	Montgomery
101	Basemore, William	1986	1989	C	*Commonwealth v. Basemore,* No. CP-51-CR-317611-1987 (Phila. C.P. Dec. 19, 2001)	*Batson v. Kentucky*	197 CAP	N	Philadelphia
102	Bryant, James	1978	1989	C	*Commonwealth v. Bryant,* 531 Pa. 147, 611 A.2d 703 (1992)	State law evidentiary ruling	23 ED 1989	N	Philadelphia
103	Chester, Frank	1987	1989	C	*Chester v. Horn,* No. 99-cv-411, 2011 WL 710470 (E.D. Pa. Feb. 28, 2011)	Defense counsel conflict of interest and *In re Winship*	339 CAP	N	Bucks
104	Faulkner, Arthur	1988	1989	C	Order, *Faulkner v. Horn,* No. CP-46-CR-3162-1988 (Montgomery C.P. July 9, 2002)	IAC guilt phase and right to present defense	233 CAP	N	Montgomery
105	Fisher, Robert	1980	1989	C	*Commonwealth v. Fisher,* 527 Pa. 345, 591 A.2d 710 (1991)	State law ruling on jury selection	68 ED 1989	Y	Montgomery

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106	Gorby, Thomas	1985	1989	S	*Commonwealth v. Gorby,* 589 Pa. 364, 909 A.2d 775 (2006)	IAC penalty phase	385 CAP	N	Washington
107	Green, Samuel	1987	1989	C	*Commonwealth v. Green,* 536 Pa. 599, 640 A.2d 1242 (1994)	*Brady v. Maryland*	103 ED 1991	N	Northampton
108	Howard, Melvin	1987	1989	S	Order, *Commonwealth v. Howard,* No. CP-51-CR-304271-1988 (Phila. C.P. Sept. 16, 2011)	Stipulated	302 CAP	N	Philadelphia
109	Laird, Richard	1987	1989	C	*Laird v. Horn,* 414 F.3d 419 (3d Cir. 2005)	*In re Winship*	194 CAP	Y	Bucks
110	Mikell, William	1987	1989	C	*Commonwealth v. Mikell,* 556 Pa. 509, 729 A.2d 566 (1999)	IAC guilt phase (failure to request alibi instruction)	97 CAP	N	Philadelphia
111	Wilson, Harold	1988	1989	C	Bench Order, *Commonwealth v. Wilson,* No. CP-51-CR-3267 (Phila. C.P. Jan. 17, 2003)	*Batson v. Kentucky*	57 CAP	N	Philadelphia
112	Burgos, Jerry	1988	1990	C + S	*Commonwealth v. Burgos,* 530 Pa. 473, 610 A.2d 11 (1992)	State law evidentiary ruling and erroneous aggravating circumstance	162 ED 1990	N	Monroe
113	Crews, Paul David	1990	1990	S	Order, *Crews v. Horn,* No. 3:98-cv-1464 (M.D. Pa. Aug. 28, 2006)	IAC penalty phase	393 CAP	N	Perry
114	Crispell, Daniel	1989	1990	S	*Commonwealth v. Crispell,* 193 A.3d 919 (Pa. 2018)	IAC penalty phase	722 CAP	N	Clearfield
115	Grier, Eric	1989	1990	C	*Commonwealth v. Grier,* 536 Pa. 204, 638 A.2d 965 (1994)	*In re Winship*	177 ED 1990	N	Philadelphia
116	Hall, Donald	1981	1990	S	*Commonwealth v. Hall,* 26 Phila. Co. Rptr. 621, 1993 WL 1156097 (Phila. C.P. July 23, 1993)	IAC penalty phase (failure to raise Commonwealth's prior concession not to seek death)	577 ED ALLOC 1994	N	Philadelphia
117	Hawkins, Thomas	1989	1990	C	*Commonwealth v. Hawkins,* 534 Pa. 123, 626 A.2d 550 (1993)	State law evidentiary ruling	88 ED 1991	Y	Montgomery
118	Huffman, Andrew	1989	1990	C	*Commonwealth v. Huffman,* 536 Pa. 196, 638 A.2d 961 (1994)	*In re Winship*	182 ED 1990	N	Philadelphia
119	Marshall, Jerry	1987	1990	S	*Memorandum, Marshall v. Beard,* No. 03-cv-795 (E.D. Pa. Apr. 25, 2007)	Stipulated	216 CAP	N	Philadelphia
120	Meadows, Thomas	1984	1990	S	Stipulation and Order, *Meadows v. Beard,* No. 05-cv-566 (E.D. Pa. Sept. 8, 2016)	IAC penalty phase (failure to object to victim impact evidence)	689 CAP	N	Montgomery
121	Pelzer, Kevin	1988	1990	S	*Commonwealth v. Pelzer,* 628 Pa. 193, 104 A.3d 267 (2014)	IAC penalty phase	631, 632, 633 & 634 CAP	N	Philadelphia

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122	Peoples, Al	1987	1990	S	Order, *Commonwealth v. Peoples,* No. CP-51-CR-1044981-1989 (Phila. C.P. June 24, 2011)	Stipulated	482 & 483 CAP	N	Philadelphia
123	Perry, Curry	1987	1990	C	*Commonwealth v. Curry,* 537 Pa. 385, 644 A.2d 705 (1994)	IAC guilt phase (failure to investigate)	7 CAP	N	Philadelphia
124	Williams, Craig	1987	1990	S	Order, *Commonwealth v. Williams,* No. CP-51-CR-424041-1987 (Phila. C.P. Nov. 29, 2006)	Stipulated	514 CAP	N	Philadelphia
125	Zook, Robert Peter	1985	1990	S	*Commonwealth v. Zook,* 585 Pa. 11, 887 A.2d 1218 (2005)	IAC penalty phase	293 CAP	N	Lancaster
126	Blount, John	1989	1991	S	*Commonwealth v. Blount,* 538 Pa. 156, 647 A.2d 199 (1994)	IAC penalty phase (failure to object to erroneous instruction)	8 CAP	N	Philadelphia
127	Bradley, Jerard	1990	1991	C	*Commonwealth v. Bradley,* 552 Pa. 492, 715 A.2d 1121 (1998)	IAC guilt phase (erroneous plea advice)	147 CAP	N	Lycoming
128	Fisher, Robert	1980	1991	S	*Commonwealth v. Fisher,* 545 Pa. 233, 681 A.2d 130 (1996)	Improper admission of victim impact evidence	48 ED 1982	Y	Montgomery
129	Kindler, Joseph	1982	1991	S	*Kindler v. Horn,* 642 F.3d 398 (3d Cir. 2011)	*Mills v. Maryland* and IAC sentencing phase	151 CAP	N	Philadelphia
130	LaCava, Michael	1990	1991	S	*Commonwealth v. LaCava,* 542 Pa. 160, 666 A.2d 221 (1995)	IAC penalty phase (failure to object to prosecutorial misconduct)	34 CAP	N	Philadelphia
131	Lee, Percy	1986	1991	S	Order, *Commonwealth v. Lee,* No. CP-51-CR-511562-1986 (Phila. C.P. Sept. 21, 2005)	*Roper v. Simmons*	386 CAP	N	Philadelphia
132	May, Freeman	1982	1991	S	*Commonwealth v. May,* 540 Pa. 237, 656 A.2d 1335 (1995)	Erroneous aggravating circumstance	54 CAP	Y	Lebanon
133	Rivers, Delores	1988	1991	S	Stipulation and Order, *Rivers v. Horn,* No. 02-cv-1600 (E.D. Pa. May 10, 2005)	IAC penalty phase	241 CAP	N	Philadelphia
134	Smith, Brian	1991	1991	S	*Commonwealth v. Smith,* 544 Pa. 219, 675 A.2d 1221 (1996)	IAC penalty phase	11 CAP	N	Luzerne
135	Williams, Antoine	1989	1991	S	*Commonwealth v. Williams,* 539 Pa. 61, 650 A.2d 420 (1994)	Erroneous aggravating circumstance	41 CAP	N	Berks
136	Auker, Robert	1989	1992	S	*Commonwealth v. Auker,* 545 Pa. 521, 681 A.2d 1305 (1996)	Erroneous aggravating circumstance	104 CAP	N	Northumberland
137	Bracey, Edward	1991	1992	S	*Commonwealth v. Bracey,* 632 Pa. 75, 117 A.3d 270 (2015)	*Atkins v. Virginia*	240 CAP	N	Philadelphia

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	Name	Year of offense	Year of sentence	Conviction (C) or sentencing (S) reversal?	Decision of reversal	Grounds for reversal	SCOPA docket #	Resentenced to death?	County of conviction
138	Brown, John	1990	1992	C	Order, *Brown v. Beard,* No. 05-cv-4125 (E.D. Pa. June 27, 2018)	Stipulated	539 CAP	N	Philadelphia
139	Dennis, James	1991	1992	C	*Dennis v. Sec'y, Pa. Dept. of Corr.,* 834 F.3d 263 (3d Cir. 2016) (en banc)	*Brady v. Maryland*	491 CAP	N	Philadelphia
140	Ford, Kenneth	1989	1992	S	*Commonwealth v. Ford,* 570 Pa. 378, 809 A.2d 325 (2002)	IAC penalty phase	248 CAP	N	Philadelphia
141	McGill, Bernard	1990	1992	S	Order, *Commonwealth v. McGill,* No. CP-51-CR-339201-1990 (Phila. C.P. July 13, 2012)	IAC penalty phase	225 CAP	N	Philadelphia
142	McNeil, Christopher	1990	1992	S	*Commonwealth v. McNeil,* 545 Pa. 42, 679 A.2d 1253 (1996)	IAC penalty phase (failure to object to victim impact evidence)	37 CAP	N	Philadelphia
143	Miller, Joseph	1987, 89	1992	S	*Commonwealth v. Miller,* 597 Pa. 333, 951 A.2d 322 (2008)	*Atkins v. Virginia*	540 CAP	N	Dauphin
144	Thompson, Louis	1990	1992	S	Order, *Commonwealth v. Thompson,* No. CP-51-CR-436071-1990 (Phila. C.P. May 21, 2004)	Stipulated	22 CAP	N	Philadelphia
145	Bardo, Michael	1992	1993	S	*Commonwealth v. Bardo,* 629 Pa. 352, 105 A.3d 678 (2014)	IAC penalty phase	650 & 651 CAP	N	Luzerne
146	Bond, Aquil	1991	1993	S	*Commonwealth v. Bond,* No. CP-51-CR-502971-2004 (Phila. C.P. Mar. 13, 2017)	IAC penalty phase	501 CAP	N	Philadelphia
147	Bond, Jesse	1991	1993	S	*Bond v. Beard,* 539 F.3d 256 (3d Cir. 2008)	IAC penalty phase	212 CAP	N	Philadelphia
148	Hill, Donetta	1990	1993	S	Order, *Commonwealth v. Hill,* No. CP-51-CR-518391-1991 (Phila. C.P. Dec. 5, 2005)	Stipulated	39 CAP	N	Philadelphia
149	Jacobs, Daniel	1992	1993	C	*Jacobs v. Horn,* 395 F.3d 92 (3d Cir. 2005)	IAC guilt phase (failure to present diminished capacity defense)	177 CAP	N	York
150	Paolello, Anthony	1992	1993	S	*Commonwealth v. Paolello,* 542 Pa. 47, 665 A.2d 439 (1995)	Erroneous aggravating circumstance	47 CAP	N	Erie
151	Rainey, Michael	1989	1993	S	Order, *Commonwealth v. Rainey,* No. CP-51-CR-419613-1990 (Phila. C.P. Mar. 6, 2008)	IAC penalty phase	468 & 469 CAP	N	Philadelphia

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	Name	Year of offense	Year of sentence	Conviction (C) or sentencing (S) reversal?	Decision of reversal	Grounds for reversal	SCOPA docket #	Resentenced to death?	County of conviction
152	Santiago, Salvador	1985	1993	S	Order, *Commonwealth v. Santiago,* No. 04-cv-1669 (W.D. Pa. June 2, 2009)	IAC penalty phase	180 CAP	N	Allegheny
153	Simmons, Ernest	1992	1993	C	*Simmons v. Beard,* 590 F.3d 223 (3d Cir. 2009)	*Brady v. Maryland*	260 CAP	N	Cambria
154	Speight, Melvin	1992	1993	S	*Speight v. Beard,* No. 04-cv-4110, 2017 WL 914907 (E.D. Pa. Mar. 7, 2017)	Stipulated	58 CAP	N	Philadelphia
155	Walker, Shawn	1991	1993	S	Order, *Commonwealth v. Walker,* No. CP-51-CR-2770-1991 (Phila. C.P. Apr. 21, 2004)	IAC penalty phase	43 CAP	N	Philadelphia
156	Bronshtein, Antuan	1991	1994	S	*Bronshtein v. Horn,* 404 F.3d 700 (3d Cir. 2005)	*Simmons v. South Carolina,* 512 U.S. 154 (1994)	284 CAP	Y	Philadelphia
157	Chambers, Karl	1986	1994	S	*Commonwealth v. Chambers,* 570 Pa. 3, 807 A.2d 872 (2002)	IAC penalty phase (failure to object to erroneous instruction)	299 CAP	N	York
158	Clark, Ronald	1993	1994	S	Order, *Commonwealth v. Clark,* No. CP-51-CR-1241151-1993 (Phila. C.P. Aug. 25, 2006)	IAC penalty phase	92 CAP	N	Philadelphia
159	Cook, Robert	1987	1994	S	Order, *Commonwealth v. Cook,* No. CP-51-CR-826512-1987 (Phila. C.P. Mar. 13, 2003)	IAC penalty phase	61 CAP	N	Philadelphia
160	Craver, Sherman	1993	1994	S	*Commonwealth v. Craver,* No. CP-23-CR-1902-1993 (Del. C.P. June 21, 2002)	IAC penalty phase	98 CAP	N	Delaware
161	Elliott, Joseph	1992	1994	S	*Commonwealth v. Elliott,* No. CP-51-CR-410911-1994 (Phila. C.P. May 1, 2015)	IAC penalty phase and IAC appellate counsel	612 & 624 CAP	N	Philadelphia
162	Gribble, William	1992	1994	S	Order, *Commonwealth v. Gribble,* No. CP-51-CR-1220811-1992 (Phila. C.P. Mar. 8, 2007)	IAC penalty phase	336 & 356 CAP	N	Philadelphia
163	Hall, Darrick	1993	1994	S	*Hall v. Beard,* 55 F. Supp. 3d 618 (E.D. Pa. 2014)	IAC penalty phase	318 CAP	N	Chester
164	Jasper, Alfred	1984	1994	S	*Commonwealth v. Jasper,* 558 Pa. 281, 737 A.2d 196 (1999)	*Caldwell v. Mississippi*	114 CAP	N	Philadelphia
165	Johnson, William	1991	1994	S	Order, *Commonwealth v. Johnson,* No. CP-51-CR-936052-1991 (Phila. C.P. Dec. 12, 2005)	IAC penalty phase	701 CAP	N	Philadelphia

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	Name	Year of offense	Year of sentence	Conviction (C) or sentencing (S) reversal?	Decision of reversal	Grounds for reversal	SCOPA docket #	Resentenced to death?	County of conviction
166	Keaton, Alexander	1992	1994	S	*Commonwealth v. Keaton,* 615 Pa. 675, 45 A.3d 1050 (2012)	IAC penalty phase	418, 419 & 420 CAP	N	Philadelphia
167	King, Carolyn	1993	1994	S	Order, *Commonwealth v. King,* No. CP-38-CR-10898-1993 (Lebanon C.P. July 23, 2010)	IAC penalty phase	614 CAP	N	Lebannon
168	Lewis, Reginald	1983	1994	S	Order, *Lewis v. Horn,* No. 00-cv-802 (E.D. Pa. July 25, 2011)	Stipulated	164 CAP	N	Philadelphia
169	Marrero, Jose	1994	1994	S	Order, *Commonwealth v. Marrero,* No. CP-25-CR-645-1994 (Erie C.P. Jan. 8, 2009)	Stipulated	397 CAP	N	Erie
170	Martin, Bradley	1993	1994	S	*Commonwealth v. Martin,* 607 Pa. 165, 5 A.3d 177 (2010)	IAC penalty phase	441, 442 & 443 CAP	N	Lebanon
171	Nieves, William	1992	1994	C	*Commonwealth v. Nieves,* 560 Pa. 529, 746 A.2d 1102 (2000)	IAC guilt phase (erroneous plea advice)	82 CAP	N	Philadelphia
172	O'Donnell, Kelly	1992	1994	S	*Commonwealth v. O'Donnell,* 559 Pa. 320, 740 A.2d 198 (1999)	Insufficient colloquy for waiver of right to jury sentencing	71 CAP	N	Philadelphia
173	Reyes, Angel	1993	1994	S	*Commonwealth v. Reyes,* 582 Pa. 317, 870 A.2d 888 (2005)	IAC penalty phase	359 CAP	Y	Delaware
174	Rucci, Dino	1989	1994	S	Order, *Commonwealth v. Rucci,* No. CP-63-CR-2164-1990 (Wash. C.P. Apr. 13, 2006)	IAC penalty phase	68 CAP	N	Washington
175	Saranchak, Daniel	1993	1994	S	*Saranchak v. Sec'y, Pa. Dept. of Corr.,* 802 F.3d 579 (3d Cir. 2015)	IAC penalty phase	426 CAP	N	Schuylkill
176	Washington, Anthony	1993	1994	C	*Washington v. Beard,* No. 07-cv-3462, 2015 WL 234719 (E.D. Pa. Jan. 16, 2015)	*Brady v. Maryland*	347 CAP	N	Philadelphia
177	Abdul Salaam, Seifullah	1994	1995	S	*Abdul Salaam v. Sec'y, Pa. Dept. of Corr.,* 895 F.3d 254 (3d Cir. 2018)	IAC penalty phase	249 CAP	N	Cumberland
178	Brown, Kenneth	1993	1995	S	*Commonwealth v. Brown,* 551 Pa. 465, 711 A.2d 444 (1998)	Improper prosecutorial argument	108 CAP	Y	Philadelphia
179	Carson, Samuel	1993	1995	S	Order, *Commonwealth v. Carson,* No. CP-51-CR-228371-1994 (Phila. C.P. Apr. 1, 2008)	IAC penalty phase	400 CAP	N	Philadelphia
180	Chandler, Kevin	1993	1995	S	*Commonwealth v. Chandler,* 554 Pa. 401, 721 A.2d 1040 (1998)	*Simmons v. South Carolina*	111 CAP	N	Philadelphia

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	Name	Year of offense	Year of sentence	Conviction (C) or sentencing (S) reversal?	Decision of reversal	Grounds for reversal	SCOPA docket #	Resentenced to death?	County of conviction
181	Chmiel, David	1983	1995	C	*Commonwealth v. Chmiel,* 558 Pa. 478, 738 A.2d 406 (1999)	Right to counsel and right against self-incrimination	162 CAP	Y	Lackawanna
182	Collins, Rodney	1992	1995	S	*Commonwealth v. Collins,* 598 Pa. 397, 957 A.2d 237 (2008)	IAC penalty phase	473 CAP	N	Philadelphia
183	Collins, Ronald	1992	1995	S	*Commonwealth v. Collins,* 585 Pa. 45, 888 A.2d 564 (2005)	IAC penalty phase	372 & 373 CAP	N	Philadelphia
184	Gease, Maurice	1994	1995	S	Order, *Commonwealth v. Gease,* No. CP-23-CR-902-1994 (Del. C.P. Nov. 14, 2003)	IAC penalty phase	116 CAP	N	Delaware
185	Gibson, Jerome	1994	1995	S	Order, *Commonwealth v. Gibson,* No. CP-09-CR-5119-1994 (Bucks C.P. Nov. 24, 2004)	*Atkins v. Virginia*	378, 380 & 467 CAP	N	Bucks
186	Harris, Johnny Ray	1992	1995	S	Order, *Commonwealth v. Harris,* No. CP-51-CR-903421-1992 (Phila. C.P. Sept. 12, 2002)	IAC penalty phase	99 CAP	N	Philadelphia
187	May, Freeman	1982	1995	S	*Commonwealth v. May,* 587 Pa. 184, 898 A.2d 559 (2006)	IAC appellate counsel	415 CAP	Y	Lebanon
188	Smith, Wayne	1994	1995	S	*Commonwealth v. Smith,* 606 Pa. 127, 995 A.2d 1143 (2010)	IAC penalty phase	436 CAP	Y	Delaware
189	Thomas, Frederick	1993	1995	C	Order, *Commonwealth v. Thomas,* No. CP-51-CR-209891-1994 (Phila. C.P. May 31, 2002)	*Brady v. Maryland*	132 CAP	N	Philadelphia
190	Thomas, LeRoy	1994	1995	S	*Commonwealth v. Thomas,* No. CP-51-CR-1207001-1994 (Phila. C.P. Jan. 11, 2007)	IAC penalty phase	314 CAP	N	Philadelphia
191	Washington, Vinson	1993	1995	S	Order, *Commonwealth v. Washington,* No. CP-51-CR-310321-1994 (Phila. C.P. July 15, 2008)	Stipulated	352 CAP	N	Phila.
192	Williams, Christopher	1989	1995	C	*Commonwealth v. Williams,* 636 Pa. 105, 141 A.3d 440 (2016)	IAC guilt phase (failure to call expert) and IAC appellate counsel	694 & 695 CAP	N	Philadelphia
193	Young, Richard	1979	1995	C	*Commonwealth v. Young,* 561 Pa. 34, 748 A.2d 166 (2000) (on reargument)	Confrontation clause violation	120 CAP	N	Lackawanna
194	Begley, James	1995	1996	S	*Commonwealth v. Begley,* 566 Pa. 239, 780 A.2d 605 (2001)	*Mills v. Maryland*	182 CAP	N	York
195	Bolden, Ralph	1994	1996	S	*Commonwealth v. Bolden,* 562 Pa. 94, 753 A.2d 793 (2000)	Erroneous aggravating circumstance	205 CAP	N	Allegheny

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	Name	Year of offense	Year of sentence	Conviction (C) or sentencing (S) reversal?	Decision of reversal	Grounds for reversal	SCOPA docket #	Resentenced to death?	County of conviction
196	Counterman, Dennis	1988	1996	C + S	Order, *Commonwealth v. Counterman,* No. CP-39-CR-2500-1988 (Lehigh C.P. Aug. 27, 2001)	*Brady v. Maryland,* IAC guilt phase, and IAC penalty phase	184 CAP	N	Lehigh
197	Karenbauer, Peter	1995	1996	S	Order, *Commonwealth v. Karenbauer,* No. CP-37-CR-642-1995 (Lawrence C.P. Sept. 23, 2002)	*Atkins v. Virginia*	181 CAP	N	Lawrence
198	Thompson, Andre	1992	1996	C	Order, *Commonwealth v. Thompson,* No. CP-51-CR-221931-1993 (Phila. C.P. July 12, 2004)	IAC guilt phase (failure to prepare alibi defense)	145 CAP	N	Philadelphia
199	Trivigno, Philip	1995	1996	S	*Commonwealth v. Trivigno,* 561 Pa. 232, 750 A.2d 243 (2000)	*Simmons v. South Carolina*	228 CAP	N	Philadelphia
200	Wesley, Jake	1994	1996	S	*Commonwealth v. Wesley,* 562 Pa. 7, 753 A.2d 204 (2000)	Erroneous aggravating circumstance	221 CAP	N	Allegheny
201	Douglas, Robert	1980	1997	S	Order, *Commonwealth v. Douglas,* No. CP-51-CR-823261-1981 (Phila. C.P. Nov. 10, 2005)	IAC penalty phase	160 CAP	N	Philadelphia
202	Fisher, Robert	1980	1997	C + S	*Fisher v. Beard,* No. 03-cv-788, 2018 WL 3594990 (E.D. Pa. July 25, 2018)	IAC penalty phase, *In re Winship* , and erroneous aggravating circumstance	451 CAP	N	Montgomery
203	Johnson, Roderick	1996	1997	C	*Commonwealth v. Johnson,* 174 A.3d 1050 (2017)	*Brady v. Maryland*	713 CAP	N	Berks
204	Miller, Dennis	1995	1997	S	*Miller v. Beard,* 214 F. Supp. 3d 304 (E.D. Pa. 2016)	IAC penalty phase (failure to challenge Commonwealth's expert) and insufficient waiver of penalty phase presentation	204 CAP	N	Chester
205	Rice, Timothy	1996	1997	S	Order, *Commonwealth v. Rice,* No. CP-51-CR-906231-1996 (Phila. C.P. Jan. 27, 2012)	Stipulated	253 CAP	N	Philadelphia
206	Thomaston, Michael	1995	1997	S	Order, *Commonwealth v. Thomaston,* No. CP-51-CR-400541-1995 (Phila. C.P. Dec. 11, 2002)	IAC penalty phase		N	Philadelphia
207	Weiss, Ronald	1978	1997	S	*Commonwealth v. Weiss,* No. CP-32-CR-218-199 (Indiana C.P. Mar. 19, 2012)	IAC penalty phase	543 CAP	N	Indiana

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	Name	Year of offense	Year of sentence	Conviction (C) or sentencing (S) reversal?	Decision of reversal	Grounds for reversal	SCOPA docket #	Resentenced to death?	County of conviction
208	Bridges, Shawnfatee	1996	1998	C	*Bridges v. Sec'y, Pa. Dep't of Corr.*, 706 F. App'x 75 (3d Cir. 2017)	*Brady v. Maryland*	450 CAP	N	Berks
209	Freeman, Robert	1989	1998	S	Order, *Commonwealth v. Freeman,* No. CP-51-CR-1008861-1996 (Phila. C.P. May 29, 2009)	IAC penalty phase	234 CAP	N	Philadelphia
210	Kemp, Matthew	1996	1998	S	Order, *Commonwealth v. Kemp,* No. CP-51-CR-400091-1997 (Phila. C.P. Oct. 24, 2005)	IAC penalty phase	245 CAP	N	Philadelphia
211	Kimbell, Thomas	1994	1998	C	*Commonwealth v. Kimbell,* 563 Pa. 256, 759 A.2d 1273 (2000)	Right to present a defense	261 CAP	N	Lawrence
212	Ockenhouse, John	1998	1998	S	Order, *Commonwealth v. Ockenhouse,* No. CP-39-CR-1664-1998 (Lehigh C.P. Apr. 16, 2003)	Stipulated	254 CAP	N	Lehigh
213	Overby, Lamont	1996	1998	S	*Commonwealth v. Overby,* No. CP-51-CR-1006081-1996 (Phila. C.P. Oct. 18, 2013)	Stipulated	239 CAP	N	Philadelphia
214	Overby, Michael	1990	1998	C	*Commonwealth v. Overby,* 570 Pa. 328, 809 A.2d 295 (2002)	*Bruton v. United States,* 391 U.S. 123 (1968)	244 CAP	N	Philadelphia
215	Rizzuto, Paul	1994	1998	S	*Commonwealth v. Rizzuto,* 566 Pa. 40, 777 A.2d 1069 (2001)	Jury misapplied statutory weighing law and instructional error	273 CAP	N	Philadelphia
216	Scott, Nathan	1998	1998	S	*Commonwealth v. Scott,* No. CP-46-CR-1739-1998 (Montgomery C.P. June 30, 2003)	*Atkins v. Virginia*	266 CAP	N	Montgomery
217	Stallworth, Leroy	1998	1998	S	*Commonwealth v. Stallworth,* 566 Pa. 349, 781 A.2d 110 (2001)	Erroneous aggravating circumstance	278 CAP	N	Lancaster
218	Boczkowski, Timothy	1994	1999	S	*Commonwealth v. Boczkowski,* 577 Pa. 421, 846 A.2d 75 (2004)	Erroneous aggravating circumstance	285 CAP	N	Allegheny
219	Champney, Ronald	1992	1999	C	*Commonwealth v. Champney,* 619 Pa. 627, 65 A.3d 386 (2013)	IAC guilt phase (failure to retain expert, investigate, and seek suppression of statement)	574 & 575 CAP	N	Schuylkill
220	DeJesus, Jose	1997	1999	S	*Commonwealth v. DeJesus,* 500 Pa. 303, 860 A.2d 102 (2004)	Improper prosecutorial argument	286 CAP	N	Philadelphia

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	Name	Year of offense	Year of sentence	Conviction (C) or sentencing (S) reversal?	Decision of reversal	Grounds for reversal	SCOPA docket #	Resentenced to death?	County of conviction
221	DeJesus, Jose III	1997	1999	S	*Commonwealth v. DeJesus,* No CP-51-CR-1103501-1997 (Phila. C.P. Jan. 8, 2018)	Stipulated	246 CAP	N	Philadelphia
222	DeJesus, Jose III	1997	1999	S	*Commonwealth v. DeJesus,* No CP-51-CR-1103501-1997 (Phila. C.P. Jan. 8, 2018)	Stipulated	246 CAP	N	Philadelphia
223	Dougherty, Daniel	1985	1999	C	*Commonwealth v. Dougherty,* 93 A.3d 520 (Pa. Super. Ct. 2013)	IAC guilt phase	585 CAP	N	Philadelphia
224	Fisher, Jonathan	1998	1999	S	Order, *Commonwealth v. Fisher,* No. CP-46-CR-4631-1999 (Montgomery C.P. Aug. 6, 2004)	IAC penalty phase	298 CAP	N	Montgomery
225	Harvey, Derrick	1998	1999	S	*Commonwealth v. Harvey,* 571 Pa. 533, 812 A.2d 1190 (2002)	Erroneous aggravating circumstance	267 CAP	N	Philadelphia
226	Hutchinson, Steven	1997	1999	S	Order, *Commonwealth v. Hutchinson,* No. CP-51-CR-408581-1998 (Phila. C.P. Oct. 25, 2006)	Stipulated	291 CAP	N	Philadelphia
227	Lloyd, Marcus	1998	1999	S	*Commonwealth v. Lloyd,* 569 Pa. 101, 800 A.2d 927 (2002)	Erroneous aggravating circumstance	312 CAP	N	Philadelphia
228	Miller, Kenneth	1998	1999	S	Bench Order, *Commonwealth v. Miller,* No. CP-51-CR-902382-1998 (Phila. C.P. May 13, 2014)	No grounds specified	678 CAP	N	Philadelphia
229	Moore, Mikal	1998	1999	S	*Commonwealth v. Moore,* No. CP-51-CR-701141-1998 (Phila. C.P. Mar. 27, 2017)	Stipulated	396 CAP	N	Philadelphia
230	Sattazahn, David	1987	1999	S	*Commonwealth v. Sattazahn,* 597 Pa. 648, 952 A.2d 640 (2008)	IAC penalty phase	509, 510 & 511 CAP	N	Berks
231	Boxley, Richard	1997	2000	S	*Commonwealth v. Boxley,* 575 Pa. 611, 838 A.2d 608 (2003)	State law ruling on jury selection	322 CAP	Y	Berks
232	Johnson, Raymond	1996	2000	C	Order, *Commonwealth v. Johnson,* No. CP-06-CR-3849-1999 (Berks C.P. Aug. 14, 2009)	IAC guilt phase (failure to prepare alibi defense)	529 CAP	N	Berks
233	Malloy, Charles	1996	2000	S	*Commonwealth v. Malloy,* 579 Pa. 425, 856 A.2d 767 (2004)	IAC penalty phase	311 CAP	N	York
234	McCrae, Steven	1998	2000	S	Order, *Commonwealth v. McCrae,* No. CP-51-CR-452-1999 (Phila. C.P. Apr. 13, 2006)	Stipulated	337 CAP	N	Philadelphia

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	Name	Year of offense	Year of sentence	Conviction (C) or sentencing (S) reversal?	Decision of reversal	Grounds for reversal	SCOPA docket #	Resentenced to death?	County of conviction
235	Ramos, Wilfredo	1998	2000	S	Order, *Commonwealth v. Ramos,* No. CP-51-CR-100891-1999 (Phila. C.P. Apr. 17, 2008)	IAC penalty phase	307 CAP	N	Philadelphia
236	Tharp, Michelle	1998	2000	S	*Commonwealth v. Tharp,* 627 Pa. 673, 101 A.3d 736 (2014)	IAC penalty phase	637 CAP	N	Washington
237	Cousar, Bernard	1999	2001	S	*Commonwealth v. Cousar,* 638 Pa. 171, 154 A.2d 287 (2017)	IAC penalty phase	704 CAP	N	Philadelphia
238	Cuevas, Joseph	1999	2001	S	*Commonwealth v. Cuevas,* 574 Pa. 409, 832 A.2d 388 (2003)	Erroneous aggravating circumstance	363 CAP	N	Monroe
239	Hanible, Ronald	1999	2001	S	Order, *Commonwealth v. Hanible,* No. CP-51-CR-409021-1999 (Phila. C.P. July 2, 2008)	IAC penalty phase	346 CAP	N	Philadelphia
240	Brooks, Billy	1990	2002	C	*Commonwealth v. Brooks,* 576 Pa. 332, 839 A.2d 245 (2003)	IAC guilt phase (failure to meet with defendant)	369 CAP	Y	Philadelphia
241	Fletcher, Lester	2001	2002	S	Order, *Commonwealth v. Fletcher,* No. CP-51-CR-709931-2001 (Phila. C.P. Jan. 19, 2011)	IAC penalty phase	626 CAP	N	Philadelphia
242	Markman, Beth	2000	2002	C	*Commonwealth v. Markman,* 591 Pa. 249, 916 A.2d 586 (2007)	*Bruton v. United States* and instructional error	371 CAP	N	Cumberland
243	Smith, Lawrence	2000	2002	S	*Commonwealth v. Smith,* 580 Pa. 392, 861 A.2d 892 (2004)	Improper prosecutorial argument	390 CAP	N	Philadelphia
244	Williams, Connie	1999	2002	S	*Commonwealth v. Williams,* 619 Pa. 219, 61 A.3d 979 (2013)	*Atkins v. Virginia*	611 CAP	N	Allegheny
245	Edwards, Mark	2002	2003	S	Order, *Commonwealth v. Edwards,* No. CP-26-CR-838-2002 (Fayette C.P. Mar. 25, 2015)	*Atkins v. Virginia*	449 CAP	N	Fayette
246	Sanchez, Ramon	2001	2003	C	Order, *Commonwealth v. Sanchez,* No. CP-39-CR-3652-2001 (Lehigh C.P. Nov. 16, 2010)	*Brady v. Maryland,* prosecutorial misconduct, IAC guilt phase (failure to impeach witnesses), improper admission of prior bad acts, and false testimony of Commonwealth expert	464 CAP	N	Lehigh
247	Sepulveda, Manuel	2001	2003	S	*Commonwealth v. Sepulveda,* 636 Pa. 466, 144 A.3d 1270 (2016)	IAC penalty phase	712 CAP	N	Monroe

Pennsylvania Capital Case Reversals - By Year of Sentence

	Name	Year of offense	Year of sentence	Conviction (C) or sentencing (S) reversal?	Decision of reversal	Grounds for reversal	SCOPA docket #	Resentenced to death?	County of conviction
248	Solano, Raymond	2001	2003	S	*Commonwealth v. Solano,* 634 Pa. 218, 129 A.3d 1156 (2015)	IAC penalty phase	686 & 687 CAP	N	Lehigh
249	Cooper, Willie	2002	2004	S	*Commonwealth v. Cooper,* 596 Pa. 119, 941 A.2d 655 (2007)	IAC penalty phase (improper defense closing argument)	454, 455 & 462 CAP	N	Philadelphia
250	Diggs, Junious	2002	2004	S	Order, *Commonwealth v. Diggs* , No. CP-51-CR-709781-2002 (Phila. C.P. Aug. 14, 2012)	Stipulated	444 CAP	N	Philadelphia
251	Maisonet, Orlando	1982	2005	C	Order, *Commonwealth v. Maisonet,* No. CP-51-CR-1134831-1990 (Phila. C.P. Feb. 13, 2019)	Prosecutorial misconduct and IAC guilt phase	490 CAP	N	Philadelphia
252	Walter, Shonda L	2003	2005	S	Order, *Commonwealth v. Walter,* No. CP-18-CR-179-2003 (Clinton C.P. July 26, 2016)	IAC penalty phase	645 CAP	N	Clinton
253	Briggs, Dustin	2004	2006	S	Order, *Commonwealth v. Briggs,* No. CP-08-CR-348-2004 (Bradford C.P. Mar. 30, 2017)	IAC penalty phase (failure to object to erroneous verdict slip)	537 CAP	N	Bradford
254	Galvin, Bryan	2006	2007	C	Opinion, *Commonwealth v. Galvin,* No. CP-06-CR-2572-2006 (Berks C.P. Sept. 15, 2014)	Juror misconduct	542 CAP	N	Berks
255	Johnson, Kareem	2002	2007	C	Agreement and Order, *Commonwealth v. Johnson,* No. CP-51-CR-1300424-2006 (Phila. C.P. Apr. 22, 2015)	IAC guilt phase	558 CAP	N	Philadelphia
256	Reyes, Angel	1993	2007	S	Order, *Commonwealth v. Reyes,* No. CP-23-CR-1388-1993 (Del. C.P. 2011)	IAC penalty phase (failure to review entire file and retaining conflicted expert)	554 CAP	N	Delaware
257	VanDivner, James W	2004	2007	S	*Commonwealth v. VanDivner,* 178 A.3d 108 (2018)	*Atkins v. Virginia* and IAC penalty phase	696 CAP	N	Fayette
258	May, Freeman	1982	2008	S	Order, *Commonwealth v. May,* No. CP-38-CR-71-1990 (Lebanon C.P. July 2, 2014)	Stipulated	600 CAP	N	Lebanon
259	Sanchez, Alfonso	2007	2008	C	Order, *Commonwealth v. Sanchez,* No. CP-09-CR-1136-2008 (Bucks C.P. Jan. 26, 2017)	*Brady v. Maryland*	605 CAP	N	Bucks
260	Murray, Harold	2005	2009	S	*Commonwealth v. Murray,* 623 Pa. 506, 83 A.3d 137 (2013)	Erroneous aggravating circumstance	658 CAP	N	Montgomery

Pennsylvania Capital Case Reversals - By Year of Sentence

	Name	Year of offense	Year of sentence	Conviction (C) or sentencing (S) reversal?	Decision of reversal	Grounds for reversal	SCOPA docket #	Resentenced to death?	County of conviction
261	Ramtahal, David	2006	2009	S	Order, *Commonwealth v. Ramtahal,* No. CP-09-CR-6389-2008 (Bucks C.P. Sept. 19, 2013)	IAC penalty phase	588 CAP	N	Bucks
262	Spell, Gaylord	2007	2009	S	*Commonwealth v. Spell,* 611 Pa. 584, 28 A.3d 1274 (2011)	Erroneous aggravating circumstance	592 CAP	N	Lawrence
263	Knight, Melvin	2010	2012	S	*Commonwealth v. Knight,* 638 Pa. 407, 156 A.3d 239 (2016)	Jury failed to find undisputed mitigator	702 CAP	Y	Westmoreland
264	White, Derrick	2010	2012	S	Bench Order, *Commonwealth v. White,* No. CP-51-CR-12991-2010 (Phila. C.P. May 19, 2014)	IAC penalty phase	78 EAL 2016	N	Philadelphia

Pennsylvania Capital Case Reversals - By Name

	Name	Year of offense	Year of sentence	Conviction (C) or sentencing (S) reversal?	Decision of reversal	Grounds for reversal	SCOPA docket #	Resentenced to death?	County of conviction
1	Abdul Salaam, Seifullah	1994	1995	S	*Abdul Salaam v. Sec'y, Pa. Dept. of Corr.,* 895 F.3d 254 (3d Cir. 2018)	IAC penalty phase	249 CAP	N	Cumberland
2	Abu-Jamal, Mumia	1981	1983	S	*Abu-Jamal v. Sec'y, Pa. Dep't of Corr.,* 643 F.3d 370 (3d Cir. 2011)	*Mills v. Maryland,* 486 U.S. 367 (1988)	119 CAP	N	Philadelphia
3	Albrecht, Alfred	1980	1983	S	*Albrecht v. Beard,* 636 F. Supp. 2d 468 (E.D. Pa. July 14, 2009)	IAC appellate counsel	138 CAP	N	Bucks
4	Appel, Martin	1986	1986	C	*Appel v. Horn,* 250 F.3d 203 (3d Cir. 2001)	IAC guilt phase (failure to investigate competency)	112 CAP	N	Northampton
5	Auker, Robert	1989	1992	S	*Commonwealth v. Auker,* 545 Pa. 521, 681 A.2d 1305 (1996)	Erroneous aggravating circumstance	104 CAP	N	Northumberland
6	Aulisio, Joseph	1981	1982	S	*Commonwealth v. Aulisio,* 514 Pa. 84, 522 A.2d 1075 (1987)	Erroneous aggravating circumstance	105 ED 1984	N	Lackawanna
7	Baker, Lawrence	1979	1981	S	*Commonwealth v. Baker,* 511 Pa. 1, 511 A.2d 777 (1986)	*Caldwell v. Mississippi,* 472 U.S. 320 (1985) and improper prosecutorial argument	62 ED 1983	N	Philadelphia
8	Baker, Lee (Herbert)	1984	1984	C	*Baker v. Horn,* 383 F. Supp. 2d 720 (E.D. Pa. 2005)	IAC guilt phase (failure to object to unconstitutional jury instructions)	189 & 190 CAP	N	Philadelphia
9	Bannerman, Sam	1984	1986	C	*Commonwealth v. Bannerman,* 525 Pa. 264, 579 A.2d 1295 (1990)	State law instructional error	90 ED 1986	N	Philadelphia
10	Bardo, Michael	1992	1993	S	*Commonwealth v. Bardo,* 629 Pa. 352, 105 A.3d 678 (2014)	IAC penalty phase	650 & 651 CAP	N	Luzerne
11	Basemore, William	1986	1989	C	*Commonwealth v. Basemore,* No. CP-51-CR-317611-1987 (Phila. C.P. Dec. 19, 2001)	*Batson v. Kentucky,* 476 U.S. 79 (1986)	197 CAP	N	Philadelphia
12	Begley, James	1995	1996	S	*Commonwealth v. Begley,* 566 Pa. 239, 780 A.2d 605 (2001)	*Mills v. Maryland*	182 CAP	N	York
13	Billa, Louis	1987	1987	C	*Commonwealth v. Billa,* 521 Pa. 168, 555 A.2d 835 (1989)	IAC penalty phase (failure to object to erroneous instruction)		N	Philadelphia
14	Blount, John	1989	1991	S	*Commonwealth v. Blount,* 538 Pa. 156, 647 A.2d 199 (1994)	IAC penalty phase (failure to object to erroneous instruction)	8 CAP	N	Philadelphia
15	Blystone, Scott	1983	1984	S	*Blystone v. Horn,* 664 F.3d 397 (3d Cir. 2011)	IAC penalty phase	136 CAP	N	Fayette

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	Name	Year of offense	Year of sentence	Conviction (C) or sentencing (S) reversal?	Decision of reversal	Grounds for reversal	SCOPA docket #	Resentenced to death?	County of conviction
16	Boczkowski, Timothy	1994	1999	S	*Commonwealth v. Boczkowski,* 577 Pa. 421, 846 A.2d 75 (2004)	Erroneous aggravating circumstance	285 CAP	N	Allegheny
17	Bolden, Ralph	1994	1996	S	*Commonwealth v. Bolden,* 562 Pa. 94, 753 A.2d 793 (2000)	Erroneous aggravating circumstance	205 CAP	N	Allegheny
18	Bond, Aquil	1991	1993	S	*Commonwealth v. Bond,* No. CP-51-CR-502971-2004 (Phila. C.P. Mar. 13, 2017)	IAC penalty phase	501 CAP	N	Philadelphia
19	Bond, Jesse	1991	1993	S	*Bond v. Beard,* 539 F.3d 256 (3d Cir. 2008)	IAC penalty phase	212 CAP	N	Philadelphia
20	Boxley, Richard	1997	2000	S	*Commonwealth v. Boxley,* 575 Pa. 611, 838 A.2d 608 (2003)	State law ruling on jury selection	322 CAP	Y	Berks
21	Bracey, Edward	1991	1992	S	*Commonwealth v. Bracey,* 632 Pa. 75, 117 A.3d 270 (2015)	*Atkins v. Virginia,* 536 U.S. 304 (2002)	240 CAP	N	Philadelphia
22	Bradley, Jerard	1990	1991	C	*Commonwealth v. Bradley,* 552 Pa. 492, 715 A.2d 1121 (1998)	IAC guilt phase (erroneous plea advice)	147 CAP	N	Lycoming
23	Breakiron, Mark	1987	1988	C	*Breakiron v. Horn,* No. 00-cv-300, 2008 WL 4412057 (W.D. Pa. Sept. 24, 2008)	*Brady v. Maryland,* 373 U.S. 83 (1963)	323 CAP	N	Fayette
24	Bricker, Robert	1979	1983	C	*Commonwealth v. Bricker,* 506 Pa. 571, 487 A.2d 346 (1985)	Improper prosecutorial argument and IAC guilt phase	38 WD 1983	Y	Allegheny
25	Bricker, Robert	1979	1988	C	*Commonwealth v. Bricker,* 525 Pa. 362, 581 A.2d 147 (1990)	State law instructional error and evidentiary ruling	111 WD 1988	N	Allegheny
26	Bridges, Shawnfatee	1996	1998	C	*Bridges v. Sec'y, Pa. Dep't of Corr.,* 706 F. App'x 75 (3d Cir. 2017)	*Brady v. Maryland*	450 CAP	N	Berks
27	Briggs, Dustin	2004	2006	S	Order, *Commonwealth v. Briggs,* No. CP-08-CR-348-2004 (Bradford C.P. Mar. 30, 2017)	IAC penalty phase (failure to object to erroneous verdict slip)	537 CAP	N	Bradford
28	Brode, Richard	1986	1988	S	*Commonwealth v. Brode,* 523 Pa. 20, 564 A.2d 1254 (1989)	State law evidentiary ruling	48 MD 1988	N	Lebanon
29	Bronshtein, Antuan	1991	1994	S	*Bronshtein v. Horn,* 404 F.3d 700 (3d Cir. 2005)	*Simmons v. South Carolina,* 512 U.S. 154 (1994)	284 CAP	Y	Philadelphia
30	Brooks, Billy	1990	2002	C	*Commonwealth v. Brooks,* 576 Pa. 332, 839 A.2d 245 (2003)	IAC guilt phase (failure to meet with defendant)	369 CAP	Y	Philadelphia
31	Brown, John	1990	1992	C	Order, *Brown v. Beard,* No. 05-cv-4125 (E.D. Pa. June 27, 2018)	Stipulated	539 CAP	N	Philadelphia

Pennsylvania Capital Case Reversals - By Name

	Name	Year of offense	Year of sentence	Conviction (C) or sentencing (S) reversal?	Decision of reversal	Grounds for reversal	SCOPA docket #	Resentenced to death?	County of conviction
32	Brown, Kenneth	1993	1995	S	*Commonwealth v. Brown,* 551 Pa. 465, 711 A.2d 444 (1998)	Improper prosecutorial argument	108 CAP	Y	Philadelphia
33	Bryant, James	1978	1984	C	*Commonwealth v. Bryant,* 515 Pa. 473, 530 A.2d 83 (1987)	State law evidentiary ruling	159 ED 1984	Y	Philadelphia
34	Bryant, James	1978	1989	C	*Commonwealth v. Bryant,* 531 Pa. 147, 611 A.2d 703 (1992)	State law evidentiary ruling	23 ED 1989	N	Philadelphia
35	Bryant, Robert	1984	1986	S	*Commonwealth v. Bryant,* No. CP-02-CR-7686-1984 (Allegheny C.P. Mar. 24, 1998)	IAC penalty phase		N	Allegheny
36	Buehl, Roger	1982	1983	S	*Buehl v. Vaughn,* 166 F.3d 163 (3d Cir. 1999)	IAC penalty phase	63 CAP	N	Montgomery
37	Burgos, Jerry	1988	1990	C + S	*Commonwealth v. Burgos,* 530 Pa. 473, 610 A.2d 11 (1992)	State law evidentiary ruling and erroneous aggravating circumstance	162 ED 1990	N	Monroe
38	Caldwell, Christopher	1985	1986	S	*Commonwealth v. Caldwell,* 516 Pa. 441, 532 A.2d 813 (1987)	Erroneous aggravating circumstance	35 WD 1986	N	Allegheny
39	Carpenter, James	1983	1984	S	*Carpenter v. Vaughn,* 296 F.3d 138 (3d Cir. 2002)	IAC penalty phase (failure to object to instructional error)	178 CAP	N	York
40	Carson, Samuel	1993	1995	S	Order, *Commonwealth v. Carson,* No. CP-51-CR-228371-1994 (Phila. C.P. Apr. 1, 2008)	IAC penalty phase	400 CAP	N	Philadelphia
41	Chambers, Karl	1986	1987	S	*Commonwealth v. Chambers,* 528 Pa. 558, 599 A.2d 630 (1991)	Improper prosecutorial argument	14 MD 1989	N	York
42	Chambers, Karl	1986	1994	S	*Commonwealth v. Chambers,* 570 Pa. 3, 807 A.2d 872 (2002)	IAC penalty phase (failure to object to erroneous instruction)	299 CAP	N	York
43	Champney, Ronald	1992	1999	C	*Commonwealth v. Champney,* 619 Pa. 627, 65 A.3d 386 (2013)	IAC guilt phase (failure to retain expert, investigate, and seek suppression of statement)	574 & 575 CAP	N	Schuylkill
44	Chandler, Kevin	1993	1995	S	*Commonwealth v. Chandler,* 554 Pa. 401, 721 A.2d 1040 (1998)	*Simmons v. South Carolina*	111 CAP	N	Philadelphia
45	Chester, Frank	1987	1989	C	*Chester v. Horn,* No. 99-cv-411, 2011 WL 710470 (E.D. Pa. Feb. 28, 2011)	Defense counsel conflict of interest and *In re Winship,* 397 U.S. 358 (1970)	339 CAP	N	Bucks

Pennsylvania Capital Case Reversals - By Name

	Name	Year of offense	Year of sentence	Conviction (C) or sentencing (S) reversal?	Decision of reversal	Grounds for reversal	SCOPA docket #	Resentenced to death?	County of conviction
46	Chmiel, David	1983	1984	C	*Commonwealth v. Chmiel,* 536 Pa. 244, 639 A.2d 9 (1994)	IAC guilt phase (failure to request corrupt source instruction)	111 ED 1991	Y	Lackawanna
47	Chmiel, David	1983	1995	C	*Commonwealth v. Chmiel,* 558 Pa. 478, 738 A.2d 406 (1999)	Right to counsel and right against self-incrimination	162 CAP	Y	Lackawanna
48	Christy, Lawrence	1980	1983	C + S	*Christy v. Horn,* 28 F. Supp. 2d 307 (W.D. Pa. 1998)	*Ake v. Oklahoma,* 470 U.S. 68 (1985), IAC sentencing phase, and improper prosecutorial argument	48 CAP	N	Cambria
49	Clark, Ronald	1993	1994	S	Order, *Commonwealth v. Clark,* No. CP-51-CR-1241151-1993 (Phila. C.P. Aug. 25, 2006)	IAC penalty phase	92 CAP	N	Philadelphia
50	Clayton, Willie	1980	1982	C	*Commonwealth v. Clayton,* 506 Pa. 24, 483 A.2d 1345 (1984)	State law evidentiary ruling	46 ED 1983	Y	Philadelphia
51	Collins, Rodney	1992	1995	S	*Commonwealth v. Collins,* 598 Pa. 397, 957 A.2d 237 (2008)	IAC penalty phase	473 CAP	N	Philadelphia
52	Collins, Ronald	1992	1995	S	*Commonwealth v. Collins,* 585 Pa. 45, 888 A.2d 564 (2005)	IAC penalty phase	372 & 373 CAP	N	Philadelphia
53	Cook, Robert	1987	1994	S	Order, *Commonwealth v. Cook,* No. CP-51-CR-826512-1987 (Phila. C.P. Mar. 13, 2003)	IAC penalty phase	61 CAP	N	Philadelphia
54	Cooper, Willie	2002	2004	S	*Commonwealth v. Cooper,* 596 Pa. 119, 941 A.2d 655 (2007)	IAC penalty phase (improper defense closing argument)	454, 455 & 462 CAP	N	Philadelphia
55	Counterman, Dennis	1988	1996	C + S	Order, *Commonwealth v. Counterman,* No. CP-39-CR-2500-1988 (Lehigh C.P. Aug. 27, 2001)	*Brady v. Maryland,* IAC guilt phase, and IAC penalty phase	184 CAP	N	Lehigh
56	Cousar, Bernard	1999	2001	S	*Commonwealth v. Cousar,* 638 Pa. 171, 154 A.2d 287 (2017)	IAC penalty phase	704 CAP	N	Philadelphia
57	Craver, Sherman	1993	1994	S	*Commonwealth v. Craver,* No. CP-23-CR-1902-1993 (Del. C.P. June 21, 2002)	IAC penalty phase	98 CAP	N	Delaware
58	Crawley, DeWitt	1983	1984	S	Order, *Crawley v. Horn,* No. 99-cv-5919 (E.D. Pa. Feb. 17, 2015)	IAC penalty phase	66 & 447 CAP	N	Philadelphia
59	Crews, Paul David	1990	1990	S	Order, *Crews v. Horn,* No. 3:98-cv-1464 (M.D. Pa. Aug. 28, 2006)	IAC penalty phase	393 CAP	N	Perry
60	Crispell, Daniel	1989	1990	S	*Commonwealth v. Crispell,* 193 A.3d 919 (Pa. 2018)	IAC penalty phase	722 CAP	N	Clearfield

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	Name	Year of offense	Year of sentence	Conviction (C) or sentencing (S) reversal?	Decision of reversal	Grounds for reversal	SCOPA docket #	Resentenced to death?	County of conviction
61	Cross, Charles	1981	1982	S	*Cross v. Price,* No. 95-cv-614, 2005 WL 2106559 (W.D. Pa. Aug. 30, 2005)	IAC penalty phase (failure to object to erroneous instruction)	179 CAP	N	Beaver
62	Cuevas, Joseph	1999	2001	S	*Commonwealth v. Cuevas,* 574 Pa. 409, 832 A.2d 388 (2003)	Erroneous aggravating circumstance	363 CAP	N	Monroe
63	D'Amato, Joseph	1981	1983	S	Order, *Commonwealth v. D'Amato,* No. CP-51-CR-1219941-1981 (Phila. C.P. June 13, 2013)	Stipulated	332 CAP	N	Philadelphia
64	DeHart, Robert	1983	1983	S	*Commonwealth v. DeHart,* 539 Pa. 5, 650 A.2d 38 (1994)	IAC penalty phase (failure to object to erroneous verdict slip)	6 CAP	N	Huntingdon
65	DeJesus, Jose	1997	1999	S	*Commonwealth v. DeJesus,* 500 Pa. 303, 860 A.2d 102 (2004)	Improper prosecutorial argument	286 CAP	N	Philadelphia
66	DeJesus, Jose III	1997	1999	S	*Commonwealth v. DeJesus,* No CP-51-CR-1103501-1997 (Phila. C.P. Jan. 8, 2018)	Stipulated	246 CAP	N	Philadelphia
67	DeJesus, Jose III	1997	1999	S	*Commonwealth v. DeJesus,* No CP-51-CR-1103501-1997 (Phila. C.P. Jan. 8, 2018)	Stipulated	246 CAP	N	Philadelphia
68	Dennis, James	1991	1992	C	*Dennis v. Sec'y, Pa. Dept. of Corr.,* 834 F.3d 263 (3d Cir. 2016) (en banc)	*Brady v. Maryland*	491 CAP	N	Philadelphia
69	Diggs, Junious	2002	2004	S	Order, *Commonwealth v. Diggs* , No. CP-51-CR-709781-2002 (Phila. C.P. Aug. 14, 2012)	Stipulated	444 CAP	N	Philadelphia
70	Dougherty, Daniel	1985	1999	C	*Commonwealth v. Dougherty,* 93 A.3d 520 (Pa. Super. Ct. 2013)	IAC guilt phase	585 CAP	N	Philadelphia
71	Douglas, Robert	1980	1997	S	Order, *Commonwealth v. Douglas,* No. CP-51-CR-823261-1981 (Phila. C.P. Nov. 10, 2005)	IAC penalty phase	160 CAP	N	Philadelphia
72	Edwards, George	1984	1985	S	*Commonwealth v. Edwards,* No. CP-35-CR-52919-1984 (Lackawanna C.P. June 16, 1999)	Stipulated	74 ED 1987	N	Lackawanna
73	Edwards, Mark	2002	2003	S	Order, *Commonwealth v. Edwards,* No. CP-26-CR-838-2002 (Fayette C.P. Mar. 25, 2015)	*Atkins v. Virginia*	449 CAP	N	Fayette

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74	Elliott, Joseph	1992	1994	S	*Commonwealth v. Elliott,* No. CP-51-CR-410911-1994 (Phila. C.P. May 1, 2015)	IAC penalty phase and IAC appellate counsel	612 & 624 CAP	N	Philadelphia
75	Faulkner, Arthur	1988	1989	C	Order, *Faulkner v. Horn,* No. CP-46-CR-3162-1988 (Montgomery C.P. July 9, 2002)	IAC guilt phase and right to present defense	233 CAP	N	Montgomery
76	Ferber, Neil	1981	1984	C	*Commonwealth v. Ferber,* No. CP-51-CR-710481-1981 (Phila. C.P. Mar. 7, 1986)	Innocence		N	Philadelphia
77	Fisher, Jonathan	1998	1999	S	Order, *Commonwealth v. Fisher,* No. CP-46-CR-4631-1999 (Montgomery C.P. Aug. 6, 2004)	IAC penalty phase	298 CAP	N	Montgomery
78	Fisher, Robert	1980	1989	C	*Commonwealth v. Fisher,* 527 Pa. 345, 591 A.2d 710 (1991)	State law ruling on jury selection	68 ED 1989	Y	Montgomery
79	Fisher, Robert	1980	1991	S	*Commonwealth v. Fisher,* 545 Pa. 233, 681 A.2d 130 (1996)	Improper admission of victim impact evidence	48 ED 1982	Y	Montgomery
80	Fisher, Robert	1980	1997	C + S	*Fisher v. Beard,* No. 03-cv-788, 2018 WL 3594990 (E.D. Pa. July 25, 2018)	IAC penalty phase, *In re Winship* , and erroneous aggravating circumstance	451 CAP	N	Montgomery
81	Fletcher, Lester	2001	2002	S	Order, *Commonwealth v. Fletcher,* No. CP-51-CR-709931-2001 (Phila. C.P. Jan. 19, 2011)	IAC penalty phase	626 CAP	N	Philadelphia
82	Floyd, Calvin	1980	1982	C	*Commonwealth v. Floyd,* 506 Pa. 85, 484 A.2d 365 (1984)	Improper prosecutorial argument	91 ED 1982	N	Philadelphia
83	Ford, Kenneth	1989	1992	S	*Commonwealth v. Ford,* 570 Pa. 378, 809 A.2d 325 (2002)	IAC penalty phase	248 CAP	N	Philadelphia
84	Frederick, Edward Lee	1982	1983	S	*Commonwealth v. Frederick,* 508 Pa. 527, 498 A.2d 1322 (1985)	Erroneous aggravating circumstance	85 WD 1983	N	McKean
85	Freeman, Robert	1989	1998	S	Order, *Commonwealth v. Freeman,* No. CP-51-CR-1008861-1996 (Phila. C.P. May 29, 2009)	IAC penalty phase	234 CAP	N	Philadelphia
86	Frey, Roderick	1979	1980	S	*Frey v. Fulcomer,* 132 F.3d 916 (3d Cir. 1997)	*Mills v. Maryland*		N	Lancaster
87	Galvin, Bryan	2006	2007	C	Opinion, *Commonwealth v. Galvin,* No. CP-06-CR-2572-2006 (Berks C.P. Sept. 15, 2014)	Juror misconduct	542 CAP	N	Berks

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88	Gease, Maurice	1994	1995	S	Order, *Commonwealth v. Gease,* No. CP-23-CR-902-1994 (Del. C.P. Nov. 14, 2003)	IAC penalty phase	116 CAP	N	Delaware
89	Gibbs, Barry	1984	1985	C	*Commonwealth v. Gibbs,* 520 Pa. 151, 553 A.2d 409 (1989)	*Miranda v. Arizona,* 384 U.S. 436 (1966)		N	Pike
90	Gibson, Jerome	1994	1995	S	Order, *Commonwealth v. Gibson,* No. CP-09-CR-5119-1994 (Bucks C.P. Nov. 24, 2004)	*Atkins v. Virginia*	378, 380 & 467 CAP	N	Bucks
91	Goins, George	1981	1982	S	*Commonwealth v. Goins,* 508 Pa. 270, 495 A.2d 527 (1985)	Erroneous aggravating circumstance	30 ED 1984	N	Philadelphia
92	Gorby, Thomas	1985	1989	S	*Commonwealth v. Gorby,* 589 Pa. 364, 909 A.2d 775 (2006)	IAC penalty phase	385 CAP	N	Washington
93	Graham, Harrison	1987	1988	S	Order, *Commonwealth v. Graham,* No. CP-51-CR-839481-1987 (Phila. C.P. Dec. 18, 2003)	*Atkins v. Virginia*	38 CAP	N	Philadelphia
94	Green, Samuel	1987	1989	C	*Commonwealth v. Green,* 536 Pa. 599, 640 A.2d 1242 (1994)	*Brady v. Maryland*	103 ED 1991	N	Northampton
95	Green, William	1982	1982	S	*Commonwealth v. Green,* 525 Pa. 424, 581 A.2d 544 (1990)	State law evidentiary ruling	41 ED 1987	N	Philadelphia
96	Gribble, William	1992	1994	S	Order, *Commonwealth v. Gribble,* No. CP-51-CR-1220811-1992 (Phila. C.P. Mar. 8, 2007)	IAC penalty phase	336 & 356 CAP	N	Philadelphia
97	Grier, Eric	1989	1990	C	*Commonwealth v. Grier,* 536 Pa. 204, 638 A.2d 965 (1994)	*In re Winship*	177 ED 1990	N	Philadelphia
98	Griffin, Rodney	1983	1984	S	Order, *Commonwealth v. Griffin,* No. CP-23-CR-1655-1984 (Del. C.P Dec. 16, 2003)	Stipulated	24 CAP	N	Delaware
99	Hall, Darrick	1993	1994	S	*Hall v. Beard,* 55 F. Supp. 3d 618 (E.D. Pa. 2014)	IAC penalty phase	318 CAP	N	Chester
100	Hall, Donald	1981	1982	S	*Commonwealth v. Hall,* 523 Pa. 75, 565 A.2d 144 (1989)	Improper prosecutorial argument	97 ED 1987	Y	Philadelphia
101	Hall, Donald	1981	1990	S	*Commonwealth v. Hall,* 26 Phila. Co. Rptr. 621, 1993 WL 1156097 (Phila. C.P. July 23, 1993)	IAC penalty phase (failure to raise Commonwealth's prior concession not to seek death)	577 ED ALLOC 1994	N	Philadelphia
102	Hanible, Ronald	1999	2001	S	Order, *Commonwealth v. Hanible,* No. CP-51-CR-409021-1999 (Phila. C.P. July 2, 2008)	IAC penalty phase	346 CAP	N	Philadelphia

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103	Hardcastle, Donald	1982	1986	C	*Hardcastle v. Horn,* 332 F. App'x 764 (3d Cir. 2009)	*Batson v. Kentucky*	100 CAP	N	Philadelphia
104	Harris, Johnny Ray	1992	1995	S	Order, *Commonwealth v. Harris,* No. CP-51-CR-903421-1992 (Phila. C.P. Sept. 12, 2002)	IAC penalty phase	99 CAP	N	Philadelphia
105	Harvey, Derrick	1998	1999	S	*Commonwealth v. Harvey,* 571 Pa. 533, 812 A.2d 1190 (2002)	Erroneous aggravating circumstance	267 CAP	N	Philadelphia
106	Hawkins, Thomas	1989	1990	C	*Commonwealth v. Hawkins,* 534 Pa. 123, 626 A.2d 550 (1993)	State law evidentiary ruling	88 ED 1991	Y	Montgomery
107	Henry, Josoph	1986	1987	S	*Henry v. Horn,* 218 F. Supp. 2d 671 (E.D. Pa. 2002)	*Mills v. Maryland*	140 CAP	N	Northampton
108	Hill, Donetta	1990	1993	S	Order, *Commonwealth v. Hill,* No. CP-51-CR-518391-1991 (Phila. C.P. Dec. 5, 2005)	Stipulated	39 CAP	N	Philadelphia
109	Holland, William	1984	1986	S	*Holland v. Horn,* 519 F.3d 107 (3d Cir. 2008)	*Ake v. Oklahoma* and IAC appellate counsel	153 CAP	N	Philadelphia
110	Holloway, Arnold	1980	1987	S	*Holloway v. Horn,* 161 F. Supp. 2d 452 (E.D. Pa. 2001)	IAC penalty phase (failure to request mental health expert)	191 CAP	N	Philadelphia
111	Howard, Melvin	1987	1989	S	Order, *Commonwealth v. Howard,* No. CP-51-CR-304271-1988 (Phila. C.P. Sept. 16, 2011)	Stipulated	302 CAP	N	Philadelphia
112	Huffman, Andrew	1989	1990	C	*Commonwealth v. Huffman,* 536 Pa. 196, 638 A.2d 961 (1994)	*In re Winship*	182 ED 1990	N	Philadelphia
113	Hughes, Kevin	1979	1983	S	Order, *Commonwealth v. Hughes,* No. CP-51-CR-116881-1980 (Phila. C.P. Mar. 21, 2005)	*Roper v. Simmons,* 543 U.S. 551 (2004)	313 CAP	N	Philadelphia
114	Hutchinson, Steven	1997	1999	S	Order, *Commonwealth v. Hutchinson,* No. CP-51-CR-408581-1998 (Phila. C.P. Oct. 25, 2006)	Stipulated	291 CAP	N	Philadelphia
115	Jacobs, Daniel	1992	1993	C	*Jacobs v. Horn,* 395 F.3d 92 (3d Cir. 2005)	IAC guilt phase (failure to present diminished capacity defense)	177 CAP	N	York
116	Jasper, Alfred	1984	1988	S	*Commonwealth v. Jasper,* 526 Pa. 497, 587 A.2d 705 (1991)	*Mills v. Maryland*	65 ED 1988	Y	Philadelphia
117	Jasper, Alfred	1984	1994	S	*Commonwealth v. Jasper,* 558 Pa. 281, 737 A.2d 196 (1999)	*Caldwell v. Mississippi*	114 CAP	N	Philadelphia

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	Name	Year of offense	Year of sentence	Conviction (C) or sentencing (S) reversal?	Decision of reversal	Grounds for reversal	SCOPA docket #	Resentenced to death?	County of conviction
118	Jermyn, Frederick	1985	1986	S	*Jermyn v. Horn,* 266 F.3d 257 (3d Cir. 2001)	IAC penalty phase	134 CAP	N	Cumberland
119	Johnson, Kareem	2002	2007	C	Agreement and Order, *Commonwealth v. Johnson,* No. CP-51-CR-1300424-2006 (Phila. C.P. Apr. 22, 2015)	IAC guilt phase	558 CAP	N	Philadelphia
120	Johnson, Raymond	1996	2000	C	Order, *Commonwealth v. Johnson,* No. CP-06-CR-3849-1999 (Berks C.P. Aug. 14, 2009)	IAC guilt phase (failure to prepare alibi defense)	529 CAP	N	Berks
121	Johnson, Roderick	1996	1997	C	*Commonwealth v. Johnson,* 174 A.3d 1050 (2017)	*Brady v. Maryland*	713 CAP	N	Berks
122	Johnson, William	1991	1994	S	Order, *Commonwealth v. Johnson,* No. CP-51-CR-936052-1991 (Phila. C.P. Dec. 12, 2005)	IAC penalty phase	701 CAP	N	Philadelphia
123	Jones, Damon	1982	1987	S	Order, *Commonwealth v. Jones,* No. CP-51-CR-907121-1982 (Phila. C.P. Aug. 3, 2007)	IAC penalty phase and IAC appellate counsel	409 & 425 CAP	N	Philadelphia
124	Jones, James	1980	1985	S	*Commonwealth v. Jones,* 583 Pa. 130, 876 A.2d 380 (2005)	IAC penalty phase, erroneous aggravating circumstance, and denial of mental health evaluation	350 & 360 CAP	N	Philadelphia
125	Jones, Thomas	1982	1982	S	*Commonwealth v. Jones,* 520 Pa. 68, 550 A.2d 536 (1988)	IAC penalty phase	29 ED 1983	N	Philadelphia
126	Judge, Roger	1984	1987	S	*Judge v. Beard,* No. 02-cv-6798, 2012 WL 5960643 (E.D. Pa. Nov. 29, 2012)	IAC penalty phase	474 CAP	N	Philadelphia
127	Karabin, Nicholas	1979	1979	S	*Commonwealth v. Karabin,* 521 Pa. 543, 559 A.2d 19 (1989)	Erroneous aggravating circumstance	49 MD 1987	N	Dauphin
128	Karenbauer, Peter	1995	1996	S	Order, *Commonwealth v. Karenbauer,* No. CP-37-CR-642-1995 (Lawrence C.P. Sept. 23, 2002)	*Atkins v. Virginia*	181 CAP	N	Lawrence
129	Keaton, Alexander	1992	1994	S	*Commonwealth v. Keaton,* 615 Pa. 675, 45 A.3d 1050 (2012)	IAC penalty phase	418, 419 & 420 CAP	N	Philadelphia
130	Kemp, Matthew	1996	1998	S	Order, *Commonwealth v. Kemp,* No. CP-51-CR-400091-1997 (Phila. C.P. Oct. 24, 2005)	IAC penalty phase	245 CAP	N	Philadelphia

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	Name	Year of offense	Year of sentence	Conviction (C) or sentencing (S) reversal?	Decision of reversal	Grounds for reversal	SCOPA docket #	Resentenced to death?	County of conviction
131	Kimbell, Thomas	1994	1998	C	*Commonwealth v. Kimbell,* 563 Pa. 256, 759 A.2d 1273 (2000)	Right to present a defense	261 CAP	N	Lawrence
132	Kindler, Joseph	1982	1991	S	*Kindler v. Horn,* 642 F.3d 398 (3d Cir. 2011)	*Mills v. Maryland* and IAC sentencing phase	151 CAP	N	Philadelphia
133	King, Carolyn	1993	1994	S	Order, *Commonwealth v. King,* No. CP-38-CR-10898-1993 (Lebanon C.P. July 23, 2010)	IAC penalty phase	614 CAP	N	Lebannon
134	Knight, Melvin	2010	2012	S	*Commonwealth v. Knight,* 638 Pa. 407, 156 A.3d 239 (2016)	Jury failed to find undisputed mitigator	702 CAP	Y	Westmoreland
135	LaCava, Michael	1990	1991	S	*Commonwealth v. LaCava,* 542 Pa. 160, 666 A.2d 221 (1995)	IAC penalty phase (failure to object to prosecutorial misconduct)	34 CAP	N	Philadelphia
136	Laird, Richard	1987	1989	C	*Laird v. Horn,* 414 F.3d 419 (3d Cir. 2005)	*In re Winship*	194 CAP	Y	Bucks
137	Lambert, James	1982	1986	S	*Lambert v. Beard,* 537 F. App'x 78 (3d Cir. 2013)	*Brady v. Maryland*	427 CAP	N	Philadelphia
138	Lark, Robert	1978	1985	C	*Lark v. Sec'y, Pa. Dept. of Corr.,* 566 F. App'x 161 (3d Cir. 2014)	*Batson v. Kentucky*	235 CAP	N	Philadelphia
139	Lee, Percy	1986	1991	S	Order, *Commonwealth v. Lee,* No. CP-51-CR-511562-1986 (Phila. C.P. Sept. 21, 2005)	*Roper v. Simmons*	386 CAP	N	Philadelphia
140	Lesko, John	1980	1981	S	*Lesko v. Lehman,* 925 F.2d 1527 (3d Cir. 1991)	Improper prosecutorial argument	37 WD 1982	Y	Westmoreland
141	Lewis, Reginald	1983	1988	C	*Commonwealth v. Lewis,* 528 Pa. 440, 598 A.2d 975 (1991)	State law instructional error	170 ED 1988	Y	Philadelphia
142	Lewis, Reginald	1983	1994	S	Order, *Lewis v. Horn,* No. 00-cv-802 (E.D. Pa. July 25, 2011)	Stipulated	164 CAP	N	Philadelphia
143	Lloyd, Marcus	1998	1999	S	*Commonwealth v. Lloyd,* 569 Pa. 101, 800 A.2d 927 (2002)	Erroneous aggravating circumstance	312 CAP	N	Philadelphia
144	Ly, Cam	1983	1988	S	*Commonwealth v. Ly,* No. CP-51-CR-1125561-1986 (Phila. C.P. Dec. 12, 2013)	Stipulated	465 CAP	N	Philadelphia
145	Maisonet, Orlando	1982	2005	C	Order, *Commonwealth v. Maisonet,* No. CP-51-CR-1134831-1990 (Phila. C.P. Feb. 13, 2019)	Prosecutorial misconduct and IAC guilt phase	490 CAP	N	Philadelphia
146	Malloy, Charles	1996	2000	S	*Commonwealth v. Malloy,* 579 Pa. 425, 856 A.2d 767 (2004)	IAC penalty phase	311 CAP	N	York

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147	Markman, Beth	2000	2002	C	*Commonwealth v. Markman,* 591 Pa. 249, 916 A.2d 586 (2007)	*Bruton v. United States,* 391 U.S. 123 (1968) and instructional error	371 CAP	N	Cumberland
148	Marrero, Jose	1994	1994	S	Order, *Commonwealth v. Marrero,* No. CP-25-CR-645-1994 (Erie C.P. Jan. 8, 2009)	Stipulated	397 CAP	N	Erie
149	Marshall, Jerome	1983	1984	S	*Commonwealth v. Marshall,* 523 Pa. 556, 568 A.2d 590 (1989)	Erroneous aggravating circumstance	155 ED 1985	Y	Philadelphia
150	Marshall, Jerome	1983	1984	S	*Marshall v. Wetzel,* No. 03-cv-3308, 2018 WL 5814633 (E.D. Pa. Nov. 6, 2018)	Stipulated	533 CAP	N	Philadelphia
151	Marshall, Jerry	1987	1990	S	*Memorandum, Marshall v. Beard,* No. 03-cv-795 (E.D. Pa. Apr. 25, 2007)	Stipulated	216 CAP	N	Philadelphia
152	Martin, Bradley	1993	1994	S	*Commonwealth v. Martin,* 607 Pa. 165, 5 A.3d 177 (2010)	IAC penalty phase	441, 442 & 443 CAP	N	Lebanon
153	May, Freeman	1982	1991	S	*Commonwealth v. May,* 540 Pa. 237, 656 A.2d 1335 (1995)	Erroneous aggravating circumstance	54 CAP	Y	Lebanon
154	May, Freeman	1982	1995	S	*Commonwealth v. May,* 587 Pa. 184, 898 A.2d 559 (2006)	IAC appellate counsel	415 CAP	Y	Lebanon
155	May, Freeman	1982	2008	S	Order, *Commonwealth v. May,* No. CP-38-CR-71-1990 (Lebanon C.P. July 2, 2014)	Stipulated	600 CAP	N	Lebanon
156	Mayhue, Frederick	1986	1988	S	*Commonwealth v. Mayhue,* 536 Pa. 271, 639 A.2d 421 (1994)	Erroneous aggravating circumstance	28 CAP	N	Allegheny
157	McCrae, Steven	1998	2000	S	Order, *Commonwealth v. McCrae,* No. CP-51-CR-452-1999 (Phila. C.P. Apr. 13, 2006)	Stipulated	337 CAP	N	Philadelphia
158	McGill, Bernard	1990	1992	S	Order, *Commonwealth v. McGill,* No. CP-51-CR-339201-1990 (Phila. C.P. July 13, 2012)	IAC penalty phase	225 CAP	N	Philadelphia
159	McNair, Nathaniel	1987	1988	S	Order, *Commonwealth v. McNair,* No. CP-51-CR-122459-1987 (Phila. C.P. Feb. 19, 2002)	IAC penalty phase	90 ED 1989	N	Philadelphia
160	McNeil, Christopher	1990	1992	S	*Commonwealth v. McNeil,* 545 Pa. 42, 679 A.2d 1253 (1996)	IAC penalty phase (failure to object to victim impact evidence)	37 CAP	N	Philadelphia

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	Name	Year of offense	Year of sentence	Conviction (C) or sentencing (S) reversal?	Decision of reversal	Grounds for reversal	SCOPA docket #	Resentenced to death?	County of conviction
161	Meadows, Thomas	1984	1990	S	Stipulation and Order, *Meadows v. Beard,* No. 05-cv-566 (E.D. Pa. Sept. 8, 2016)	IAC penalty phase (failure to object to victim impact evidence)	689 CAP	N	Montgomery
162	Mikell, William	1987	1989	C	*Commonwealth v. Mikell,* 556 Pa. 509, 729 A.2d 566 (1999)	IAC guilt phase (failure to request alibi instruction)	97 CAP	N	Philadelphia
163	Miller, Dennis	1995	1997	S	*Miller v. Beard,* 214 F. Supp. 3d 304 (E.D. Pa. 2016)	IAC penalty phase (failure to challenge Commonwealth's expert) and insufficient waiver of penalty phase presentation	204 CAP	N	Chester
164	Miller, Joseph	1987, 89	1992	S	*Commonwealth v. Miller,* 597 Pa. 333, 951 A.2d 322 (2008)	*Atkins v. Virginia*	540 CAP	N	Dauphin
165	Miller, Kenneth	1998	1999	S	Bench Order, *Commonwealth v. Miller,* No. CP-51-CR-902382-1998 (Phila. C.P. May 13, 2014)	No grounds specified	678 CAP	N	Philadelphia
166	Moore, Mikal	1998	1999	S	*Commonwealth v. Moore,* No. CP-51-CR-701141-1998 (Phila. C.P. Mar. 27, 2017)	Stipulated	396 CAP	N	Philadelphia
167	Moore, Tyrone	1982	1988	S	*Commonwealth v. Moore,* 500 Pa. 279, 860 A.2d 88 (2004)	IAC penalty phase and IAC appellate counsel	316 & 317 CAP	N	Luzerne
168	Morales, Salvador	1982	1983	S	*Commonwealth v. Morales,* 549 Pa. 400, 701 A.2d 516 (1997)	IAC penalty phase (failure to object to prosecutorial misconduct)	84 CAP	N	Philadelphia
169	Moran, Willard	1980	1981	C	Order, *Commonwealth v. Moran,* No. CP-51-CR-3091-1981 (Phila. C.P. Jan. 25, 1999)	IAC guilt phase	141 ED 1991	N	Philadelphia
170	Morris, Kelvin	1980	1987	S	*Morris v. Beard,* No. 01-cv-3070, 2007 WL 1795689 (E.D. Pa. June 20, 2007)	*Mills v. Maryland* and IAC penalty phase	289 CAP	N	Philadelphia
171	Murphy, Craig	1981	1986	C	*Commonwealth v. Murphy,* 527 Pa. 309, 591 A.2d 278 (1991)	IAC guilt phase (failure to cross-examine witness)	51 ED 1987	Y	Philadelphia
172	Murray, Harold	2005	2009	S	*Commonwealth v. Murray,* 623 Pa. 506, 83 A.3d 137 (2013)	Erroneous aggravating circumstance	658 CAP	N	Montgomery
173	Nelson, John	1983	1984	S	*Commonwealth v. Nelson,* 514 Pa. 262, 523 A.2d 728 (1987)	Erroneous aggravating circumstance and IAC penalty phase (failure to object to erroneous aggravator)	43 WD 1984	N	Erie

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	Name	Year of offense	Year of sentence	Conviction (C) or sentencing (S) reversal?	Decision of reversal	Grounds for reversal	SCOPA docket #	Resentenced to death?	County of conviction
174	Nieves, William	1992	1994	C	*Commonwealth v. Nieves,* 560 Pa. 529, 746 A.2d 1102 (2000)	IAC guilt phase (erroneous plea advice)	82 CAP	N	Philadelphia
175	Ockenhouse, John	1998	1998	S	Order, *Commonwealth v. Ockenhouse,* No. CP-39-CR-1664-1998 (Lehigh C.P. Apr. 16, 2003)	Stipulated	254 CAP	N	Lehigh
176	O'Donnell, Kelly	1992	1994	S	*Commonwealth v. O'Donnell,* 559 Pa. 320, 740 A.2d 198 (1999)	Insufficient colloquy for waiver of right to jury sentencing	71 CAP	N	Philadelphia
177	Overby, Lamont	1996	1998	S	*Commonwealth v. Overby,* No. CP-51-CR-1006081-1996 (Phila. C.P. Oct. 18, 2013)	Stipulated	239 CAP	N	Philadelphia
178	Overby, Michael	1990	1998	C	*Commonwealth v. Overby,* 570 Pa. 328, 809 A.2d 295 (2002)	*Bruton v. United States*	244 CAP	N	Philadelphia
179	Paolello, Anthony	1992	1993	S	*Commonwealth v. Paolello,* 542 Pa. 47, 665 A.2d 439 (1995)	Erroneous aggravating circumstance	47 CAP	N	Erie
180	Pelzer, Kevin	1988	1990	S	*Commonwealth v. Pelzer,* 628 Pa. 193, 104 A.3d 267 (2014)	IAC penalty phase	631, 632, 633 & 634 CAP	N	Philadelphia
181	Peoples, Al	1987	1990	S	Order, *Commonwealth v. Peoples,* No. CP-51-CR-1044981-1989 (Phila. C.P. June 24, 2011)	Stipulated	482 & 483 CAP	N	Philadelphia
182	Perry, Curry	1987	1990	C	*Commonwealth v. Curry,* 537 Pa. 385, 644 A.2d 705 (1994)	IAC guilt phase (failure to investigate)	7 CAP	N	Philadelphia
183	Peterkin, Otis	1981	1982	C + S	*Peterkin v. Horn,* 176 F. Supp. 2d 342 (E.D. Pa. 2001)	Confrontation clause violation, prosecutorial misconduct , IAC guilt and sentencing phase, erroneous aggravating circumstance, and *Mills v. Maryland*	165 CAP	N	Philadelphia
184	Pirela, Simon	1981	1983	S	*Commonwealth v. Pirela,* 593 Pa. 312, 929 A.2d 629 (2007)	*Atkins v. Virginia*	448 CAP	N	Philadelphia
185	Proctor, Roger	1985	1986	S	Memorandum and Order, *Commonwealth v. Proctor,* No. CP-20-CR-759-1985 (Crawford C.P. Dec. 30, 2002)	*Brady v. Maryland*	218 CAP	N	Crawford
186	Pursell, Alan	1981	1982	S	*Pursell v. Horn,* 187 F. Supp. 2d 260 (W.D. Pa. Feb. 1, 2002)	IAC penalty phase and instructional error	277 CAP	N	Erie

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	Name	Year of offense	Year of sentence	Conviction (C) or sentencing (S) reversal?	Decision of reversal	Grounds for reversal	SCOPA docket #	Resentenced to death?	County of conviction
187	Rainey, Michael	1989	1993	S	Order, *Commonwealth v. Rainey,* No. CP-51-CR-419613-1990 (Phila. C.P. Mar. 6, 2008)	IAC penalty phase	468 & 469 CAP	N	Philadelphia
188	Ramos, Wilfredo	1998	2000	S	Order, *Commonwealth v. Ramos,* No. CP-51-CR-100891-1999 (Phila. C.P. Apr. 17, 2008)	IAC penalty phase	307 CAP	N	Philadelphia
189	Ramtahal, David	2006	2009	S	Order, *Commonwealth v. Ramtahal,* No. CP-09-CR-6389-2008 (Bucks C.P. Sept. 19, 2013)	IAC penalty phase	588 CAP	N	Bucks
190	Reyes, Angel	1993	1994	S	*Commonwealth v. Reyes,* 582 Pa. 317, 870 A.2d 888 (2005)	IAC penalty phase	359 CAP	Y	Delaware
191	Reyes, Angel	1993	2007	S	Order, *Commonwealth v. Reyes,* No. CP-23-CR-1388-1993 (Del. C.P. 2011)	IAC penalty phase (failure to review entire file and retaining conflicted expert)	554 CAP	N	Delaware
192	Rice, Timothy	1996	1997	S	Order, *Commonwealth v. Rice,* No. CP-51-CR-906231-1996 (Phila. C.P. Jan. 27, 2012)	Stipulated	253 CAP	N	Philadelphia
193	Rivers, Delores	1988	1991	S	Stipulation and Order, *Rivers v. Horn,* No. 02-cv-1600 (E.D. Pa. May 10, 2005)	IAC penalty phase	241 CAP	N	Philadelphia
194	Rizzuto, Paul	1994	1998	S	*Commonwealth v. Rizzuto,* 566 Pa. 40, 777 A.2d 1069 (2001)	Jury misapplied statutory weighing law and instructional error	273 CAP	N	Philadelphia
195	Rolan, Florencio	1983	1985	S	*Commonwealth v. Rolan,* No. CP-51-CR-2893-1994 (Phila. C.P. Feb. 4, 1998)	IAC penalty phase		N	Philadelphia
196	Rollins, Saharris	1986	1987	S	*Rollins v. Horn,* 386 F. App'x 267 (3d Cir. 2010)	IAC penalty phase	192 CAP	N	Philadelphia
197	Rompilla, Ronald	1988	1988	S	*Rompilla v. Beard,* 545 U.S. 374 (2005)	IAC penalty phase	152 CAP	N	Lehigh
198	Rucci, Dino	1989	1994	S	Order, *Commonwealth v. Rucci,* No. CP-63-CR-2164-1990 (Wash. C.P. Apr. 13, 2006)	IAC penalty phase	68 CAP	N	Washington
199	Sanchez, Alfonso	2007	2008	C	Order, *Commonwealth v. Sanchez,* No. CP-09-CR-1136-2008 (Bucks C.P. Jan. 26, 2017)	*Brady v. Maryland*	605 CAP	N	Bucks

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200	Sanchez, Ramon	2001	2003	C	Order, *Commonwealth v. Sanchez,* No. CP-39-CR-3652-2001 (Lehigh C.P. Nov. 16, 2010)	*Brady v. Maryland,* prosecutorial misconduct, IAC guilt phase (failure to impeach witnesses), improper admission of prior bad acts, and false testimony of Commonwealth expert	464 CAP	N	Lehigh
201	Santiago, Salvador	1985	1985	C	*Commonwealth v. Santiago,* 528 Pa. 516, 599 A.2d 200 (1991)	*Miranda v. Arizona*	99 WD 1986	Y	Allegheny
202	Santiago, Salvador	1985	1993	S	Order, *Commonwealth v. Santiago,* No. 04-cv-1669 (W.D. Pa. June 2, 2009)	IAC penalty phase	180 CAP	N	Allegheny
203	Saranchak, Daniel	1993	1994	S	*Saranchak v. Sec'y, Pa. Dept. of Corr.,* 802 F.3d 579 (3d Cir. 2015)	IAC penalty phase	426 CAP	N	Schuylkill
204	Sattazahn, David	1987	1999	S	*Commonwealth v. Sattazahn,* 597 Pa. 648, 952 A.2d 640 (2008)	IAC penalty phase	509, 510 & 511 CAP	N	Berks
205	Scott, Nathan	1998	1998	S	*Commonwealth v. Scott,* No. CP-46-CR-1739-1998 (Montgomery C.P. June 30, 2003)	*Atkins v. Virginia*	266 CAP	N	Montgomery
206	Sepulveda, Manuel	2001	2003	S	*Commonwealth v. Sepulveda,* 636 Pa. 466, 144 A.3d 1270 (2016)	IAC penalty phase	712 CAP	N	Monroe
207	Simmons, Ernest	1992	1993	C	*Simmons v. Beard,* 590 F.3d 223 (3d Cir. 2009)	*Brady v. Maryland*	260 CAP	N	Cambria
208	Sims, Bobby	1980	1983	C	*Commonwealth v. Sims,* 513 Pa. 366, 521 A.2d 391 (1987)	Confrontation clause violation	52 ED 1984	N	Philadelphia
209	Smith, Brian	1991	1991	S	*Commonwealth v. Smith,* 544 Pa. 219, 675 A.2d 1221 (1996)	IAC penalty phase	11 CAP	N	Luzerne
210	Smith, Clifford	1983	1985	S	*Smith v. Horn,* 120 F.3d 400 (3d Cir. 1997)	*In re Winship*	23 CAP	N	Bucks
211	Smith, Donald	1980	1981	C	*Commonwealth v. Smith,* 502 Pa. 600, 467 A.2d 1120 (1983)	IAC guilt phase (failure to impeach witness)	9 WD 1983	N	Fayette
212	Smith, James	1979	1986	S	Order, *Commonwealth v. Smith,* No. CP-51-CR-717891-1983 (Phila. C.P. June 19, 2009)	IAC penalty phase	591 CAP	N	Philadelphia

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	Name	Year of offense	Year of sentence	Conviction (C) or sentencing (S) reversal?	Decision of reversal	Grounds for reversal	SCOPA docket #	Resentenced to death?	County of conviction
213	Smith, Jay	1979	1986	C	*Commonwealth v. Smith,* 523 Pa. 577, 568 A.2d 600 (1989)	*Brady v. Maryland*	48 MD 1987	N	Dauphin
214	Smith, Lawrence	2000	2002	S	*Commonwealth v. Smith,* 580 Pa. 392, 861 A.2d 892 (2004)	Improper prosecutorial argument	390 CAP	N	Philadelphia
215	Smith, Wayne	1994	1995	S	*Commonwealth v. Smith,* 606 Pa. 127, 995 A.2d 1143 (2010)	IAC penalty phase	436 CAP	Y	Delaware
216	Sneed, Willie	1980	1985	S	*Commonwealth v. Sneed,* 587 Pa. 318, 899 A.2d 1067 (2006)	IAC penalty phase	366 CAP	N	Philadelphia
217	Solano, Raymond	2001	2003	S	*Commonwealth v. Solano,* 634 Pa. 218, 129 A.3d 1156 (2015)	IAC penalty phase	686 & 687 CAP	N	Lehigh
218	Speight, Melvin	1992	1993	S	*Speight v. Beard,* No. 04-cv-4110, 2017 WL 914907 (E.D. Pa. Mar. 7, 2017)	Stipulated	58 CAP	N	Philadelphia
219	Spell, Gaylord	2007	2009	S	*Commonwealth v. Spell,* 611 Pa. 584, 28 A.3d 1274 (2011)	Erroneous aggravating circumstance	592 CAP	N	Lawrence
220	Spence, Morris	1986	1988	C	Order, *Commonwealth v. Spence,* No. CP-51-CR-933911-1996 (Phila. C.P. Mar. 22, 2004)	*Batson v. Kentucky*	70 ED 1990	N	Philadelphia
221	Stallworth, Leroy	1998	1998	S	*Commonwealth v. Stallworth,* 566 Pa. 349, 781 A.2d 110 (2001)	Erroneous aggravating circumstance	278 CAP	N	Lancaster
222	Starr, Gary	1988	1988	C	*Commonwealth v. Starr,* 541 Pa. 564, 664 A.2d 1326 (1995)	Right to self-representation	32 CAP	N	Allegheny
223	Strong, James	1983	1984	C	*Commonwealth v. Strong,* 563 Pa. 455, 761 A.2d 1167 (2000)	*Brady v. Maryland*	250 CAP	N	Luzerne
224	Szuchon, Joseph	1981	1981	S	*Szuchon v. Lehman,* 273 F.3d 299 (3d Cir. 2001)	*Witherspoon v. Illinois,* 391 U.S. 510 (1968)	137 CAP	N	Erie
225	Terry, Benjamin	1979	1979	C	*Commonwealth v. Terry,* 501 Pa. 626, 462 A.2d 676 (1983)	State law evidentiary ruling	80-3-595	Y	Montgomery
226	Terry, Benjamin	1979	1984	S	*Commonwealth v. Terry,* No. CP-46-CR-1565-79 (Montgomery C.P. Oct. 22, 1996)	IAC penalty phase	179 ED 1984	N	Montgomery
227	Tharp, Michelle	1998	2000	S	*Commonwealth v. Tharp,* 627 Pa. 673, 101 A.3d 736 (2014)	IAC penalty phase	637 CAP	N	Washington
228	Thomas, Brian	1985	1986	S	Order, *Commonwealth v. Thomas,* No. 2:00-cv-803 (E.D. Pa. Dec. 20, 2011)	IAC penalty phase	552 CAP	N	Philadelphia

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229	Thomas, Frederick	1993	1995	C	Order, *Commonwealth v. Thomas,* No. CP-51-CR-209891-1994 (Phila. C.P. May 31, 2002)	*Brady v. Maryland*	132 CAP	N	Philadelphia
230	Thomas, LeRoy	1994	1995	S	*Commonwealth v. Thomas,* No. CP-51-CR-1207001-1994 (Phila. C.P. Jan. 11, 2007)	IAC penalty phase	314 CAP	N	Philadelphia
231	Thomaston, Michael	1995	1997	S	Order, *Commonwealth v. Thomaston,* No. CP-51-CR-400541-1995 (Phila. C.P. Dec. 11, 2002)	IAC penalty phase		N	Philadelphia
232	Thompson, Andre	1992	1996	C	Order, *Commonwealth v. Thompson,* No. CP-51-CR-221931-1993 (Phila. C.P. July 12, 2004)	IAC guilt phase (failure to prepare alibi defense)	145 CAP	N	Philadelphia
233	Thompson, Louis	1990	1992	S	Order, *Commonwealth v. Thompson,* No. CP-51-CR-436071-1990 (Phila. C.P. May 21, 2004)	Stipulated	22 CAP	N	Philadelphia
234	Tilley, William	1985	1987	S	Order, *Commonwealth v. Tilley,* No. CP-51-CR-1210781-1985 (Phila. C.P. Nov. 2, 2007)	IAC penalty phase	9 ED 2000	N	Philadelphia
235	Travaglia, Michael	1980	1981	S	Order, *Travaglia v. Morgan,* No. 2:90-cv-1469 (W.D. Pa. Nov. 7, 1996)	Erroneous aggravating circumstance	42 CAP	Y	Westmoreland
236	Trivigno, Philip	1995	1996	S	*Commonwealth v. Trivigno,* 561 Pa. 232, 750 A.2d 243 (2000)	*Simmons v. South Carolina*	228 CAP	N	Philadelphia
237	VanDivner, James W	2004	2007	S	*Commonwealth v. VanDivner,* 178 A.3d 108 (2018)	*Atkins v. Virginia* and IAC penalty phase	696 CAP	N	Fayette
238	Walker, Shawn	1991	1993	S	Order, *Commonwealth v. Walker,* No. CP-51-CR-2770-1991 (Phila. C.P. Apr. 21, 2004)	IAC penalty phase	43 CAP	N	Philadelphia
239	Wallace, William	1979	1981	C	*Commonwealth v. Wallace,* 500 Pa. 270, 455 A.2d 1187 (1983)	*Brady v. Maryland*	20 & 50 WD 1982	Y	Washington
240	Wallace, William	1979	1985	C	*Wallace v. Price,* 243 F. App'x 710 (3d Cir. 2007)	Confrontation clause violation	135 CAP	N	Washington
241	Walter, Shonda L	2003	2005	S	Order, *Commonwealth v. Walter,* No. CP-18-CR-179-2003 (Clinton C.P. July 26, 2016)	IAC penalty phase	645 CAP	N	Clinton

Pennsylvania Capital Case Reversals - By Name

	Name	Year of offense	Year of sentence	Conviction (C) or sentencing (S) reversal?	Decision of reversal	Grounds for reversal	SCOPA docket #	Resentenced to death?	County of conviction
242	Washington, Anthony	1993	1994	C	*Washington v. Beard,* No. 07-cv-3462, 2015 WL 234719 (E.D. Pa. Jan. 16, 2015)	*Brady v. Maryland*	347 CAP	N	Philadelphia
243	Washington, Vinson	1993	1995	S	Order, *Commonwealth v. Washington,* No. CP-51-CR-310321-1994 (Phila. C.P. July 15, 2008)	Stipulated	352 CAP	N	Phila.
244	Weiss, Ronald	1978	1997	S	*Commonwealth v. Weiss,* No. CP-32-CR-218-199 (Indiana C.P. Mar. 19, 2012)	IAC penalty phase	543 CAP	N	Indiana
245	Wesley, Jake	1994	1996	S	*Commonwealth v. Wesley,* 562 Pa. 7, 753 A.2d 204 (2000)	Erroneous aggravating circumstance	221 CAP	N	Allegheny
246	Wharton, Robert	1984	1986	S	*Commonwealth v. Wharton,* 530 Pa. 127, 607 A.2d 710 (1992)	IAC penalty phase (failure to object to erroneous instruction)	114 ED 1986	Y	Philadelphia
247	Wheeler, Ronald	1982	1983	S	*Commonwealth v. Wheeler,* 518 Pa. 103, 541 A.2d 730 (1988)	State law evidentiary ruling	98 ED 1985	N	Bucks
248	White, Derrick	2010	2012	S	Bench Order, *Commonwealth v. White,* No. CP-51-CR-12991-2010 (Phila. C.P. May 19, 2014)	IAC penalty phase	78 EAL 2016	N	Philadelphia
249	Whitney, Raymond	1981	1982	S	Order, *Commonwealth v. Whitney,* No. CP-51-CR-1114161-1981 (Phila. C.P. Jan. 16, 2008)	*Atkins v. Virginia*	333 CAP	N	Philadelphia
250	Williams, Antoine	1989	1991	S	*Commonwealth v. Williams,* 539 Pa. 61, 650 A.2d 420 (1994)	Erroneous aggravating circumstance	41 CAP	N	Berks
251	Williams, Christopher	1989	1995	C	*Commonwealth v. Williams,* 636 Pa. 105, 141 A.3d 440 (2016)	IAC guilt phase (failure to call expert) and IAC appellate counsel	694 & 695 CAP	N	Philadelphia
252	Williams, Connie	1999	2002	S	*Commonwealth v. Williams,* 619 Pa. 219, 61 A.3d 979 (2013)	*Atkins v. Virginia*	611 CAP	N	Allegheny
253	Williams, Craig	1987	1990	S	Order, *Commonwealth v. Williams,* No. CP-51-CR-424041-1987 (Phila. C.P. Nov. 29, 2006)	Stipulated	514 CAP	N	Philadelphia
254	Williams, Kenneth	1983	1985	S	*Commonwealth v. Williams,* 597 Pa. 109, 950 A.2d 294 (2008)	IAC penalty phase and IAC appellate counsel	430 & 431 CAP	N	Lehigh
255	Williams, Raymond	1984	1985	S	*Commonwealth v. Williams,* 514 Pa. 62, 522 A.2d 1058 (1987)	Juror misconduct	43 WD 1985	N	Butler
256	Williams, Ronald	1984	1985	S	*Commonwealth v. Williams,* 522 Pa. 287, 561 A.2d 714 (1989)	Juror misconduct	46 WD 1985	N	Butler

Pennsylvania Capital Case Reversals - By Name

	Name	Year of offense	Year of sentence	Conviction (C) or sentencing (S) reversal?	Decision of reversal	Grounds for reversal	SCOPA docket #	Resentenced to death?	County of conviction
257	Williams, Terrance	1984	1986	S	*Commonwealth v. Williams,* 641 Pa. 283, 168 A.3d 97 (2017)	*Brady v. Maryland*	560 CAP	N	Philadelphia
258	Wilson, Harold	1988	1989	C	Bench Order, *Commonwealth v. Wilson,* No. CP-51-CR-3267 (Phila. C.P. Jan. 17, 2003)	*Batson v. Kentucky*	57 CAP	N	Philadelphia
259	Wilson, Zachary	1981	1988	C	*Wilson v. Beard,* 589 F.3d 651 (3d Cir. 2009)	*Brady v. Maryland*	230 CAP	N	Philadelphia
260	Yarris, Nicholas	1981	1983	C	*Commonwealth v. Yarris,* No. CP-23-690-1982 (Del. C.P. Sept. 3, 2003)	Innocence	232 CAP	N	Delaware
261	Young, Joseph	1986	1988	S	*Commonwealth v. Young,* 524 Pa. 373, 572 A.2d 1217 (1990)	*Mills v. Maryland*	107 ED 1988	Y	Montgomery
262	Young, Richard	1979	1995	C	*Commonwealth v. Young,* 561 Pa. 34, 748 A.2d 166 (2000) (on reargument)	Confrontation clause violation	120 CAP	N	Lackawanna
263	Zook, Robert Peter	1985	1986	C	*Commonwealth v. Zook,* 520 Pa. 210, 553 A.2d 920 (1989)	*Miranda v. Arizona*	37 ED 1987	N	Lancaster
264	Zook, Robert Peter	1985	1990	S	*Commonwealth v. Zook,* 585 Pa. 11, 887 A.2d 1218 (2005)	IAC penalty phase	293 CAP	N	Lancaster

Pennsylvania Capital Case Reversals (Non-Final)

	Name	Year of offense	Year of sentence	Conviction (C) or sentencing (S) reversal?	Decision	Grounds for reversal	SCOPA docket #	County of conviction
1	Fahy, Henry	1981	1983	S	*Fahy v. Horn,* No. 99-cv-5086, 2014 WL 4209551 (E.D. Pa. Aug. 26, 2014)	IAC penalty phase and instructional error	215 CAP	Philadelphia
2	Porter, Ernest	1985	1986	S	*Porter v. Horn,* 276 F. Supp. 2d 278 (E.D. Pa. 2003)	*Mills v. Maryland,* 486 U.S. 367 (1988)	131 CAP	Philadelphia
3	Steele, Roland	1985	1988	S	*Steele v. Beard,* 830 F. Supp. 2d 49 (W.D. Pa. 2011)	*Mills v. Maryland*	358 CAP	Washington
4	Montalvo, Milton	1998	2000	S	*Commonwealth v. Montalvo,* No. CP-67-CR-3183-1998 (York C.P. May 22, 2017)	IAC penalty phase, denial of expert funds, and *Caldwell v. Mississippi,* 472 U.S. 320 (1985)	301 CAP	York
5	Housman, William	2000	2002	S	Order and Opinion, *Commonwealth v. Housman,* No. CP-21-CR-0246-2001 (Cumberland C.P. Feb. 2, 2018)	IAC penalty phase	452 CAP	Cumberland
6	Rega, Robert	2000	2002	S	*Rega v. Wetzel,* No. 2:13-cv-1781, 2018 WL 897126 (W.D. Pa. Feb. 15, 2018)	IAC penalty phase (failure to rebut aggravator) and IAC appellate counsel	642 CAP	Jefferson

An Enquiry How Far the Punishment of Death Is Necessary in Pennsylvania
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DOCUMENTS

An Enquiry how far the Punishment of Death is Necessary in Pennsylvania

by WILLIAM BRADFORD

Editor's Introduction

THE CRIMINAL LAW IN AMERICA underwent significant changes immediately following the American Revolution. Punishments were reduced in severity and "cruel and unusual punishments," so common in the colonial period, were abolished. No longer were prisoners to sit in a pillory for hours on end or have their ears nailed to a wall and later cut off.

These changes came at different periods in the different states, but the trend definitely began in Pennsylvania. The Constitution of Pennsylvania for 1776 provided: "the penal laws as heretofore used shall be reformed by the legislature of this state, as soon as may be, and punishments made in some cases less sanguinary, and in general more proportionate to the crimes." (Sec. 38) The author of this particular provision is unknown. It is rather unusual that this subject was a matter of such concern to a significant number of delegates that it was incorporated into the Constitution, when so many political events were taking place which were more pressing. However, at the same time this Constitution was written, Thomas Jefferson in Virginia was likewise seeking a revision of the criminal law.

Just what steps were taken to implement this constitutional mandate is not clear, nor is it known which individuals encouraged the legislative enactments. However, William Bradford, who had served as Attorney General of the state from 1780 through 1791, and later as a justice of the Supreme Court of the state, prepared the pamphlet which is reprinted here dealing with the conditions of the criminal law during the colonial period. The main purpose of the pamphlet clearly was to indicate that the punishment should be more proportionate to the offense. This pamphlet was well received and printed in full in the Journal of the Senate for January 5, 1793,[1] and as a separate publication in the same year. However, the General Assembly had previously enacted a statute in 1786 reducing the penalty for certain capital offenses to punishment by hard labor and making some offenses bailable before the

[1] At page 38.

judges of the Supreme Court. However, this act was limited in duration to three years. In 1790 a new statute incorporating many of the provisions of the old one was enacted and various new reforms were added. This pamphlet by Bradford apparently convinced the General Assembly to make these changes permanent.

As anyone knows, a great gap exists between the letter of law and its application. The great significance of this pamphlet is that it gives a review of the operation of the criminal law in the colonial period such as is unavailable in any other source. The author had lived through some of the period and had access to members of the Bar and records which are not available to us today. The figures he gives concerning crime are unique; no similar source is known to this editor.

Although the report was received with acclaim by the General Assembly, it is now difficult to appraise its impact on the Act of 1794, which made permanent many of the reforms which had been in the previous temporary laws. Whether the pamphlet had any influence beyond the boundaries of Pennsylvania is not clear either, but it is significant that the author knew of the work of Thomas Jefferson and the Virginia legislature. This knowledge may be explained by the fact that Bradford served as Attorney General in the federal government and this information came to his attention through his associations with the group of Virginians surrounding Washington.

Another Pennsylvania institution which apparently served as a model in other states was the penitentiary located in Philadelphia. This pamphlet includes a description of the penitentiary by Caleb Lownes, a leader in establishing the institution. This part of the pamphlet, including the rules of the institution, will be published in the July issue.

In the opinion of the Editors, the chief merit of this pamphlet is that it gives an insight into the application of the criminal law before the period when changes were made. For this reason, it was judged to be of sufficient interest to publish in the JOURNAL. The original copy of this pamphlet is in the Rare Book Collection of the Temple University Library, and the Editors would like to express their appreciation to its staff for making this copy available.

The Editor has made no attempt to change the text of the pamphlet. The errata have been incorporated into the text and hence this section of the original is omitted. It was felt that it was unnecessary to expand the footnotes of the author; it is left to the reader to trace sources to which Bradford refers. They all are well-known works of that period. The original pagination is indicated by the figures in brackets.

A N

E N Q U I R Y

HOW FAR

THE PUNISHMENT OF DEATH IS NECESSARY

IN PENNSYLVANIA

WITH

NOTES AND ILLUSTRATIONS.

BY WILLIAM BRADFORD, ESQ.

To which is added,

AN ACCOUNT OF THE GAOL AND PENITENTIARY HOUSE OF PHILADELPHIA, AND OF THE INTERIOR MANAGEMENT THEREOF.

BY CALEB LOWNES, OF PHILADELPHIA.

If we enquire into the cause of all human corruptions, we shall find that they proceed from the impunity of crimes, and not from the moderation of punishments. MONTESQ.

PHILADELPHIA:

PRINTED BY T. DOBSON AT THE STONE-HOUSE, NO. 415 SOUTH SECOND-STREET.

M,DCC,XCIII.

124

[a2] ADVERTISEMENT.

THE following memoir was written at the request, and presented to the Governor of Pennsylvania, on the third day of last December. The nature of this communication, as well as the necessity of completing it by that day, required brevity; and a more extended view of the subject, was on many accounts inexpedient. Hence, some information, which might have been proper in a work designed for general circulation, was suppressed, and the experience of other *countries was rather glanced at than explained.*

It having been thought advisable to publish this memoir in its present form, an opportunity was afforded the writer of making such additions as his other avocations would permit. Further time would have enabled him to furnish more accurate and particular information of the experience of the other States: but those who have interested themselves in this publication, think it ought not to be any longer delayed.

The additional information might have been advantageously blended with the original memoir: but as the Senate of the Commonwealth, have honored that work, by placing it on their journals, there was a propriety in keeping it distinct. The new matter is therefore thrown into the form of Notes *and* Illustrations *at the end of the memoir—a few paragraphs only, necessary to introduce the notes, being added to the text.*

[a4] *Although the world has seen a profusion of* Theory *on the subject of the Criminal Law: it is to be regretted that so few writers have been solicitous "to throw the light of experience upon it." To supply, in some measure, this defect—to collect the scattered rays which the juridical history of our own and other countries affords—and to examine how far the maxims of philosophy abide the text of experiment, have, therefore, been the leading objects of this work. The facts adduced, are stated with as much brevity, as was consistent with clearness; and, as accuracy was indispensable, none have been lightly assumed, and few without a coincidence of authorities.*

Philadelphia, Feb. 26, 1793.

AN

ENQUIRY, &c.

INTRODUCTION.

THE general principles upon which penal laws ought to be founded appear to be fully settled. Montesquieu and Beccaria led the way in the discussion, and the philosophy of all Europe, roused by the boldness of their march, has since been deeply engaged on this interesting topic. Independent of the force of their reasoning a remarkable coincidence of opinion, among the enlighted writers on this subject, seems to announce the justness of their conclusions: and the questions which still exist are rather questions of fact than of principle.

Among these principles some have obtained the force of axioms, and are no longer considered as the subjects either of doubt or demonstration. *"That the prevention of crimes is the sole end of punishment,"* is one of these: and it is another, *"That every punishment which is not absolutely necessary for that purpose is a cruel and tyrannical act."* To these may be added a third, (calculated to limit the first) which is, ***"That every penalty should be proportioned to the offence."***

[4] These principles, which serve to protect the rights of humanity and to prevent the abuses of government, are so important that they deserve a place among the *fundamental* laws of every free country. The enlightened patriots who composed the first National Assembly in France, placed this check on the power of punishment, where it ought to be placed, among "the rights of a man and a citizen." They had long witnessed the ferocity of the criminal law, and they endeavoured to guard against it by declaring, in precise and definite terms, "That the law ought to establish such punishments *only* as are *strictly* and evidently *necessary*." * Few of the American constitutions are sufficiently express, though they are not silent, on this subject. That of New-Hampshire declares, "That all penalties should be proportioned to the nature of the offense, and that a multitude of sanguinary punishments is impolitic and unjust, the true design of all punishments being to reform, and not to exterminate, mankind." The constitution of Vermont enjoins the introduction of hard labor as a punishment, in order to lessen the necessity for such as are capital: and that of Pennsylvania framed in 1776, directed the future Legislature "to reform the penal laws—to make punishments less sanguinary, and, in some cases, more proportioned to the offenses." But it was in Maryland alone that the *general* principle was asserted; and, in the enumeration of their rights, we find it declared, "That sanguinary punishments ought to be avoided as far as is consistent with the safety of the state" †. The other constitutions which touch on this subject content themselves with generally declaring, "That cruel punishments ought not to be inflicted." But, does not this involve the same principle, and impli- [5] citly prohibit every penalty which is not evidently necessary?

One would think, that, in a nation jealous of its liberty, these important truths would never be overlooked; and, that the infliction of death, the highest act of power that man exercises over man, would seldom be prescribed where its necessity was doubtful. But on no subject has government, in different parts of the world, discovered more indolence and inattention than in the construction or reform of the penal code. Legislators feel themselves elevated above the commission of crimes which the laws proscribe, and they have too little personal interest in a system of punishments to be critically exact in restraining its severity. The degraded class of men, who are the victims of the laws, are thrown at a distance which obscures their sufferings and blunts the sensibility of the Legislator. Hence sanguinary punishments, contrived in despotic

* S. VIII. † S. XIV.

and barbarous ages, have been continued when the progress of freedom, science, and morals renders them unnecessary and mischievous: and laws, the offspring of a corrupted monarchy, are fostered in the bosom of a youthful republic.

But it is pleasing to perceive that of late this indolence has not been able to resist the energies of truth. The voice of Reason and Humanity has not been raised in vain. It has already "forced its way to the thrones of Princes," and the impression it has made on the governments of Europe is visible in the progressive amelioration of their criminal codes. A spirit of reform has gone forth—the empire of prejudice and inhumanity is silently crumbling to pieces —and the progress of liberty, by unfettering the human mind, will hasten its destruction. *(a)*

[6] Happily for Pennsylvania the examination and reform of the penal laws have been considered by the Legislature as one of its most imoprtant duties. Much attention has been paid to this subject since the revolution. Capital punishments have, in several instances, been abolished; and, in others, the penalty has been better proportioned to the offence. This has been considered as the commencement of a more general reform; and, if the result of the experiment shall be found to be such as the friends of humanity wish, it has been generally expected, that the Legislature would resume the benevolent task. Proceeding with that caution, which innovation on an ancient system demands, they have paused in their labors, but it is hoped they have not abandoned the work.

What success has attended the new system of punishments is, therefore, a question interesting to humanity. Some years have elapsed since its first establishment, and we now have data sufficient to calculate its effects. To aid this important enquiry,—to review the crimes which are still capital in Pennsylvania,—and to examine, whether the punishment of death be, in any case, necessary, is the object of the present attempt.

ON CAPITAL PUNISHMENTS.

IT being established, That the only object of human punishments is the prevention of crimes, it necessarily follows, that when a criminal is put to death, it is not to revenge the wrongs of society, or of any individual—"it is not to recall past time and to undo what is already done:" but merely to prevent the offender from repeating the crime, and to deter others from its commission, by the terror of the punishment. If, therefore, these two objects can be obtained

(*a*) See NOTE I [*infra*, p. 156.]

by any penalty short of death, [7] to take away life, in such case, seems to be an authorized act of power.

That the first of these may be accomplished by perpetual imprisonment, unless the unsettled state, the weakness or poverty, of a government prevents it, admits of little dispute. It is not only as effectual as death, but is attended with these advantages, that reparation may sometimes be made to the party injured—that punishment may follow quick upon the heels of the offence, without violating the sentiments of humanity or religion,—and if, in a course of years, the offender becomes humbled and reformed, society, instead of losing, gains a citizen.

It is more difficult to determine what effects are produced on the mind by the *terror* of capital punishments; and, whether it be absolutely necessary to deter the wicked from the commission of atrocious crimes. This is the great problem, to the solution of which, all the facts I shall have occasion to mention hereafter, will be directed.

If capital punishments are abolished, their place must be supplied by solitary imprisonment, hard labor, or stripes: and it has been often urged, that the apprehension of these would be more terrible and impressive than death. This may be the case where great inequality is established between the citizens, where the oppressions of the great drive the lower classes of society into penury and despair, where education is neglected, manners ferocious, and morals depraved. In such a country—and such there are in Europe—the prospect of death can be no restraint to the wretch whose life is of so little account, and who willingly risks it to better his condition. But in a nation where every man is or may be a proprietor, where labor is bountifully rewarded, and existence is a blessing of which the poorest citizen feels the value, it cannot [8] be denied, that death is considered as the heaviest punishment the law can inflict. The impression it makes on the public mind is visible when a criminal is tried for his life. We feel it in the general expectation—in the numbers that throng the place of trial—in the looks of the prisoner—in the anxious attention and long deliberation of the jury, and in the awful silence which prevails while the verdict is given in by their Foreman. All these announce the inestimable value which is set on the life of a citizen. But the reverse of this takes place when imprisonment at hard labor is the punishment, and the minds of all present, are free from the weight which oppresses them during a trial of a capital charge. The dread of death is natural, universal—impressive: and destruction is an idea so simple that all can comprehend and estimate it: while the punishment of imprisonment and hard labor,

secluded from common observation, and consisting of many parts, requires to be contemplated or felt, before its horrors can be realized.

But, while this truth is admitted in the abstract, it cannot be denied, that the terror of death is often so weakened by the hopes of impunity, that the less punishment seems a curb as strong as the greater. The prospect of escaping detection and the hopes of an acquittal or pardon, blunt its operation and defeat the expectations of the Legislature. Experience proves that these hopes are wonderfully strong, and they often give birth to the most fatal rashness*. Through the violence [9] of the temptation the offender over-looks the punishment, or sees it "in distant obscurity." Few, who contemplate the commission of a crime, deliberately count the cost.

These circumstances make it doubtful, whether capital punishments are beneficial in any cases, except in such *as exclude the hopes of pardon.* It is the universal opinion of the best writers on this subject, and many of them are among the most enlightened men of Europe, That the imagination is soon accustomed to overlook or despise the *degree* of the penalty, and that the *certainty* of it is the only effectual restraint. They contend, that capital punishments are prejudicial to society from the example of barbarity they furnish, and that they multiply crimes instead of preventing them. In support of this opinion, they appeal to the experience of all ages. They affirm, it has been proved, in many instances, that the *increase of punishment*, though it may suddenly check, does not, in the end, diminish the number of offenders.*(b)* They appeal to the example of the Romans, who, during the most prosperous ages of the Commonwealth, punished with death none but their slaves. They appeal to the East Indians, that mild and soft people, where the gentlest punishments are said to be a curb as effectual as the most bloody code in other countries. *(c)* They appeal to the experience of modern Europe,—to the feeble operation of the

* Soon after the act to amend the penal laws was passed two persons were convicted, one of robbery the other of burglary, committed previous to it. These had the privilege of accepting the new punishment instead of the old: but, they obstinately refused to pray the benefit of the act, and submitted to the sentence of death in expectation of a pardon. The hopes of one were realized; but the other was miserably disappointed. The unavailing regret he expressed when his death warrant was announced and the horrors which seized him when he was led to execution proved, at once, how terrible is the punishment of death and how strong are the hopes of pardon!

(*b*) See NOTE II [*infra*, p. 158.]

(*c*) Montesq, B. 14. ch. 15. See NOTE III [*infra*, p. 159.]

increased severity against robbers and deserters in France,—and to the situation of England, where, amidst a multitude of sanguinary and atrocious laws, the number of crimes is greater than in any part of Europe. They cite the example of Russia,‡ where the intro- [10] duction of a *milder* system has promoted civilization, and been productive of the happiest effects: *(d)* and they applaud the bolder policy of Leopold, which has actually lessened the number of crimes in Tuscany, by the *total* abolition of all capital punishments. This instructive fact is not only authenticated by discerning travellers, but is announced by the celebrated Edict of the Grand Duke, issued so lately as 1786. *(e)* To these might be added the example of Sweden and Denmark: and indeed the more closely we examine the effects of the different criminal codes in Europe the more proofs we shall find to confirm this great truth, *That the source of all human corruption lies in the impunity of the criminal not in the moderation of Punishment.(f)*

The experience of America does not contradict that of Europe. Crimes, which are capital in one state, are punished more mildly in another: and, in the same state, offences which were formerly capital are not so at present. Such are those of horse-stealing, forgery, counterfeiting bills of credit or the coin, robbery, burglary, and some others: but, I cannot learn that these crimes have been better repressed by the punishment of death than by a milder penalty. Horse-stealing has always been treated like the other kinds of simple larceny in New England and in Pennsylvania: in all the states southward of Maryland, it is a capital crime. In the latter states the offence seems to be as common as in the former; and if the severity of the punishment has any beneficial effect, my enquiries have not been able to ascertain it. On the contrary I have the best authority for say- [11] ing, that, in Virginia, the effect is so feeble, that of all crimes this is the most frequent. New Jersey has made the experiment fairly. At first it was a felony of death: in 1769 the law was repealed: it was again revived in 1780; but after a few years experience, the Legislature was obliged to listen once more to the voice of humanity and sound policy. The unwillingness of witnesses to prosecute, the facility with which juries acquitted, and the prospects of pardon, created hopes of impunity which invited and multiplied the offense.*(g)*

In the case of forgery the balance is clearly on the side of the milder punishment. It is capital in New York, but it is not

‡ Beccaria. Voltaire 4. Black. Com. p. 10.

(*d*) See NOTE IV [*infra*, p. 160.] (*e*) See NOTE V [*infra*, p. 161.]

(*f*) Montesq. B. 6. ch. 12. See NOTE VI [*infra*, p. 162.]

(*g*) See NOTE VII [*infra*, p. 166.]

so in Pennsylvania; and, in the latter state, there have been fewer convicts of this crime than in the former. It is natural that it should be so; for the public sentiment revolting against this severity, very few have been executed: and the mischief became so apparent, that the late Attorney General thought it his duty to present a memorial to the Assembly and to re-recommend a milder punishment than death.

Another fact deserves notice. Bank bills have been several times forged in the state of New York: but in Pennsylvania this crime has never been committed, although the act which made it capital at first, was repealed above seven years ago.

Counterfeiting the continental bills of credit and uttering them knowingly, were, as far as I can learn, much more frequent in this state, where they were capital, than in Connecticut where they were not. It appears, by the annexed table, that, in the space of two years, while such bills were current, there were eighteen persons tried for these [12] crimes, of whom eleven were convicted. This is nearly equal to all the other instances of forgery, not capital, that have occurred in the long term of fourteen years. Robbery, burglary, and the crime against nature were formerly punished with death in this state: since the year 1786, they have been as effectually restrained by the gentler penalties of imprisonment and hard labor.

The experience of Maryland, and, also, of Connecticut, where a similar system has been adopted with regard to the two first of these crimes, is said to establish the same fact.*(h)*.

Hereafter there may be occasion further to illustrate this part of the subject: yet, even these facts incline us to suspect, that, in most cases to which it is applied, the terror of death (lessened as it is by the hopes of impunity) is neither necessary nor useful. May not milder penalties, strictly enforced, have as great an effect? Is there not sound wisdom in establishing a species of punishment in which the grade of criminality may be marked by a correspondent degree of severity? May we not be allowed to suspect, that any *apparent* necessity results rather from the indolence and inattention of governments than from the nature of things? and, may we not infer, that a Legislature would be warranted to abolish this dreadful punishment in all cases (except in the *higher* degrees of treason and murder) and to make, in this country, a fair experiment in favor of the rights of human nature.

In no country can the experiment be made with so much safety, and such probability of success, as in the United States.

(*h*) See NOTE VIII [*infra*, p. 167.]

In the old and corrupted governments of Europe, especially in the larger states, a reform in the criminal law has real difficulties to encounter. The multitude of offen- [13] ders—the unequal state of society—the ignorance, poverty and wretchedness of the lowest class of the people—corruption of morals—and habits and manners formed under sanguinary laws, make a sudden relaxation of punishment, in those countries, a dangerous experiment. But in America every thing invites to it: and strangers have expressed their surprise, that we should still retain the severe code of criminal law, which, during our connection with Britain, we copied from her. "I am surprized, says a late traveller through America,† that the penalty of death is not abolished in this country where morals are so pure, the means of living so abundant, and misery so rare, that there can be no need of such horrid pains to prevent the commission of crimes." That these punishments ought to be greatly lessened, if not totally abolished, is the opinion of many of the most enlightened men in America: among these I may be allowed to mention the respectable names of Mr. Jefferson, Mr. Wythe and Mr. Pendleton of Virginia, who, as a committee of revision in their report, to the General Assembly of that state, recommended the abolition of capital punishments in all cases but those of treason and murder: a proposal, which, unfortunately for the interests of humanity, was rejected in the Legislature by a single vote.

But authorities may mislead and theory may be delusive. Government is an experimental science: and a series of well established facts in our state is the best source of rational induction for us. I shall, therefore, after taking an historical view of our criminal law, proceed to examine the practical effects of the new system of punishments—(adopted in 1786, and improved by new regulations, intro- [14] duced in 1790)—of those which are still capital—and to accompany them with such observations as a course of some years experience may suggest.

HISTORICAL VIEW OF THE CRIMINAL LAW OF PENNSYLVANIA.

IT was the policy of Great Britain to keep the laws of the Colonies in unison with those of the mother country. This principle extended not only to the regulation of property, but even to the criminal code. The royal charter to William Penn directs, That the laws of Pennsylvania "respecting felonies, should be the same with those of England, until altered by the acts of the future Legislature," who are enjoined to make these acts "as near, as

† M. Briffot. p. 743.

conveniently may be, to those of England:" * and in order to prevent too great a departure, a duplicate of all acts are directed to be transmitted, once in five years, for the royal approbation or dissent.

The natural tendency of this policy was to overwhelm an infant colony, thinly inhabited, with a mass of sanguinary punishments hardly endurable in an old, corrupted and populous country. But the Founder of the province was a philosopher whose elevated mind rose above the errors and prejudices of his age, like a mountain, whose summit is enlightened by the first beams of the sun, while the plains are still covered with mists and darkness. He comprehended, at once, all the absurdity of such a system. In an age of religious [15] intolerance he destroyed every restraint upon the rights of conscience, and insured not merely *toleration*, but absolute *protection*,† to every religion under heaven. He abolished the ancient oppression of forfeitures for self-murder, and deodands in all cases of homicide. He saw the wickedness of exterminating where it was possible to reform; and the folly of capital punishments in a country where he hoped to establish purity of morals and innocence of manners. As a philosopher he wished to extend the empire of reason and humanity; and, as a leader of a sect, he might recollect that the infliction of death, in cold blood, could hardly be justified by those who denied the lawfulness of defensive war. He hastened, therefore, to prevent the operation of the system which the charter imposed, and among the first cares of his administration, was that of forming a small, concise, but complete code of criminal law, fitted to the state of his new settlement: a code which is animated by the pure spirit of philanthropy, and, where we may discover those principles of penal law, the elucidation of which has given so much celebrity to the philosophy of modern times. The punishments prescribed in it were calculated to tie up the hands of the criminal—to reform—to repair the wrongs of the injured party—and to hold up an object of terror sufficient to check a people whose manners he endeavoured to fashion by

* This clause, introduced into several of the charters, was considered as imposing the English statutes. The Assembly of North Carolina, in their acts, passed 1715, declare, that, "From hence it is manifest that the laws of England are our laws as far as they are compatible with our way of living and trade." A similar attempt, to introduce the British statutes, was more than once made in early times in Pennsylvania but was always steadily opposed by the General Assembly.

† If any one shall abuse or deride another for his persuasion or practice in religion, he shall be punished as a disturber of the peace. Laws, 1682. Ch. I.

provisions interwoven in the same system. Robbery, burglary, arson, rape, the crime against nature, forgery, levying war against the Governor, conspiring his death, and other crimes, deemed so heinous in many countries, and for which so many thousands have been [16] executed in Britain, were declared to be no longer capital. Different degrees of imprisonment at hard labor—stripes—fines and forfeitures, were the whole compass of punishment inflicted on these offences. Murder, "wilful and premeditated," is the only crime for which the infliction of death is prescribed; and this is declared to be enacted in obedience "to the law of God," as though there had not been any political necessity even for this punishment apparent to the Legislature. Yet even here the life of the citizen was guarded by a provision, that no man should be convicted but upon the testimony of two witnesses, and, by a humane practice, early introduced, of staying execution till the record of conviction had been laid before the Executive, and full opportunity given to obtain a pardon of the offence or a mitigation of the punishment.

These laws were at first temporary, but being, at length, permanently enacted, they were transmitted to England, and were all, without exception, repealed by the Queen in Council. The rights of humanity, however, were not tamely given up: the same laws were immediately reenacted, and they continued until the year 1718, and might have remained to this day had not high handed measures driven our ancestors into an adoption of the sanguinary statutes of the Mother Country. During this long space of thirty-five years, it does not appear that the mildness of the laws invited offences, or that Pennsylvania was the theatre of more atrocious crimes than the other Colonies. The judicial records of that day are lost: but, upon those of the legislative or executive departments and other public papers, no complaint of their inefficacy can be found; nor any attempt to punish these crimes with death. On the contrary, as these laws were temporary the [17] subject was often before the Legislature, and they were often re-enacted: which is a decisive proof that they were found adequate to their object.

Under this policy the province flourished: but during the boisterous administration of Governor Gookin, a storm was gathering over it which threatened to sweep away not only this system of laws, but, with it, the privileges of the people. The administration of government, in all its departments, had, from the first settlement of the province, been conducted under the solemnity of an attestation instead of an oath. The laws upon this subject were repealed in England, and, by an order of the Queen in Council, all officers and witnesses were obliged to take an oath, or, in lieu thereof, the affirmation allowed to Quakers in England by the statute of

William III. But the Assembly chose to legislate for themselves on this important subject; and this, together with the refusal to adopt the English statutes in other cases, had given offence. The conduct of the Assembly, in their disputes with the Governor, was misrepresented—suspicions of disaffection were propagated—the declining health of the Proprietor left them without an advocate, and his necessities threatened them with a surrender of the government into the hands of the crown.

At this moment the Quakers were alarmed with the prospect of political annihilation. It was said, that the act of 1 George I. which prohibits an affirmation in cases of qualifications to office or in criminal suits, extended to the colony and superceded the ancient laws. This construction, which was advocated by the Governor, and tended to exclude the majority of the settlers from all offices and even from the protection of the law, threw the whole province into confusion. The Governor refused to administer the affirmation as [18] a qualification for office—the Judges refused to sit in criminal cases—the administration of justice was suspended, and two atrocious murderers remained in gaol three years without trial. The Assembly were alarmed, but they resolutely and forcibly asserted the rights of the people: and Gookin was at length re-called.*

On the accession of Sir William Keith a temporary calm took place—the criminals were convicted under the *old forms of proceeding*, and executed agreeably to their sentence. A representation and complaint of this was made to the Crown; and the Assembly were panick struck with the intelligence. They trembled for their privileges—they were weary of the contest which had so long agitated them, and impatient to obtain any regular administration of justice consistent with their fundamental rights.

They had been assured by the Governor that the best way to secure the favor of their Sovereign was to copy the laws of the Mother Country,—"the sum and result of the experience of ages." The advice was pursued—a resolution to extend such of the British penal statutes, as suited the province, was suddenly entered into. An act for this purpose (containing a provision to secure the right of affirmation to such as conscientiously scrupled an oath) was drawn up by David Lloyd, the Chief Justice, and, together with a petition to the Crown, was passed in a few days.†

So anxious were they to conform, that they not only surrendered their ancient system, but left it to the British Parliament

* 2 Votes of Assembly, 150, 188, 194-5, 200, et passim.

† 2 Votes of Assembly, 224, 253-4-5, &c.

to legislate for them, in [19] future, upon this subject:† and so humbled that they departed, in their petition, from their usual stile,‡ and directed their Speaker to solicit the Vestry and some members of the Church of England to join in a similar address. The sacrifice was accepted, and the privilege of affirmation, so anxiously desired, was confirmed by the royal sanction.

Thus ended this humane experiment in legislation, and the same year, which saw it expire, put a period to the life of its benevolent Author.

The royal approbation of this act was triumphantly announced by the Governor, and such was the satisfaction of seeing its privileges secured, that the province did not regret the price that it paid.

By this act, which is the basis of our criminal law, the following offences were declared to be capital: high treason (including all those treasons which respect the coin) petit treason, murder, robbery, burglary, rape, sodomy, buggery, malicious maiming, manslaughter by stabbing, witch-craft and conjuration, arson,§ and every other felony (except larceny) on a second conviction. The statute of James I. respecting bastard children, was extended, in all its rigor, and the courts were authorized to award execution forthwith.

To this list, already too large, were added, at subsequent periods, counterfeiting and uttering counterfeit bills of credit, counterfeiting *any* current gold or silver coin, and the crime of arson, [20] was extended so as to include, the burning of certain public buildings. All these crimes, except *perhaps*, the impossible one of witch-craft, were capital at the revolution.

We perceive, by this detail, that the severity of our criminal law is an exotic plant and not the native growth of Pennsylvania. It has been endured, but, I believe, has never been a favorite. The religious opinions of many of our citizens were in opposition to it: and, as soon as the principles of Beccaria were disseminated, they found a soil that was prepared to receive them. During our connection with Great Britain no reform was attempted: but, as soon as we separated from her, the public sentiment disclosed itself, and this benevolent undertaking was enjoined by the constitution. This

† Persons attainted, &c. are to suffer "as the laws of England now do *or hereafter shall direct.*" Act, 1718. § VI.

‡ But the principle was saved by directing the Speaker to sign it with an exception.

§ I include arson in this list, because such was the construction of the act at the time and long after its passing. One Hunt was actually executed under it. But, on a sounder construction it being held to be a felony within clergy, this benefit was expressly taken away in 1767.

was one of the first fruits of liberty, and confirms the remark of Montesquieu,* "That, as freedom advances, the severity of the penal law decreases."

In obedience to these injunctions, the Assembly proceeded, in the year 1786, to introduce the punishment of hard labor; and the offences (formerly capital) on which its effects have been tried, are, the crime against nature, robbery and burglary.

We are now to enquire whether this punishment has been less efficacious in preventing these crimes than the punishment of death. To aid this enquiry, a table exhibiting a view of the number of persons convicted, acquitted and executed, since the year 1778, is annexed.

Of the Crime against Nature.

THIS crime, to which there is so little temptation, that philosophers have affected to doubt its [21] existence, is, in America, as rare as it is detestable. In a country where marriages take place so early, and the intercourse between the sexes is not difficult, there can be no reason for severe penalties to restrain this abuse. The wretch, who perpetrates it, must be in a state of mind which may occasion us to doubt, whether he be *sui Juris* at the time; or, whether he reflects on the punishment at all. The infamy of detection would, of itself, be a punishment sufficient to restrain any one who was not certain of being undiscovered: and what terror has any punishment to him who believes that his crime will never be known? The experiment that has been made, proves that the mildness of the punishment has not encreased the offence. *In the six years preceding the act, and while the crime was capital, there are on record two instances of it. In the same period since, there is but one.* It was impossible this last offender could be seduced by the mildness of the punishment, because at the time, and long after his arrest, he believed it to be a capital crime.

These facts prove, that to punish this crime with death would be a useless severity. They may teach us, like the capital punishments formerly inflicted on adultery and witch-craft, how dangerous it is rashly to adopt the Mosaical institutions. Laws might have been proper for a tribe of ardent barbarians wandering through the sands of Arabia which are wholly unfit for an enlightened people of civilized and gentle manners.

Robbery and Burglary.

THE salutary effects of this change in our laws are not so evident in the cases of robbery and burglary as in that of the crime against nature. On the contrary, a superficial inspection of the

* Book VI. ch. 9.

annex- [22] ed table would lead a careless observer to believe that it has tended to encourage these crimes instead of suppressing them. It is true, there were, at first, great defects in the plan and still greater in the execution: and, for some time after its adoption, it had difficulties to struggle with which nothing but the native merit of its principle could have surmounted. A detail of these is necessary to enable us justly to appreciate this new system of punishment.

It must be remarked, that about three-fourths of the convictions of robbery and burglary, stated in the table, took place in Philadelphia. In a large city like this there is always a class of men, sometimes greater and sometimes less, who live by dishonest means, and considering theft as a regular vocation, pass through all the gradations of simple larceny into the higher departments of robbery and burglary. It so happened, that about the time of passing the act for amending the penal laws, there was accumulated in the gaol of the city and county of Philadelphia a great number of persons who had been convicted of these and other infamous crimes, and were either pardoned by the mercy of the government, or had undergone the punishment (and some of them the *repeated* punishment) of the pillory and whipping-post. These wretches, hardened by the nature of the punishment they had sustained—shut up together in idleness—freely supplied with liquor—witnesses of each others debauchery — instructing the inexperienced in the arts of villainy—and mutually corrupting and corrupted by each other, were a melancholy proof of the inefficacy of our former laws, and they were well prepared to despise the new. In order to clear the gaol, and accommodate it to the operation of the new system, these offenders were, from time [23] to time, discharged, and as soon as they were at liberty they returned to their old vocation.

It is a fact well known, that among all the convicts which first fell under the correction of the new law, scarce a new face appeared. Most of those who were convicted of the two offenses in question, were sentenced to undergo an imprisonment of five, seven or ten years; and had these sentences been strictly enforced, the benefit of the new system would have been apparent, and these crimes would have become rare.

Of all offenders these are the most incorrigible. Other offences are seldom repeated: but a person once devoted to any species of theft is seldom reclaimed by any terrors he has undergone or any mercy he has received. Reformation, though not impossible, must be the work of much time. A *strict execution* of the act was, therefore, essential to its success. But it unfortunately happened, that they were scarcely convicted before many of them were again loose

upon the public. Pardons, so destructive to every mild system of penal laws, instead of being thought *dangerous*, were granted with a profusion as unaccountable as it was mischievous: and escapes, which ought to have been guarded against by the most vigilant care, were multiplied to an alarming degree. Sixty-eight different persons were convicted of these offences previous to the year 1790. Of these twenty-nine escaped and thirty have been pardoned—five executed for capital offences committed after their escape, and one killed in an affray. I doubt whether any one male offender served out the time to which he was condemned by the sentence of the court; and it is certain, that there is not, at this time, in gaol a single person *under* a sentence pronounced previous to the year 1791. When to these abuses it is added, that the system itself was de- [24] fective in requiring the criminals to be employed abroad, which gave them opportunities for intoxication, and hardened them against shame—that their labor was not equal to that which it is the lot of poverty to endure, while their fare was much better—that there were no places for solitary confinement nor power to inflict it, and no real increase of punishment for a second offence, we may readily conjecture, that the operations of the system must have been not only impeded but perverted.

The defects of the system were corrected in 1790—the execution of it has been diligently attended to by the Inspectors, and the prerogative of pardon, since it has resided in a single Magistrate, is no longer weakly exercised.

Our calculations ought, therefore, to be made on the operations of the corrected system *during the two last years*. From an inspection of the table, it is evident these crimes have greatly decreased during that period. *The convictions in those two years are, upon an average, considerably less than those in any two years which precede them.*

But, under all the difficulties which, at first, it encountered, and without allowing for re-convictions which swell the account, let us examine what has been the general effect of the system, on these crimes, since it was first adopted. Referring, therefore, to the table, and excluding the year 1778 in order to make the time previous and subsequent to the act as equal as we can, the account will stand thus:

	Before the *act.*	*Since* the *act.*
Convicted,	81	104
Convicted partially,	9	1
Acquitted,	42	20
Total tried,	132	125

[25] From this statement it appears, *that more persons were tried for these offences, while they were capital, than since the punishment has been lessened: and if we allow for re-convictions the difference will be much greater.* It is true, the number of persons convicted, in the former period, is less than that of those convicted in the latter: but in this (as well as in the number of partial acquittals) I see nothing but the humane struggles of the jury to save the offender from death. At that period the acquittals were more than *half* the number of the convictions: since the change in our laws, they do not amount to a *fourth.*—A proof how much the severity of a law tends to defeat its execution!

It is probable that the number of *these* crimes would have been less, had a greater difference been made between *their* punishment and that of simple larceny. Perhaps it might have a beneficial effect if solitary confinement and coarse fare were a *necessary* part of the punishment. At present, it forms no part of the sentence on the criminal, but is inflicted, at the discretion of the Inspectors, on "the more hardened offenders." This is so indefinite a description, that this salutary rigor may be either capriciously inflicted or weakly withheld: and, as it is not the *certain* consequence of the offence, it can be no check upon the mind of the offender.

It might be sound policy to make a distinction between the punishment of those who commit these offences, armed with dangerous and mortal weapons, and of those who do not indicate such violent intentions. Such a distinction prevails in the laws of Connecticut, and, also, in those of Milan: and I understood from the nephew of the Marquis Beccaria, while he was in America, that [26] beneficial effects had resulted from this discrimination.

These crimes are still punished with death in the first instance, when committed by any person, sentenced to hard labor, after an escape: and, also, on the second conviction, if the offender was pardoned for the first. A similar provision is found in the laws of Denmark, where robbery is not in the first instance a capital offence, and where (Mr. Howard assures us) Night Robberies are never heard of.*

It is evident, from this examination, that the principle of the new system, properly modified, coincides with the public safety as much as with the dictates of humanity. The happy result of this experiment is an encouragement to proceed still further. I have already observed, that no offenders are so incorrigible as robbers and burglars, and on few crimes could the experiment have been made with so little prospect of success as on these I have been con-

* Howard on Pris. p. 76. Williams on the Northern Gov. 1 vol. p. 353.

sidering. Succeeding in this, there is little to apprehend from extending it to other crimes, which, though still capital, are not of the deepest dye.

COUNTERFEITING THE COIN.

BY the act of 1767, the counterfeiting "of any gold or silver coin, which is, or shall be, passing, or in circulation," is made a felony of death without benefit of clergy. This not only comprehends all current *foreign* coins, but will embrace those of the United States as soon as they come into circulation.

[27] This act is more penal than even the British statutes, for it is not a capital offence in England to counterfeit any *foreign* coin *at present* current in that kingdom.* If it be necessary to guard our coin by the terrors of an ignominious death, the act, to be consistent, ought to go further. False money made in another state or beyond seas, may be imported or uttered without incurring this punishment. The offence may, therefore, in substance, be committed, and yet the penalty of the law avoided.

But there does not appear to be any necessity for so violent a remedy. It is probable this crime will be neither frequent nor dangerous. The perfection of modern coins renders its commission difficult, and, to counterfeit them with success, requires not only time and industry, but a degree of skill which few possess, and which, in this country will always ensure its possessor a respectable livelihood.

Most people are now a days sufficiently discerning to distinguish the genuine from false coin: and the Banks, established in this and many of the principal cities in America, form a valuable check upon the circulation of base money. In these it is immediately detected; and, if a quantity appears to be abroad, information of it, and of the marks which distinguish it, is immediately transmitted to every part of the state by means of the public prints: Add to this, that the practice of making payments by checks or bank notes, now so general in this city (which is the usual mart for vending base money) tends very much to lessen the mischief. There is no longer any danger that false money will shock the public confidence or embarrass the course of dealing between man and man. The [28] monstrous folly of considering this offence as an usurpation of sovereignty, and, therefore, a species of high treason, is past; and it may now be safely ranked with other base frauds against individuals. The Edict of the Duke of Tuscany considers the coining of false money as grand larceny and punishes it as such.† This crime is

* Black. Com. 89.

† §. 94.

not capital in Massachusetts, nor in Connecticut, nor in Maryland, nor in North Carolina, as far as relates to foreign coin; and to every reflecting mind, which is not still enslaved by ancient errors, the punishment of death must appear to be far beyond the demerits of the offence. Is it wise, or is it just, to confound together dissimiliar crimes, and to involve him who debases a piece of money in the same punishment with him who is guilty of deliberate murder?

There is no substantial reason for making this crime capital which does not equally apply to that of forgery. In the present state of society paper negotiations require as much protection as the coin. The latter offence, in general, is more easily committed; and, a single act of forgery, may be more injurious to the individual than many acts of counterfeiting the coin. Yet, we find, the paper of the Banks, promissory notes and bills of exchange sufficiently safe under the mild systems of our laws. It is true various acts of Assembly made it a felony of death to counterfeit and and utter the Continental bills of credit: but it has been already stated, that no beneficial consequences resulted from this severity.

Only three persons have been tried in Pennsylvania for counterfeiting the coin since the revolution, and of these two were acquitted. Positive proof of this crime is rarely to be obtained, and the [29] usual circumstances which attend its commission, as they amount to proof of an inferior offence, are seldom admitted by a jury to amount to anything more.

From the experience we have had it is not probable, that many will become the victims of the law: but, while it remains in our statute book, it furnishes a precedent for involving, in the same punishment, crimes which are similar in their nature and effects. I suspect this offence was overlooked at the time the reform was made in our penal laws, otherwise it would hardly have been continued in the list of capital crimes.

Of the acts respecting the crime of counterfeiting bills of credit, loan-office certificates, &c. I shall take no notice, as the offence will scarcely be committed at this day, and the law will become obsolete of itself, if it be not repealed.

RAPE.

THE infliction of death for any crime supposes the incorrigibility of the criminal. But this offence, arising from the sudden abuse of a natural passion, and perpetrated in the phrenzy of desire, does not announce any irreclaimable corruption.

Female innocence has strong claims upon our protection, and a desire to avenge its wrongs is natural to a generous and manly mind. We consult this resentment, rather than our reason, when we punish

this offence with such dreadful severity. The injury is certainly great: yet, it cannot be denied, that much of its atrocity resides in the imagination and is the creature of opinion. Why else do we estimate the degree of the offence so much by the rank, the situation, and the character of the injured party? Why does a jury frequently treat this charge so lightly as to acquit against positive and uncontradicted evidence? Or why do [30] the laws consider the violation of a female slave of so little moment as to secure the offender from punishment by excluding the only witness who can prove it? * In most cases the violation of the natural right and the real injury to the individual is nearly the same: yet, those who justify the present severity are obliged to admit, "that it is a crime peculiarly liable to vary in the degree of its atrociousness, according to the circumstances of the case, and, therefore, *peculiarly* open to the divine prerogative of pardon." † The truth is, that in many instances, the common sense of mankind revolts against the extremity of the punishment, and pardons or acquittals are the necessary consequence. It is these pardons—it is these acquittals—which create the hopes of impunity and rob the law of all its terrors. It has been as strictly executed in Pennsylvania as in most countries: yet, of eighteen persons tried since the revolution for this crime, and *positively* charged, only five have been punished.

By a table of capital convictions in Scotland from 1768, to 1782,§ it appears that only one person was convicted of this crime, and that he was pardoned.*(i)*

William Penn considered imprisonment, stripes and hard labour as a punishment adequate to this crime and sufficient to check the commission of it. The Grand Duke of Tuscany prescribes imprisonment at labor, varied as the circumstances may require. ‡ The Legislature of Vermont, so late as the year 1791, has followed the humane exam- [31] ple, and in that state death is no longer inflicted on this offence.

If any one, mistaking the end of punishment, and more intent on vengeance than the prevention of the crime, deems this chastisement too light, a visit to the penitentiary house lately erected as part of the gaol of Philadelphia, will correct the opinion. When he looks into the narrow cells prepared for the more atrocious offenders

* Act for the gradual abolition of slavery. § 7.

† Eden's principles, 238.

§ Howard on prisons, 485.

(*i*) See NOTE IX [*infra*, p. 167.]

‡ Section 99.

—When he realizes what it is to subsist on coarse fare—to languish in the solitude of a prison—to wear out his tedious days and long nights in feverish anxiety—to be cut off from his family—from his friends—from society—from all that makes life dear to the heart—When he realizes this he will no longer think the punishment inadequate to the offence.

ARSON.

ARSON is the crime of slaves and children. Its motive is revenge, and, to a free mind, the pleasure of revenge is lost when its object is ignorant of the hand that inflicts the blow. Twelve persons have been tried for this offence in the last fourteen years: and of these, three were negro slaves—four were children, and two were vagrant beggars. The remaining three were acquitted under circumstances which made it probable the fire was accidental.

This offence may be committed so secretly that it is seldom possible to collect proof sufficient on a charge that is capital. Other crimes are committed in the presence of witnesses, or are attended with circumstances which point out the criminal: but in arson there are no eye-witnesses—the presumptive proof will seldom be *violent*, and confessions are only to be expected from the ignorance of slaves and children. These confessions (too [32] generally extorted by promises or threats) come before the jury in so questionable a shape, that they are often disregarded.

Hence the severity of the punishment, in this case, leads in a peculiar manner to impunity. The proof is so difficult that juries are justified in acquitting, and the objects convicted are such as the Executive is prompt to pardon. Of five persons convicted of this crime only one was executed.—This was a *negro* woman in a *distant* county.

The crime of arson extends only to the wilful burning of a dwelling-house, certain public buildings, or a barn having hay or corn therein. Every other species of property may be maliciously destroyed by fire, without incurring the forfeiture of life. Hence, ships and other vessels in harbour or on the stocks—hay and grain in stack or barracks—magazines of arms and provisions—store-houses of every description—mills—theatres and distilleries, are not protected by these high terrors of the law: and to burn *them* is considered merely as a misdemeanor at common law. Here then is a fair opportunity for comparison. Has the milder punishment encouraged these malicious crimes; or, has the terror of death, hung up on high, deterred offenders from the crime of arson? The following fact will answer the question. *Since the revolution twelve persons have been indicted for the crime of arson; and only two for any other species of malicious burning!*

In New Hampshire and Massachusetts this crime is not capital if committed in the day time: nor in Connecticut, "if no prejudice or hazard to the life of any person happen therefrom." To burn public vessels or magazines of provision, *in time of war*, being a species of treason, is, indeed, capital in that state: but it is not so if the same offence be committed in time of peace. I cannot [33] learn that these distinctions have any effect, or that the lesser offence is more frequent than the greater.

Upon the whole, it seems that solitude and hard labor will be a punishment, for this crime, as efficacious and more advantageous to the public, than death. The offender may be reformed and become a useful citizen, and he may be compelled to repair, by his estate or his labor, the injury he has done. This was formerly required in most cases, by the laws of William Penn; but, at present, is swallowed up by the legal maxim which merges the private in the public wrong: a maxim, invented by fiscal or feudal ingenuity, to prevent the claims of the injured party from interfering with the forfeiture to the crown and the escheat to the lord.

MALICIOUS MAYHEM, &C.

THIS offence is described in the words of the English statute, 22 & 23 Car. II. Ch. 1. commonly called the *Coventry* act. The severity of this act, which goes considerably beyond all former statutes on the subject, was occasioned by a malicious assault made upon Sir John Coventry, then one of the members of the House of Commons. Laws thus made upon the spur of the occasion, and under the emotions of indignation, are seldom founded upon the permanent principles of justice or policy.

This act has remained a dead letter in Pennsylvania. No person has been prosecuted under it, nor can I learn that the crime has ever been committed. I attribute this to the state of manners, and by no means to the nature of the penalty. On the contrary, as no prosecution has called it into public notice, it is probable that very few people know that such an act exists.

[34] New Hampshire, in legislating on this subject, has set us an example of justice and moderation. There the penalty is fine and imprisonment not exceeding seven years; and there, as well as in Pennsylvania, the offence is unknown. The same penalty is prescribed by the laws of the United States. Even in Georgia, where the attention of the Legislature has been called to it so late as 1787, the punishment, for the first offence, is the pillory and fine not exceeding one hundred pounds, half of which goes to the injured party. In Virginia and North Carolina, though it be a felony, it is not ousted, as with us, of the benefit of clergy.

MAN-SLAUGHTER BY STABBING.

The act of 1 Jac. I. usually called, the statute of stabbing, by which this offence was ousted of clergy, was extended to the province by an express reference to it in the act of 1718. This statute, which was levelled against a *temporary* mischief prevalent in England at that day—in which so much ignorance of the common law is discovered—which is so rigorous in its *literal* meaning as to involve the cases of chance medley and innocent mistake—and so obscure and ill drawn that the Judges have been divided on the meaning of almost every important word in it—ought never to have been made a permanent law of Pennsylvania. Its severity, however, has been so mitigated by judicial construction, that the soundest opinion now seems to be, "That the party indicted upon it ought not to be convicted, unless the fact, upon evidence, turns out to be murder at common law." * For this reason it has not been usual, for some years past, to indict [35] any person on this act in Pennsylvania; and, for the same reason, it ought not to remain among our laws. It is useless when rightly explained: it may be the instrument of mischief when it is perverted or misunderstood.

MURDER.

IT has been a question which has divided the philosophers of Europe, whether it be lawful, in *any* case, to take away the life of a criminal: and the negative has been advanced and ingeniously supported in our own country. † Great names are arranged on the different sides of this question: but, waving useless refinement, it seems to resolve itself into that which we are considering, *viz.* whether it be *necessary* to the peace, order and happiness of society.

Murder, in its highest degree, has generally been punished with death, ‡ and it is for deliberate assassination, if in any case, that this punishment will be justifiable and useful. Existence is the first blessing of Heaven, because all others depend upon it. Its protection is the great object of civil society and governments are bound to adopt every measure which is, in any degree, essential to its preservation. The life of the deliberate assassin can be of little worth to society, and it were better that ten such atrocious criminals should suffer the penalty of the present system, than that one worthy citizen should perish by its abolition. The crime imports extreme depravity and it admits of no reparation.

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* Foster, 301-2.

† "Observations on the injustice and impolicy of punishing murder with death," by Dr. Rush.

‡ See NOTE X [*infra*, p. 168.]

"But why should capital punishments have a more powerful effect on these than on other offen- [36] ders?" I have already observed, that the fear of death is universal and impressive: and that its beneficial effects are defeated principally by the hopes of impunity.

We have had no experience what its effect will be when it is applied to a *single* crime of such a nature as to exclude the hopes of pardon. In such a case, where an execution would be as rare as it is dreadful, the wholesome terror of the law would be wonderfully increased: and this is one reason why a less punishment should be adopted for other crimes.

If we seek a punishment capable of impressing a strong and lasting terror, we shall find it in an execution *rarely* occurring—*solemnly* conducted *(k)*—and inflicted in a case, where the feelings of mankind *acquiesce in its justice* and do not revolt at its severity.

But while I contend that this is the most powerful curb of human governments, I do not affirm that it is *absolutely* necessary, or that a milder one will be insufficient. It is possible that the further diffusion of knowledge and melioration of manners, may render capital punishments unnecessary in all cases: but, until we have had more experience, it is safest to tread with caution on such delicate ground, and to proceed step by step in so great a work. A few years experience is often of more real use than all the theory and rhetoric in the world. One thing, however, is clear. Whatever be the punishment inflicted on the higher degrees of murder it ought to be *widely* different from that of every other crime. If not different in its *nature* at least let there be some circumstance in it calculated to strike the imagination—to impress a [37] respect for life—and to remove the temptation which the villain otherwise has to prevent the discovery of a less crime by the commission of a greater.*(l)*

But while I speak thus of deliberate assassination, there are other kinds of murder to which these observations do not apply: and in which, as the killing is in a great measure the result of *accident*, it is impossible the severity of the punishment can have any effect. The laws seem, in such cases, to punish the act more than the intention: and, because society has unfortunately lost one citizen, the executioner is suffered to deprive it of another.

In common understanding the crime of murder includes the circumstances of premeditation. In the laws of William Penn, the technical phrase *malice aforethought*, was avoided; and "wilful and *premeditated* murder" is the crime which was declared to be capital. Yet murder, in judicial construction, is a term so broad and compre-

(*k*) See NOTE XI [*infra*, p. 172.]
(*l*) NOTE XII [*infra*, p. 172.]

hensive in its meaning as to embrace many acts of homicide, where the killing is neither wilful nor premeditated. "*A.* shooteth at the poultry of *B.* and, by *accident*, killeth a man; if his intention was to *steal* the poultry it will be murder: but if *done wantonly* it will be barely man-slaughter." Again, " A parker found a boy stealing wood in his masters ground: he bound him to his horse's tail and beat him. The horse took fright, run away and killed the boy. This was held to be murder." * In the latter case there was no design to kill; in the former not the least intention to do any bodily harm.

I am sensible how delicate a step it is to break in upon the definition of crimes formed by the [38] accumulated care of ages; but, when we consider how different, in their degree of guilt, these offences are from the horrid crime of deliberate assassination, it is difficult to suppress a wish, that some distinctions were made in favor of homicides which do not announce extreme depravity. The defect may be, in a degree, supplied by the prerogative of pardon: yet it shocks the vulgar opinion and lessens the horror of the crime whenever a *murderer* is pardoned. It has been said, "Ye shall take no satisfaction for the life of the murderer:" yet it is often necessary, as the law stands, to interpose the prerogative of mercy. Even in England, where restraints are laid upon its exercise in cases of murder, it appears, by tables * already referred to, that, of eight-one sentenced to die for this crime, seven were pardoned,—in Scotland seven out of twenty,—and in Pennsylvania about one-fourth of the whole number convicted. *Not one of these, thus pardoned, has ever been prosecuted, to my knowledge, for any other crime.*

In the report of the committee of revision to the General Assembly of Virginia, a reform is suggested so far as relates to homicide accidentally happening in consequence of a felonious or unlawful act: and it is proposed to be enacted, "That, in future, no such case shall be deemed man-slaughter unless man-slaughter were intended, nor murder unless murder were intended."

Though *assassination* has been rare in Pennsylvania, it cannot be concealed that *homicides* have been very frequent. It appears by the table annexed, that, in the last fourteen years, there have been tried for murder and manslaughter no less than one hundred persons, of whom one half were convicted, and *thirty-four* of these were for mur- [39] der. In the same space of time there were but *twenty* convicted of this latter crime in Scotland. Even in the city of London, nearly twice as populous as this state, there were but *nineteen* persons executed for murder from 1771 to 1783, a space of twelve

* Foster. 259, 292.

* See Jansen's Tables in How. Lazar. p. 483-5.

years.* In fourteen years *twenty-six* have been executed in Pennsylvania.

There is one species of murder which deserves attention. It is that of bastard children. The horrid severity of the statute of James I, introduced here, had long been mitigated by a humane *practice* of requiring some proof that the child was born alive. This practical construction is now legally authorized, and it is necessary to give, some *"probable presumptive proof* of that fact, before the strained presumption that the child, whose death is concealed, was therefore, murdered by its mother, shall be sufficient to convict the party indicted." †

But does it necessarily follow that a child, which *is* born alive, must be destroyed merely because its death is concealed? May not the child perish from want of care, or skill, in so critical a moment? A helpless woman, in a situation so novel and so alarming—alone, and, perhaps, exhausted by her sufferings—may she not be the involuntary cause of her infant's death? and, if she afterwards consults a natural impulse to conceal her shame, is not the penalty beyond the demerit of the offence? These reflections naturally arise in the hearts of jury-men; they regard these unfortunate creatures with compassionate eyes, and I have never known them convict unless there were marks of violence, or some circumstances that would amount to proof of murder at common law. The [40] punishment is ever before their eyes, and they tremble at the consequences of an irretrievable mistake. The presumptions that the child was born alive have been, not only *probable* but *violent*, and yet the act has not been enforced. *There have been fifteen women tried for child-murder since the year* 1778; *three only convicted, and, of these, two were pardoned.* Where a positive law is so feebly enforced, there is reason to suspect that it is fundamentally wrong. The error of *this* act is apparent. Proof of a crime is that which satisfies our minds of the truth of the charge. If it does not produce a *belief* of the fact laid in the indictment it is not *proof* of it—and this belief is neither in our power nor that of the law. It is absurd, therefore, to say, that this or that circumstance shall be *proof of the murder.* To make the concealment a capital crime in one thing; but, to say, that when the concealment is proved, the jury must, at all events, believe the murder to be committed—is a very different one.

In *Denmark*, women guilty of child-murder are no longer punished with death: but are condemned to work in spin-houses for life, and to be whipped annually, on the day when, and the spot where, the

* Howard, p. 484-5.

† Act to reform the penal laws. § VI.

crime was committed. "This mode of punishment, Mr. Howard assures us,* is dreaded more than death, and since it has been adopted has greatly prevented the frequency of the crime."

An attempt was made to introduce a similar alteration in the laws of *Sweden.* It was recommended by Gustavus III. in his speech at the opening of the Diet of 1786. But this innovation was warmly opposed by the Clergy: and the patriots to whose consideration it was referred were unani- [41] mous in advising the representatives of the nation to continue the punishment of death.§

There is a provision in the laws of New Hampshire, which is founded in good sense, and which, while this offence remains capital, it is desirable could be introduced here. There, the *concealment* is treated as a crime punishable by fine, imprisonment or public infamy, according to the circumstances of the case; while the proof of the *murder* remains as at common law. If, as is usually done, the indictment charges both crimes, the jury may acquit of the murder and find the prisoner guilty of the less offence.

MAN-SLAUGHTER.

THOUGH man-slaughter is not, in common acceptance, a capital crime, I mention it for the sake of making a single observation respecting its punishment.

Man-slaughter, as explained in our law-books, is exceedingly comprehensive in its nature. While its deepest shade partakes of the hue of murder, its lightest is faintly tinged with the feeble colors of carelessness and inadvertence. The punishment ought, therefore, to be such as might be varied according to the circumstances of the case: or, the different degrees of the crime should be ascertained and marked with a correspondent penalty. The former is the case in all the New England states, and the court may inflict an *infamous* punishment, or fine or imprisonment, or all or either of these as the degree of guilt requires. This was formerly the law in Pennsylvania; but now *every* person convicted of man-slaughter is sentenced to [42] be burnt in the hand—to find security for his good behaviour *during life*—and to be fined and imprisoned: and for the second offence to be hanged.

Beneficial effects resulted from an act of Assembly, passed in the year 1780, which authorized the Attorney General, with the leave of the court, to proceed against any person charged with *treason,* as

* Howard on prisons, p. 74.

§ See Journey thro' Sweden translated by Radcliffe. Catteau's View of Swed. p. 159.

for a misdemeanor only. Upon this principle, might not the Public Prosecutor be impowered to wave the felony in the lower species of man-slaughter, and to indict the defendant for an unlawful homicide, punishable as a misdemeanor at common law?

PETIT TREASON.

THIS crime, which consists in a wife's killing her husband or a servant his or her master, is punished differently from the other species of murder. A man convicted of it is to be drawn and hanged, and a woman to be drawn and *burnt*. Is not this distinction unjust, and this mode of inflicting death, handed down from ferocious ages, injurious to society from it apparent,* if not real, barbarity?

In many of the states, as well as by the laws of Congress, it is expressly enacted, That death shall *always* be inflicted by hanging the offender by the neck. We have no such act in Pennsylvania.

The distinction between petit treason and other kinds of murder is abolished by the laws of Massachusetts. Neither the enormity of its guilt, nor the supposed allegiance of the party, require a distinction more than the crime of parricide which is punished as simple murder.

[43] HIGH TREASON.

HIGH TREASON, when properly limited, has generally been considered as the highest crime and as involving in it the guilt of murder. In its true meaning it is an attack upon the sovereignty and existence of the nation.

By the acts of Congress and of several of the states * it is properly confined to the levying war and adhering to enemies, and is described in the words of the statute of Edward III:—words, whose precise extent has been settled by the judicial construction of more than four centuries. In Pennsylvania the description of this crime is more diffuse: and the act of 1782 is sufficiently severe which makes it high treason to set up a notice inviting the people to meet for the purpose of erecting a new and independent government within the bounds of the state, or even to attend at any meeting for such a purpose.

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* In practice, it is usual to strangle the woman before her body is committed to the flames. See NOTE II [*infra*, p. 158].

* In New Hampshire "to *conspire* to levy war" is high Treason: This, if applied to the *constructive* levying of war, outdoes the severity of the British Government.

CONCLUSION.

IT is from the ignorance, wretchedness or corrupted manners of a people that crimes proceed. In a country where these do not prevail moderate punishments, strictly enforced, will be a curb as effectual as the greatest severity.

A mitigation of punishment ought, therefore, to be accompanied, as far as possible, by a *diffusion of knowledge* and a *strict execution of the laws.* The former not only contributes to enlighten, but to meliorate the manners and improve the happiness of a people.

[44] The celebrated *Beccaria* is of opinion, that no government has a right to punish its subjects unless it has previously taken care to instruct them in the knowledge of the laws and the duties of public and private life. The strong mind of *William Penn* grasped at both these objects, and provisions to secure them were interwoven with his system of punishments. The laws enjoined all parents and guardians to instruct the children under their care so as to enable them to write and read the scriptures by the time they attained to twelve years of age: and directed, that a copy of the laws (at that time few, simple and concise) should be used as a school book.* Similar provisions were introduced into the laws of Connecticut, and the Select Men are directed to see that "none suffer so much barbarism in their families as to want such learning and instruction." The children were to be "taught the laws against capital offences," † as those at Rome were accustomed to commit the twelve tables to memory. These were regulations in the pure spirit of a republic, which, considering the youth as the property of the state, does not permit a parent to bring up his children in ignorance and vice.

The policy of the Eastern states, in the establishment of public schools, aided by the convenient size and *incorporation* of their townships, deserves attention and imitation. It is, doubtless, in a great measure, owing to the diffusion of knowledge which these produce, that executions have been so rare in New England; and, for the same reason, they are comparatively few in Scot- [45] land.* Early education prevents more crimes than the severity of the criminal code.

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* Laws 1682. ch. 60. 1-2.

† Laws Conn. p. 20.

* Scotland is nearly twice as populous as London; yet, by the tables referred to already, it appears, that about *thirty* criminals are executed, yearly, in London, while not quite *four* is the yearly average in Scotland. The difference between those *capitally convicted,* in two places, is much greater. How. p. 9. 483-5.

The constitution of Pennsylvania contemplates this great object and directs, That "Schools shall be established, by law, throughout this state." Although there are real difficulties which oppose themselves to the *perfect* execution of the plan, yet, the advantages of it are so manifest that an enlightened Legislator will, no doubt, cheerfully encounter, and, in the end, be able to surmount them.

Secondly—Laws which prescribe hard labor as a punishment should be strictly executed.*(m)* The criminals ought, as far as possible, to be collected in one place, easily accessible to those who have the inspection of it. When they are together their management will be less expensive, more systematic and beneficial—Their treatment ought to be such as to make their confinement an *actual* punishment, and the rememberance of it a terror in future. The labor, in most cases, should be real *hard* labor—the food, though wholesome, should be *coarse*—the confinement sufficiently *long* to break down a disposition to vice—and the salutary rigor of *perfect solitude, invariably* inflicted on the greater offenders. Escape should be industriously guarded against—pardons should be rarely, *very rarely*, granted, and the punishment of those who are guilty of a second offence should be sufficiently severe.

The reformation of offenders is declared to be one of the objects of the Legislature in reducing the punishment—But time, and, in some cases, [46] *much time*, must be allowed for this. It is easy to counterfeit contrition; but it is impossible to have faith in the sudden conversion of an old offender.

On these hints I mean not to enlarge—but they point to objects of great importance, which may deserve attention whenever a further reform is attempted.

The conclusion to which we are led, by this enquiry, seems to be, that in all cases (except those of high treason and murder) the punishment of death may be safely abolished, and milder penalties advantageously introduced—Such a system of punishments, aided and enforced in the manner I have mentioned, will not only have an auspicous influence on the character, morals, and happiness of the people, but may hasten the period, when, in the progress of civilization, the punishment of death shall cease to be necessary; and the Legislature of Pennsylvania, putting the key-stone to the arch, may triumph in the *completion* of their benevolent works.*(n)*

(*m*) See NOTE XIII [*infra*, p. 173.]
(*n*) See NOTE XIV [*infra*, p. 174.]

A Table exhibiting a View of the number of Persons convicted of all capital and certain other Crimes

Years	Crime against Nature			Robbery				Burglary				*Counterfeiting* the Coin			Rape			Arson			Murder				Manslaughter		Treason			*Counterfeiting* bills of credit		
	Acquitted	Convicted	Executed	Acquitted	Acquitted of robbery, but guilty of larceny	Convicted	Executed	Acquitted	Acquitted of burglary, but guilty of larceny	Convicted	Executed	Acquitted	Convicted	Executed	Acquitted	Convicted	Executed	Acquitted	Convicted	Executed	Acquitted	Acquitted of murder, but guilty of manslaughter	Convicted	Executed	Acquitted	Convicted	Acquitted	Convicted	Executed	Acquitted	Convicted	Executed
1779						5	4	1		3	2				1						6	1	5	4				1	1	3	5	3
1780				6		3	3	2	2	6	5				1				1	1	4		2	2			1	2	1	4	6	2
1781				3		3	3	7		10	4				2	1	1	2			1	2			1	1	1	1		3		
1782				4		15	3	3		8	4										2	1	2	2			2			1		
1783		1		1		2	2	3	2	5					1	1		2	3		2	3	5	4	1							
1784				4		7	5	4		8	8				1						3		1		2					1		
1785		1	1	2				2	3	4	2				1	1	1				7	1	5	5	1							
								1	2	10																						
1786	{	..	..	..	....	..	..	..	....	..						3	1				4				3							
						7		3		4																						
1787				1		6		5		7									1				3	2	1							
1788		1		2		7		3		14	1	1	1	1	1	1					3				1							
1789				1	1	22	1	2		5		1									3		6	6								
1790				1		11				5					1			2			2	2	3			2						
1791						2				6															1	1						
1792				1		3				5						2	2	1			1	1	2	1	1	1						
Total		3	1	26	1	93	21	37	9	100	26	2	1	1	9	9	5	7	5	1	38	11	34	26	12	5	4	4	2	12	11	5

I. The Table states the number of *Offenders* not of *Convictions*; therefore, where a person appears to have been twice convicted of the same crime, at the same sessions, no notice is taken of it in the table.

II. In the convictions of 1782, several attainders, by outlawry, are included: the robberies committed being matter of public notoriety.

III. The dotted line separates those offences of the year 1786, which were previous to the act to amend the penal laws, from those which were subsequent to it.

NOTES AND ILLUSTRATIONS

NOTE I. Page 5.

IT was a favorite opinion of Dr. Jebb, *"That no effort is lost,"* and the success which has attended these endeavours to moderate the rigor of the Criminal Law, tends to confirm it. A slight review of the effects which the dissemination of these principles have had upon the governments of Europe will not be foreign to the object of this work, and must be consolatory to the friends of humanity.

Forty years ago the execrable practice of *torture* was general on the continent of Europe, and it was considered to be as necessary in the administration of justice as capital punishments are at present. Against this cruel institution all the powers of reason and ridicule were exerted: and the folly as well as the wickedness of it has been so happily exposed, that it has either been wholly suppressed, or has become so disreputable as seldom to be exercised. The King of *Prussia* set the example of abolishing it in Germany, and the Duke of *Tuscany* in Italy; and the example was soon followed in Saxony and in Poland. It was suppressed throughout all *Russia* in 1768, though not without some opposition from the prejudices of the people. In *Geneva* it has not been used since the year 1756; and it was totally abolished in *Sweden* in 1773. Maria Theresa *tacitly* suppressed, and the late Emperor Joseph, formally prohibited it in the *Austrian* dominions. Louis XVI. about the same time restricted its exercise in *France*. The revolution has utterly abolished it in that country as well as in *Avignon*, where it was exercised with so much severity that the goaler there informed Mr. *Howard*, in 1786, that he had seen drops of blood mixed with sweat on the breasts of some who had suffered the torture. Even in *Spain* the practice though not formally abolished, is generally reprobated, and in some of the provinces is no longer used. The *Chevalier de Bourgoanne* informs us, that a few years ago an ecclesiastic named Castro, undertook a formal apology for it; but that his book was received with universal indignation and was fully refuted by a gentleman of the law, who, in fact, only expressed the moderate sentiments of the first tribunals of the kingdom, and of the reasonable part of the nation.

Those, whose imaginations have realized the scenes which were formerly exhibited in a *torture chamber*, will consider the destruction of this monster as no inconsiderable cause of triumph. See Bourg. Trav. 1 vol. 286-7. Howard on Pris. 154 &c. Lazaretto's. 66. 53. 2 Coxe's Trav. 83. 392. 4. Biblioth. Philos. 205.

Though I have selected this striking instance, it is but a small part of the effects produced by this diffusion of light and truth.

To *this* is to be attributed the *general* reformation in the civil and criminal code of Russia. The celebrated "Instructions" of the Empress, written with her *own* hand, and deposited with so much care in the gilded vase at Petersburg—What are they, but the principles scattered through the writings of the philosophers of Europe, and often expressed in their *very words?* It was the same cause which produced the reformation of the criminal law at Vienna in 1785. "The Court (says Baron Reisbach, speaking of the Codex Theresianus) became ashamed, at the time when all Europe was making an outcry about humanity, the abolition of capital punishments, &c. of a statute book which had nothing in it but halters, gibbets, and swords"—and a reform was immediately begun.

The amelioration introduced into the laws of Sweden by *Gustavus* III. begin to be generally known.——We now perceive in that country "the character of a government which listens to the voice of humanity;" and it is easy to trace the source of this reform to those philosophical writings whose maxims were so strongly impressed on his mind, that he did not forget them in the last moments of his life. As to *Tuscany*, it is acknowledged, that the abolition of capital punishments and the whole system of *Leopold*, was introduced with the design of putting the principles of *Beccaria* to the test of experiment.

In *Spain*, the triumphs of reason have not been wanting. Various steps have been taken under the auspices of *Count d' Aranda*, to narrow the Jurisdiction and humanize the proceedings of the inquisition, and with such success, that some years ago there was an expectation "that the moment was at hand when this hydra, which philosophy had condemned long before, was to be destroyed." ——Attempts were also made in the year 1783 to reform the criminal law of the other tribunals of the kingdom. The council of Castile proposed this, and a committee was appointed to carry the proposal into effect. But what has been the result I have not been able to learn.

England contenting herself with the superior wisdom, humanity, and justice of her laws in all respects but one, and too fond of "*the ancient order of things*," has alone remained stationary. The nation indeed is fully sensible of the evil which attends a multitude of sanguinary laws and the *government* itself begins to be alarmed with the magnitude of the mischief. Judge Blackstone was active in prosecuting a reform, and Lord Ashburton, it is said, was prevented by his death from bringing forward in parliament a plan for that purpose. A disposition to establish penetentiary houses has been discovered, and this rational expedient will probably be adopted when the Botany Bay scheme has been sufficiently tried.

The fermentation of the public mind in Europe excited by greater objects will prevent for a while any attention to this subordinate subject: but a reform in the government will in the end hasten that which is so much wanted in the criminal law. It is impossible that error can long resist the gentle, but continued impression of reason. The stroke of truth on public prejudice will be finally irresistible. It resembles that of a grain of sand falling on unannealed glass. Feeble as it seems to be—and slow and invisible as its operations are, no human power can prevent its effects, or preserve from destruction the object on which it falls. See Reisbach's Trav. 1 vol. p. 106. Bourg. 1 vol. 320. 1. 186. Jebb on Prisons. Parl. Regist. vol. 18. p. 521.

NOTE II. Page 9.

[*An increase of punishment may suddenly check, but does not in the end diminish the number of offenders.*]—This principle is well illustrated by Montesquieu. To the facts adduced by him in support if it, the following may be added. In 1752, the British parliament passed an act for the better preventing the horrid crime of murder; by which, in order "*to add further terror to the punishment of death,*" it was directed that the body of the criminal should be delivered at Surgeons Hall, to be dissected and anatomized. This expedient, it is said, carried some terror with it at first, but, we are assured, that this prejudice is now pretty well worn off. 1 vol. Wenderb. View, p. 78. This is confirmed by Sir S. T. Jansen, who on comparing the annual average of convictions for 23 years previous and subsequent to that statute, found that the number of murders had not all decreased. See his Table in Howard's Lazar.

I am sorry to perceive that this useless, and perhaps pernicious, expedient has been introduced into the laws of the United States. An anatomical professor might have found reasons for its adoption, but the single object of the legislature was or ought to have been to prevent the crime. See Debates Cong. 7 April 1790. Not wholly foreign to this subject is the following striking passage in the Rights of Man: "It may, perhaps be said, that it signifies nothing to a man what is done to him after his death: but it signifies much to the living. It either tortures their feelings or hardens their hearts; and in either case it teaches them how to punish when power falls into their hands. Lay then the axe to the root, and teach governments humanity. It is their sanguinary punishments which corrupt mankind." Rights of Man, 1 Part p. 33.

NOTE III. Page 9.

Facts from which principles are to be deduced ought to be well established. I am therefore obliged to observe that Montesquieu appears to have taken up that alluded to in the text, without sufficiently examining into its truth. The passage in the Spirit of Laws is thus: "The people of *India* are mild, tender, and compassionate. Hence their legislators repose great confidence in them. They have established very few punishments, and these are not severe nor rigorously executed." This is founded on the authority of Le P. Bouchuel in his collection of edifying letters. A similar account is given by other European writers. The authors of "Travels into Europe, Asia, and Africa," published in 1782, says, "The Hindoos are naturally the most inoffensive of mortals. There is a wonderful mildness in their manners, and also in their laws, by which the murder of a human creature and of a cow, (one of the sacred animals) are the only crimes which are punished with death." 1 vol. p. 332. These accounts are very different from those of the ancients, who represent the punishment of crimes in *India* as extremely rigorous: and since the Bramins have been prevailed upon by the address of Mr. Hastings, to communicate the Hindoo code to the world, we find that the ancients were right in their representations. There is a profusion of capital punishments prescribed in that code, and the cruel manner of inflicting them, bears the stamp of remote and barbarous ages. This difference is, in some measure reconciled, by Mr. Halhed, the translator of the Hindoo code, in his preface to that work. Speaking of the chapter on theft, his words are, "This part of the compilation exhibits a variety of crimes punished by various modes of capital retribution, contrary to the general opinion adopted in Europe, that the Gentor administration was wonderfully mild and averse to the deprivation of life. One cause for this opinion might be, that since the Tartar Emperors became absolute in India, the Hindoos, (like the Jews in captivity) though in some respects permitted to *live* by their own rules, have, for reasons of government, been in most cases prohibited from *dying* by them." p. 62. Be this as it may, little can be inferred from the example of so peculiar a people, who are more governed by manners and religion, than by laws; otherwise it might be observed, that those of the superior cast or tribe, are expressly exempted from *capital*, though they are subjected to other punishments: and there is no good ground to believe, that this exemption ever corrupted the heart or tempted to the commission of crimes. See Spirit Laws. B. 14. ch. 15. Raynel vol. 1. Sketches Hist. Hindost. 300. 1. Hindoo Code. 1777. passim. Roberts. Ind. 263.

In *China*, where the population is computed at 60 millions, a strict administration of justice is said to supersede the necessity of many capital punishments. We are told that no crimes are punished with death, except treason and murder; and that in this extensive country, not more than 10 persons are executed in a year. Sullivans Philos. Raps. 156. There *is* reason to believe that the laws of China are at once mild and efficient: But the accounts we have of that people are imperfect and contradictory. See on this subject Montes. B. 19 ch. 17. B. 6. ch. 9. Duhalde's Hist. vol. 1. Encyclop. art. China.

NOTE IV. Page 10.

Blackstone in his Commentaries, Montesquieu, and others, cite with approbation the conduct of the Empress Elizabeth, who upon her accession to the throne of *Russia*, in 1741, made a vow that no one should be put to death during her reign. But as there were no fixed and ascertained punishments substituted in the room of death, and as that defect was often supplied in that arbitrary government by the infliction of capricious and cruel tortures, it seems rather to have been a weak affectation of clemency, than a beneficial reform: and it was not successful in the prevention of crimes. See note X. The present Empress proceeded with more wisdom, In 1768 she convoked an assembly of deputies from all parts of the Empire, and laying before them her "Instructions," which contain an epitome of the principles advanced by the best writers on this subject, has by their assistance given to the nation a complete code of civil and criminal laws, the first part published in 1775, the latter in 1780. By these the penalty of death is abolished in all cases but that of treason: and definite and certain punishments are prescribed for every offence. Some of these are of such a nature, that humanity has gained little by the change: but *in general* the beneficial effects of the new system are very evident. That empire has of late been an object of attention to intelligent travellers, and we have as much authentic information of the internal state of *Russia* as of other European countries. Upon an attentive examination of their accounts, I do not discover, that the suppression of capital punishments has in any degree tended to encourage crimes: on the contrary, that country is constantly increasing in civilization and happiness, and the people are as secure in their persons and property, as they were under the bloody code which formerly prevailed. There have been no complaints of the inefficacy of the new regulations as there were of those under the administration of Elizabeth, and before the establishment of the present system.

The severity with which the punishment of the Knoot is sometimes inflicted on atrocious criminals, may be thought necessary on account of the remaining barbarism of a part of the people—or may arise from a defective execution of the laws on smaller offences, and particularly from what Mr. Howard tells us, p. 86. That in Russia there is little or no attention paid to the *reformation* of prisoners. Yet when we consider that under all these defects,—in so extensive a country—where the population is computed at 22 millions of people, and a considerable part of those still rude—the government is able to repress crimes (except in a single case) without the *terror of death*, we must admit that it is seldom *necessary*, and ought rarely to be inflicted. See 4 Blacks. 18. 1 Coxes Trav. 521. 2 ditto. 77-93. 217. William's View &c. 2 vol. 255.

NOTE V. Page 10.

As the example of *Tuscany* appears to be the most instructive one I meet with, and is generally cited as *conclusive* in support of these principles—I have endeavoured to ascertain the fact with as much accuracy as possible.

General Lee, who viewed the different governments of Europe with the eye of a philosopher, and whose residence at Vienna furnished him with the best means of information gives us this account: "When the present Grand Duke acceded to the Ducal throne, he found in Tuscany the most abandoned people of all Italy, filled with robbers and assassins. Every where for a series of years previous to the government of this excellent Prince were seen gallows, wheels, and tortures of every kind; and the robberies and murders were not at all less frequent. He had read and admired the Marquis of Beccaria, and determined to try the effects of his plan. He put a stop to all capital punishments, even for the greatest crimes; and the consequences have convinced the world of its wholesomeness. The galleys and slavery for a certain term of years, or for life, in proportion to the crime, have accomplished what an army of hangmen with their hooks, wheels, and gibbets, could not. In short, Tuscany from being a theatre of the greatest crimes and villanies of every species, is become the safest and best ordered state of Europe. Lee's Memoirs, p. 53.

Dr. Moore, whose writings have so happily united profound observation with amusing bagatelle, imputes the frequency of Murder in Italy to the laxity of the police, the number of sanctuaries, and the ease with which pardons are obtained—that is, to the *hopes of impunity*. "As soon, say he, as asylums for such criminals are abolished, and justice is allowed to take its natural course, that foul stain will be entirely effaced from the national character of

the modern Italians. This is already verified in the Grand Duke of Tuscany's dominions. The edict which declared that churches and convents should no longer be places of refuge for murderers,—(and the same edict abolished the penalty of death)—has totally put a stop to the stilleto; and the Florentine populace now fight with the same blunt weapons that are used by the common people of other nations." Vol. 4. Lett. 43.

To these might be added the testimony of de Archenholtz, and other writers: but the most direct and satisfactory evidence that the *abolition* of capital punishments has not impaired the public safety, is derived from the edict of 1786.

This was the completion and *formal* establishment of a system which before that period had been considered as an *experiment.* In the introduction, the Grand Duke states, that on his accession he began the reform, by moderating the rigor of the old law, and abolishing the pains of death: and that he had waited until "by *serious examination and trial* of the new regulations," he should be able to judge of their tendency. He then proceeds: "With the utmost satisfaction to our paternal feelings, we have at length perceived, that the *mitigation of punishments,* joined to the most scrupulous attention to prevent crimes, and also a great *dispatch* in the trials together with a *certainty* and *suddenness* of punishment to real delinquents, has, instead of increasing the number of crimes, considerably diminished that of the smaller ones, *and rendered those of an atrocious nature very rare:* we have, therefore, come to a determination not to defer any longer the reform of the said criminal laws."

These well established facts go far to prove that a *strict administration of justice is sufficient to repress crimes without a severity of punishment:* and if we contrast the situation of Tuscany with that of the rest of the Italian states or other countries, where sanctuaries abound, it will establish the converse of the proposition, and prove that it is the *impunity* of the criminal alone which governments ought to dread.

How frequent assassinations have been in Italy is well known: and Mr. Townsend informs us, that in consequence of this impunity they abound in many parts of Spain. "In the last sixteen months, says he, they reckon seventy murders (in Malaga) for which not one criminal has been brought to justice; and in one year, as I am credibly informed, 105 persons fell in the same manner." 3 vol. p. 18.

NOTE VI. Page 10.

[*The source of all human corruption lies in the impunity of crimes, not in the moderation of punishments.*]——The soundness of this principle may be demonstrated by the example of *other* Euro-

pean countries, as well as of Russia and Tuscany; and will be further illustrated if we contrast *their* situation with that of England.

It appears that the severity of the ancient criminal laws in *Sweden* has been of late so greatly mitigated, that all writers agree, they are now remarkable for the moderation of their punishments. We learn from Mr. Coxe, that many offences which in other countries are considered as capital, are there chastised by whipping, condemnation to bread and water, imprisonment and hard labour. More than 120 strokes of the rod are never inflicted, nor is a criminal sentenced to *bread and water* longer than 28 days. 2 vol. 392.

But Mr. Catteau, who published his "*View of Sweden*" so late as 1789, resided long in that country, and had the best sources of information. "The criminal laws (says this elegant writer) which are followed by the Swedish tribunals, display a striking character of humanity and justice; and for this they are indebted principally to the reformation they have undergone in the present reign. These laws establish an exact proportion between the crime and the punishment: *that of death is not yet entirely abolished;* but in several cases, banishment, whipping, paying a fine, and labouring at the public works, are substituted in its stead. Criminals condemned to die, are generally beheaded: severer punishments are appointed for those crimes, which shock humanity by their atrocity; but of these there are few instances in Sweden." P. 158.

So far is this mildness of the laws from injuring the public welfare, that the character of the whole nation seems to be meliorated by suppressing the *frequency* of capital punishments. "Though Sweden is covered with rocks, woods, and mountains, its inhabitants are mild and peaceable. Theft, murder, robbery, and atrocious crimes in general, are very uncommon amongst them; and even in war they do not appear to be sanguinary." Ib. p. 325.

In *Denmark,* as has been already mentioned, robbery is never punished with death, except when committed by a convict who has escaped from the public labour, to which he was condemned. But the administration of justice is *strict;* and the consequence is, that robberies, burglaries, and other gross crimes, are very rare, even in the capital. "Night robberies, says Mr. Howard, are never heard of in Copenhagen." Pris. p. 76.—Mr. Williams in his View of the Northern Governments mentions the same fact and attributes it "to the good police and the difficulty of escaping out of the island." 1 vol. p. 353. What is this but acknowledging that it is the *certainty* and not the *severity* of the punishment which prevents offences!

In Vienna, the late Emperor Joseph began the reform, not by abolishing the penalty of death, but by an universal requisition to

the judges *to be mild in their sentences, and never to inflict capital punishments without necessity.* This mode of submitting the guilty to the descretion of the judges (which now prevails in Maryland, in most cases of felony, without clergy, and formerly did in New Jersey, in that of horse-stealing) seems liable to many objections. Moderate penalties, however, were by this means *generally* introduced at Vienna; and it is a fact well authenticated, that aided by a strict police, they have been found sufficient. Atrocious crimes are seldom committed. Reisb. Trav. II. vol. p. 106.

The punishment of hard labour, which is the correction inflicted (and inflicted with great mildness) upon all crimes in *Holland,* except those of a very high degree, is attended with the most beneficial effects. These result principally from the excellent management which prevails in the *Rasp and Spin Houses.* Mr. Howard paid particular attention to these wise and benevolent institutions, and he informs us, that many have been reformed, and have come out of the Rasp Houses sober and honest; and that some have even chosen to continue to work in them after their discharge. The great object attended to in these *bettering* houses (as they are very properly called) is to reclaim and reform the criminal; and the consequence is, that by checking the young offender in his first attempts, gross crimes are prevented. Accordingly we find that executions are very rare, the annual average in *all the United Provinces,* being from 4 to 6.

In Amsterdam, which contains above 250,000 people, there were but six persons executed in the twelve years preceding 1787. I find that there were in the same time no less than 572 persons hanged or burnt, in London and Middlesex; and of these at least three fourths were under twenty years of age. Even the smaller offences do not greatly abound in Holland: and the success of these mild institutions confirms the great principle which is the motto of this work. See the Tables in How. Laz. p. 256, 7, 8. How. on Pris. p. 66. 45. do. Laz. 74. r8 Parl. Reg. 522.

Let us now examine the situation of England where an opposite principle is adopted, and where the terror of death is on all occasions resorted to as the surest means of preventing crimes.

Blackstone in his Commentaries stated the number of capital crimes, (that is, of felonies ousted of clergy) at 160. Since that time they seem to have increased: for in 1786, Capel Loft enumerates and states them as follows:

Felonies without clergy 176

Felonies within clergy ..... 65. Jebb on Pris. 96.

Amidst this multitude of sanguinary laws, atrocious crimes are very frequent; and the severity of the punishment, by being familiar, is no longer an object of terror, and by exciting hopes of impunity, has become the parent of crimes. "I cannot tell, (says Dr. Goldsmith) whether it is from the number of our penal laws or the licentiousness of our people, that this country should shew more convicts in a year than *half of the dominions* of Europe united." Wenderborn, an intelligent German, who lately visited England, assures us, that the punishment of death is more frequently inflicted in England than *in all Europe together*, in the same space of time. Hence it is, that executions lose all their terrors which attend them in other countries. I. vol. p. 75. The author of *Thoughts on Executive Justice*, thus describes the situation of England in 1785: "No civilized nation, that I know of, has to lament, as we have, the daily commission of the most dangerous and atrocious crimes; insomuch that we cannot travel the roads, or sleep in our houses, or turn our cattle into the fields, without the most imminent danger of thieves and robbers. These are increased in such numbers, as well as audaciousness, that the day is now little less dangerous than the night." P. 4. One of the English prints, 9 November 1784, says, "If robbers continue to increase as they have done for some time past, the number of those who rob will exceed that of the robbed."

These representations are confirmed by the declarations of the Solicitor General and Mr. Townsend, in the house of commons in the same year. They affirm, that in the course of the winter, *every day* furnished some fresh account of daring robberies, or burglaries being committed; that few persons could walk the streets at night, without fear, or lie down in safety in their beds; for that gangs of 6, 8, 10, or 12 persons together, made it a practice to knock at doors, and immediately to rush in and rob the house. 18 Parl. Reg. p. 83. 521. Compare this with the situation of Copenhagen, where night robberies are never heard of."

The number of persons executed in England, may be seen in the tables already referred to. In the Lent Circuit only, no less than 286 persons were capitally convicted in 1786, and the annual amount of those transported is from 960 to a thousand.

It is needless to make observations on these striking facts which prove conclusively, that the severity of the laws instead of preventing, is frequently the cause of crimes. The humanity of mankind revolts at a strict execution of them, and the hopes of impunity become a source of temptation. To this, Mr. Howard, among others, traces the mischief: "and yet, (he adds) many are brought by it to an untimely end, who might have been made useful to the state." Laz. 221. No one will deny the justice of this last observation, when

they learn from the mouth of the Solicitor General of England, "That of those who are executed, eighteen out of twenty do not exceed 20 years of age." 18 Parl. Reg. 22.

It is difficult to conceive how a free, humane, and generous people should have so long endured this weak and barbarous policy; or why America should be fond of retaining any part of a system, as ineffectual as it is severe!

NOTE VII. Page 11.

Horse-stealing is a crime which naturally irritates a nation of farmers: and when they are provoked by its *frequency* they are apt to call for a punishment neither proportioned to the offence nor calculated to prevent it.

This crime became so prevalent in *Pennsylvania*, during the confusions of the war, which interrupted the regular administration of justice, that the assembly thought it necessary to increase the punishment of it. They would have extended the penalty to death itself, had not the late Judge Bryan, at that time a member of the legislature (who to a sound understanding added a familiar acquaintance, with all the philosophy of jurisprudence) strenuously opposed it. He made it evident to the good sense of the country members, who were intent upon this punishment, that the severity of the act would defeat its execution, and that a milder penalty would be a more effectual restraint. The subsequent experience of Pennsylvania compared with that of New Jersey (where in the same year the penalty of death was resorted to) fully proves the soundness of this opinion.

I know not any government in Europe which punishes this offence with death, in the present day, except that of England; and even there, the humanity of the nation has almost virtually abolished it. Of ninety persons, who in the space of 23 years, were convicted at Old Baily, previous to 1771, there were but 22 executed, which is less than a fourth. See Jansens Tables. The multitude who escape for want of prosecution, or by the tenderness of juries, is much greater; and it is *now* so common to grant a reprieve, that a well informed writer affirms, that the chance of obtaining it is as *one to forty in favour of the thief!* Thoughts on Ex. Just. p. 42. One reason of this may be, that many persons consider it as unlawful to inflict the punishment of death, in any case of simple theft, since it is warranted by no part of the law given to the Jews.

A similar difficulty in enforcing a punishment so disproportionate to the offence, has been experienced in some parts of America: and it will every day become more and more apparent in those states, which still retain this unnecessary severity. I have very

respectable authority (that of the Attorney General of the United States) for saying, "that within the last ten years, *pardons* for horse-stealing have multiplied in Virginia: and while the convicts might by law put to hard labor, or executed at the will of the executive, scarce a single horse-stealer suffered death, unless he had repeated the crime, or was under some very obnoxious circumstances."

NOTE VIII. Page 11.

It may be considered as improper to appeal to the example of Maryland, where these crimes are still felonies of death, without benefit of clergy. But as the Court have it in their *discretion* to adjudge every such offender to hard labour, instead of pronouncing the sentence of death; the latter is so rare, that *(as to every purpose of terror or example)* it may be considered as abolished. The punishment of hard labor, continually offered to the public eye, will be considered as the only penalty prescribed by the laws; and no offender will count upon a greater severity, even if he be convicted.

There is reason to *believe*, that this mild administration of justice has not produced any increase of crimes—although the method of treating the male convicts, does not appear to be the most unexceptionable. How the fact is, I have no information sufficiently accurate and particular, positively to affirm. Measures have been taken to procure it, and if it arrives in time, it shall be added in a postscript.

Whether the task of deciding, *at discretion*, on the life or death of a fellow creature, should be imposed on any Court, and how far such a power is consistent with the spirit of a republic, which is a government of laws and not of men, may deserve consideration. The *degree* of the punishment must necessarily be left to judicial discretion: but its *nature* ought, as far as possible, to be ascertained by the laws. See Acts Maryl. Nov. Sess. 1789.

NOTE IX. Page 30.

There is scarce any crime which escapes punishment so often as that of rape. In support of this, I appeal to the following facts in addition to those mentioned in the text.

Between the years 1720 and 1732, there were 24 persons tried for this crime at Old Bailey. Of all these only two were convicted; one of them, the infamous Col. Charters, who was pardoned; the other, a servant boy, aged *fifteen*, who was hanged. Select Trials, &c, 1 & 2 vol.

Jansens Tables do not state the number of acquittals: but they prove this fact, That in 23 years, no more than 9 persons were convicted of rape, and of these there were executed—Two!

Though it is not in my power to state the relative number of persons convicted or acquitted of this crime in other states, I have such information as satisfied me that the severity of the punishment produces in America the same effects which attend it in England and Scotland.

Mr. Randolph, who held the office of Attorney General in Virginia, many years, informs me, that "thus much may be safely affirmed, that the proportion of the *acquitted* to the *charged* in that state was *very great* leaving but *few* convicts. It seemed as if something more than *usual* tenderness for life, operated with the juries on these occasions; and they appeared to lay aside their natural abhorrence of the act, to seize the smallest symptoms of innocence!"

NOTE X. Page 35.

The practice of punishing murder with death, has been so general among civilized nations, that some writers have considered it as sanctioned by the *universal consent* of mankind, and as *absolutely necessary* for the safety of society. It is certain, however, that it has been dispensed with in many countries at different periods: and a review of the best authenticated facts of this kind (obscured as some of them may be, by the mist of time) will not be useless. Taken together they will impress upon our minds these two important truths—*That the penalty of death is not in its own nature necessary* —and yet *That it is dangerous, rashly to abolish it!*

The most ancient instance on record, is that of Sabaco, king of Egypt. The account is to be found in *Herodotus* and *Diadorus Siculus:* That of the latter, translated by Booth, is thus: "A long time after him one Sabach, an Ethiopean, came to the throne going beyond his predessors in his worship of the gods and kindness to his subjects. Any man may judge his gentle disposition in this, that when the law pronounced the severest judgment, I mean sentence of death, *he changed the punishment,* and made an edict that the condemned person should be kept to work in the town, in chains, by whose labour he raised many mounts and made many commodious canals." p. 34. He thought (says Mr. Goguet) that Egypt would draw more profit and advantage from this kind of punishment, which, being for life, appeared to him equally adapted to punish crimes *and to repress them.*" What its effects were is not so evident: but the ancients speak in terms of approbation of this clemency: and it is certain, that during his long reign of 50 years, Sabaco did not see cause to alter it: and his successor Anysis, seems to have continued it. This example is cited with approbation, by Sir Tho. Moore, Puffendorff, Grotius, and other modern writers. See Diod. Sic. L. I.

ch. 65. Puff. b. 8. ch. 3. §23. Goug. Orig. Laws, 3 vol. p. 15. 1st Rollin Ant. Hist. 90.

"Among the *Persians* it was not lawful either for a private person to put any of his slaves to death, or for the Prince to inflict *capital punishment* upon any of his subjects for the first offence; because it might rather be considered as an effect of human weakness and frailty than of a confirmed malignity of heart." 2d Rollin Ant. Hist. p. 221.

Rome furnishes us with a more brilliant and better authenticated example. It is well known that soon after the expulsion of the Decemviri the *Porcian* law ordained, that no *citizen* of Rome should be put to death. In the happy ages of the republic, his country was everything to a Roman, and banishment the heaviest of punishments!—For the space of 200 years, from the establishment of equal liberty to the end of the second Punic war, penalties short of death were found sufficient for the government of Rome. Simple in their manners—frugal—unacquainted with luxury, and intent upon conquering the world, these proud republicans had neither leisure nor inclination for the commission of crimes. Livy, more than once triumphs in this moderation of punishments, and no historian has hinted that during the period I have mentioned, they were inadequate to their object!

But we must remember at the same time, that capital punishments were found necessary in the *camp*, and while they were denied to the *magistrate*, were absurdly trusted to the direction of a *master* and a *parent*. See 4 Gibbon's Hist. ch. 44. Quarto.

When Rome lost her liberty, a profusion of capital punishments ensued; and under the Emperors, the hands of the executioner were every day stained wtih the blood of the citizen. But in the decline of the Eastern Empire, an opinion grew up, that it was unlawful to shed *Christian* blood: and capital punishments were sometimes suppressed *without substituting any efficient check* in their place. To mutilate an offender and then turn him loose, was but to provoke him to the commission of new crimes. Hence they became frequent —insurrections multiplied—and the throne tottered from the shameful imbecillity of the laws. Anastatius, it is said, punished no crimes at all: and Mauritius, Isaac Angelus, and others, by *rashly* suppressing the punishment of death among so corrupted a people, endangered their own safety and that of their subjects. See Rise and Fall of Rom. Emp. p. 212. Spir. Laws B. 6. ch. 21.

The conduct of *Alexius Comnenus*, an enlightened Prince, distinguished equally for his talents and virtues, deserves a closer inspection; and I regret that I have no sources of information sufficiently particular to ascertain the effects of his regulations. I only

learn from Mr. Gibbon, "That during his reign of 25 years, the penalty of death was abolished in the Roman Empire: a law of mercy most delightful to the humane theorist, but of which, the practice in a large and vicious community is seldom consistent with the public safety. Severe to himself, indulgent to others, chaste, frugal and abstemious, he despised and moderated the stately magnificence of the Byzantine Court, so oppressive to the people, and so contemptible to the eye of reason. Under such a prince, innocence had nothing to fear, and merit every thing to hope: and without assuming the tyrannical office of Censor, he introduced a gradual, but *"visible reformation in the public and private manners* of Constantinople." V Gibb. Hist. Decline and Fall, &c. ch. 48.

The punishments inflicted on those who conspired against him, were confiscation of goods, and banishment. 6 Univ. Hist. 617.

The only countries in modern Europe, in which murder is not punished with death, are Russia and Tuscany. It has already been mentioned that the Empress Elizabeth made a vow, that she would put no one to death. This clemency has been much celebrated, and *Blackstone* enquires "Was the vast territory of all the Russia's worse regulated under the late Empress than under her more sanguinary predecessors?" But Mr. Williams assures us, that the *abuse* of this clemency became so intollerable, that the senate requested Catharine II to re-establish the law, which ordained that *certain* crimes should be punished with death. North. Gov. vol. I. p. 255. This appears to have been complied with: as the same author mentions an instance of four villains being condemned to be broke upon the wheel for murder, p. 266. The punishment of death, however, is now formally retained only in the case of high treason: yet, in that prescribed for murder, it virtually subsists. Though no one is litterally sentenced to die, many are knooted to death. This punishment, says Mr. Howard, is often dreaded more than death, and sometimes the criminal has endeavored to bribe the executioner to kill him. It seldom causes immediate death, but death is often the consequence of it. Pris. 86. 2d Coxe's Trav. 82. Tho' all felons are liable to undergo the knoot, yet it is inflicted with this peculiar severity on murderers, "who never receive any mitigation of their punishment." To this is added the slitting of the nostrils, and branding on the cheek with hot irons. This horrid method of torturing the body, attended with such consequences, may well be dreaded more than the mere loss of life, and I cannot consider it as any moderation of the punishment. It is probably owing to the remaining barbarism of some parts of Russia, that this severity is thought *necessary:* and the abuse of the clemency of the former reign has been attributed to this circumstance. 2d Will. North. Gov. 232.

But what shall we say to the example of Tuscany? There, not only are *the pains of death* abolished, but every kind of *cruel* punishment is prohibited. The beneficial effects have been stated: and General Lee says, "It is a known fact that since the adoption of this plan, there have been but two murders committed: one by a little boy of eleven years old, in a stroke of passion; and the other, not by a native *Italian* subject, but by an Irish officer." Memoirs, p. 53. But the point of time to which he refers is not ascertained.

It were desirable to know how far that police which the Grand Duke calls "a vigilant attention to prevent the commission of crimes," extends, and whether it coincides with the general liberty of the subject. If it be such as was established by Spinelli at Rome, or as is in use at Vienna and Madrid, it could not be tolerated in a free country. D'Archenholtz's, Italy, §8. p. 161. 1 Reisb. Trav. p. 244.

As that part of the edict which abolishes the penalty of death, contains the reasons upon which it is founded, and is little known in this country, I shall here insert it.

"We have seen with horror the facility with which, in the for-
" mer laws, the pain of death was decreed, even against crimes of
" no very great enormity; and having considered that the object of
" punishment ought to consist—in the *satisfaction* due either to a
" private or a public injury—in the *correction* of the offender, who
" is still a member and child of the society, and of the state, and
" whose reformation ought never to be despaired of—in the *security*
" (where the crime is very atrocious in its nature) that he who has
" committed it shall not be left at liberty to commit any others—
" and finally, in the *public example;* and that the government, in the
" punishment of crimes, and in adapting such punishment to the
" objects, towards which alone it should be directed, ought always
" to employ those means, which, whilst they are the *most efficacious,*
" are the *least hurtful* to the offender; which efficacy and modera-
" tion *we find* to consist more in condemning the said offender to
" hard labor, than in putting him to death; since the former serves
" as a lasting example, and the latter only as a momentary object
" of terror, which is often changed into pity; and since the former
" takes from the delinquent the possibility of committing the same
" crime again, but does not destroy the hope of his reformation, and
" of his becoming once more an useful subject; and having con-
" sidered besides, that a legislation very different from our preced-
" ing one, will agree better with the *gentle manners* of this polished
" age, and chiefly with those of the people of Tuscany, we are come
" to a resolution to abolish, and we actually abolish forever, by the
" present law, the pain of death, which shall not be inflicted on any
" criminal," &c. Sect. 51.

NOTE XI. Page 36.

Those who have been witnesses to the solemn manner in which executions are conducted in some parts of Europe, speak of the impression arising from *that* circumstance as wonderfully strong. Dr. Moore describes such an execution which he was present at in Rome, and mentions in strong language *how deeply* the populace were affected by it! See Letter 44, vol. 4. Mr. Howard, remarked the same thing in Holland: and accounting for the few executions which take place in United Provinces, says, "one reason of this, I believe, is the *awful solemnity* of executions which are performed in the presence of the magistrates, with great order and seriousness, and *great effect* upon the spectators. Pris. 45 p.

Whoever will contrast this with the manner in which executions have been heretofore conducted among us, will readily perceive that though we exhibit this terrible spectacle, we do not derive from it all the benefits it was designed to produce.

NOTE XII. Page 37.

"In Russia, says Montesquieu, where the punishment of robbery and murder is the same, they always murder." He speaks here of the reign of Elizabeth: but the mischief seems to have continued for some time after Catherine II. ascended the throne. Mr. Richardson, who was in Russia in 1770, mentions the practice as existing at that day. "Robberies, (says he) are here very frequent and barbarous, and constantly attended with murder." Richards. Anecd. p. 323.

This circumstance was not unattended to; and in her *instructions*, § 86. The Empress declares 'that it is the last injustice to punish in the same manner the robber, who contents himself with robbing, and him, who not only robs, but murders at the same time." Accordingly the new code has drawn this necessary distinction. Robbers are sent to public labour in Siberia, while murderers, besides undergoing the knoot, are branded in the face with hot irons, kept in chains, or have their nostrils torn: and except upon a general or particular amnesty, *they receive no mitigation.* See 2d Coxe's Trav. 86 & passim.

I believe this discrimination in the punishment has put a stop to the evil complained of before it was introduced: for among all the later writers on the state of Russia, I find no one who hints that any such practice prevails at present in that Empire. See some excellent observations on the necessity of this discrimination, 4th Blackst. Com. 10 Montesquieu, B. 6. ch. 16.

NOTE XIII. Page 45.

I firmly believe that the success of all punishments by hard labour and solitary confinement, must finally depend upon the wisdom of the regulations, which shall be established in the gaols of penitentiary houses, and upon the prudence and attention of those, to whom the management of the prisoners is committed. Some useful hints upon this subject lie buried, under a variety of other matter, in Mr. Howard's Treatise on Prisons and Lazarettos: and it is much to be regretted, that no well digested plan for the *interior* management of those places of confinement, has hitherto been published. The best substitute is an account of such plans as are now in use: and Mr. Caleb Lownes, one of the inspectors of the gaol of Philadelphia, (to whose humane zeal and attention, in the discharge of this voluntary duty, the public are much indebted) has undertaken to give a detail of the regulations adopted in the gaol, and penitentiary house in this place, and of the management and employment of the convicts. The more minute the information is, the more useful and interesting it will be, when our sister states turn their attention to the revision and reform of their criminal laws. In hopes that this event is not very distant, I shall here add a few principles on this subject, collected from the facts, or observations of Mr. Howard.

First. That houses for convicts at labour, ought to be in or near a large town or city, and easily accessible to those who have the inspection of them. This last circumstance seems to be of the utmost importance.

Second. Mr. Howard uniformly found those houses best managed, when the inspection was undertaken without *mercenary views*, and solely from a sense of duty, and a love to humanity. So reputable is this humane task in Germany, that at Frankfort, the house of correction is inspected by the *Ladies*. Pris. 128. Lazar. 71.

Third. Steady, lenient, and persuasive measures, were always found to be the best means for preventing escapes; and far preferable to rough usage, which often made the prisoners *desperate*. Laz. 206. Pris. 39.

Fourth. The great object to be attended to (especially with young offenders) ought to be to *reclaim and reform them*. Many facts prove, that this is not so difficult as some persons apprehend. Their *earnings* must therefore be a secondary consideration; and if the house does not maintain itself, *(as in many places it will not)* that circumstance ought not to be regarded. To promote this object of reformation, the *young* offenders ought to be separated from those who are *old* and *hardened*.

Fifth. In order to hold out a real object of terror, *solitary confinement*, on coarse diet, should be the *invariable* portion of every *old* or *great* offendre. This, however, it is best to inflict at intervals, and seldom longer than 20 or 30 days at a time. The observations of Mr. Howard on this subject, deserves attention, and with them I close this note.

"The intention of *solitary confinement*, (I mean by day as well as by night) is either to reclaim the most *atrocious* or *daring criminals*——to punish the *refractory* for crimes committed in prison——or to make a *strong* impression, in a *short time*, upon thoughtless and irregular apprentices, or the like. It should, therefore be considered by those who are ready to commit, for a *long time*, petty offenders to absolute solitude, that such a system *is more than human nature can bear*, without the hazard of distraction or despair: and that, for want of some employ in the day, health is impaired, and a habit of idleness and inability to labor in future, is in danger of being acquired. The *beneficial* effects on the mind of such a punishment, are *speedy* proceeding from the *horror* of a vicious person's being left entirely to his own reflections. This may wear off by a *long continuance*, and a sullen insensibility may succeed." Laz. p. 169. in notis.

NOTE XIV. Page [45]

A revision of the criminal laws of Pennsylvania, at present occupies the attention of the Legislature. Those who wish to know the progress that has already been made in this great work, may find it in the following resolves, which, on the 22d instant (February) were entered into by the senate.

Resolved, That for all offenses (except murder of the *first* degree) which are made capital by the existing laws of Pennsylvania, the punishment shall be changed to imprisonment at hard labor, varying in *duration* and *severity*, according to the degree of the crime.

Resolved, That the crimes, at present classed under the *general* denomination of Murder, be divided into murder of the *first* and murder of the *second* degree: the latter punishable with imprisonment, at hard labor, or in solitude, or both, for any time not exceeding 21 years.

Resolved, That all murder, perpetrated by poisoning, or by lying in wait, or by any kind of wilful, premeditated, and deliberate killing, shall be deemed murder in the first degree: and all other kinds of murder, shall be deemed murder in the second degree: and the jury, before whom any person shall be indicted for murder, if

they find the party guilty thereof, shall ascertain whether it be murder in the first or second degree.

Resolved, That all claims to dispensation from punishment by benefit of clergy, or benefit of the act of assembly, entitled, "An act for the advancement of justice, and the more certain administration thereof," shall be forever abolished, and a definite punishment be prescribed for all offences, at present deemed clergyable: the punishment for the *second* offence, to be the same in its *nature*, but in a higher *degree*.

Resolved, That a committee be appointed to bring in a bill, supplementary to the penal laws of this state, for the purpose of carrying the preceding resolutions into effect.

The committee who brought in these resolutions, reporting, "That they have doubts at present, whether the terrible punishment of death be in any case justifiable and necessary in Pennsylvania; and are desirous that the public sentiment on this important subject may be more fully known," and therefore offering the following resolution, the same was adopted by the senate, viz.

Resolved, That the revision and amendment of the laws, respecting murder of the first degree, be specially recommended to the early attention of the next Legislature.

We may, therefore hope, that Pennsylvania will soon give to her sister states, an example of humane legislation, which may tend, in its consequences, to meliorate the condition of mankind.

Feb. 26, 1793.

respective district so convened, shall cause the said general return to be delivered to the sheriff of the county in which they shall be thus convened, and shall also cause a duplicate thereof, signed and sealed in the same manner, to be deposited in the office of the prothonotary of such county.

[Section VI.] (Section VI, P. L.) And be it further enacted by the authority aforesaid, That such sheriff, having received the said return, shall, within forty days after such election, deliver or safely transmit the same to the governor, who shall thereupon declare, by proclamation, the name of the person or persons to him returned as duly elected in each respective district, and shall thereafter, as soon as conveniently may be, transmit the returns so to him made, to the house of representatives of the United States.

Passed April 22, 1794. Recorded L. B. No. 5, p. 275, &c.

CHAPTER MDCCLXXVII.

AN ACT FOR THE BETTER PREVENTING OF CRIMES, AND FOR ABOLISHING THE PUNISHMENT OF DEATH IN CERTAIN CASES.

Whereas the design of punishment is to prevent the commission of crimes, and to repair the injury that hath been done thereby to society or the individual, and it hath been found by experience, that these objects are better obtained by moderate but certain penalties, than by severe and excessive punishments. And whereas it is the duty of every government to endeavor to reform, rather than exterminate offenders, and the punishment of death ought never to be inflicted where it is not absolutely necessary to the public safety. Therefore:

[Section I.] (Section I, P. L.) Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania, in General Assembly met, and it is hereby enacted by the authority of the same, That no crime whatsoever, hereafter committed (except murder in the first degree) shall be punished with death in the state of Pennsylvania.

(Section II, P. L.) And whereas the several offenses which are included under the general denomination of murder, differ so greatly from each other in the degree of their atrociousness, that it is unjust to involve them in the same punishment.

[Section II.] Be it further enacted by the authority aforesaid, That all murder which shall be perpetrated by means of poison, or by lying in wait, or by any other kind of willful, deliberate or premeditated killing, or which shall be committed in the perpetration, or attempt to perpetrate, any arson, rape, robbery or burglary, shall be deemed murder of the first degree; and all other kinds of murder shall be deemed murder in the second degree; and the jury, before whom any person indicted for murder shall be tried, shall, if they find such person guilty thereof, ascertain in their verdict, whether it be murder of the first or second degree; but if such person shall be convicted by confession, the court shall proceed, by examination of witnesses, to determine the degree of the crime, and to give sentence accordingly.

[Section III.] (Section III, P. L.) And be it further enacted by the authority aforesaid, That every person liable to be prosecuted for petit treason, shall in future be indicted, proceeded against and punished, as is directed in other kinds of murder.

[Section IV.] (Section IV, P. L.) And be it further enacted by the authority aforesaid, That every person duly convicted of the crime of high treason, shall be sentenced to undergo a confinement in the gaol and penitentiary house of Philadelphia, for a period not less than six nor more than twelve years, and shall be kept therein at hard labor, or in solitude, and shall in all things be treated and dealt with as is prescribed by an act, entitled, "An act to reform the penal laws of this state,"[1] or by the provisions of this act; that every person duly convicted of the crime of arson, or as being an accessory thereto, shall be sentenced to undergo a similar confinement, for a period not less than five nor more than twelve years, under the same conditions as are herein expressed in the first clause of this section; that every person duly convicted of the crime of rape, or as being accessory thereto before the fact, shall be sentenced to undergo a similar confinement, for a period not less than ten years nor

more than twenty-one years, under the same conditions as are herein expressed in the first clause of this section; that every person duly convicted of the crime of murder of the second degree, shall be sentenced to undergo a similar confinement, for a period not less than five years nor more than eighteen years, under the same conditions as are herein expressed in the first clause of this section.

[Section V.] (Section V, P. L.) And be it further enacted by the authority aforesaid, That every person who shall be convicted of having, after the passing of this act, safely forged and counterfeited any gold or silver coin, which now is or hereafter shall be passing or in circulation within this state, or of having falsely uttered, paid, or tendered in payment, any such counterfeit or forged coin, knowing the same to be forged and counterfeit, or having aided, abetted or commanded the perpetration of either of the said crimes, or shall be concerned in printing, signing or passing any counterfeit notes of the bank of Pennsylvania, North America, or the United States, knowing them to be such, or altering any genuine notes of any of the said banks, shall be sentenced to undergo a confinement in the gaol and penitentiary house aforesaid, for any time not less than four nor more than fifteen years, and shall be kept, treated and dealt with in the manner aforesaid, and shall also pay such fine as the court shall adjudge, not exceeding one thousand dollars.

[Section VI.] (Section VI, P. L.) And be it further enacted by the authority aforesaid, That whosoever, on purpose and of malice aforethought, by lying in wait, shall unlawfully cut out or disable the tongue, put out an eye, slit the nose, cut off the nose, ear or lip, or cut off or disable any limb or member of another, with intention, in so doing, to maim or disfigure such person, or shall voluntarily, maliciously, and of purpose, pull or put out an eye, while fighting or otherwise, every such offender, his or her aiders, abettors, and counsellors, shall be sentenced to undergo a confinement, in the gaol and penitentiary house aforesaid, for any time not less than two nor more than ten years aforesaid, and shall also pay a fine not exceeding one thousand dollars, three fourth parts whereof shall be for the use of the party grieved.

[Section VII.] (Section VII, P. L.) And be it further en-

acted by the authority aforesaid, That whosoever shall be convicted of any voluntary manslaughter hereafter committed, shall be sentenced to undergo an imprisonment at hard labor and solitary confinement in the gaol and penitentiary house of Philadelphia, for any time not less than two nor more than ten years, and to give security for his or her good behavior during life, or for any less time, according to the nature and enormity of the offence, shall be sentenced to undergo an imprisonment at hard labor and solitary confinement, in the gaol and penitentiary house aforesaid, for any time not less than six nor more than fourteen years.

[Section VIII.] (Section VIII, P. L.) And be it further enacted by the authority aforesaid, That wheresoever any person shall be charged with involuntary manslaughter happening in consequence of an unlawful act, it shall and may be lawful for the attorney general or other person prosecuting the pleas of the commonwealth, with the leave of the court, to waive the felony, and to proceed against and to charge such person with a misdemeanor, and to give in evidence any act or acts of manslaughter, and such person or persons, on conviction, shall be fined or imprisoned, as in cases of misdemeanor; or the said attorney general, or other person, prosecuting the pleas of the commonwealth, may charge both offences in the same indictment, in which case the jury may acquit the party of one, and find him or her guilty of the other charge.

[Section IX.] (Section IX, P. L.) And be it further enacted by the authority aforesaid, That all claims to dispensation from punishment by benefit of clergy, or benefit of the act of assembly, entitled, "An act, for the advancement of justice, and more certain administration thereof,"[1] shall be, and hereby are, forever abolished; and every person convicted of any felony heretofore deemed clergyable, shall undergo imprisonment at hard labor and solitary confinement in the gaol and penitentiary house aforesaid, for any time not less than six months and not more than two years, and shall be treated and dealt with as is directed in the act to reform the penal laws of this state, except in those cases where some other specific penalty is prescribed by

the act aforesaid to reform the penal laws of this state, or by this act.

[Section X.] (Section X, P. L.) And be it further enacted by the authority aforesaid, That every person convicted in any county in this state, other than Philadelphia county, of any crime (except murder of the first degree) which now is, or on the fifteenth day of September, one thousand seven hundred and eighty-six, was capital, or a felony of death, without benefit of clergy, or of knowingly uttering counterfeit coin, or of being concerned in printing, signing or passing any counterfeit notes of the banks of Pennsylvania, North America or of the United States, knowing them to be such, or of altering any of the genuine notes of either of the said banks, shall, as soon as possible, be safely removed and conveyed by the sheriff, and at the expense of the commonwealth, to the gaol and penitentiary house aforesaid, and therein be kept during the term of their confinement, in the manner and on the terms mentioned in the thirty-fourth section of the act entitled, "An act to reform the penal laws of this state";[1] and every sheriff who shall neglect to remove and safely deliver at the gaol aforesaid such convict, shall forfeit and pay the sum of one hundred dollars, to be recovered in any court of justice, and applied, one-half to the use of the county in which the offence was committed, the other half to such persons as shall sue for the same.

[Section XI.] (Section XI, P. L.) And be it further enacted by the authority aforesaid, That every person convicted of any of the crimes last aforesaid, and who shall be confined in the gaol and penitentiary house aforesaid, shall be placed and kept in the solitary cells thereof, on low and coarse diet, for such part or portion of the term 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. And that the inspectors of the said gaol shall have power to direct the infliction of the said solitary confinement, at such intervals and in such manner as they shall judge best.

(Section XII, P. L.) Whereas it is of importance that the nature of the offence, and the former character and conduct of

the convict should be known by the said inspectors, and their successors in office.

[Section XII.] Bt it further enacted by the authority aforesaid, That whensoever any person shall be convicted of any crime which, on the fifteenth day of September, one thousand seven hundred and eighty-six, was capital, or a felony of death, shall be removed from any county to the gaol and penitentiary house aforesaid, the court before whom such conviction is had, shall, within forty days after such offender is removed from the said county, make and cause to be transmitted to the said inspectors, a report or short account of the circumstances attending the crime committed by such convict, particularly such as tend to aggravate or extenuate the same, and also what character the said convict appeared on the trial to sustain, and whether he had at any time before been convicted of any felony or other infamous crime, which report the said inspectors shall cause to be entered in books or registers to be provided for that purpose.

[Section XIII.] (Section XIII, P. L.) And be it further enacted by the authority aforesaid, That if any person convicted of any crime which, on the said fifteenth day of September, one thousand seven hundred and eighty-six, was capital, or a felony of death, without benefit of clergy, shall commit any such offence a second time, and be thereof legally convicted, he or she shall be sentenced to undergo an imprisonment in the said gaol and penitentiary house at hard labor during life, and shall be confined in the said solitary cells, at such times and in such manner as the inspectors shall direct; and if any person sentenced to hard labor and solitary confinement, by virtue of this or any former act, shall escape, or be pardoned, and after his or her escape or pardon shall be guilty of any such offence, as on the said fifteenth day of September, one thousand seven hundred and eighty-six, was capital, or a felony of death, without benefit of clergy, such person shall be sentenced to undergo an imprisonment for the term of twenty-five years, and shall be confined in the solitary cells aforesaid, at the discretion of the said inspectors.

[Section XIV.] (Section XIV, P. L.) And be it further enacted by the authority aforesaid, That if any person shall hereafter be convicted of any crime committed before the passing of

this act, he or she shall be sentenced to undergo such pains and punishment, as by the laws now in force are prescribed and directed, unless such convict shall openly pray the court, before whom such conviction shall be had, that sentence may be pronounced agreeably to the provisions of the act for the like offence, in which case the said court shall comply with the said prayer, and pass such sentence on such convict as they would have passed had the said offence been committed subsequent to the passing of this act.

[Section XV.] (Section XV, P. L.) And be it further enacted by the authority aforesaid, That every person convicted of murder of the first degree, his or her aiders, abettors and counsellors, shall suffer death by hanging by the neck.

[Section XVI.] (Section XVI, P. L.) And be it further enacted by the authority aforesaid, That no person indicted for any crime, the punishment whereof is altered by this act, shall lose any peremptory challenge, to which he or she would have been entitled had this act not been passed, nor be liable to be tried before any court other than the supreme court, or court of oyer and terminer, in the county where the fact was committed.

[Section XVII.] (Section XVII, P. L.) And be it further enacted by the authority aforesaid, That if any woman shall endeavor privately, either by herself or the procurement of others, to conceal the death of any issue of her body, male or female, which, if it were born alive, would by the law be a bastard, so that it may not come to light whether it was born dead or alive, or whether it was murdered or not, every such mother, being convicted thereof, shall suffer imprisonment at hard labor in the county gaol of the county where the fact was committed, or in the gaol and penitentiary house aforesaid, for any time not exceeding five years; or shall be fined and imprisoned, at the discretion of the court, according to the nature of the case; and if the grand jury shall, in the same indictment, charge any woman with the murder of her bastard child, as well as with the offence aforesaid, the jury by whom such woman shall be tried, may either acquit or convict her of both offences,

or find her guilty of one and acquit her of the other, as the case may be.

[Section XVIII.] (Section XVIII.) And be it further enacted by the authority aforesaid, That the concealment of the death of any such child shall not be conclusive evidence to convict the party indicted of the murder of her child, unless the circumstances attending it be such as shall satisfy the mind of the jury, that she did wilfully and maliciously destroy and take away the life of such child.

[Section XIX.] (Section XIX, P. L.) And be it further enacted by the authority aforesaid, That the several acts of assembly of this commonwealth and such parts thereof, so far as the same are repugnant to or supplied by this act, and no further, shall be, and hereby are, repealed.

[1]Passed April 5, 1790, Chapter 1516.
[1]Passed May 31st, 1718, Chapter 236.
[1]See Ante.
Repealed by the Act of Assembly passed March 31, 1861, Chapter 376, P. L. 1860, p. 452.

CHAPTER MDCCLXXVIII.

AN ACT TO ENABLE THE GOVERNOR OF THIS COMMONWEALTH TO INCORPORATE A COMPANY, FOR MAKING AN ARTIFICIAL ROAD FROM THE BOROUGH OF LANCASTER TO THE RIVER SUSQUEHANNA, AT OR NEAR WRIGHT'S FERRY.

Whereas the improvement of roads and highways is of the first importance to the interest of agriculture and commerce, and the rapid progress of the improvement of the road from Philadelphia to Lancaster evinces a laudable spirit of enterprise among the good people of this state, and affords a reasonable ground of expectation that an extension of the same road westward may be effected. Therefore:

[Section I.] (Section I, P. L.) Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania, in General Assembly met, and it is hereby enacted by

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James Wilson

JAMES WILSON

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Edited by Kermit L. Hall and Mark David Hall
with an Introduction by Kermit L. Hall
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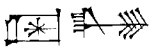
Collected by Maynard Garrison

VOLUME I



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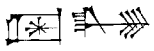

The cuneiform inscription that serves as our logo and as the design motif for our endpapers is the earliest-known written appearance of the word "freedom" (*amagi*), or "liberty." It is taken from a clay document written about 2300 B.C. in the Sumerian city-state of Lagash.

Cover art: James Wilson, etching by Max Rosenthal, 1890.
From Library of Congress, Prints and Photographs Division, James Wilson Biographical File, LC-USZ62-6065.
Frontispiece portrait of James Wilson by James Barton Longacre, after an original by J. P. H. Elouis, c. 1825, by permission of the National Portrait Gallery, Smithsonian Institution.

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them, the moral sense discovers peculiar inflexibility: it dictates, that we should submit to any distress or danger, rather than procure our safety and relief by violence upon an innocent person.

Similar to the restraint, respecting personal safety and security, is the restraint, which the moral sense imposes on us, with regard to property. Robbery and theft are indulged by no society: from a society even of robbers, they are strictly excluded.

The necessity of the social law, with regard to personal security, is so evident, as to require no explanation. Its necessity, with regard to property, will be explained and made evident by the following remarks.

Man has a natural propensity to store up the means of his subsistence: this propensity is essential, in order to incite us to provide comfortably for ourselves, and for those who depend on us. But this propensity would be rendered ineffectual, if we were not secured in the possession of those stores which we collect; for no one would toil to accumulate what he could not possess in security. This security is afforded by the moral sense, which dictates to all men, that goods collected by the labour and industry of individuals are their property; and that property ought to be inviolable.

We beheld, a little while ago, one of the principal pillars of *civil* law founded deeply in our nature: we now perceive the great principles of *criminal* law laid equally deep in the human frame. Violations of property and of personal security are, as we shall afterwards show particularly, the objects of that law. To punish, and, by punishing, to prevent them, is or ought to be the great end of that law, as shall also be particularly shown.

That we are fitted and intended for society, and that society is fitted and intended for us, will become evident by considering our passions and affections, as well as by considering our moral perceptions, and the other operations of our understandings. We have all the emotions, which are necessary in order that society may be formed and maintained: we have tenderness for the fair sex: we have affection for our children, for our parents, and for our other relations: we have attachment to our friends: we have a regard for reputation and esteem: we possess gratitude and compassion: we enjoy pleasure in the happiness of others, especially when we have been instrumental in procuring it: we entertain for our country an animated and vigorous zeal: we feel delight in the agreeable conception of the improvement and happiness of mankind.

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VOLUME 2

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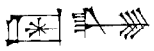

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LECTURES ON LAW,

DELIVERED IN THE

College of Philadelphia,

IN THE YEARS ONE THOUSAND SEVEN HUNDRED AND NINETY,
AND ONE THOUSAND SEVEN HUNDRED AND NINETY ONE.

CONTENTS OF THE SECOND VOLUME

LECTURES ON LAW.

Part 1

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CHAPTER I.

Of the Nature of Crimes; and the Necessity and Proportion of Punishments.

Hitherto, we have considered the rights of men, of citizens, of publick officers, and of publick bodies: we must now turn our eyes to objects less pleasing—the violations of those rights must be brought under our view. Man is sometimes unjust: sometimes he is even criminal: injuries and crimes must, therefore, find their place in every legal system, calculated for man. One consolatory reflection, however, will greatly support us in our progress through this uninviting part of our journey: we shall be richly compensated when we reach its conclusion. The end of criminal jurisprudence is the *prevention* of crimes.

What is an injury?—What is a crime?—What is reparation?—What is punishment?—These are questions, which ought to be considered in a separate, and also in a connected, point of view. At some times, they have been too much blended. In some instances, the injury and the reparation have been lost in the crime and the punishment. In other instances, the crime and the punishment have, with equal impropriety, been sunk in the reparation and injury. At other times, they have been kept too much apart. The crime has been considered as altogether unconnected with the injury, and the punishment as altogether unconnected with reparation. In other instances, the reparation only has been regarded, and no attention has been given to the punishment: the injury only has been calculated; but no computation has been made concerning the crime.

An injury is a loss arising to an individual, from the violation or infringement of his right.

A reparation is that, which compensates for the loss sustained by an injury.

A crime is an injury, so atrocious in its nature, or so dangerous in its example, that, besides the loss which it occasions to the individual who suffers by it, it affects, in its immediate operation or in its consequences, the interest, the peace, the dignity, or the security of the publick. Offences and misdemeanors denote inferiour crimes.

A punishment is the infliction of that evil, superadded to the reparation, which the crime, superadded to the injury, renders necessary, for the purposes of a wise and good administration of government.

Concerning an injury and a reparation, and the measures by which each of them ought to be estimated, it will not be necessary to say much; because, with regard to them, much confusion or mistake has not been introduced into the theory or practice of the law.

Concerning crimes and punishments, and concerning the relation between a crime and an injury, and between punishment and reparation, the case is widely different indeed. On those subjects, an endless confusion has prevailed, and mistakes innumerable have been committed. On those subjects, therefore, it will be proper to be full; and it will certainly be attempted—I promise not success in the attempt—to be both accurate and perspicuous.

From an inattention or a disregard to the great principle—that government was made for the sake of man, some writers have been led to consider crimes, in their origin and nature as well as in their degrees and effects, as different from injuries; and have, consequently, taught, that without any injury to an individual, a crime might be committed against the government. Suppose, says one of the learned commentators on Grotius, that one has done neither wrong nor injury to any individual, yet if he has committed something which the law has prohibited, it is a crime, which demands reparation; because the right of the superiour is violated, and because an injury is offered to the dignity of his character.[a] How naturally one mistake leads to another! A mistake in legislation produces one in criminal jurisprudence. A law which prohibits what is neither a wrong nor an injury to any one! What name does it deserve? We have seen[b] that a law which

a. 2. War. Bib. 15.
b. Ante. vol. 2. p. 1045.

In every case before judgment, the Romans allowed an accused citizen to withdraw himself from the consequences of conviction into a voluntary exile. To this institution, the former practice of abjuration in England bore a strong resemblance. This was permitted, as my Lord Coke says, when the criminal chose rather "perdere patriam, quam vitam."[u 14] On the same principles, a liberty was given, in Greece,to a person accused to disappear after his first defence, and retire into voluntary banishment—in the language of the English law, to abjure the realm after the indictment was found.[v]

Sabacos,[15] one of the legislators of Egypt, went still further. He abolished capital punishments, and ordained, that such criminals as were judged worthy of death should be employed in the publick works. Egypt, he thought, would derive more advantage from this kind of punishment; which, being imposed for life, appeared equally adapted to punish and to repress crimes.[w]

Punishments ought unquestionably to be moderate and mild. I know the opinion advanced by some writers, that the number of crimes is diminished by the severity of punishments: I know, that if we inspect the greatest part of the criminal codes, their unwieldy size and their ensanguined hue will force us to acknowledge, that the opinion has been general and prevalent. On accurate and unbiassed examination, however, it will appear to be an opinion unfounded and pernicious, inconsistent with the principles of our nature, and, by a necessary consequence, with those of wise and good government.

So far as any sentiment of generous sympathy is suffered, by a merciless code, to remain among the citizens, their abhorrence of crimes is, by the barbarous exhibitions of human agony, sunk in the commiseration of criminals. These barbarous exhibitions are productive of another bad effect—a latent and gradual, but a powerful, because a natural, aversion to the laws. Can laws, which are a natural and a just object of aversion, receive a cheerful obedience, or secure a regular and uniform execution? The expectation is forbidden by some of the strongest principles in the human

u. Eden. 31.
14. To lose his fatherland, than his life.
v. 2. Gog. Or. L. 72.
15. Shabaka (Sabacos) ruled Egypt from 721 to 707 B.C.
w. 3. Gog. Or. L. 15.

frame. Such laws, while they excite the compassion of society for those who suffer, rouse its indignation against those who are active in the steps preparatory to their sufferings.

The result of those combined emotions, operating vigorously in concert, may be easily conjectured. The criminal will probably be dismissed without prosecution, by those whom he has injured. If prosecuted and tried, the jury will probably find, or think they find, some decent ground, on which they may be justified or, at least, excused in giving a verdict of acquittal. If convicted, the judges will, with avidity, receive and support every, the nicest, exception to the proceedings against him; and, if all other things should fail, will have recourse to the last expedient within their reach for exempting him from rigorous punishment—that of recommending him to the mercy of the pardoning power. In this manner the acerbity of punishment deadens the execution of the law.

The criminal, pardoned, repeats the crime, under the expectation that the impunity also will be repeated. The habits of vice and depravity are gradually formed within him. Those habits acquire, by exercise, continued accessions of strength and inveteracy. In the progress of his course, he is led to engage in some desperate attempt. From one desperate attempt he boldly proceeds to another; till, at last, he necessarily becomes the victim of that preposterous rigour, which repeated impunity had taught him to despise, because it had persuaded him that he might always escape.

When, on the other hand, punishments are moderate and mild, every one will, from a sense of interest and of duty, take his proper part in detecting, in exposing, in trying, and in passing sentence on crimes. The consequence will be, that criminals will seldom elude the vigilance, or baffle the energy of publick justice.

True it is, that, on some emergencies, excesses of a temporary nature may receive a sudden check from rigorous penalties: but their continuance and their frequency introduce and diffuse a hardened insensibility among the citizens; and this insensibility, in its turn, gives occasion or pretence to the further extension and multiplication of those penalties. Thus one degree of severity opens and smooths the way for another, till, at length, under the specious appearance of necessary justice, a system of cruelty is established by law. Such a system is calculated to eradicate all the manly sentiments of the soul, and to substitute in their place dispositions of the most depraved and degrading kind.

The principles both of utility and of justice require, that the commission of a crime should be followed by a speedy infliction of the punishment.

The association of ideas has vast power over the sentiments, the passions, and the conduct of men. When a penalty marches close in the rear of the offence, against which it is denounced, an association, strong and striking, is produced between them, and they are viewed in the inseparable relation of cause and effect. When, on the contrary, the punishment is procrastinated to a remote period, this connexion is considered as weak and precarious, and the execution of the law is beheld and suffered as a detached instance of severity, warranted by no cogent reason, and springing from no laudable motive.

It is just, as well as useful, that the punishment should be inflicted soon after the commission of the crime. It should never be forgotten, that imprisonment, though often necessary for the safe custody of the person accused, is, nevertheless, in itself a punishment—a punishment galling to some of the finest feelings of the heart—a punishment, too, which, as it precedes conviction, may be as undeserved as it is distressing.

But imprisonment is not the only penalty, which an accused person undergoes before his trial. He undergoes also the corroding torment of suspense—the keenest agony, perhaps, which falls to the lot of suffering humanity. This agony is by no means to be estimated by the real probability or danger of conviction: it bears a compound proportion to the delicacy of sentiment and the strength of imagination possessed by him, who is doomed to become its prey.

These observations show, that those accused of crimes should be speedily tried; and that those convicted of them should be speedily punished. But with regard to this, as with regard to almost every other subject, there is an extreme on one hand as well as on the other; and the extremes on each hand should be avoided with equal care. In some cases, at some times, and under some circumstances, a delay of the trial and of the punishment, instead of being hurtful or pernicious, may, in the highest degree, be salutary and beneficial, both to the publick and to him who is accused or convicted.

Prejudices may naturally arise, or may be artfully fomented, against the crime, or against the man who is charged with having committed it. A delay should be allowed, that those prejudices may subside, and that neither the judges nor jurors may, at the trial, act under the fascinating

impressions of sentiments conceived before the evidence is heard, instead of the calm influence of those which should be its impartial and deliberate result. A sufficient time should be given to prepare the prosecution on the part of the state, and the defence of it on the part of the prisoner. This time must vary according to different persons, different crimes, and different situations.

After conviction, the punishment assigned to an inferiour offence should be inflicted with much expedition. This will strengthen the useful association between them; one appearing as the immediate and unavoidable consequence of the other. When a sentence of death is pronounced, such an interval should be permitted to elapse before its execution, as will render the language of political expediency consonant to the language of religion.

Under these qualifications, the speedy punishment of crimes should form a part in every system of criminal jurisprudence. The constitution of Pennsylvania[x] declares, that in all criminal prosecutions, the accused has a "right to a speedy trial."

The certainty of punishments is a quality of the greatest importance. This quality is, in its operation, most merciful as well as most powerful. When a criminal determines on the commission of a crime, he is not so much influenced by the lenity of the punishment, as by the expectation, that, in some way or other, he may be fortunate enough to avoid it. This is particularly the case with him, when this expectation is cherished by the example or by the experience of impunity. It was the saying of Solon, that he had completed his system of laws by the combined energy of justice and strength. By this expression he meant to denote, that laws, of themselves, would be of very little service, unless they were enforced by a faithful and an effectual execution of them. The strict execution of every criminal law is the dictate of humanity as well as of wisdom.

By this rule, important as well as general, I mean not to exclude the pardoning power from my system of criminal jurisprudence. That power ought to continue till the system and the proceedings under it become absolutely perfect—in other words—it ought to continue while laws are made and administered by men. But I mean that the exercise of the par-

x. Art. 9. s. 9.

Troubled Experiment

Crime and Justice in Pennsylvania, 1682–1800

JACK D. MARIETTA AND
G. S. ROWE

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These criminal laws, mirroring the social views of the predominantly Quaker assembly that gave birth to them, seriously modified portions of the Duke's Laws while abolishing others. The result was the mildest criminal code of any continental English colony and one much milder than England's.[21] Murder alone was made a capital offense, although because no provision was made for treason, that offense continued to be capital under the English common law. Forfeitures, corporal punishment, and imprisonment were substituted for capital sanctions for such offenses as rape, sodomy, bigamy, and incest. A second conviction for these offenses carried with it life imprisonment. Attacks upon property, including thefts, arson, forgery, and counterfeiting, were punished by having defendants pay some multiple of the lost property. Few crimes brought lengthy incarceration. Swearing, profanity, playing cards or dice, promoting or engaging in unlicensed lotteries, and drunkenness, for instance, earned five-day sentences. Assaulting a magistrate brought one month's confinement. Challenging a person to a fight could lead to three months' incarceration if the convicted could not pay a five-pound fine. Only a conviction for incest could bring as much as one year at hard labor.[22]

Despite its apparent mildness, the Great Law held some potential for harshness. Its provisions for the punishment of criminal offenses were often unduly vague or discretionary, permitting unscrupulous or hard-minded judges to exact severe penalties.[23] For instance, at the discretion of two justices of the peace, servants assaulting their masters or mistresses were to be punished "suitable to the Nature and Circumstances of the fact." The same sentence held for general assaults and sedition. Children physically attacking their mother or father could be confined "during the pleasure" of the parents. Defamation was to be "severely Punished."[24] The assembly which met in New Castle in March 1684 took steps to curtail some of the discretion exercised by judges when it ratified a law establishing that if a statute called for whipping but failed to designate the specific number of stripes to be laid on, punishment should not exceed twenty-one lashes.[25] Still, considerable magisterial discretion remained.

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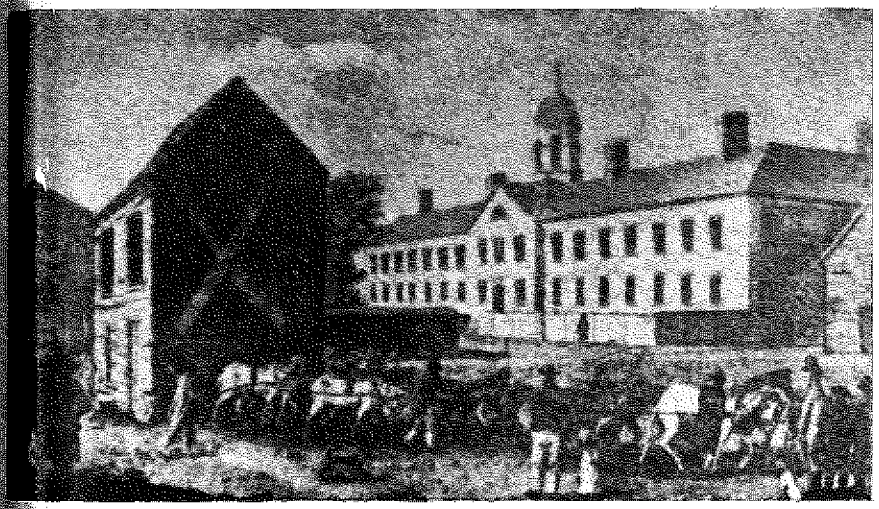
Important safeguards were incorporated to ensure that justice would

The Cradle of the Penitentiary

THE WALNUT STREET JAIL AT PHILADELPHIA, 1773-1835



A View of Walnut Street Jail—a Birch Print

by NEGLEY K. TEETERS

Temple University

Sponsored by the Pennsylvania Prison Society

PRINTED IN U.S.A.

CHAPTER ONE

Penology in Colonial Pennsylvania

1. *Early Penal Codes*

Few people realize that the first penitentiary in the world was located in Philadelphia, Pennsylvania. A relatively small stone structure, known locally as the Walnut Street Jail, that stood on the present site of the Penn Mutual Life Insurance Company building, at the corner of Sixth and Walnut Streets was, in truth, the "cradle" of the modern penitentiary. It was Dr. Nicolaus Julius, a distinguished student of penology from Prussia who, as early as 1839, stated that this jail "was the cradle of the American system of reformative prison discipline."[1]

The famous old structure, erected in 1773, was designated a penitentiary-house by the Act of General Assembly of Pennsylvania, dated March 27, 1789. A later act, dated April 5, 1790, provided that a special cell block be set up in the yard of the prison which, at the time, served as the jail for Philadelphia County. Under these two acts, convicted felons from all parts of the Commonwealth were henceforth sent to this institution where they were isolated for a part of their sentence from all other types of offenders, in solitary confinement, at hard labor.

From 1790 to 1799—a decade of experimentation in penology—the Walnut Street Jail became the mecca for students of penal reform from various parts of the country as well as from Europe. Out of these experimental concepts of imprisonment and treatment there evolved a system of penal discipline that was to bring fame and distinction to Pennsylvania as the leader in this important field.

The history of the Walnut Street Jail is a comparatively short one; from 1773 to 1790 it was a county jail; from 1790 to 1835, when it was abandoned, it served both as a local jail and as the penitentiary for

[1] Quoted by Orlando F. Lewis, *The Development of American Prisons and Prison Customs, 1776-1845*, Albany: 1922, p. 27.

the Commonwealth. In due time the state erected two penitentiaries—during the decade, 1820-1830—one at Pittsburgh and the other at Philadelphia, which gradually superseded the institution at Sixth and Walnut Streets, Philadelphia.

The story of this jail is indeed fascinating.[2] For over a hundred years previously the penal philosophy of the Commonwealth of Pennsylvania had reflected the traditions of William Penn and the Society of Friends. The Quakers had been, and still are, distinguished by their mildness and humility, as well as for their deep concern over inhumane treatment of convicted offenders.

From 1682, when Penn landed on American shores to found his new colony, to the establishment of the new country of the United States of America, the settlers of Pennsylvania followed the humane concepts of the Founder—aside from a period between 1718 and 1786 when the representatives of the British Crown pressed upon the people the severe Anglican penal code. This code defined thirteen capital crimes and called for the punishment of others in the stocks and pillory or with the application of the lash. It was after the Revolution and the establishment of the new country that the milder representatives of justice began their work to re-establish the reputation of William Penn and to culminate their labors with a radical new concept of penal treatment. It was the establishment of the "penitentiary" in 1790 that ushered in the new dispensation. However, as is so often the case, this proved to be only the beginning of a larger movement that was to change completely the prevailing attitudes of society toward the treatment of criminals.

This movement envisaged the concept of imprisonment for convicted felons to supplant the barbaric types of corporal punishment that, for so many centuries, had been the lot of those who had wronged society. Imprisonment has been taken for granted for so long that it is difficult for those living today to appreciate how novel and even radical it seemed during the colonial period of our country. It is thus that the history of the Walnut Street Jail, as well as the evolutionary development of the penal code of Pennsylvania, are so significant as a backdrop to modern thinking on penal treatment. In order to understand the importance of the Walnut Street Jail to the subject of penology, it is necessary to review the status of penal philosophy during

[2] Partial accounts of the story, especially for the period between 1790 and 1800, have recently appeared. See Rex Skidmore, "Penological Pioneering in the Walnut Street Jail, 1789-1799," *Journal of Criminal Law and Criminology*, July-August, 1948, pp. 167-180; also Le Roy De Puy, "The Walnut Street Prison, Pennsylvania's First Penitentiary," *Pennsylvania History*, Vol. XVIII, No. 2, April, 1951, pp. 3-19.

the earlier period of the Commonwealth of Pennsylvania.

William Penn met his first assembly at Chester on December 4, 1682. There they deliberated on his Frame of Government which he had conceived before he set sail from London. The result of this conference was *The Great Law or Body of Laws*, consisting of sixty-one chapters that was to govern the province of Pennsylvania. It contained the original Quaker criminal code and marked out clearly the wide differences between Quaker practices and theories and those of the Anglicans and Puritans in operation in the other colonies and the mother country.

This remarkable document opened with a declaration, very unusual at the time, that liberty of conscience and freedom of worship should be guaranteed to all who acknowledged the existence of the one true God. This eliminated at the outset the long category of religious offenses that marred the colonial jurisprudence of most of the other colonies as well as those of European countries.

The Quakers had long abhorred the taking of human life so it was decreed that the only crimes punishable by death would be premeditated murder and treason. This was a radical departure from current practice throughout the world as death was the punishment for a wide variety of offenses everywhere. Unlike early Massachusetts, Pennsylvania even tolerated witchcraft.

As a substitute for the death penalty and for bodily punishments, Penn decreed that felons should be imprisoned in a House of Correction. He had traveled on the continent and had seen some of these institutions in operation. He compared their administration with those in and around London and determined that in his new colony those of Holland would become his pattern. In the workhouses of this little country he found a decent separation of men from women, a place for vagrants and tramps apart from those imprisoned for small offenses and for indebtedness. These houses were beehives of activity, each convict receiving compensation for work performed. Separation, in seclusion, for purposes of reflection and penitence, was the method used by the progressive administrators of these establishments.

2. *The Importance of the House of Correction in Penal Practice*

Because much of the penal philosophy to develop in America, after the impetus contributed by William Penn, stems from the House of Correction, or workhouse, its development in England and on the continent should be reviewed.

With the eclipse of the feudal system of the Middle Ages, pauperism and petty thievery were rampant in all of Europe. The suppres-

place as may accommodate ( ) heading machines, their place of confinement to be just wide enough for one, with a window in each and to be six feet wide, to have ( ) feet in front of the walls so as to keep any prisoners from coming near them.[56]

7. *Concluding Remarks*

While this was an extraordinary decade in pioneering, it was not entirely idyllic. There were escapes recorded: thus, from the minutes of the inspectors for September 22, 1795 we read:

Whereas on the 12th inst. one of the Keepers having the west gate open a Rush was made by the Prisoners, five of whom made their escape and all in the Yard appeared in motion. Daniel Hunter and an insurgent prisoner exerted himself in assisting the Keepers to secure the Gate whereby the rest was secured. Resolved that the said Hunter for his meritorious conduct and orderly behavior be recommended to the Governor for a pardon and remission of his fine. Resolved that the Keeper be authorized to offer a Reward of Ten Dollars each for John Thompson, Joseph Long, James Reilly, Martin Bow and Thomas Johnson who escaped from this prison on the 22nd. inst.

Shortly after this, on December 21, 1795, a single prisoner, Seth Johnson (in the docket charged with robbing the bank of Nantucket), made his escape by using a false key to let himself out of the prison. It seems from the records that Johnson had money with which he purchased the key "composed of Pewter on Block Tin" from another prisoner. A thorough investigation of this escape was made which proved considerable laxity on the part of the keepers in not searching each prisoner when he came into the institution. Thus the Board spread on its minutes; dated December 22:

That no prisoners of whatever description be locked in any of the rooms before they have been duly examined and searched by the Deputy Jailer, and that money, Trinketts, Buckles or implements of any description whatever be taken from them and committed to the care of the Principal Jailer until the discharge of the prisoner and that no convict shall have any intercourse whatever with a prisoner for Tryall.

Later the question was raised regarding the disposition of clothes and other property belonging to any prisoner who had escaped and who, of course, had not claimed it. The Board (August 1796) ruled that the keepers should have such property if they assisted in the chase of said prisoners. Thus a watch belonging to the above Seth Johnson as well as some silver buckles belonging to Thomas Durnell were confiscated by one of the keepers.

[56] The blanks, indicated by brackets, were blank in the Minutes.

There must have been some chagrin on the part of the Board when, on May 27, 1796, three females made off but all were subsequently returned. One of them remained absent until September 1, however, and slipped out again on August 2 of the following year.[57]

During this decade many reforms were effected by law, as well as through the changing policies of the Board. Legislative acts effecting the prison were: September 23, 1791, improvement of the lot of the debtor class; April 4, 1792, placed the keeper of the jail on a salary instead of a fee basis; April 22, 1794, abolished the death penalty for all crimes except murder in the first degree; April 15, 1795 and February 15, 1799, extended and perpetuated the penal codes of 1790 and 1794. In 1795 the inspectors abolished the use of the dungeons in the prison for disciplinary cases.

And thus the penitentiary was born. Important as it was, it was only a crude beginning. But judged by the situation existing in the various county jails and workhouses of the country at the time, with promiscuity, idleness, debauchery and misery existing in all of them, it is no wonder that the reforms at Philadelphia were considered amazing. We need not gild the lily to say that this was indeed a remarkable era in penal reform. There were many who eagerly watched its administration and development and, on the whole, these observers were fairly well satisfied during this decade from 1790 to 1799. It was the following decade in which the system began to crack and, week by week, month by month, it continued to deteriorate.

Much of the social and economic life of the city of Philadelphia may be gleaned from the records of this prison. As De Puy writes: "Here can be found in stark brevity the story of the servant who stole his master's silver; of the 'stubborn apprentice' of 'high spirit' thrown into jail at the mere request of his master; of the seaman who jumped ship to escape his tyrannical captain; of runaway slaves and of free Negroes entangled in the white man's law; and of the unfortunate prisoner in an inland county, who, being found guilty of a trifling offense, was assigned an over-long term so as to render him eligible for the Philadelphia prison where expense to his county would be reduced by state aid."[58]

The "Widow Weed" resigned as keeper on July 26, 1796 and the Board bore "cheerful testimony of approbation to her conduct during the arduous and difficult duties to which she has been called." One

[57] Not reported in the Minutes. See Le Roy De Puy, "The Walnut Street Prison: Pennsylvania's First Penitentiary," Pennsylvania History, Vol. XVIII, No. 2, April, 1951, p. 14.

[58] *Loc. cit.*, p. 8.

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PUBLIC EXECUTIONS IN PENNSYLVANIA 1682 TO 1834 With ANNOTATED LISTS OF PERSONS EXECUTED; AND OF DELAYS, PARDONS AND REPRIEVES OF PERSONS SENTENCED TO DEATH IN PENNSYLVANIA 1682 TO 1834

BY DR. NEGLEY K. TEETERS

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EARLY PENAL LEGISLATION IN THE COLONY

On March 15, 1688, Judith Roe of Kent County — now a part of Delaware but at the time one of the "Lower Counties" of the Province of Pennsylvania — was publicly hanged for murder — victim, motive and weapon unknown. William Penn, president of the Provincial Council, but out of the country at the time, refused her a pardon because she was a "murtherous woman and her crime notorious and barbarous."[1] Her brother, Joseph Richardson, had begged for a pardon but without success.

Whether this woman was the first person to be executed in the Province cannot be accurately ascertained but so far as the data available indicate, she holds this dubious distinction.[2] From that date down to April 10, 1834, when public executions were abolished, slightly more than 250 persons were taken from county jails to some local spot and hanged before large crowds of spectators.[3] One hundred thirty-eight others were spared this degradation through the favor of the governor's pardon.

Much has been written of the humane features of the Great Law of William Penn adopted on December 7, 1682 at Upland. As is well known, premeditated murder only was labeled capital. Penn's code, so unusual in the colonies at the time, was regarded as the wonder of the age. But only in a few years it was deemed necessary to draw up another much more drastic. Thus the Newcastle Code, created by Penn himself in 1700 and ratified in 1701, introduced such penalties as mutilations, brandings, floggings and even castration for certain offenses.[4] Commenting on this amazing metamorphosis in penal philosophy, Professor Lawrence Gipson, long a student of colonial Pennsylvania writes:

> From prosecuting cases of larceny, slander, swearing, Sabbath breaking, assault and battery, drunkenness, the selling of rum to the Indians, and immorality . . . the authorities at the close of the century and from then on were called upon to deal with burglaries, counterfeiting, highway robbery, petit treason, horse stealing, rapes, homicides, infanticides, and murders.[5]

As early as May 1697 Penn wrote to the Colonial Council from London that persistent rumors reaching him complained not only of crimes in low places but even among those who were charged with serious responsibilities in the colony. He wrote: "There is no place more overrun with wickedness, Sins so very Scandalous, openly Committed in defiance of Law and Virtue; facts so foul I am forbid by common modesty to relate ym."[6] And, as Professor Gipson records: "Pennsylvania was called in 1698 'Ye greatest refuge and shelter for pirates and rogues in America.' "[7]

Another facet of the ambivalence of the provincial fathers was the concern they felt for crimes committed by Negroes. As early as 1693 the courts of Quarter Sessions were empowered to direct constables

> . . . against the tumultuous gathering of Negroes whom they should find gadding abroad . . . without a ticket from their Mr. or Mris. [sic] or not in their company, or to carry them to gaole, there to remain the night & that without meat & drink to cause them to be publickly whipped next morning with 39 lashes well laid on their bare backs for which their said Mr. or Mris. should pay 15d to the whipper.[8]

Presumably following the example of the southern colonies in dealing with crime among Negroes, the Pennsylvania Council, in 1701, passed an act which placed the trials of Negroes in the hands of two specially designated justices of the peace before a jury of freeholders who had power to "hear, try, and determine" the offenses of "murder, manslaughter, buggery, burglary, rapes, attempts of rapes, and other high and heinous enormities and capital offenses."[9] All of these offenses, when committed by Negroes, were made capital. None of the records of these special courts remains so we can only surmise what penalties were imposed and enforced.

Surprisingly enough our own records show no Negroes subjected to the death penalty until "Joe" and "Caspar" were executed in Philadelphia some time in November 1762, and one "Phoebe" in Chester County in March 1764, all for burglary. The owner of Phoebe, one Joseph Richardson, was compensated £55 for the loss of his slave since an act passed on March 5, 1725/6 called for an appraisal "value" of slaves executed, with owners to be paid out of the public treasury.[10] No doubt the owners of "Joe" and "Caspar" were also compensated for their losses. It is difficult to believe that some Negro slaves were not executed prior to the above dates especially since legislation to compensate owners was enacted so many years earlier. In addition, in neighboring Quaker West Jersey several Negroes were executed for assaultng their masters as well as for the commission of serious felonies.

The drastic code of 1701 proved to be so repugnant to the Mother Country that its repeal was ordered by the Crown within a few years. As Herbert Fitzroy writes:

> The more extreme punishments were permitted to be continued for but a few years, since in 1705 we had the rather unusual spectacle of the English Privy Council disallowing laws of the Quaker province because of their unusual cruelty — the laws involving castration because it was "a punishment never inflicted by any law of Her Majesty's dominions," and the laws providing enslavement because "selling a man is not a punishment allowed by the Laws of England."[11]

We have no way of knowing whether castration was actually resorted to by the courts since, of the dockets surviving, no case has thus far been revealed.

In 1718 the colony went all out in setting up a sanguinary code. On May 31 "AN ACT FOR THE ADVANCEMENT OF JUSTICE AND MORE CERTAIN ADMINISTRATION THEREOF," designating thirteen capital crimes, was passed. These were: various degrees of treason, murder, manslaughter by stabbing, serious maiming, highway robbery, burglary, arson, sodomy, buggery, rape, concealing the death of a bastard child, advising the killing of such a child, and witchcraft.[12]

With a few additions to the list of capital offenses[13] there were no significant changes made in the penal code until a reforming era was ushered in by the passage of the Act of September 15, 1786. This act reduced the number of capital offenses and provided for the placing of most convicted felons on the public streets and highways to perform public works. The era reached its zenith in the famous Act of April 22, 1794. This progressive piece of legislation recognized only one capital offense, that of premeditated murder. *It is significant also because it was the first to be adopted in this country to distinguish between first and second degree murders.*

Provincial Pennsylvania, to enhance further its reputation for "mildness," made provisions for softening the draconic sentences of the courts. These were, first, the pardoning power vested in the governor save for murder and treason which were in the hands of the Crown, and second, the *benefit of clergy*. The pardoning power was delegated by the governor in most instances to his council, aided often by the recommendations of the courts where the culprits were convicted. The governor also had the power to stay an execution until the case was adjudicated by royal instruction.

In our list of pardoned persons condemned to death, many were granted the grace provided they would leave the colony. Some, however, were not apprized of their good fortune until they were "under the gallows." For instance, Isaac Bradford, doomed to die on July 2, 1737, along with two others, one a woman, was pardoned provided he "did the office of executioner" on his companions in misery. This "very hard choice," so stated by the local newspaper, apparently did not bother Bradford too much because he escaped the noose. Another case, that of John Benson, condemned to death for robbery was reprieved "under the gallows" in Philadelphia when two companions in crime were executed May 12, 1764. The local paper stated:

son's **Daily Advertiser**, Philadelphia, March 20; also the thinly disguised fictional account appearing in George Lippard's **The Quaker City, or the Monks of Monk Hall**, Philadelphia, 1845, I, 428-434; see also, Source H, 3-20 for account of his crime, also **infra** p. 141.

4. For rape, second offense; sodomy and bestiality by a married man; **Statutes at Large**, II, 8, 183; III, 202; repealed and re-enacted in 1705 with castration omitted; see Lawrence H. Gipson, "The Criminal Codes of Pennsylvania," **J. of Amer. Inst. of Crim. Law & Crimin.**, VI, 3 (1915) 323-344; citation, 330.
5. **Ibid.**, 341.
6. CR I, 527, February 9, 1697/8.
7. Loc. cit., 341.
8. CR I, 380, July 11, 1693.
9. **Statutes at Large, II**, 77-79; see also, Fitzroy, loc. cit., 242-269, especially 254, fn. 47. For a contrast with colonial East and West Jerseys see Henry B. and Grace M. Weiss, **An Introduction to Crime and Punishment in Colonial New Jersey**, Trenton: The Past Times Press, 1960.
10. Ashmead, **History of Delaware County**, 1884, 165. Later "Negro" Jack Durham's master, Andrew Long of Southampton Township, Franklin County, was compensated $80 when his slave was executed for rape on July 8, 1788; see I. H. McCauley, **Historical Sketch of Franklin County**, 1878, 58-60; and, following the execution of "Negro" Dan Byers at Bellefonte, Centre County on December 13, 1802, his owner was compensated in the amount of $214; see John Blair Linn, **History of Centre & Clinton Counties**, 1883, 44-5.
11. Loc. cit., 250.
12. As enumerated by Harry Elmer Barnes, **The Evolution of Penology in Pennsylvania**, Indianapolis: Bobbs, Merrill, 1927, 39. This act will be found in **Statutes at Large**, III, 199-214. For an explanation why this drastic code was introduced and adopted, see Barnes 37-8. A word about witchcraft is in order. There were only three cases of alleged witchcraft, all prior to 1718 when the offense was made capital. The first two were those of Margaret Matson and Getro Hendrickson (CR I, December 27, 1683, 94-6) with no decision except that bonds had to be posted to keep the peace; and a third, that of Robert Guard and his wife who were accused of being witches "by malicious persons" (John Richards, Butcher and wife Ann); however the case was dismissed, the evidence being too flimsy (CR II, March 21, 1701, 20). These cases are discussed briefly by John Fanning Watson in his **Annals** I, 265-6, 274-5 (Elijah Thomas edition, 1857).
13. Counterfeiting was made capital by the Acts of September 21, 1756 and February 21, 1767. Other offenses made capital were riotous assembly, **Statutes at Large** VI, 325-8; refusing to remove from Indian lands, S.L. VII, 152 (1768); going around in disguise, S.L. VII, 350-2 (aimed at "Black Boys" who blackened their faces and roved the frontier robbing, stealing, and rescuing felons from jail; see Fitzroy, loc. cit., 252 f.n. 42); burning the State House, libraries or other public buildings, S.L. VIII, 183. It is important to note that, contrary to general belief, horse stealing was never made a capital crime (see page 109). Robbery was not made capital until 1780 (See S.L. X, 110). For Act of September 15, 1786, see S.L. XII, 280-3; for an analysis of the act, see Barnes, 107. For the Act of April 22, 1794, see S.L. XV, 174-181 and for analysis, Barnes, 107-110.
14. For news story of the Bradford case, see the **American Weekly Mercury**, June 30 - July 7, 1737; the two executed at the time were Catherine Connor and Henry Wildeman, both for burglary. For the Benson case, see the **Pennsylvania Gazette**, May 17, 1764, page 2; those executed at the time were Handenreid and John Williams.
15. The one receiving the pardon was Jacob Dryer; the one executed was Robert Elliott; for the Elliott case, see p. 135.

CLEMENCY IN PENNSYLVANIA

Historical perspective of the clemency function. Review of case law. Present practice in the Commonwealth of Pennsylvania. Recommendations for change.

1973

National Council on Crime and Delinquency
Survey and Planning Center
508 Littlefield Building
Austin, Texas 78701

and in those cases to grant reprieves until our pleasure may be known therein, and to do all and every other thing and things which unto the complete establishment of justice ... do belong."[81] The charter reserved to the crown the right to determine appeals and required that Penn's laws "be not repugnant or contrary, but as near as conveniently may be agreeable" to the laws in England. An attempt was made to make the latter provision enforceable by empowering the king to declare null and void any law passed in the province. No other proprietary or corporate colony had such a charter provision, one which might have proved even more restrictive if Penn's friends in the government had not succeeded in inserting a clause allowing the colonists five years to transmit a law after its passage.[82]

England's continuing internal conflicts had had a strong effect on criminal law. Capital offenses, which had numbered eleven at the time of Bracton and thirty-one during the reign of Elizabeth, had increased to fifty-eight by 1680. Prisoners in felony cases were denied counsel except for the argument of special questions of law arising during the trial, and then only by the sufferance of the judges. It was a misdemeanor to help a prisoner on trial, even by whispering a word to him. There was no right to call witnesses for the defense, and if called, they were not usually sworn. No right of new trial was recognized, and there was no appeal except to the clemency of the king. Jurors could be, and often were, fined or imprisoned if they granted an acquittal not sanctioned by the judges. The only countervailing force in the English law of the time was the long-recognized doctrine of judicial reprieve, according to which judges were not bound to the law but could remit or mitigate punishment according to the circumstances of a case or their own humane impulse of the moment.[83]

From his study of English law, and of the Duke of York's laws which had previously governed part of his new province, Penn concluded that the multitude of offenses and the severe punishments listed under them were not only unreasonable and intolerable, but inapplicable and insufficient. In 1683, he and his counselors prepared a code of criminal laws in which capital punishment was prescribed for only two crimes: treason and premeditated murder.[84] The code was duly enacted, approved by the freemen and transmitted to England where it was immediately disallowed by the king's Privy Council. The colonists re-enacted it, and the resulting conflict continued for many years.

In 1700, the Privy Council similarly rejected a law permitting affirmations in place of oaths. Some judges and other colonial officials not only refused to be sworn but permitted others to affirm as well, to the end that courts were not held as usual and convictions, when had, were attacked as unlawful. Criminal sentences were imposed with no certainty of execution because so many were questionable under either the colonial laws or the laws of England. Acts were passed by the provincial legislature, vetoed by the king in council, re-enacted and re-vetoed. Within a few years, conditions had become intolerable. In 1718, David Lloyd, Chief Justice of the province, prepared a compromise act recognizing the right to affirm, but also declaring in force a long list of English criminal laws previously omitted from colonial penal codes. The act further provided, however, that the accused should be entitled to challenges, have learned counsel assigned him, and could compel attendance of his witnesses, who would be sworn or affirmed in the same manner as the witnesses for the prosecution.[85] The moderate substantive views put forth by Penn were thus set aside in favor of the more immediately apparent need for

procedural reform. Although the succeeding half century saw a number of modifications of the act, it remained substantially unimproved right up to the outbreak of the revolution. In 1776, there still remained eighteen primary capital crimes, and the death penalty for a second conviction for every felony not capital on the first with the sole exception of larceny.[86]

Like most laws not in concert with the sentiments of the people whose actions they are intended to regulate, the sanguinary provisions of the compromise Act of 1718 were irregularly enforced and frequently mitigated by other means, especially executive clemency. Burglary, a capital offense under the 1718 code, was rarely charged and convictions were even more rare. From the passage of the act to 1774 there were only seventy-three convictions, thirty-seven of which were pardoned. Horse-stealing provides an even more obvious example. During the same period, a total of three convictions were obtained and all of them were pardoned.[87] Among the priorities mandated by the state's first constitution, adopted September 28, 1776, was a reform of the penal code along the lines of that originally proposed by William Penn.[88]

Executive Clemency in the United States

When the colonies made their decision to break with England, the authors of the new state constitutions were faced with the problem of finding a new basis for the pardoning power to replace the English theory that it resided in the king as a royal prerogative. In general, it was assumed that the power to pardon, like all powers of government, resided in the people. Conflicts arose, however, around the question of which branch of the people's government was to exercise it for them.

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NOTICES

OF THE

ORIGINAL, AND SUCCESSIVE EFFORTS,

TO IMPROVE THE DISCIPLINE

OF THE

PRISON AT PHILADELPHIA,

AND

TO REFORM THE CRIMINAL CODE OF

Pennsylvania:

WITH A FEW OBSERVATIONS ON THE PENITENTIARY SYSTEM.

BY ROBERTS VAUX.

"The penal law should be founded upon principles that are permanent, uniform, and universal; and always conformable to the dictates of truth and justice, the feelings of humanity, and the indelible rights of mankind."..... BLACKSTONE'S COM. B. IV. C. I.

PHILADELPHIA:

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1826.

NOTICES, &c.

It will not, at this enlightened period, be denied, that one of the first duties, as well as the true policy, of every government, is to adopt measures *for the prevention of crime;* nor that the most powerful instrument for effecting this important object is *universal education.*

To make men familiarly acquainted with their religious and moral obligations, and with the influence of these great principles, when habitually observed, upon their individual respectability and happiness; and to develop their physical and intellectual resources, and direct them to the attainment of the certain rewards of honest industry and sober economy; have uniformly been found the most effectual means of interesting every member of society in its good order and welfare, and of enabling all to estimate justly the ennobling privileges of virtue and independence.

When, after the rude age in which offences were avenged at the will and by the power of the injured party, governments at length became

the arbiters of private wrongs, had plans been devised for improving the minds of men, rather than for inflicting upon them the most barbarous punishments for transgression, what an infinite waste of blood, by wanton and debasing cruelties, would have been prevented, in every country of ancient and modern Europe.

History establishes the fact, that accelerated improvement has every where attended the mitigation of penalties; and that, in proportion as the laws have become less sanguinary and vindictive, crimes have decreased in number and atrocity.

The code of Alfred, which was a master-piece of judicial polity, set a just value on the life of man: and a tender regard for that temporal existence, which Deity only can confer, has never impaired the security of person or of property, nor diminished the power or dignity of governments that have been cautious in shedding human blood. On the contrary, the administration of justice is more uniform and certain, and social order better preserved, when punishments are mild and sure.

The great law given by Penn, upon the banks of the Delaware, has been not less remarkable for its beneficial influence upon the character and condition of society, in the Western hemisphere, than was the code of Alfred, enacted on

the shores of the Thames, upon those of Britain and of Europe.

The Pennsylvania lawgiver, regardless of most of the statutes of England which had been in force down to the reign of Charles the Second, employed his highly gifted mind in incorporating, with the frame of his government, a criminal code, which he believed to be judicious and practical; and although its provisions have since undergone some changes in form, its great features have remained, not only to distinguish and adorn the land of his affection, then contemplated by him as the "*seed of a nation*," but to extend its benefits to the remotest confines of the American confederacy.

The admirable system of the founder of Pennsylvania, from its first promulgation to the present hour, has carried conviction to the understandings of the most enlightened and distinguished men in America and in Europe, who have never ceased to bestow the highest commendation on the individual who possessed the wisdom to devise, and the firmness to avow, principles, which are calculated to enlarge the dominion of reason and humanity, and to place the institutions of society upon the broad and sure foundation of the Christian religion. These philanthropic principles, however, were too much in advance of the age in which they were

embodied, to receive the sanction of the parent government; but, notwithstanding their repeal by the Queen and Council, the same laws were re-enacted by the freemen of the Province, and remained in operation until the death of their benevolent author, in 1718.

During thirty-five years' application of this mild system, no evidence exists, that offences were of a more flagitious nature, or of more frequent occurrence, than in the neighbouring Colonies, where rigorous penalties were inflicted: on the contrary, it is believed, that its efficacy was acknowledged to contribute, in an enviable degree, to the prosperous administration of Pennsylvania.

Under the rule of Sir William Keith, and other successive Governors, the sanguinary laws of the mother country again prevailed, and gradually brought about all the evils characteristic of the criminal law, up to the period of the revolution.

Although the excellent code of Penn ceased with his existence, the exalted sources of religion and reason, whence it was derived, were happily beyond the control of human caprice and power. His example encouraged other minds, happily imbued with the same principles, to devote themselves to the production of similar results, in more modern times.

To those meritorious pioneers, most of whom have gone down to the grave, Pennsylvania is largely indebted for the reformation of her criminal jurisprudence; and their faithful and disinterested labours deserve to be recorded, for the information and instruction of present and future generations, since they exhibit the unostentatious triumph of benevolence over the errors and prejudices of centuries.

In order to unfold the nature of the difficulties to be encountered in the first attempt to change the penal code of Pennsylvania, and to show how arduous was the task of the original volunteers in this interesting cause, it will be necessary to exhibit the principal criminal offences then known to the law, and the punishments annexed to them respectively. They were,

Murder, Treason, Robbery, Burglary, Rape, Arson, The crime against nature, Malicious maiming, Manslaughter, Counterfeiting bills of credit, or the current coin.	Death, by hanging.

Various minor offences were punished by whipping, the pillory, cropping, branding with a hot iron, and public labour with chain and ball attached to the prisoner, &c.

Of this shocking catalogue of unjust and cruel penalties, few men, it may be supposed, would have the resolution to undertake the removal, especially when the actual condition of the prison, and the mode of treating the prisoners, are considered; for it must be kept in mind, that for nearly all the crimes which have been enumerated, it was proposed to commute the punishment for solitary confinement and hard labour.

The first individual, unconnected with the administration of the criminal laws, who appears to have given attention to the inhabitants of the jail, then situated at the south-west corner of High and Third streets, was a benevolent and independent citizen,* residing in that neighbourhood; who, before the revolutionary war, was in the practice of causing wholesome soup, prepared at his own dwelling, to be conveyed to the prisoners and distributed among them. This fact indicates the wretched condition of the objects of his liberality, as it cannot be presumed that such an interposition would have taken place, but from a full conviction of its absolute necessity.—

* *Richard Wistar;* he died in 1781, aged 54 years.

Whether this circumstance led to a more general notice of the state of the jail and of its inmates, cannot now be ascertained, but it is highly probable it had an influence in producing the first association, formed in any country, for investigating the condition of prisoners, and for affording them relief, as the natural and happy precursor of the important changes in punishments, which, as will hereafter be seen, was subsequently effected by an institution of similar character.

On the 7th of February, 1776, a society was formed, under the name of "*The Philadelphia Society for assisting distressed Prisoners.*" A considerable number of citizens became members of it, and paid an annual subscription of ten shillings, each. The managers of this body afforded some relief during a short career, which, from the following record, (the only one known to exist,) appears to have terminated in about nineteen months. "*The British army having entered the city of Philadelphia in September,* (1777,) *and possessed themselves of the public jails, no further service could be rendered, nor was any election held this month, for the appointment of new managers, so that the Philadelphia Society for assisting distressed Prisoners, was dissolved during this memorable period.*"

Signed, "RICHARD WELLS, *Sec'ry.*"

During the remainder of the war, this good work was necessarily suspended, except that the Convention of Pennsylvania proclaimed, that an alteration should be made in the penal laws of the Commonwealth—a measure which grew out of the new form of the government.

The first amelioration of the criminal code, as subsisting before the revolution, was accomplished by an act of assembly, passed on the 15th of September, 1786, when robbery, burglary, and the crime against nature, were made punishable with servitude, at hard labour, instead of death. This dawn of legislative mercy to criminals in Pennsylvania, deserves to be as gratefully commemorated as it was then joyfully hailed.

On the 8th of May, 1787, a number of citizens assembled at the German School House, on Cherry street, and constituted themselves "*The Philadelphia Society for alleviating the miseries of Public Prisons.*" Their motives and purposes are thus explained, in the preamble and synopsis of the constitution.

"I was in prison and ye came unto me."

"——— and the King shall answer, and say unto them, verily I say unto you, inasmuch as ye have done it unto one of the least of these my brethren, ye have done it unto me."

Matthew xxv. 36, 40.

"When we consider that the obligations of benevolence, which are founded on the precepts

and example of the author of Christianity, are not cancelled by the follies or crimes of our fellow creatures; and when we reflect upon the miseries which penury, hunger, cold, unnecessary severity, unwholesome apartments, and guilt, (the usual attendants of prisons,) involve with them, it becomes us to extend our compassion to that part of mankind, who are the subjects of these miseries. By the aids of humanity, their undue and illegal sufferings may be prevented; the links which should bind the whole family of mankind together, under all circumstances, be preserved unbroken; and such degrees and modes of punishment may be discovered and suggested, as may, instead of continuing habits of vice, become the means of restoring our fellow creatures to virtue and happiness. From a conviction of the truth and obligation of these principles, the subscribers have associated themselves," &c.

Officers:—A President, two Vice Presidents, two Secretaries, a Treasurer, four Physicians, an electing and an acting Committee. Contribution of each member, ten shillings* per annum. The principal duties of the acting committee were to visit the public prisons, or such other places of confinement as were ordained by law, at least once

* Reduced to one dollar annually in 1792.

every week; to inquire into the circumstances of the persons confined; to report such abuses as they should discover; to examine the influence of confinement or punishment upon the morals of the persons who were the subjects of them. They had authority to draw on the treasurer for such sums of money as should be necessary to carry on the business of their appointment. The physicians, to visit the prisons when called on by the acting committee, and give their advice respecting such matters as were connected with the preservation of the health of persons confined, &c.

On the day of the adoption of this constitution, the society elected its officers and committees, who proceeded to an immediate fulfilment of their important and benevolent duties.

It is much to be regretted, that the first minutes of the acting committee, which contained, doubtless, a mass of intelligence which would now be deeply interesting, cannot be found. Recourse has therefore been had to a few of the venerable persons, who, after a lapse of almost forty years, survive to relate some of the occurrences connected with their early labours in this field of beneficence and patriotism. Their representations of the condition of the jail, and of those confined in it when their visits commenced, are truly appalling. A brief sketch of

these will serve to prove at once the immense difficulties of the undertaking, and the moral courage which must have been exerted to overcome them. The prison, as already stated, was at the corner of High and Third streets, then nearly in the centre of the population of the city. It is said to have been an injudiciously contrived building, with a subterraneous dungeon for prisoners under sentence of death.—What a spectacle must this abode of guilt and wretchedness have presented, when in one common herd were kept, by day and by night, prisoners of all ages, colours, and sexes! No separation was made of the most flagrant offender and convict, from the prisoner who might perhaps be falsely suspected of some trifling misdemeanor;—none of the old and hardened culprit, from the youthful and trembling novice in crime;—none even of the fraudulent swindler, from the unfortunate and possibly the most estimable debtor; and when intermingled with all these, in one corrupt and corrupting assemblage, were to be found the disgusting object of popular contempt besmeared with filth from the pillory—the unhappy victim of the lash streaming with blood from the whipping post—the half naked vagrant—the loathsome drunkard—the sick suffering with various bodily pains—and too often the unaneled malefactor, whose precious hours

of probation had been numbered by his earthly judge.

Some of these deplorable objects, not entirely screened from the public eye by ill constructed walls, exposed themselves daily at the windows, through which they pushed out into the street bags and baskets, suspended upon poles, to receive the alms of the passenger whose sympathy might be excited by their wails of real or affected anguish, or if disappointed, they seldom failed to vent a torrent of abuse on those who were unmoved by their recitals, or who disapproved of their importunity. To increase the horror and disgust of the scene, the ear was continually assailed by the clank of fetters, or with expressions the most obscene and profane, loudly and fiercely uttered, as by the lips of demons.

The keeper derived his appointment from the Sheriff of the city and county of Philadelphia; and had been for many years retained in office, on account of his supposed competency for a charge so disagreeable, as to excite neither desire nor competition on the part of persons better qualified to occupy the station. Indeed the circumstances, under which the incumbent had been long connected with criminals, caused him to be suspected of a more intimate knowledge of the depredations committed in the city, than

comported with that unblemished reputation which ought to belong to such an officer. Whether justly suspected or not, certain it is, that he viewed the first interference of the members of the society, as altogether improper and unnecessary, and contrived to interpose every possible obstacle to the prosecution of their plans; a deportment which went far to confirm the unfavourable opinions entertained of his character. An anecdote, related by one of the acting committee, exhibits at once the dispositions of the jailer, and a specimen of the arts to which he resorted for deterring the members of that body from the discharge of their duties. The gentleman alluded to was a clergyman,* who, believing that benefit would result to the prisoners from an occasional sermon, called on the keeper to inform him of his intention to preach "on the following Sunday." This proved most unwelcome intelligence to the keeper, who instantly declared that such a measure was not only fraught with peril to the person who might deliver the address, but would involve also the risk of the escape of all the criminals, and the consequent pillage or murder of the citizens. To this the clergyman answered, that he did not anticipate such a result, and for himself he did not

* The late William Rogers, D. D.

apprehend even the slightest injury. Leaving, however, the keeper utterly unconvinced, he waited upon the Sheriff, who, on being told what had passed, issued a written order to the jailer, to prepare for the intended religious service. At the appointed time the clergyman repaired to the prison, and was there received with a reserve bordering on incivility. The keeper reluctantly admitted him through the iron gate, to a platform at the top of the steps leading to the yard, where a loaded cannon was placed, and a man beside it with a lighted match. The motley concourse of prisoners was arranged in a solid column, extending to the greatest distance which the wall would allow, and in front of the instrument prepared for their destruction, in the event of the least commotion. This formidable apparatus failed to intimidate or obstruct the preacher, who discoursed to the unhappy multitude for almost an hour, not only unmolested, but, as he had reason to think, with advantage to his hearers, most of whom gave him their respectful attention, and all behaved with much greater decency than he expected. This sermon, it is asserted, was the first ever delivered to the whole of the prisoners in Philadelphia, and perhaps it preceded every attempt of the kind in any other city. Be that as it may, the duty in this case was performed under very

extraordinary circumstances. Not long afterwards, when Bishop White, the President of the society, was about to officiate in the same prison, the keeper, with similar designs, very significantly advised him to leave his watch on the outside of the gate-way, lest it should be purloined; but the intimation was disregarded, and the service administered without molestation. Another proof of the violent and sturdy opposition which the members of the society must have habitually encountered, in their intercourse with the jail, from the refractory temper of a man who could even set at naught the sovereignty of the state, is found in the following extract from the minutes:—"*Although an order was issued, three days since, by the Supreme Executive Council, that Barrack Martin (a negro under sentence of death, but who had been pardoned,) should be released from his irons, yet they had not been removed.*"

Notwithstanding the discountenance of the jailer, a subject rather of ridicule than anger, the members of the acting committee persevered in visiting the prison, alleviating the miseries of its inhabitants, and at the same time making themselves acquainted with all the iniquity of the system which it was the purpose of the society to expose and reform.

As the public attention became gradually

awakened to the arduous labours of the few founders of the society, they were encouraged in their noble aims by accessions to their number, and by donations in money. As early as the third meeting, it is recorded that John Dickinson, late President of the State, proposed transferring certain ground rents for the benefit of the institution.

At the ensuing sitting, the members were gratified by the reading of a letter from Dr. John Coakley Lettsom, of London, to Dr. Benjamin Rush, giving an account of journeys then recently performed by the celebrated John Howard along the borders of the Mediterranean, whither he went to promote the relief of prisoners. The instruction communicated in this epistle renders it worthy of preservation.

"On Howard's return from Turkey, he refused any public honours, which put a stop to the increase of the fund under his name; out of fifteen hundred pounds subscribed, above five hundred pounds have been reclaimed. Of the appropriation of the residue we cannot yet conclude, but my ideas will appear from the Gentleman's Magazine enclosed, in which I have grafted part of thy letter. Though Howard absolutely refused the public honour, he seemed highly gratified by the spirit of the nation, and truly sensible of the grateful sense of his labours. I was closeted with him three hours, soon after his return, and though I have introduced to him persons of fashion, title, and respect, he remains immoveably fixed against all entreaties to admit of public honour. He has not published any account of his Asiatic tour, as it must be illustrated with at least thirteen plates, and he remained here scarcely a month

before he set off for Ireland, in which kingdom he is now employed in visiting the prisons; but his papers, he informed me, were in readiness for the press. Happily he had duplicates of his remarks, and these were kept in different trunks; with these he travelled safely through different regions, till he arrived in Bishop's Gate street, London, and just as he got out of the stage to take a hackney coach, into which he was removing his trunks, one was stolen, and has never since been recovered: besides a duplicate of his travels, it contained twenty-five guineas and a gold watch. A friend of mine who visited Newgate the next day, was told by a convict (such intelligence and communications have they) that the papers were all burnt. Of the lazaretto at Marseilles, he had no duplicates, and luckily the drawings were in the preserved trunk. Howard told me he valued them so highly, that had they been stolen, he would have returned to Marseilles to acquire new ones. To enter this place is forbidden to strangers, and it was by a singular stratagem that he got in nine days successively, without being discovered. Having heard at Marseilles that an English protestant was confined in a prison at Lyons, into which the intrusion of a stranger was always punished with confinement to the galleys for life, the difficulty of access only stimulated the enthusiasm of Howard. He learned, as well as he could, the different turnings and windings that led to the prisoner he more particularly wished to visit. Howard is a little man, of extenuated features, who might pass for a Frenchman. He dressed himself like a Frenchman, with his hat under his arm, and passed hastily by twenty-four officers, and entered the very apartment he wished to see, without suspicion. He disclosed the secret to an English minister at Lyons, who advised his immediate departure, as he would inevitably be discovered if he remained at Lyons all night. He therefore departed hastily and got to Nice. When he arrived at Paris it was almost eleven o'clock at night; he had concluded to depart at three in the morning, by the Brussels stage, and to the inn he sent his baggage, and hoping to get an hour or two's sleep, he went to bed. He had scarcely fallen asleep before his room door was forced open, and in stalked a formal dressed man, preceded by

a servant bearing two lighted candles, and solemnly interrogated him in French to this purpose:—Are you John Howard? I am, replied the Englishman. Did you travel with such a person? I do not know any thing of him, said Howard. The question was again repeated, and the same reply (but with some warmth) was given to it. The personage left the candles on a table and departed: immediately Howard dressed himself and stole to the Lyon's hotel; he heard of two messengers in pursuit of him, but he arrived at Brussels undiscovered.

"At Vienna he purposed to remain two days, but the Emperor Joseph, hearing of his arrival, desired to see him; but as he had found his prisons upon a bad plan, and badly conducted by persons in high trust, Howard evaded an interview at first; but Joseph sending him a message that he should choose his own hour for an interview, the Englishman consented to the Emperor's request. The moment that Howard was announced, he quitted his secretaries and retired with him to a little room, in which there was neither picture nor looking-glass. Here Joseph received a man who never bent his knee to, nor kissed the hand of, any monarch; here he heard truths that astonished him, and often did he seize hold of Howard's hand with inexpressible satisfaction and approbation. "*You have prisoners,*" said Howard, "*who have been confined in dungeons without seeing day light for twenty months, who have not yet had a trial, and should they be found innocent, your majesty has it not in your power to make compensation for the violated rights of humanity.*" To the honour of this great prince be it remembered, that alterations were made in the prisons before Howard's departure."

The first public appeal of the institution, for pecuniary assistance, was, with equal delicacy and eloquence, made on the 16th of August, 1787, in the following terms:

"*To the Friends of Humanity.*

"The Society for alleviating the miseries of Public Prisons, beg leave to solicit the attention of the public to the objects of their institution.

"From the weakness and imperfection of all governments, there must necessarily exist in every community certain portions of distress, which lie beyond the reach of law to prevent or relieve. To supply this deficiency in Philadelphia this society was instituted, and if a judgment be formed of its future usefulness from the success that hath attended its first efforts, there is reason to believe it will prove a blessing to our city, not only as the means of relieving distress, but likewise of preventing vice. The funds of the society at present are confined to an annual subscription from each of its members, and a ground rent of fourteen pounds, the donation of John Dickinson, Esq. These sums are by no means equal to the numerous objects and extensive wishes of the society. They have therefore taken this method of soliciting further benefactions from their fellow citizens. To a people professing Christianity, it will be sufficient only to mention that acts of charity to the miserable tenants of prisons are upon record among the first of Christian duties. From the ladies, therefore, whom heaven has blessed with affluence, and the still greater gift of sympathy—from gentlemen, who acknowledge the obligations to humanity—from the relation of our species to each other in a common and universal Father—and from the followers of the compassionate Saviour of mankind, of every rank and description, the Society thus humbly solicits an addition to their funds.

"Signed by order.

"WILLIAM WHITE, *President.*"

The law of 1786, although in many respects less sanguinary than the former enactments, contained some provisions, the execution of which led to most injurious consequences. It directed that a certain description of convicts should be employed in cleaning the streets of the city and repairing the roads in its neighbourhood; and authorised the keeper of the jail *to shave the heads* of the prisoners, and otherwise to distin-

guish them by *an infamous dress.* In this very objectionable manner they were brought before the public. The sport of the idle and the vicious, they often became incensed, and naturally took violent revenge upon the aggressors. To prevent them from retorting injuries still allowed to be inflicted, they were encumbered with iron collars and chains, to which bomb-shells were attached, to be dragged along while they performed their degrading service, under the eye of keepers armed with swords, blunderbusses, and other weapons of destruction. These measures begot in the minds of the criminals and those who witnessed them, disrespect for laws executed with so much cruelty, and did not fail to excite the early notice of the society. A committee was therefore appointed "*to inquire into the effects of the lately enacted penal law on the criminals, now at work in our streets, and also its influence on society,*" who speedily reported an essay of a memorial, which being approved, twenty-four members were deputed to procure to it the signatures of the citizens.

"To the Representatives of the Freemen of the Commonwealth of Pennsylvania, in General Assembly met.

"The Representation and Petition of the subscribers, citizens of Pennsylvania.—

"Your petitioners have viewed with pleasure the act of a former Assembly, for the reforming of the penal laws of the state, by rendering them "*less sanguinary and more proportionate to*

crimes," and though your petitioners conceive that the good ends thereby intended, have not hitherto been fully answered, yet they presume to suggest that the mode of punishment adopted in the "*act for amending the penal laws*," will be more likely to answer the desired purpose, by means of some amendments; a few of which your petitioners beg leave to lay before the house.

"The punishment of criminals by "hard labour *publicly* and disgracefully imposed," as indicated in the preamble to the law, your petitioners wish the house would be pleased to revise, being fully convinced that punishment by more *private* or even *solitary* labour, would more successfully tend to reclaim the unhappy objects, as it might be conducted more steadily and uniformly, and the kind and portion of labour better adapted to the different abilities of the criminals; the evils of familiarizing young minds to vicious characters would be removed, and the opportunities of begging money would be prevented; for although the criminals are forbid to have money in their possession, yet no penalty is inflicted on persons furnishing them therewith.

"Your petitioners also would wish to recommend to the attention of the house the very great importance of a separation of the sexes in the public prisons—and that some more effectual provision be made for the prohibition of spirituous liquor amongst the criminals, the use of which tends to lessen the true sense of their situation, and prevents those useful reflections which might be produced by solitary labour and strict temperance.

"Your petitioners therefore respectfully request the house will be pleased to take the penal law under their consideration, and make such provision thereon as may more effectually answer the good and humane purposes thereby originally intended."

Such was the modest, but forcible application which the society was instrumental in bringing before the representatives of the people of this Commonwealth, and to this measure Pennsylva-

nia owes all the subsequent improvements in her prison discipline and penal laws, which have attracted the approving notice of statesmen and philanthropists, throughout the civilized world.

The society had by this time acquired so respectable a standing as to insure to it a powerful influence, which was strenuously exerted on every occasion, to press its generous and judicious plans to completion.

To enlarge its knowledge of efforts in some respects similar to its own, in Europe, a correspondence was commenced with the indefatigable Howard, to whom the following communication was addressed:

"*Philadelphia, January* 14, 1788.

"To JOHN HOWARD.

"The Society for alleviating the miseries of Public Prisons, in the city of Philadelphia, beg leave to forward to you a copy of their constitution, and to request, at the same time, such communications from you upon the subject of their institution, as may favour their designs.

"The Society heartily concur with the friends of humanity in Europe, in expressing their obligations to you for having rendered the miserable tenants of prisons the objects of more general attention and compassion, and for having pointed out some of the means of not only al-

leviating their miseries, but of preventing those crimes and misfortunes which are the causes of them.

"With sincere wishes that your useful life may be prolonged, and that you may enjoy the pleasure of seeing the success of your labours in the cause of humanity, in every part of the globe, we are, with great respect and esteem, your sincere friends and well wishers.

"Signed by order of the Society.

"WILLIAM WHITE, *President.*"*

The meeting at which this letter was adopted, in order to disseminate information calculated to enlighten the community respecting its favourite purpose, instituted a committee to print, and gratuitously distribute, a pamphlet which had recently appeared, entitled "*Thoughts on the construction and polity of Prisons,*" copies of which were ordered to be presented to each member of the council and assembly of the state. On

* Of the usefulness of this society, the benevolent Howard thus expresses himself in one of his published works:—"Should the plan take place during my life, of establishing *a permanent charity* under some such title as that at *Philadelphia,* viz: "*A Society for alleviating the miseries of Public Prisons,*" and annuities be engrafted thereupon, for the above mentioned purpose, I would most readily stand at the bottom of a page for five hundred pounds; or if such society shall be instituted within three years after my death, this sum shall be paid out of my estate."

the same occasion a resolution of the Supreme Executive Council was submitted, asking the society to confer with a deputation, which had been chosen by the former body, on the subject of the condition of the jail of the city and county of Philadelphia; which request was promptly met, and a large committee accordingly appointed. At the joint meetings of the delegates, several interesting and important discussions took place, and a general view of the subjects under notice being prepared, the succeeding paper was furnished to the council.

"In consequence of a minute of the Supreme Executive Council, 20th November, 1788, laid before a special meeting of the Society for alleviating the miseries of Public Prisons, a committee was appointed to take the said minute into consideration, and to give such information to Council as the nature of the minute requires, which committee, having several times met, agree to make the following representation:

"That in the article of clothing few complaints arise respecting the condemned criminals, but amongst the greater number confined in prison previous to trial, there frequently happen cases of great want, many of the prisoners being destitute of shirts and stockings and warm covering, partly owing to the length of time before trial, and partly to the easy access, by various means, to spirituous liquors, for which their clothes are disposed of. Clothing distributed by the society to the apparently most destitute, has, in many instances, been quickly exchanged for rum. No provision being made by law for relieving these distressed objects, or for preventing the abuses of charitable donations, it is at present an evil without a remedy, though it is conceived that a kind of prison dress might be adopted by law, and as easily preserved from sale as those of the convicts.

"In the article of diet an allowance is made by law to the

The Crisis of Imprisonment

PROTEST, POLITICS, AND THE MAKING OF THE AMERICAN PENAL STATE, 1776–1941

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criticism on both sides of the North Atlantic since at least 1764 (when Cesare Beccaría published his celebrated critique of capital punishment),[11] the experience of war itself proved an important catalyst in the articulation, first, of a coherent American critique of what the revolutionaries argued were "monarchical" penal laws and practices, and, eventually, of a positive republican theory of crime, penal law, and penal practice. Drawing variously on the works of Beccaría and Montesquieu, Quaker theology, classical republicanism, English country ideology, and the former colonies' own penal practices, the revolutionaries launched a wave of impassioned critiques of the death penalty and other sanguinary punishments in which the British government had commonly engaged, both in times of peace and in times of war. A diverse group of American patriots frequently and passionately condemned the British power's liberal use of the gallows, and what they decried as the monarchy's "cruel," "savage," and lawless treatment of American civilians and soldiers. Connections were drawn between British "savagery" on the battlefield and the frequency with which the courts in England reputedly condemned Englishmen, found guilty of crimes grand and petty, to swing from the "hanging tree."[12]

Although there was some variation of emphasis among these early revolutionary critiques, as early as 1777, two basic and closely related themes united them: Critics argued that capital and related sanguinary punishments were inherently despotic and immoral in nature, and that such punishments were also irrational and even detrimental to the society they were allegedly intended to protect. Bloody and "excessive" spectacles of punishment, reasoned Thomas Jefferson, Benjamin Rush, John Adams, and Benjamin Franklin, among others, were the native weapons of kings and despots. Capital punishment, in particular, was emblematic of the monarchical mode of government; while some revolutionary critics countenanced the punishment of death by hanging for the most serious of crimes, others sought the outright abolition of all forms of the death penalty. One such absolute opponent of capital punishment, Benjamin Rush, argued that the punishment of death for murder not only "propagated" murder itself but,

University Press, 1986), 451–5,530–8; and Lawrence M. Friedman, *Crime and Punishment in American History* (New York: Basic Books, 1993), 41–2.

[11] Cesare Beccaría (trans. Henry Paolucci), *On Crimes and Punishments* (Indianapolis: Bobbs Merrill, 1963).

[12] Masur, *Rites of Execution*, 54–60. In 1782, for example, Thomas Paine wrote an outraged, open letter to Sir Guy Carleton in which he protested the summary hanging, from a tree, of a patriot taken captive by the British at New York: The patriot (a Captain Huddy) "was taken out of the provost down to the water-side, put into a boat, and brought again upon the Jersey shore, and there, contrary to the practice of all nations but savages, was hung up on a tree, and left hanging till found by our people who took him down and buried him." "What sort of men must Englishmen be...?" Paine implored: "The history of the most savage Indians does not produce instances exactly of this kind. They, at least, have a formality in their punishments. With them it is the horridness of revenge, but with your army it is a still greater crime, the horridness of diversion." "A Supernumerary Crisis, To Sir Guy Carleton," *Crisis Papers*, Philadelphia, May 31, 1782.

CHAPTED DCCCLXXXI.

AN ACT FOR THE GRADUAL ABOLITION OF SLAVERY.

(Section I, P. L.) When we contemplate our abhorrence of that condition to which the arms and tyranny of Great Britain were exerted to reduce us, when we look back on the variety of dangers to which we have been exposed, and how miraculously our wants in many instances have been supplied and our deliverances wrought, when even hope and human fortitude have become unequal to the conflict, we are unavoidably led to a serious and grateful sense of the manifold blessings which we have undeservedly received from the hand of that Being from whom every good and perfect gift cometh. Impressed with these ideas, we conceive that it is our duty, and we rejoice that it is in our power, to extend a portion of that freedom to others, which hath been extended to us, and a release from that state of thraldom, to which we ourselves were tyrannically doomed, and from which we have now every prospect of being delivered. It is not for us to enquire why, in the creation of mankind, the inhabitants of the several parts of the earth were distinguished by a difference in feature or complexion. It is sufficient to know that all are the work of an Almighty Hand. We find in the distribution of the human species that the most fertile as well as the most barren parts of the earth are inhabited by men of complexions different from ours and from each other, from whence we may reasonably, as well as religiously infer, that He, who placed them in their various situations, hath extended equally His care and protection to all, and that it becometh not us to counteract His mercies:

We esteem it a peculiar blessing granted to us, that we are enabled this day to add one more step to universal civilization by removing as much as possible the sorrows of those who have lived in undeserved bondage, and from which by the as-

sumed authority of the Kings of Britain, no effectual legal relief could be obtained. Weaned by a long course of experience from those narrow prejudices and partialities we had imbibed, we find our hearts enlarged with kindness and benevolence towards men of all conditions and nations, and we conceive ourselves at this particular period extraordinarily called upon, by the blessings which we have received, to manifest the sincerity of our profession and to give substantial proof of our gratitude:

(Section II, P. L.) And whereas the condition of those persons who have heretofore been denominated negro and mulatto slaves, has been attended with circumstances which not only deprived them of the common blessings that they were by nature entitled to, but has cast them into the deepest afflictions by an unnatural separation and sale of husband and wife from each other, and from their children, an injury the greatness of which can only be conceived by supposing that we were in the same unhappy case. In justice, therefore, to persons so unhappily circumstanced, and who, having no prospect before them whereon they may rest their sorrows and their hopes, have no reasonable inducement to render that service to society which they otherwise might, and also in grateful commemoration of our own happy deliverance from that state of unconditional submission to which we were doomed by the tyranny of Britain:

[Section I.] (Section III, P. L.) Be it enacted and it is hereby enacted by the Representatives of the Freemen of the Commonwealth of Pennsylvania in General Assembly met, and by the authority of the same, That all persons, as well negroes and mulattoes as others who shall be born within this state, from and after the passing of this act, shall not be deemed and considered as servants for life or slaves; and that all servitude for life or slavery of children in consequence of the slavery of their mothers, in the case of all children born within this state from and after the passing of this act as aforesaid, shall be and hereby is utterly taken away, extinguished and forever abolished.

[Section II.] (Section IV, P. L.) Provided always, and be it

age of thirty-one years, within this state who shall be such on the said first day of November next, from all other persons, which particulars shall by said clerk of the sessions and clerk of said city court be entered in books to be provided for that purpose by the said clerks; and that no negro or mulatto now within this state shall, from and after the said first day of November, be deemed a slave or servant for life or till the age of thirty-one years unless his or her name shall be entered as aforesaid on such record except such negro and mulatto slaves and servants as are hereinafter excepted; the said clerk to be entitled to a fee of two dollars for each slave or servant so entered as aforesaid from the treasurer of the county, to be allowed to him in his accounts.

(Section VI, P. L.) Provided always, That any person in whom the ownership or right to the service of any negro or mulatto shall be vested at the passing of this act, other than such as are hereinbefore excepted, his or her heirs, executors, administrators and assigns, and all and every of them severally shall be liable to the overseers of the poor of the city, township or district to which any such negro or mulatto shall become chargeable, for such necessary expense, with costs of suit thereon, as such overseers may be put to through the neglect of the owner, master or mistress of such negro or mulatto, notwithstanding the name and other descriptions of such negro or mulatto shall not be entered and recorded as aforesaid; unless his or her master or owner shall, before such slave or servant attain his or her twenty-eighth year, execute and record in the proper county, a deed or instrument securing to such slave or servant his or her freedom.

[Section IV.] (Section VII, P. L.) And be it further enacted by the authority aforesaid, That the offenses and crimes of negroes and mulattoes as well slaves and servants and [sic] [as] freemen, shall be inquired of, adjudged, corrected and punished in like manner as the offenses and crimes of the other inhabitants of this state are and shall be enquired of, adjudged, corrected and punished, and not otherwise, except that a slave shall not be admitted to bear witness against a freeman.

[Section V.] (Section VIII, P. L.) And be it further enacted

further enacted by the authority aforesaid, That every negro and mulatto child born within this state after the passing of this act as aforesaid who would in case this act had not been made, have been born a servant for years or life or a slave, shall be deemed to be and shall be, by virtue of this act the servant of such person or his or her assigns who would in such case have been entitled to the service of such child until such child shall attain unto the age of twenty-eight years, in the manner and on the conditions whereon servants bound by indenture for four years are or may be retained and holden, and shall be liable to like correction and punishment, and entitled to like relief in case he or she be evilly treated by his or her master or mistress, and to like freedom dues and other privileges as servants bound by indenture for four years are or may be entitled unless the person to whom the service of any such child shall belong shall abandon his or her claim to the same, in which case the overseers of the poor of the city, township or district, respectively where such child shall be so abandoned, shall [by indenture] bind out every child so abandoned as an apprentice for a time not exceeding the age hereinbefore limited for the service of such children.

[Section III.] (Section V, P. L.) And be it further enacted by the authority aforesaid, That every person who is or shall be the owner of any negro or mulatto slave or servant for life or till the age of thirty-one years, now within this state, or his lawful attorney shall, on or before the said first day of November next, deliver, or cause to be delivered, in writing to the clerk of the peace of the county or to the clerk of the court of record of the city of Philadelphia, in which he or she shall respectively inhabit, the name and surname and occupation or profession of such owner and the name of the county and township, district or ward wherein he or she resideth, and also the name and names of any such slave and slaves and servant and servants for life or till the age of thirty-one years, together with their ages and sexes severally and respectively set forth and annexed, by such person owned or statedly employed and then being within this state, in order to ascertain and distinguish the slaves and servants for life and years till the

by the authority aforesaid, That in all cases wherein sentence of death shall be pronounced against a slave, the jury before whom he or she shall be tried shall appraise and declare the value of such slave, and in case such sentence be executed, the court shall make an order on the state treasurer, payable to the owner for the same and for the costs of prosecution, but in case of a remission or mitigation for the costs only.

[Section VI.] (Section IX, P. L.) And be it further enacted by the authority aforesaid, That the reward for taking up runaway and absconding negro and mulatto slaves and servants and the penalties for enticing away, dealing with or harboring, concealing or employing negro and mulatto slaves and servants shall be the same, and shall be recovered in like manner as in case of servants bound for four years.

[Section VII.] (Section X, P. L.) And be it further enacted by the authority aforesaid, That no man or woman of any nation or color, except the negroes or mulattoes who shall be registered as aforesaid shall at any time hereafter be deemed, adjudged or holden, within the territories of this commonwealth, as slaves or servants for life, but as free men and free women, and except the domestic slaves attending upon delegates in Congress from the other American states, foreign ministers and consuls, and persons passing through or sojourning in this state, and not becoming resident therein; and seamen employed in ships, not belonging to any inhabitant of this state nor employed in any ship owned by any such inhabitant: [Provided such domestic slaves be not aliened or sold to any inhabitant] nor (except in the case of members of Congress, foreign ministers and consuls) retained in this state longer than six months.

[Section VIII.] (Section XI, P. L.) Provided always, and be it further enacted by the authority aforesaid, That this act, nor anything in it contained, shall not give any relief or shelter to any absconding or runaway negro or mulatto slave or servant, who has absented himself or shall absent himself from his or her owner, master or mistress, residing in any other state or country, but such owner, master or mistress, shall have like right and aid to demand, claim and take away his slave

one, entitled "An act for laying a duty on negro and mulatto slaves imported into this province,"[1] and also another act of assembly of the said province, passed in the year one thousand seven hundred and seventy-three, entitled "An act for making perpetual an act for laying a duty on negro and mulatto slaves imported into this province and for laying an additional duty on said slaves,"[2] shall be and are hereby repealed, annulled and made void.

Passed March 1, 1780. See the Acts of Assembly passed October 1, 1781, Chapter 953; March 29, 1788, Chapter 1345; December 8, 1789, Chapter 1476. Recorded L. B. No. 1, p. 339, &c.

CHAPTER DCCCLXXXII.

AN ACT TO COMPEL THE SETTLEMENT OF THE PUBLIC ACCOUNTS.

(Section I, P. L.) Whereas in the course of the present contest between the inhabitants of the United States of America and Great Britain very large and great expenditures and advances of public money have been made by the good people of Pennsylvania in the common cause:

(Section II, P. L.) And whereas many of the persons to whom such advances of money have been made, regardless of the public welfare, as well as of their own credit and character, have refused or neglected and do still refuse or neglect to exhibit their accounts and vouchers and to settle their accounts notwithstanding the opportunity which has been given and the repeated calls which have been made upon such defaulters by the auditors appointed and authorized in [and] by an act of assembly of this commonwealth, entitled "An act for settling the accounts of the late committee and council of safety,"[3] passed on the second day of September, which was in the year of our Lord one thousand seven hundred and seventy-eight;

[1] Passed March 14, 1761, Chapter 467.
[2] Passed February 26, 1773, Chapter 681.
[3] Passed September 2, 1778, Chapter 806.

or servant as he might have had in case this act had not been made. And that all negro and mulatto slaves now owned, and heretofore resident in this state, who have absented themselves or been clandestinely carried away, or who may be employed abroad as seamen, and have not returned or been brought back to their owners, masters or mistresses, before the passing of this act may, within five years be registered as effectually as is ordered by this act concerning those who are now within this state, on producing such slave before any two justices of the peace, and satisfying the said justices by due proof of the former residence, absconding, taking away or absence of such slave as aforesaid; who, thereupon, shall direct and order the said slave to be entered on the record as aforesaid.

(Section XII, P. L.) And whereas attempts may be made to evade this act by introducing into this state negroes and mulattoes bound by covenant to serve for long and unreasonable terms of years, if the same be not prevented:

[Section IX.] (Section XIII, P. L.) Be it therefore enacted by the authority aforesaid, That no covenant of personal servitude or apprenticeship whatsoever shall be valid or binding on a negro or mulatto for a longer term than seven years, unless such servant or apprentice were at the commencement of such servitude or apprenticeship under the age of twenty-one years; in which case such negro or mulatto may be holden as a servant or apprentice respectively according to the covenant, as the case shall be until he or she shall attain the age of twenty-eight years, but no longer.

[Section X.] (Section XIV, P. L.) And be it further enacted by the authority aforesaid, That an act of assembly of the province of Pennsylvania, passed in the year one thousand seven hundred and five, entitled "An act for the trial of negroes,"[1] and another act of assembly of the said province, passed in the year one thousand seven hundred and twenty-five, entitled "An act for the better regulating of negroes in this province,"[2] and another act of assembly of the said province passed in the year one thousand seven hundred and sixty-

[1] Passed January 12, 1705-06, Chapter 143.
[2] Passed March 5, 1725-26, Chapter 292.

of Pennsylvania exclusive of pew rents and other free contributions belonging to the aforesaid congregation, which said money shall be received by the said trustees and disposed of by them for the purposes and in the manner hereinbefore described and directed.

Passed September 11, 1786. Recorded L. B. No. 3, p. 140, etc.

CHAPTER MCCXLI.

AN ACT AMENDING THE PENAL LAWS OF THIS STATE.

(Section I. P. L.) Whereas by the thirty-eighth section of the second chapter of the constitution of this commonwealth it is declared, "That the penal laws as heretofore used should be reformed by the legislature of this state as soon as may be and punishments made in some cases less sanguinary and in general more proportionate to the crimes." And by the thirty-ninth section that, "To deter more effectually from the commission of crimes by continued visible punishment of long duration, and to make sanguinary punishment less necessary, houses ought to be provided for punishing by hard labor those who shall be convicted of crimes not capital, wherein the criminal shall be employed for the benefit of the public or for reparation of injuries done to private persons."

And whereas it is the wish of every good government to reclaim rather than to destroy, and it being apprehended that the cause of human corruptions proceed more from the impunity of crimes than from the moderation of punishments, and it having been found by experience that the punishments directed by the laws now in force as well for capital as other inferior offences do not answer the principal ends of society in inflicting them, to wit, to correct and reform the offenders, and to produce such strong impression upon the minds of others as to deter them from committing the like offences, which is conceived may be better effected by continued hard labor, publicly and disgracefully imposed on persons convicted of them, not

only the manner pointed out by the convention, but in streets of cities and towns, and upon the highways of the open country and other public works.

[Section I.] (Section II. P. L.) Be it therefore enacted and it is hereby enacted by the Representatives of the Freemen of the Commonwealth of Pennsylvania in General Assembly met and by the authority of the same, That the pains and penalties hereinafter mentioned shall be inflicted upon the several offenders who shall from and after the first day of November next commit and be legally convicted of any of the offences hereinafter enumerated and specified in lieu of the pains and penalties which by law have been heretofore inflicted, that is to say, every person convicted of robbery, burglary, sodomy or buggary, or as accessory thereof before the fact, shall forfeit to the commonwealth all and singular the lands and tenements, goods and chattels whereof he or she was seized or possessed at the time the crime was committed, and at any time afterwards until convicted and be sentenced to undergo a servitude for any term or time at the discretion of the court who passes the sentence not exceeding ten years in the public gaol or house of correction of the county or city in which the offence shall have been committed and kept at such labor and fed and clothed in such manner as is hereinafter directed.

[Section II.] (Section III. P. L.) Provided always and be it further enacted by the authority aforesaid, That no person accused of any of the aforesaid crimes shall be admitted to bail but by the judges of the supreme court or some or one of them, nor shall he or she be tried but in the supreme court or in a court of oyer and terminer and general goal delivery held in and for the county wherein the offence shall have been committed, and that peremptory challenges shall be allowed in all such cases, wherein they have been heretofore allowed by law: But no attainder hereafter shall work corruption of blood in any case, nor extend to the disinherison or prejudice of any person or persons other than the offender.

[Section III.] (Section IV. P. L.) And be it further enacted by the authority aforesaid, That every person convicted of horse stealing or as accessory thereof before the fact, shall restore

the horse, mare or gelding stolen to the owner or owners thereof, or shall pay to him, her or them, the full value thereof, and also pay the like value to the commonwealth, and moreover undergo a servitude for any term not exceeding seven years in the discretion of the court before which the conviction shall be and shall be confined, kept to hard labor, fed and clothed in the manner as is hereinafter directed; every person convicted of simple larceny to the value of twenty shillings and upwards or as accessory thereof before the fact, shall restore the goods or chattels so stolen to the right owner or owners thereof or shall pay to him, her or them the full value thereof or so much thereof as shall not be restored, and moreover shall forfeit and pay to the commonwealth the like value of the goods and chattels stolen, and also undergo a servitude for any term of years not exceeding three, at the discretion of the court before which the conviction shall be, and shall be confined, kept to hard labor, fed and clothed in manner hereinafter directed.

(Section V. P. L.) And whereas by the ninth section of the first chapter of the constitution it is declared, "That in all prosecutions for criminal offences a man hath a right to be heard by himself and his council, to demand the cause and nature of his accusation, to be confronted with the witnesses, to call for evidence in his favor, and a speedy public trial by an impartial jury of the country without the unanimous consent of which jury he cannot be found guilty." Since which declaration it is not proper that persons accused of small or petty larcencies should be tried and convicted before two magistrates or justices of the peace without the intervention of a jury.

[Section IV.] (Section VI. P. L.) Be it therefore enacted by the authority aforesaid, That the act of assembly, entitled "An act for the trial and punishment of larceny under five shillings[1] be and the same is hereby repealed, and that if any person or persons shall hereafter feloniously steal, take and carry away any goods, or chattels under the value of twenty shillings, the same order and course of trial shall be had and observed as for other simple larcenies, and he, she or they, being thereof le-

[1] Passed Feb. 24, 1720-21. Chapter 243.

gally convicted, shall be deemed guilty of petty larceny, and shall restore the goods and chattels so stolen or pay the full value thereof to the owner or owners thereof, and also forfeit and pay the like value to the commonwealth and be further sentenced to undergo a servitude for a term not exceeding one year in the discretion of the court before which such conviction shall be, and be confined, kept to hard labor, clothed and fed in manner hereinafter directed. And every person convicted of bigamy or of being an accessory after the fact in any felony, or of receiving stolen goods knowing them to have been stolen, or of any other offense not capital for which by the laws now in force burning in the hand, cutting off the ears, nailing the ear or ears to the pillory, placing in and upon the pillory, whipping or imprisonment for life, is or may be inflicted, shall instead of such parts of the punishment, be fined, and sentenced to undergo in like manner, and be confined, kept to hard labor, fed and clothed, as is hereinafter directed for any term not exceeding two years, which the court before whom such conviction shall be, may and shall in their discretion think adapted to the nature and heinousness of the offense.

[Section V.] (Section VII. P. L.) And be it further enacted by the authority aforesaid, That robbery or larceny of obligations or bonds, bills obligatory, bills of exchange, promissory notes for the payment of money, lottery tickets, paper bills of credit, certificates on loan on the credit of this commonwealth or of all or any of the United States of America shall be punished in the same manner as robbery or larceny of any goods or chattels.

(Section VIII. P. L.) And whereas by the eight section of the act of assembly, entitled "An act for the advancement of justice and more certain administration thereof,"[2] it is enacted, that if any woman shall endeavor privately to conceal the death of her child, which by being born alive, should by the law be deemed a bastard, so that it may not come to light, whether it were born alive or not, and be convicted thereof, she shall suffer death as in case of murder, "except such mother can make proof by one witness at the least, that the child, whose death was by

[2] Passed May 31, 1718. Chap. 236.

her so intended to be so concealed, was born dead;" whereby the bare concealment of the death is made almost conclusive evidence of the child's being murdered by the mother or by her procurement.

[Section VI.] (Section IX. P. L.) Be it therefore declared and enacted by the authority aforesaid, That from and after the publication of this act the constrained presumption that the child whose death is so concealed was therefore murdered by the mother, shall not be sufficient evidence to convict the party indicted without probable presumptive proof is given that the child was born alive.

[Section VII.] (Section X. P. L.) And be it further enacted by the authority aforesaid, That every other felony or misdemeanor or offence whatsoever not specially provided for by this act may and shall be punished as heretofore.

[Section VIII.] (Section XI. P. L.) And be it further enacted by the authority aforesaid, That the malefactors sentenced to hard labor as aforesaid in punishment of their crimes may and shall be employed not only in the gaols and houses of correction of the respective counties wherein they shall be confined, but also in repairing and cleaning the streets of the cities or towns, in making, repairing and amending the public roads or highways, in fortifications, mines, and such other hard and laborious works within the county where they shall have been convicted, and for the benefit of such county as by the courts before whom they were convicted in their discretion shall be directed: And during the term of their condemnation shall at the public expense of such county be fed on such course wholesome food as may be sufficient for them and shall have such lodgings as defend them from the inclemencies of the weather (and the males have their heads and beards close shaven at least once in every week) and be clothed in habits of course materials, uniform in color and make and distinguished from all others used by the good citizens of this commonwealth and also have some visible mark on the outer garment designating the nature of the crime for which sentenced, that so they may be marked out to public note as well while at their ordinary occupations as when attempting to make their escapes.

(Section XII. P. L.) And to the end that the opulence of the offender or of his friends or the indiscreet bounties of individuals may not disarm the public justice or alleviate those sufferings which making part of the punishments intended by the law should be incurred equally by all, and also to render escapes more difficult, their keeper shall take particular care that no such malefactor use or receive any clothing other than what shall be provided by the public as is before directed, nor receive, nor have in their own keeping any weapon, [arms], money or other property, nor have attendants of their own, and all artitcles so prohibited to them and found in their custody or use shall belong to him or her who shall give information thereof to the said keeper and demand delivery to be made by him, which the said keeper is hereby directed to deliver accordingly under the penalty of ten pounds. And the sheriff of the proper county to whom the said malefactors shall be committed in execution of their sentence shall from time to time with the approbation of the justices of the court of quarter sessions of the proper county in open court appoint so many keepers of the said malefactors as shall be necessary whose wages shall be ascertained and allowed by the said court and paid by the treasurer of the county out of the moneys in his hands raised for the use of the said county by a warrant drawn by the said sheriff and at least one of the commissioners of the proper county, and that the duty of the said keepers shall be to superintend and direct their labors, manage and attend to their clothing, diet and lodging, and take care that they be safely kept, and the better to effect this purpose they shall have authority to confine in close durance apart from all society all those who shall refuse to labor, be idle or guilty of any trespass, and during such confinement to withhold from them all sustenance except bread and water, and also to put iron yokes around their necks, chains upon their leg or legs or otherwise restrain in irons such as shall be incorrigible or irreclaimable without such severity.

[Section IX.] (Section XIII. P. L.) And be it further enacted by the authority aforesaid, That the court of quarter sessions of the county wherein the malefactors labor shall have

power either ex-officio or upon information against any such keeper for partiality or cruelty to call before them such keeper, together with the material witnesses and inquire into his conduct, and if it shall appear that he has been guilty of gross partiality or cruelty, it shall and may be lawful for the said court to suspend or remove him, and the judges of the supreme court when sitting in banc or any of the judges when upon the circuit either on their own motion or on complaint made by any other may take original cognizance of the misbehaviours of any keeper and remove him from office if they see cause and in case of suspension or removal of all or any of the said keepers either by the justices of the quarter sessions or the judges of the supreme court, the sheriff of the proper county with the approbation of the justices of the quarter sessions of the same county shall and he is hereby authorized and directed to appoint other keeper or keepers in the room of such as shall have been so suspended or removed.

[Section X.] (Section XIV. P. L.) And be it further enacted by the authority aforesaid, That every of the said keepers shall be exempted from being in the militia and from all fines and duties on that account. And if any malefactor shall escape from his or her keeper or absent himself or herself from his or her labor without good cause, to be judged of by the court whereby he or she was condemned, the term of his or her servitude shall by the order of such court made on record be lengthened two days for every one he or she shall be absent.

(Section XV. P. L.) And whereas many young persons from habits of idleness and intemperance and from want of a pious education are drawn unwarily into the commission of crimes and are apprehended and brought to punishment before they become so hardened as to be void of shame or beyond the hope of being reclaimed.

[Section XI.] Be it further enacted by the authority aforesaid, That the keepers aforesaid shall endeavor as much as in them lies to separate as well those who are confined to labor within doors, as those that shall be employed without in such manner as that the old and hardened offenders be prevented from mixing with and thereby contaminating and eradicating

the remaining seeds of virtue and goodness in the young and unwary, and the men from an improper intercourse with the women.

[Section XII.] (Section XVI. P. L.) And be it further enacted by the authority aforesaid, That the sheriffs or keepers of the gaols and the keepers of the work-houses or houses of correction in the several counties of this state shall once in every three months or oftener if required, furnish the commissioners of their respective counties with a complete calender or list of all persons committed to their respective custody under sentence of such servitude, together with the names of their crimes, the term of their servitude, in what court condemned, the ages and description of the persons of such as shall appear to be too old and infirm or otherwise incapable to undergo hard labor out of the gaols or work-houses, and the said commissioners shall at the charge of the proper county provide for the clothing and the food hereinbefore directed for them, and also such articles and materials of labor and manufacture as shall be most suitable for the employment of all those who are capable of labor or manufacture, and deliver the same to the said gaoler, sheriff or other work-house keeper, taking a receipt therefor, and that the sheriff, gaoler and work-house keeper shall render an account quarterly or oftener if required to the commissioners of the work done by the said malefactors and dispose of the same in such manner as the commissioners shall direct. And the said commissioners are hereby authorized from time to time to draw orders or give their warrants on the treasurer of the proper county for the advance of such sums as they shall thing reasonable and necessary for carrying this act into execution, and all expenses and charges incurred or to be incurred by virtue of this act shall be levied and raised as other county charges are, and be accounted for in like manner.

(Section XVII. P. L.) And in order to encourage those offenders in whom the love of virtue and the shame of vice is not wholly extinguished to set about a sincere and actual repentance and reformation of life and conduct so as at the expiration of their terms of servitude they may become useful members of society.

[Section XIII.] Be it further enacted by the authority aforesaid, That upon the application of any of the said malefactors or any other in their behalf it shall and may be lawful for the court in which they were convicted at and before the expiration of their servitude to make inquiry as well of the sheriff, gaoler or keeper of the work-house or house of correction as of the keeper and keepers and others concerning the conduct and behaviour of such applicant during his or her servitude, and, if it shall appear thereupon to them that such person hath labored faithfully without attempting an escape and evidenced by a patient submission to the justice of their punishment a sincere reformation, then and in such case the said court shall grant to every such person a certificate thereof which shall also be recorded without fee in the proceedings of such court, and shall thereupon operate as a discharge from all claims and demands of the party injured and also as a pardon of the guilt and infamy of the offence, and give him or her a new capacity and credit.

[Section XIV.] (Section XVIII.) And be it further enacted by the authority aforesaid, That the profits arising from the work, labor and services of malefactors in pursuance of this act shall be applied towards the payment of the fees of their prosecutions and the expenses which shall accrue in making the necessary provision for clothing, maintaining and keeping them, and if there should be any surplus, the same shall be paid into the treasury for the use of the proper county.

[Section XV.] (Section XIX. P. L.) And be it further enacted by the authority aforesaid, That this act shall be in force and take effect within this commonwealth from and after the first of November next.

[Section XVI.] (Section XX. P. L.) Provided nevertheless and be it further provided by the authority aforesaid, That if any person shall be convicted in any county within this state of any offence which had been committed before the publication of this act and for which he or she by the laws now in force would be liable to suffer the pains of death that if such convict openly pray the court before which such conviction shall be had, that sentence be passed upon him or her according to the provisions of this act for like offence, that then and in such

case the court shall pass like sentence against such convict and to similar effect and not otherwise as if the offence of which such person shall be so convicted had been committed after the first of November next.

[Section XVII.] (Section XXI. P. L.) Be it further enacted by the authority aforesaid, That this act shall be in force and have effect as to the therein offences mentioned and provided for, which shall have been committed within three years from and after the first day of November next, and to the end of the next succeeding session of the general assembly and no longer.

(Section XXII. P. L.) Provided nevertheless, That the force and operation thereof as to the person or persons who shall so offend within the same terms shall not be vacated nor affected thereby, but the same sentences and every of them shall be pronounced, remain valid and be executed in their full extent on all and every such person and persons notwithstanding the expiration of the term last aforesaid.

(Section XXIII. P. L.) And whereas it may so happen that there may be but one or few offenders convicted and sentenced to hard labor and other punishment in pursuance of this act within any county, whereby the burden upon the same county may be needlessly great and it would further the good designs of the legislature in making the foregoing alterations in the penal laws of this commonwealth, and lessen the charges of carrying the provisions of this act into execution, if in proper cases the said offender or offenders may be removed to some other county or counties there to be imprisoned and treated according to their several sentences:

Therefore:

[Section XVIII.] Be it enacted by the authority aforesaid, That the president or vice president in council upon application for that purpose made by the commissioners of any county within this commonwealth at their discretion may if they think proper authorize and direct by warrant under the less seal the removal of any convict or convicts by virtue of this act from any one or more of the counties of this commonwealth to any other of the counties of the same, there to be held, imprisoned, kept at labor, fed and treated in the same manner as if they had

severally remained in the county where they or either of them was or were convicted; and the commissioners of the county to which any such convict or convicts shall be so removed as aforesaid shall have authority to draw an order or orders from time to time or as often as it shall be necessary upon the treasurer of the county from whence any convict or convicts shall have been so removed for all expenses which shall or may accrue in removing, feeding and clothing such convict or convicts, which order or orders the treasurer of the proper county from which such convict or convicts was removed shall accept and pay.

Passed September 15, 1786. Recorded L. B. No. 3, p. 112, etc. See the Acts of Assembly passed March 27, 1789, Chapter 1409; April 5, 1790, Chapter 1516.

CHAPTER MCCXLII.

AN ACT FOR ALTERING AND AMENDING AN ACT ENTITLED "AN ACT TO REGULATE THE GENERAL ELECTIONS OF THIS COMMONWEALTH AND TO PREVENT FRAUDS THEREIN."[1]

(Section I. P. L.) Whereas it was enacted and provided in and by an act of general assembly of this commonwealth published on the thirteenth day of September last, entitled "An act to regulate the general elections of this commonwealth and to prevent frauds therein," with design to prevent the committing of irregularities and abuses during the night time, that the general elections of this commonwealth shall begin on the second Tuesday in the month of October annually between the hours of ten o'clock in the forenoon and one o'clock in the afternoon of the same day and the poll whereof shall be carred on without interruption or adjournment until the hour of seven o'clock in the afternoon of the same day, other than the elections to be holden for the city and county of Philadelphia, the poll whereof shall be carried on without interruption or adjourn-

[1] Passed Sept. 13, 1785. Chap. 1175.

THEY WERE IN PRISON

A History of the Pennsylvania Prison Society
1787-1937

FORMERLY
The Philadelphia Society for
Alleviating the Miseries of Public Prisons

by
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Introduction by
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and a concluding chapter by
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SEVENTY-FIVE ILLUSTRATIONS
Photographic work by Ellis O. Hinsey

THE JOHN C. WINSTON COMPANY
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CHAPTER I

INTRODUCTORY BACKGROUND OF THE PHILADELPHIA SOCIETY

The City of Philadelphia in 1787

"On Tuesday the 8th day of May, 1787, a number of gentlemen assembled and agreed to associate themselves in a society to be entituled (*sic*) 'The Philadelphia society for alleviating the miseries of public prisons'." [1]

Thus was founded this humane organization in the midst of one of the most exciting periods this country has ever experienced, that between the termination of the Revolution and the year 1800, when the infant nation was attempting to justify its existence.

During this remarkable interval the civic leaders of William Penn's Quaker city were faced not only with the problem of resuming the customary pursuits which the recent conflict had disrupted for almost a decade, but also with those developments which were the natural consequence of assuming independence. Philadelphia seethed with activities. Being the seat of the existing government as well as the capital of the Commonwealth of Pennsylvania, it was clothed with a certain metropolitan authority. By virtue of its political status, it was natural that delegates should be sent here to draw up rules and regulations to govern the new nation. So it was in the same month and year that saw the founding of the "Philadelphia Society," [2] delegates convened, and in the course of the next four months, produced the Federal Constitution.

Made famous by these events so important to the city of Philadelphia, the year 1787 has other bids to fame. Many civic organizations were either founded or revived. Aside from the organization which is the subject of this study, there

[1] From the Minutes of the Society, first meeting. The first public notice of this meeting may be found in the *Pennsylvania Mercury and Universal Advertiser*, Friday, May 25, 1787, p. 3.

[2] Throughout the early part of this work, the Society will be designated by this name; subsequently it will be referred to by its later title, *The Pennsylvania Prison Society*. The name was changed in 1887.

were "The Pennsylvania Society for Encouragement of Manufactures and the Useful Arts" and "The Society for Political Inquiries, for Mutual Improvement in Knowledge, of Government, and for the advancement of Political Science." This latter organization was composed of fifty resident members, meeting every two weeks for the discussion of governmental and economic questions. At one of these meetings, perhaps the first, on March 9, Dr. Benjamin Rush presented a paper of particular interest to this study, entitled, *An Inquiry into the Effects of public punishment upon criminals and upon society.*[3] Another society, "The Pennsylvania Society for Promoting the Abolition of Slavery and the Relief of Free Negroes Unlawfully held in Bondage" which had been formed in 1774, was now revived and reorganized. Benjamin Franklin was president of both these latter groups.

The city of Philadelphia, at this time, was a thriving metropolis of nearly forty thousand persons, well supplied with stores, churches, markets, newspapers and periodicals, and all the various necessities which make for a happy progressive community. The Pennsylvania Hospital was already in existence, having been established in 1755; there were the two rival colleges, the "College of Philadelphia" and the "University" which were amalgamated in 1792. The "American Philosophical Society," which had been formed out of Franklin's "Junto," had been housed in a building in State House Square in 1785, where it is still located today.

The confines of the city proper extended from Cedar (South) Street, on the south, to Vine Street, on the north, and east and west from the Delaware to the Schuylkill Rivers, although this territory was not all built up. William Penn had been rather meticulous in laying out the city, and especially generous in encouraging settlers to come from abroad to assist him in building a community which would be a credit to his vision. The district north of Vine Street was known as the Northern Liberties, and set aside for settling, with few restrictions, hence its name; the southern suburb was known as Southwark, and extended from Cedar (South) Street to the open country. Many of the landed gentry had their country homes in these two suburbs, but the city proper contained homes of many distinguished and wealthy citizens.

[3] See later section for résumé of this.

Founding of the Society

Of this character was the city of Philadelphia, when, on that memorable day of May 8, 1787, just one hundred fifty years ago, this Society came into existence. From that day to this it has been steadily and actively engaged in the same work to which it was originally dedicated. For the first hundred years, it maintained the ponderous title which was so characteristic of those days. But at the celebration of its centennial, it became officially known by its present name, "The Pennsylvania Prison Society." [4]

The charter members of the Society, together with those who joined from time to time as the years advanced, represented many of the most substantial and intelligent citizens of early Philadelphia. Out of their busy lives they found time to meet together to discuss the problems of prisons and jails, of penal reforms, and prison programs. One glance at the preamble of their Constitution shows the seriousness of purpose:

> "I was in prison and ye came unto me
> "And the king shall answer and say unto them, verily I say
> "Unto you, in as much as ye have done it unto one of the
> "Least of these my breatheren, ye have done it unto me."
> Matthew 25, 36-40.
>
> "When we consider the obligations of benevolence, which are founded on the precepts and example of the author of Christianity, are not cancelled by the follies or crimes of our fellow creatures, and when we reflect upon the miseries which penury, hunger, cold, unnecessary severity, unwholesome apartments, and guilt (the usual attendants of prisons) involve with them; it becomes us to extend our compassion to that part of mankind, who are the subjects of these miseries. By the aids of humanity, their undue and illegal sufferings may be prevented; the links which should bind the whole family of mankind together, under all circumstances, be preserved unbroken: and such degrees and modes of punishment may be discovered and suggested, as may, instead of continuing habits of vice, become the means of restoring our fellow creatures to virtue and happiness. From a conviction of the truth and obligation of these principles, the subscribers have associated themselves under the title of "The Philadelphia Society for alleviating the miseries of public prisons" for effecting these purposes they have adopted the following constitution:"—[5]

[4] See *Journal of Prison Discipline and Philanthropy*, 1887, p. 64, for an account of this change of name. The Society was incorporated April 6, 1833. See Appendix II, No. 5, for wording of the Act of Incorporation.

[5] Society Minutes, May 8, 1787.

Officers were duly elected at this first meeting. Bishop William White, rector of Christ Church, was chosen president; Dr. J. Henry Christian Helmuth, rector of Zion Lutheran Church, and Richard Wells, attorney-at-law, vice presidents; John Swanwick and John Morris, both merchants, secretaries; Thomas Rogers, probably a merchant, treasurer. The Society was well supplied with physicians, as four were chosen to serve in that capacity, apparently as regular visitors to the Jail. These were Drs. John Jones, William Shippen, Gerardus Clarkson, and Benjamin Rush. There were also an electing committee and, more important, an acting committee.[6] The Acting Committee was from the first days the functioning body. It operates today in approximately the same manner as originally conceived by the founders of the Society.

Before discussing the events which probably brought about the founding of the Society, it is of interest to note here its first official act. In the Minutes of the second meeting, held May 31, 1787, appears:

> "A member informed the Society that altho' an order had been issued three days since from the supreme executive council, that Barrach Martin (a negroe under sentence of death, but who had been pardoned) should be releas'd from his irons, yet they had not been removed, he is therefore recommended to the care of the acting committee."

At the next meeting it was reported that this unfortunate prisoner had been released.

The Society met in the German School House in Cherry Alley, near the corner of Fourth Street. It was the property of the Zion Lutheran Church, of which Dr. Helmuth was pastor. Apparently it was donated for the use of the Society, as there appears no record of any rent having been paid. The Society met here for about ten years, when it moved to a building owned by the Carpenters' Company, where it continued to meet for nearly fifty years. Both the German School House and the Carpenters' Company building are still standing, although the former is in a somewhat dilapidated condition.[7]

[6] The first electing committee was composed of: Isaac Parrish, Charles Marshall, Jonathan Penrose, John Oldden, James Whiteall, Lawrence Sickle, John Baker, Thomas Harrison, James Reynolds, Joseph Moore, Jacob Shoemaker, William Zane. The first acting committee was composed of: Tench Coxe, George Duffield, William Rogers, John Kaighn, Benjamin Wynkoop, George Krebs.

[7] See Chapter IV, section on *Meeting Places of the Society.*

its breech,—was pointed down the path in the faces of an array of all the motley of the establishment. This part of the drama had very nearly proved a failure. The play was likely to fail, for the army of actors did not respond. The curious look of surprise and inquiry among the culprits betrayed that this belligerent demonstration was an unaccustomed feature in prison discipline, and the quiet, sober, and respectful attention with which they seemed to listen to the address showed that they understood the claptrappery of the keeper, and were not willing, by their manner, to second his efforts. The 'keeper's battery' was a standing joke for the prison for all time." [33]

Regardless of the interpretation placed upon this amusing episode, it remains historically interesting because it reflects the attitude of petty officials who were in charge of our early American prisons.[34] No one questions the courage of these gentlemen in negotiating this visit, for prison sermons were relatively new in those days.[35] But it seems certain that they had more to fear from the obstinate, indifferent bully who served as keeper than from the unfortunate inmates, who undoubtedly welcomed even a religious visit from outside those dreary walls.

The Law of September 15, 1786

It was imperative that the sanguinary codes of 1718 should be repealed soon after the Revolution. The terrible conditions in the jails described above, together with the feeling on the part of the colonists that these codes represented English rather than American thought, prompted the leaders of jurisprudence in Pennsylvania to focus attention on penal reform.

Barnes shows in his *History of Penology in Pennsylvania* that as early as 1776, the new state constitution "directed a

[33] Webb, op. cit.

[34] The etching accompanying this episode can scarcely be called accurate, because Dr. Rogers, appearing as an elderly man, was only thirty-six years of age at the time; Bishop White was thirty-nine.

[35] Samuel Rowland Fisher, in his *Journal*, mentions that certain Methodist ministers preached to the debtors of the Old Stone Prison. He also records that Dr. Duffield, of the Presbyterian Church, visited the prison to see one of the prisoners. This was as early as 1780. (See pp. 90, 104.) Also "6 mo. 11th. This Afternoon & two preceding second day afternoons, some Methodist preachers came to this Gaol & having all or nearly all the prisoners collected together in that call'd the Debtor's Yard under our Windows at 4 O'clk each afternoon, they Preached Prayed & Sang Psalms in their way. This afternoon in particular some of the Prisoners laughed & talked most of the time altho' several times desired to be quiet & attentive by the preacher." (p. 144.)

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speedy reform of the criminal code along the lines of substituting imprisonment for the various types of corporal punishment." [36] As this is not primarily a history of penal legislation, the reader is referred to Barnes' excellent treatment of the subject.

The law of September 15, 1786,[37] was ushered in with these thoughts:

> "Whereas, it is the wish of every good government to reclaim rather than to destroy, and it being apprehended that the cause of human corruptions proceeds more from the impunity of crimes than from the moderation of punishments, and it having been found by experience that the punishments, directed by the laws now in force, as well for capital as for other inferior offenses do not answer the principal ends of society in inflicting them, to wit, to correct and reform the offenders, and to produce such strong impression on the minds of others as to deter them from committing the like offenses, which it is conceived may be better effected by continued hard labor, publicly and disgracefully imposed on persons convicted of them, not only in the manner pointed out by the convention, but in streets of cities and towns, and upon the highways of the open country and other public works." [38]

While this law was supposed to be a reform, it was not so construed by many of the intelligent leaders of the city of Philadelphia. It was considered degrading and humiliating. For instance, such prisoners thus "weighted down were employed at sweeping and scraping. After they had swept around them as far as the ball and chain would permit, the manacled prisoners would pick up the balls and carry them to a fresh spot. The more malicious of them would often throw down the balls in such a manner as to injure passers-by.[39] Most of the convicts were professional thieves, and adroit street robberies were frequently perpetrated by them. Besides cleaning the streets, they were employed at digging ditches, excavating cellars, grading, filling up ponds, etc. The harder kinds of labor were so obnoxious to some that they often declared their preference for hanging." [40] These felons wore a distinctive dress. "A parti-colored scheme was devised. The

[36] Op. cit., p. 106.
[37] See the *Pennsylvania Mercury*, Friday, September 8, 1786, for an account of this law.
[38] Ibid., p. 107.
[39] See Appendix II, *Miscellaneous Writings*, No. 1.
[40] Scharf & Westcott, op. cit., Vol. I, p. 444.

roundabout would have sleeves of different colors as, for example, red and green, black and white, or blue and yellow. The legs of the pantaloons were also of different colors." [41] "This kaleidoscopic assembly usually passed by the name of the wheelbarrow-men. . . . They were tethered like cattle." [42] Chief Justice Thomas McKean particularly advocated the provision of public punishment,[43] but it is not known what his sentiments were after he saw it in operation. Before the law was repealed in 1790, frightful tragedies occurred. For instance, the first day the new law went into effect, fifteen escapes took place. On the 19th of March, 1787, prisoners of the Walnut Street Jail attempted to execute a plan for a general escape. It was necessary to call in an armed force, which killed one prisoner and wounded another. Another riot took place among the wheelbarrow men in July and one person was seriously wounded. A few incidents that occurred in 1789, the last year in which this law was in effect are of interest:

Sunday, January 11—"A number of 'wheelbarrow men' confined in the jail, endeavored to escape by digging away the foundations. They were fired upon by the guards and two or three were fatally wounded."

March—"The jailer, Reynolds, and a turnkey, were seized by 22 convicts, who robbed them of their watches, money, and hats, and the keys of the prison, and thrust them into a dungeon. They then attempted to escape, and six of them got out before the true state of affairs was discovered by the other keepers."

September 18—"Five wheelbarrow men, who had been at work in the vicinity of Centre Square, having discovered that two brothers named McFarland, who were drovers, living on the south side of Market Street above 13th, had a considerable sum of money in their possession, formed a plot to rob them. That night they escaped from the jail, accompanied by the wife of one of their number, and proceeded to the house of the McFarlands. Having forced their way in, they killed one of the brothers, but the other escaped. They obtained about $2000 and left. All were subsequently arrested and hanged at Centre Square. This was the crime

[41] See the *Pennsylvania Magazine*, 18; p. 61, "mentioned in the diary of an English Quakeress." (Ann Warder, Mar. 30, 1787.)
[42] Oberholtzer, E. P., *Philadelphia: A History of the City and its People*, Philadelphia, 1911, Vol. I, p. 323.
[43] Scharf & Westcott, op. cit., Vol. I, p. 443.

that led to the abandonment of employing the convicts in the streets." [44]

Roberts Vaux in his *Notices* describes the infamy of this law as follows:

"The law of 1786, although in many respects less sanguinary than the former enactments, contained some provisions, the execution of which led to most injurious consequences. It directed that a certain description of convicts should be employed in cleaning the streets of the city and repairing the roads in its neighborhood; and authorized the keeper of the jail *to shave the heads* of the prisoners, and otherwise to distinguish them by *an infamous dress*. In this very objectionable manner they were brought before the public. The sport of the idle and the vicious, they often became incensed, and naturally took violent revenge upon the aggressors. To prevent them from retorting injuries still allowed to be inflicted, they were incumbered with iron collars and chains, to which bomb-shells were attached, to be dragged along while they performed their degrading service, under the eye of keepers armed with swords, blunderbusses, and other weapons of destruction." [45]

Just as the codes of 1718 outraged public opinion, so did the law of 1786. The most outstanding opponent was Dr. Benjamin Rush, prominent physician and surgeon of the city of Philadelphia, and signer of the Declaration of Independence.

Dr. Rush made two definite contributions to the science of penology which were characterized by astute reasoning and progressive views.[46] Not only was he opposed to public punishment as codified by the law of 1786, but capital punishment as well. He penned two scathing denunciations of these penalties which deserve recognition even today. It is significant that his first pamphlet was read at a meeting before the members of the "Society for Promoting Political Inquiries," held at the home of Benjamin Franklin, March 9, 1787, which date is only two months prior to the organization of the "Philadelphia Society for Alleviating the Miseries of Public Prisons." The title of this pamphlet is *An Enquiry into the effects of Public Punishments upon criminals and upon society.* This pamphlet was undoubtedly conceived as a

[44] Scharf & Westcott, op. cit., Vol. I, pp. 456 f.
[45] P. 21.
[46] See Lewis, O. F., *The Development of American Prisons and Prison Customs, 1776-1845*, Albany, 1922, for a more detailed analysis of these two pamphlets by Dr. Rush, pp. 19-24.

CITIZEN CONCERN AND ACTION OVER 175 YEARS

NEGLEY K. TEETERS

> Should the plan take place during my life, of establishing a permanent charity under some such title as that at Philadelphia, *viz: A Society for alleviating the miseries of Public Prisons,* and annuities be engrafted thereupon, for the above mentioned purpose, I would most readily stand at the bottom of a page for five hundred pounds; or if such society shall be instituted within three years after my death, this sum shall be paid out of my estate.

SO WROTE the distinguished philanthropist, reformer and prison visitor, John Howard, on hearing of the organization of the prison society in Philadelphia in 1787.[1] Howard's writings and activities were well-known to Philadelphia prison reformers, especially through correspondence with their counterparts in England. We know, for instance, that Dr. Benjamin Rush, who might well be designated godfather of the Philadelphia reform society, had an exchange of letters with Dr. John Coakley Lettsom regarding Howard's visit to prisons in Turkey and other Mediterranean countries.[2] There can be no doubt that inspiration to organize a prison reform society derived from John Howard and his work.

Philadelphia in May 1787 was an extremely exciting place. It was at this very time that delegates were assembling to hammer out the Constitution of the new nation. The city was a thriving metropolis of nearly forty thousand persons, well supplied with stores, markets, newspapers, hospitals and colleges—with all the necessities that contribute to the development of a sophisticated, progressive community.

In this thriving city at this time a group of "gentlemen assembled" on May 8, in the home of Isaac Parrish, hatter, in Mulberry Court[3] "and agreed to associate themselves in a society to be entituled [*sic*] *'The Philadelphia society for alleviating the miseries of public prisons'.*" For a hundred years the reform society maintained its quaint title but in 1887, at its centennial, the name was changed to the *Pennsylvania Prison Society*, by which it is known today—at this, its 175th anniversary. But from that May day of 1787 down to the present, the organization has been steadily and actively interested and engaged in the

[1] Roberts Vaux, *Notices of the Original and Successive Efforts to Improve the Discipline of the Prison at Philadelphia, and to reform the criminal code of Pennsylvania; with a few observations on the Penitentiary System*, Philadelphia, 1826: 127 fn.

[2] *Minutes* of the Society, October 8, 1787

[3] On the west side of Sixth Street between High (Market) and Mulberry (Arch) Streets

same program to which it was initially dedicated—"the alleviation of the miseries of public prisons" and to the welfare of the immured as well as the discharged prisoner.

The charter members of the Society, together with those who joined as the years passed, represented many of the most substantial and intelligent citizens of early Philadelphia. Thirty-seven of these gentlemen were charter members and signed the organization's constitution, either that first day or at subsequent meetings. Bishop William White, rector of Christ Church was elected president, [4] a post he continued to hold for forty-nine years; vice-presidents were the Rev. J. Henry Christian Helmuth, rector of Zion Lutheran Church and Richard Wells, attorney. The Society boasted of several persons whose names are closely associated with that exciting period; first and foremost was Dr. Benjamin Rush, signer of the Declaration of Independence and outstanding physician of the War of Independence and, later, of yellow fever fame; Dr. John Jones, one-time physician for George Washington, Dr. William Shippen, Surgeon-General of the colonial army, Dr. Samuel Powell Griffitts, Tench Coxe, one-time assistant treasurer of the United States, Zachariah Poulson, Jr., printer and publisher, Charles Marshall, son of the diarist, Christopher Marshall, and once an occupant of debtors' prison, Dr. William Rogers, pastor of the First Baptist Church, Dr. George Duffield, pastor of the Third Presbyterian Church, Thomas Wistar, member of a distinguished and philanthropic family, and Caleb Lownes, engraver of the Great Seal of the Commonwealth, first manager of the Walnut Street Jail after the Society took charge, and secretary of the Mayor's Committee of Safety during the yellow fever plague of 1793.

Later in the year, on August 13, some ninety-four new members were inducted into the Society, among whom was Benjamin Franklin. There is no evidence that Dr. Franklin ever attended a meeting but apparently he paid his dues of "ten shillings, payable quarterly." Franklin, at this time, was 81 years of age. He died in 1790.

Contributions of the Prison Society to Corrections

It has often been stated that the Philadelphia Society, which all agree is the oldest prison reform organization in the world—although not the first one to give aid and succor to the prisoner—has been better known abroad than in our own country. Professor Max Grünhut, of Oxford University and an astute student of historical corrections, has referred to it as "a noble forerunner of similar organizations founded in Europe under the influence of Elizabeth Fry." Further on in this report may be found the appreciative statements made by the English writer on crime and prisons, Margaret Wilson.

However, as we look back on 175 years of sustained concern for the prisoner, his abode, his rehabilitation and his moral lapses, considerable satisfaction can be registered. The Society is not without

[4] Bishop White did not preside at the first meetings as he was *enroute* home from England. He presided at the meeting held June 11.

appreciation in its own country and certainly within the confines of the Commonwealth of Pennsylvania, it has always been and still is respected. Its achievements have been and still are unique. Initiator of the first penitentiary in the world, creator of the Pennsylvania System of Separate Confinement, and pioneer in the realm of friendly prison visiting—these achievements won for it early international acclaim which persists even now. But we can muster other accomplishments that place the Society in the forefront of correctional progress: a crusader for the indeterminate sentence, for parole; for the volunteer defender movement; for the creation of a separate House of Detention for the untried prisoner; for developing a professionally-trained staff to carry on the work of prison visiting and aid to the discharged prisoner. Some of these are unique and all testify to the convincements and dynamic growth of the Society through the years. In other more conventional areas of corrections the Society has assumed cooperative leadership with other similar societies and reform groups—such as in the knotty and perplexing fields of prison labor, probation, inspection and reform of county jails, capital punishment, development of citizenship participation and public relations, and in a host of other matters. Of our achievements we are proud; of our disappointments and failures we are fully aware and of the future challenges we are cognizant. In dipping back to the beginning of its organization we are more than tempted to delineate the Society's past—for the reason that we are 175 years old and are frankly proud to inspect and describe it.

The Society is Organized—Its First Acts

There is justification to assume that the leading spirit in launching this reform society was Benjamin Rush, the doughty, humane, controversial, deeply devout, colonial physician. He, with others, was shocked at the evils of a law which had been passed as a reform measure by the legislature the previous year, on September 15, 1786. This law called for convicted felons, then lodged in the Walnut Street Jail, to be subjected to "hard labour, publicly and disgracefully imposed . . . in streets of cities and towns, and upon the highways of the open country and other public works." This law, sponsored by Chief Justice Thomas McKean, was initiated as a substitute for certain capital offenses. Under the new dispensation, the convicts were led out of the jail, their heads shaved, carrying in their wheelbarrows, balls and chains riveted to their ankles, and dressed in a bizarre distinctive dress of multi-colors. As an English Quakeress, Ann Warder, wrote of this motley crowd emerging from the little jail, which stood directly behind Independence Square at Sixth and Walnut Streets: "A parti-colored scheme was devised. The roundabout would have sleeves of different colors as, for example, red and green, black and white, or blue and yellow. The legs of the pantaloons were also of different colors." [5] E. P. Overholzer, Philadelphia historian, wrote of them: "This kaleidoscopic assembly usually passed by the name of the 'wheelbarrow men . . .' They were tethered like

[5] *Pennsylvania Magazine*, 18: 61 (March 30, 1787)

cattle." [6] In Philadelphia they were employed at digging ditches, excavating cellars, grading, filling up ponds, etc. It has been recorded that some of these degraded persons expressed a preference for hanging rather than to continue to work and exist little better than cattle. Not only was the work onerous and humiliating, but the convicts were the butt of ridicule of the idle and coarse members of the city who followed them about, sometimes hurling garbage or stones at the hapless victims of the Chief Justice's law. In response they heaped curses upon the mocking and tormenting rabble.

Dr. Rush was bitter against such a short-sighted method of dealing with the criminal. He acted promptly. He prepared and read a paper at the home of Benjamin Franklin on March 9, but two months before the prison reform society was founded. The title of this epoch-making paper is: "An Inquiry into the Effects of Public Punishment upon criminals and upon society." Rush contended that public penalties tend to make bad men worse and to increase crimes by their influence upon society. He adds that the reformation of a criminal can never be effected by such a punishment. He maintained it was connected "with infamy, [and] destroys the sense of shame, one of the strongest outposts of virtue." [7]

How well this paper was received we can only surmise. During the next two months it is quite possible, and even probable, that Rush discussed his ideas as well as the workings of the law under attack, with many of the city's representative citizens. However repugnant to Rush and to others the "wheelbarrow" law was, it had its adherents who respected the concepts of Justice McKean, long a distinguished figure in Pennsylvania jurisprudence. It is believed that Rush may have called the first meeting of the group for May 8 and as one examines the title page of the Society's Minutes, he can easily distinguish the name of the great physician and reformer leading the list of charter members.

One need not call upon Philadelphians nor, for that matter, Americans, to vouchsafe the significance of the first meeting of the Society. Writing in 1931, an astute observer of the field of corrections, Margaret Wilson, an English woman, writes in her work *The Crime of Punishment:*

> "If an American wants to find out exactly what the hackneyed term 'mingled emotions' means, he would do well to read the accounts of this society's proceedings. He will not know whether to laugh or cry over the strange mixture of the lovely and the terrible. He will be proud and ashamed of it now. He will be apt to find it much more interesting and infinitely more important than most of the colonial military history he has learned in school. . ."

[6] *Philadelphia: A History of the City and its People*, Philadelphia, 1911, Vol. I, 329

[7] In 1954 the Society republished this pamphlet, together with another written by Dr. Rush, dealing with capital punishment. These are available together in a publication entitled "A Plan for the Punishment of Crime" and may be obtained by writing the Society, 311 S. Juniper St., Phila. 7, Pa. enclosing fifty cents. Copies of the original Rush pamphlets are extremely rare.

She then has this to say regarding the preamble of the society's Constitution which appears here on page 1. "It makes sounder sense than most of the Declaration of Independence." Then she adds:

> "Could this program be improved upon today? They went further. The committee was 'to examine the influence of confinement or punishment upon the morals of the prisoners.' This was an amazing and a still unrealized program. Most states nowadays have officials to examine the effect of doctors' medicine upon their victims. They have coroners. What state has an official to examine the effect of a judge's sentence upon the convicted? Why is this officially never looked into?" [8]

In the Minutes of the second meeting (May 31) we find it recorded: "A member informed the Society that altho' an order had been issued three days since from the Supreme Executive Council that Barrack Martin (a negroe under sentence of death, but who had been pardoned) should be releas'd from his irons, yet they had not been removed, he is therefore recommended to the care of the acting committee." It was reported at the next meeting that this unfortunate prisoner had been released.

But who was Barrack Martin and what had he done? Within the recent past we have learned something of this unlettered and socially obscure convict. He was probably a slave but we do not know who his owner was. He had been sentenced to death for arson and had been pardoned. His case appears very briefly in the Colonial Records (actually the *Minutes of the Supreme Executive Council*) Vol. XV, 205 April 28, 1787. The Council had granted him a pardon "on condition he depart this state forthright, and not return." But the jailer, John Reynolds—more of him later—had apparently defied the Council by ignoring the order.

The Visit of Bishop White and Dr. Rogers to the Jail

Before proceeding to a discussion of the major business of the Society during its first months, it is of some importance historically to review one of the legends that has long persisted. It has to do with a visit to the Walnut Street Jail by two charter members who were eminent divines of the city—Bishop William White and Dr. William Rogers, some time in 1787. By this time the Society was making its demands felt in the legislative halls, demands that were significant and thoroughgoing, involving the vested interests of the authorities who managed the jail, including the jailer, Reynolds. While this dramatic episode has been described by earlier historians of the Society, notably Roberts Vaux in his *Notices*, there is no mention of it in the Society's *Minutes*. However, as the first volume of the minutes of the Acting Committee is lost, it is possible that the event was recorded. Vaux merely stated that the incident was related to him by one of the members of the Acting Committee. However, the trip to the prison was related

[8] Harcourt, Brace, 1931, 199-200

in the reminiscences of an alleged keeper in the jail, one William Webb, whose newspaper stories may be found in the Philadelphia *Sunday Dispatch,* for the dates October 16, 1859-February 5, 1860.

The story states that the two ministers called upon the keeper, Reynolds, and requested the opportunity of preaching to the inmates. The request was refused on the grounds that such a venture was fraught with the greatest of perils. He claimed that the prisoners would take advantage of the situation and not only lay hold of the gentlemen, but also attempt a jail delivery by holding them hostages. He painted his charges as desperate, depraved and untrustworthy. How sincere he was is debatable. Upon the matter of his sincerity hinges the importance of the story. Some historians of the Society believed that the jailer entertained deep concern for the ministers. This point of view is supported by the fact that later, when he was ordered by his superior, the sheriff, to permit the gentlemen of the clergy to enter the prison, he urged them to leave their valuables at the door, lest their pockets should be picked. Then he had a cannon placed on the platform with an attendant standing nearby with lighted linstock, prepared to set it off should the occasion demand. Of course, nothing happened, and it is reported that the good men proceeded with their sermon and prayers, commanding the respect of the miserable inmates. [9]

Keeper Webb, in his *Reminiscenses,* makes light of the incident, insisting that the jailer, Reynolds, derived keen sport out of the "burlesque" he engineered. He ends his account by stating that "the *keeper's battery* was a standing joke for the prison for all time." From time to time throughout the history of corrections, prison reformers and organizations concerned with the improvement of conditions in prisons have not seen eye to eye with keepers of prisons. John Howard, the great visitor, was none too welcome when he called upon officials and asked them penetrating and sometimes embarrassing questions.

We have some knowledge of Reynolds who refused to free Barrack Martin from his irons and who attempted to embarrass the ministers. He had been a tavern owner—the White Horse Inn in Elbow Lane—and was jailer in the Old Stone Prison, succeeding one Stokeley Hossman. Samuel Rowland Fisher, mentioned above, had been incarcerated in this colonial jail which stood on the corner of Third and High Streets. He had some opinions of Reynolds as well as of Hossman. Of

[9] In a familiar etching depicting this episode, the person preaching is drawn as an old man. Bishop White was 39; Dr. Rogers was 36. It has sometimes been stated that this was the first time a sermon was preached in a prison. This is not at all accurate, even in Philadelphia. Samuel Rowland Fisher, a "conscientious objector" during the American Revolution, was incarcerated in the Old Stone Prison (1779-1781) and kept a Journal. He wrote that "each afternoon ministers came and Preached and Prayed and Sang Psalms in their way" as early as 1780. See Journal of *Samuel Rowland Fisher,* pub. privately by Ann Wharton Morris, undated, 90, 104, 144. He adds that Dr. Duffield, Presbyterian minister (and later a member of the Society) also visited the jail. (For a picture of this service, see *They Were in Prison,* opposite p. 17.)

the latter he stated: "he was the most unfeeling Man that I remember to have met with . . . a rough, hard-hearted Man." He was glad to see a change to Reynolds and initially wrote of him: "Upon what motive Reynolds acts I know not, nor will his civility to me & our friends be lasting, yet he appears to be a Man not addicted to excess in drinking & as far as I have perceived is likely to keep order in this house." This prediction was premature since there were both escapes and brawls in that prison during Fisher's incarceration. Later the Quaker pacifist had occasion to make this appraisal: "He is a Man of much Art & low cunning without a principle of integrity."

A further appraisal of Reynolds comes from a contemporary physician and scientist, Dr. James Mease. He stated that Reynolds "had grown wealthy by the abuses which for a long time had been tolerated, and feared the introduction of a system which would cause his conduct to be closely watched, and the garnish fees, sale of liquor, and other perquisites to cease." [10]

When, in 1789, the management of the Walnut Street Jail was under attack by the Philadelphia Society, Reynolds, apparently finding himself and his position in jeopardy, made the rounds of persons of influence soliciting testimonials. Recently, by chance, a number of these were discovered in an issue of a contemporary newspaper, dated October 13, 1789. There is a letter addressed to the sheriff, James Ash, signed by a number of citizens, excerpts of which read:

> "We are aware of the many frivolous and other accusations which have been made secretly and openly alleged against him [Reynolds]. But, Sir, are reputations to be sported with and destroyed by machinations of artful, and perhaps, interested men? If this is admitted, let us ask, Whose character, whether private or public, is safe from shafts of envy and malice? . . . Have the accusers of Capt. Reynolds ventured to bring forward a single impeachment against him? No. Have they not exerted every moneuver to affix divers species of guilt upon him and have they succeeded? No . . . Wherefore, we your fellow citizens from the purest of motives and the strictest attachment to our lives and properties, entreat and recommend it to you to continue John Reynolds, Keeper of the Public Gaol of this city because he is the most resolute and suitable person we know for this important station." [11]

William Rawle, attorney and member of the Philadelphia Society, wrote in behalf of the beleagured jailer: "I do not think *all* the charges against Reynolds originated in envy or malevolence; yet, as none of them has been *judicially supported*, there is great reason to believe they were erroneous. In general, I believe him well qualified for the trust and recommend him to the Sheriff accordingly." Other prominent citizens, a few of them members of the Society, also backed Reynolds

[10] Quoted in Scharf & Westcott, *A History of Philadelphia, 1609-1884*, Philadelphia, 1884, Vol. III, 1829

[11] *Pennsylvania Packet & Daily Advertiser*. The letter was signed by Plunket Fleeson, Isaac Howell, Wm. Rush, Jo Wharton, Jacob Weaver, Samuel Wharton, Peter Z. Lloyd, and George Campbell. Howell was a member of the Philadelphia Society.

in the press. Among them were Jared Ingersoll, John D. Sergeant, A. J. Dallas, Moses Levy, Joseph McKean, and John D. Coxe. [12]

At this late date we have no knowledge of how Reynolds was deposed from his position nor do we know who preferred charges against him. We do know however that following the renovation of the jail—taking place at this very time—Reynolds was ousted. The new jailer was Elijah Weed, assisted by his wife. [13]

The Society Begins Operations

The Society's initial objective was the repeal of the Act of September 15, 1786, the so-called "wheelbarrow" law. During the three years in which the organization was preparing its case, shocking occurrences on the city streets were recorded in the press. Here are a few in 1789:

> Sunday January 11: "A number of wheelbarrow men endeavored to escape. They were fired upon by the guards and two or three of them were fatally wounded."
>
> March: "The jailer, Reynolds, and a turnkey, were seized by 22 convicts who robbed them of their watches, money, and hats, and the keys of the prison, and thrust them into a dungeon. They then attempted to escape, and six of them got out before the true state of affairs was discovered by other keepers."
>
> September 18: "Five wheelbarrow men who had been at work in the vicinity of Centre Square, having discovered that two brothers named M'Farland, who were drovers, living on the south side of Market above 13th, had a considerable sum of money in their possession, formed a plot to rob them. That night they escaped and, accompanied by the wife of one of them, proceeded to the house of the M'Farlands. Having forced their way in, they killed one of the brothers. They obtained about $2,000 and left. All were subsequently hanged. This was the crime that led to the abandonment of employing convicts in the streets." [14]

In the October 1787 meeting of the Society a committee was charged to look into the workings of this unpopular law and report. The committee reported at the meeting of January 29, 1788 and forthwith the Society drafted and sent to the legislature its first Memorial, begging for the repeal of the law. It also made the significant recommendation that as a substitute, "punishment by more *private* or even *solitary* labour" be enacted which would "more successfully tend to reclaim the unhappy objects" of the prison.

This Memorial, as well as many others running through the next hundred years, was the unique means the Society utilized in expressing its dissatisfaction with prevailing conditions in the field of corrections.

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[12] Other persons signing letters of testimony to John Reynolds were: S. Levy, W. Barton, John Hallowell (probably the son of Jacob, jailer of the prison some years later), Charles Swift, John Todd, Benjamin Morgan, Jacob Howell and John C. Wells. Todd was a member of the Society.

[13] Keeper Weed died of the yellow fever plague of 1793 and his widow, Mary, succeeded him. She served until 1796. She was probably the first female in this country, at least, to administer a prison.

[14] Scharf & Westcott, *op. cit.*, Vol. I, 456 f.

The influence of these Memorials was powerful, due largely to their logic and persuasiveness, as well as to the influence of their authors.[16] The legislatures pondered, with understanding and respect, the suggested reforms offered by the Philadelphia Society.

The significance of this Memorial has long been accepted by students of corrections. In a sense, this was a petition for a *"new deal"* in the treatment of the offender. Roberts Vaux, one of the city's leading citizens, wrote forty years later that "to this measure Pennsylvania owes all its subsequent improvement in her prison discipline and penal laws which have attracted the approving notice of statesmen and philanthropists throughout the world."[16]

The Supreme Executive Council asked the Society to submit specific information regarding the conditions in the local jail—the Walnut Street Jail—the better to initiate legislation in the area of corrections. The conditions existing in this establishment beggar description. Few people today can appreciate the squalor, debauchery, degradation, and misery that were the state of affairs in most common jails of both England and America in colonial days. In general they were mere "catch-alls" for the derelict, the benumbed, the apathetic flotsam and jetsam of society of those days. The Philadelphia jail, begun in 1773, partially finished in 1776, was turned over to the British as the "Provost" in 1777. It had received its first prisoners from the earlier Old Stone Prison, mentioned above, in 1776 and at that time, was figuratively christened by the escape of six of them on the first night of the transfer.[17]

It was reported by contemporaries that conditions in the so-called New Jail were no better than in the older jail. In fact, a group of citizens, led by the well-known glass manufacturer, Richard Wistar, had organized a relief society which had for its purpose the succor of prisoners and their families. Known as the *Philadelphia Society for Assisting Distressed Prisoners*, it carried on for some nineteen months or until the city was occupied by British troops. (from February 1776 to September, 1777) Its members walked through the streets pushing wheelbarrows on which were signs reading "Victuals for the Prisoners."[18]

By 1787 the jail was a well-established institution but conditions were deplorable. The committee of the Society which investigated the management reported its bill of particulars which finally reached the ears of the Supreme Executive Council. Among the complaints were: insufficient food and clothing for the untried, as well as for debtors; de-

[15] Fully twenty-five Memorials were sent to the various legislatures throughout the years—from the first, January 29, 1788 to 1803; others were drawn up but not sent. The wording of these Memorials appear in *They Were In Prison*, Appendix I, 447-486

[16] *Notices*, 24

[17] Scharf & Westcott, *op. cit.*, I, 305

[18] Notices of the meetings of this Society have been found in the various issues of the *Pennsylvania Evening Post*, February 8, 24, March 12, August 27, 1776; for story of this "parent" organization, see *Prison Journal*, Vol. XXIV, No. 4 (October 1944) 451 f.

bauchery so far as housing was concerned, both sexes permitted to intermingle in promiscuous fashion, as well as serious neglect of any kind of classification of offenders—the youth from the hardened offender—all fraternizing in demoralizing fashion; no employment whatsoever; and to top it off, the actual presence of a bar within the walls where "spiritous liquors" could be purchased by the prisoners. This, of course, was customery in local jails and was accepted as one of the privileges of the jailer to operate. In concluding, the committee stated emphatically:

> ". . . On the whole, the committee think it their duty to declare . . . that they are of unanimous opinion that *solitary confinement to hard labour*, and a total abstinence from spiritous liquors will prove the most effectual means of reforming these unhappy creatures . . . and by keeping debtors from the necessity of associating with those who are committed for trial, as well as by a constant separation of the sexes."

The effects of this, as well as of the earlier Memorial, were sweeping. The law of March 27, 1789 enacted all of the chief recommendations of this document.

During this interim (1787 to 1789) the Society had been studying prison reform in England, initiated by the famous, but eccentric, John Howard. Howard, after visiting many houses of correction, jails and prisons of Europe, had formulated his penal philosophy in a work entitled *State of Prisons,* published in 1777. In this he advocated the establishment of *penitentiary-houses* in which each prisoner would be assigned his own cell, or room, where he could work, eat, sleep, and commune with God. He even urged that a "little garden" be attached to each cell where the inmate could till the soil and grow his own vegetables. He was a strong advocate of solitary confinement as a means of reflection and eventual reformation. He saw in it, also, a guarantee against contamination, one convict by another, the glaring result of congregate penal establishments.

Parliament passed the Penitentiary Act of 1779 but due to lack of funds, no penitentiaries were built. However, there were some reforms initiated in a few local prisons. One such jail was in the small village of Wymondham, Norfolk County, which Sir Thomas Beevor operated and controlled. The transformation that took place in this little jail merits attention in this paper because the Philadelphia Society learned of it and published its story in its first printed material. Few persons even in England realize the historical importance of the reforms made in the administration of this jail by Sir Thomas under the Penitentiary Act. It may be contended that the Wymondham jail is, in truth, the real "cradle of the penitentiary," rather than the Walnut Street Jail, following the legislation of 1789 and 1790. It was Harry Elmer Barnes who first recognized the significance of Beevor's influence on the Philadelphia Society. In his *Evolution of Penology in Pennsylvania* he describes the program set up in the Wymondham jail:

> "In this "model jail" were to be seen in actual operation all of the new principles [enunciated by Howard] which it was hoped

might be introduced in Pennsylvania. Cells were provided to keep the different types of offenders separate and the sexes were segregated in different parts of the building. Solitary confinement was said by Sir Thomas to be more effective than whipping and that "part of their punishment from which reformation is chiefly expected." The new system was found effective in every way. By providing hard labour for all on six days of every week, it was found that many prisoners earned more than double the cost of their maintenance. As a reformatory agency the results were not less satisfactory. It had not been found necessary to punish any inmates by confinement at irons. . ." [19]

The Philadelphia Society declared that exactly what was needed at home was to follow the English example and to "make our prisons penitentiary houses and places of correction." In fact, the Society caused to be published a pamphlet setting forth the reforms of Sir Thomas so that Philadelphians could readily understand what the objectives were. [20] As Barnes states: "The chief purpose of that pamphlet was to allay the fear that the proposed reforms contemplated would not prove workable or economical."

Thus we find the Society's main objectives realized: the repeal of the "wheelbarrow" law, by the Act of March 27, 1789 and of the acceptance of its new concepts of corrections—the substitution of private, separate, or solitary confinement at hard labor for the public, congregate and debasing type of treatment. The Act of April 5, 1790, which superseded the earlier act of March 27, 1789, created a *penitentiary* for all convicted felons from all parts of the Commonwealth. This penitentiary was in reality a three-storied cell house with individual cells for the solitary incarceration of those sentenced by the courts to this type of treatment or punishment. It is the creation of this structure with its attendant function that marks the turning-point in American correctional philosophy. It was also this cell block within the confines of the little jail that was later referred to as the American system of reformative prison discipline. This appellation was laid on by the noted Prussian penologist, Dr. Nicolaus Heinrich Julius in 1839. [21]

Dr. James Mease, the Philadelphia physician-scientist, waxing dramatic perhaps, stated: "The task to which the Society was dedicated was truly arduous. An Augean stable of filth and iniquity was not only to be cleansed, but industry and morality to be introduced and under difficulties that seemed almost insurmountable." [22]

The New Dispensation

One brief decade encompasses the halcyon period of the renovated jail and the creation and development of the penitentiary concept, im-

[19] Bobbs-Merrill, 1927, 92
[20] *Extracts and Remarks on the Subject of Punishment and Reformation of Criminals*, Philadelphia, February 25, 1790. This is a rare pamphlet but a copy may be found in the Library Company of Philadelphia
[21] Quoted by Orlando F. Lewis, *The development of American Prisons and Prison Customs, 1776-1845*, Albany, N.Y., 1922, 27
[22] *Picture of Philadelphia*, 1811, 163

plemented in the cell house erected in the jail yard. That decade, from 1789 to 1799 stands out in the history of American corrections as a beacon of scintillating accomplishment. Short though that period was, it demonstrated that a new era in the treatment of criminals was evolving and, further, it sparked an entirely new concept or philosophy of reform. During the period news of the new dispensation spread abroad and many visitors made pilgrimages to the little prison. After viewing the administration of the establishment, they returned home to extol its virtues.

It was, and still is, problematical which of the two features of the Walnut Street Jail was more important to the field of corrections—the sweeping renovation in administration of the establishment, or the creation of a *penitentiary* with its underlying philosophy of separate or solitary confinement at hard labor. All correctional people are dedicated to humane reforms in the field and most of the information we have regarding that progressive decade places the emphasis on administration of humane and rational penal practice. We shall deal with this phase of the program of the Society first.

Aside from rendering a thorough cleansing of the jail, by replacing the jailer and dispensing with the bar and its "spiritous liquor," the managers (recommended by the Society) established a constructive labor program by which inmates could become entirely self-supporting, separated the sexes and, in due time, set up a church (inside the walls), a school, and a library. Writers, such as La Rochefoucauld, the French moralist, and the South Carolinian, Robert Turnbull, wrote in glowing terms of the metamorphosis that had transpired.[23] It seems that the leading spirit behind these reforms was the Quaker, Caleb Lownes, charter member of the Philadelphia Society. Aside from his fame in being the "first prison administrator in the country," Lownes was an engraver who designed the Great Seal of Pennsylvania. He was also secretary of the Mayor's Committee of Safety during the yellow fever plague of 1793. This man, whose accomplishments were so versatile, has been all but neglected by Philadelphia historians. The later years of his life were spent as an Indian agent in Indiana Territory at Vincennes.

While nothing appears in the records of the Society to allocate credit for the reforms inaugurated in the prison, we find contemporary sources that reveal to some degree the influence wielded by some. For instance, we may point to remarks made by La Rochefoucauld and to Dr. Mease that indicate that Lownes was responsible for much that occurred during that experimental decade. The former wrote: "It was Lownes who animated his brethern with the hope of carrying through their benevolent and sublime project. It was Lownes who proposed and effected the change of discipline; who proposed to substitute a mild

[23] La Rochefoucauld, *On the Prisons of Philadelphia by an European*, Philadelphia, 1796; Robert J. Turnbull, *A Visit to the Philadelphia Prison, etc.* Philadelphia, 1796

and rational, but firm treatment, in the room of irons and stripes; and who without relaxing in his efforts, patiently bore to be treated as a visionary in full confidence of the good to be obtained by perseverance. He, in fine . . . became the principal agent on this respectable work of reason and humanity. The penitentiary system created in 1791 [sic] in Pennsylvania whence it extended almost simultaneously in all states of the Union." [24]

Dr. James Mease gives Lownes and a colleague, also a member of the Society—John Connelly—credit for the reforms. He writes: "They may be justly ascribed the merit of bringing to the test the fullest and most successful experience, the humane principles of the new penal code." [25]

But it was actually the three-storied cell house with individual cells and what it stood for penologically, that was the unique contribution of the Society. This structure was the embryo of the penitentiary system that was to bring both fame and criticism to Pennsylvania for years to come. The acts of 1789 and 1790 stipulated that the more serious offenders convicted throughout the entire state should be sent to this establishment for at least part of their sentence. As La Rochefoucauld put it: "Those condemned for crimes heretofore punishable by death whose sentence always includes the article of solitary confinement during a period of their detention of which is fixed at the pleasure of the judge, except that according to law, it must not exceed one-half nor be less than one-twelfth of the whole period." [26]

Just how many prisoners, sentenced by the court, were placed for a period of time in the *penitentiary-house*, with its regime of solitary confinement, is moot. Thorsten Sellin, after examining the surviving dockets of the jail, observed that "the experiment was highly overrated." For instance, in 1795, out of 117 convicts admitted, only 4 arrived with sentences requiring that they spend part of their time in solitary confinement; in 1796, of 139 admitted, 7 received sentences of solitary." [27]

La Rochefoucauld describes the situation of those prisoners who were condemned to this *penitentiary-house*: " . . . the prisoner sleeps on a matress and is allowed a sufficient quantity of clothing. In this situation, separate from every other kind, given up to solitude and reflexion, and to remorse, he can communicate only with himself. He sees the turnkey once a day to receive a small pudding made of Indian corn, together with some molasses . . . During his whole confinement he is never allowed to walk out of his cell, even into the passage." [28]

With some slight modifications this describes the situation of prisoners sent to Pennsylvania prisons for fully a century after the above words were written. It was also the situation of thousands of

[24] La Rochefoucauld, 22
[25] *Op. cit.*, 163
[26] *Op. cit.*, 10
[27] "Philadelphia Prisons of the Eighteenth Century," in *Historic Philadelphia*, American Philosophical Society, Philadelphia, 43; Part I, 1953, 329
[28] La Rochefoucauld, *op. cit.*, 10

The Society for Political Inquiries: The Limits of Republican Discourse in Philadelphia on the Eve of the Constitutional Convention

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The Society for Political Inquiries: The Limits of Republican Discourse in Philadelphia on the Eve of the Constitutional Convention

THE SOCIETY FOR POLITICAL INQUIRIES was formed February 9, 1787, to promote the study of the "science of government." Interestingly enough, despite the Society's name and the imminent meeting of the Constitutional Convention, the members at meetings of the Society for Political Inquiries virtually never discussed theories of government. Instead, the Society's members turned toward topics of republican interest and little partisan significance (at that time).[1]

I would like to thank Neil Longley York, who first suggested the Society for Political Inquiries as a topic. I also want to thank the History Department of Brigham Young University for research funding, and the helpful staffs of the American Philosophical Society and the Historical Society of Pennsylvania.

[1] The lower-case word "republican" is used by some historians to describe the sometimes political, sometimes reform-minded, and sometimes economic ideology of early Americans. Robert E. Shalhope notes that the difficulty of identifying specific attributes of republicanism stems from its ambiguous usage by early Americans: "republicanism represented a general consensus solely because it rested on such vague premises. Only one thing was certain: Americans believed that republicanism meant an absence of an aristocracy and a monarchy. Beyond this, agreement vanished." See Shalhope, "Toward a Republican Synthesis: The Emergence of an Understanding of Republicanism in Early American Historiography," *William and Mary Quarterly* (hereafter, *WMQ*) 29 (1972), 72. Ruth H. Bloch has questioned the attempt by historians to "encompass all revolutionary culture" within the debate over classical republican theory. Bloch notes that republicanism, "broadly speaking," had multiple intellectual roots in liberalism, Scottish moral philosophy, Puritanism, evangelicalism, and classical republican theory. See Bloch, "The Constitution and Culture," *WMQ* 44 (1987), 552-53. It is in this broader sense that I use the term "republican" in this paper. I use the capitalized word only when referring to the Pennsylvania political party of the same name. For more on this subject, see Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge, 1967); Gordon S. Wood, *The Creation of the American Republic, 1776-1787* (Chapel Hill, 1969); J.G.A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton, 1975); Lance Banning, *The Jeffersonian Persuasion: Evolution of a Party Ideology* (Ithaca, 1978); Joyce Appleby, *Capitalism and a New Social Order* (New York, 1984); Ruth H. Bloch, *Visionary Republic: Millennial Themes*

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The Society's purpose in promoting knowledge and discussion had European antecedents in learned societies or *société savante*.[2] Carl Bridenbaugh studied the American version of these voluntary associations in Philadelphia before 1776 and concluded that they embodied the philosophy of the eighteenth century in their search for knowledge and ways to promote it.[3] These societies, followed later by the American Philosophical Society, all helped to "propagate the enlightenment" in Philadelphia.[4]

After the War for Independence, voluntary associations concerned with problems of political theory and practice began to take shape. The partisan version of these political societies appeared in the Whig societies of the 1780s. The Whig Society of Philadelphia, which later changed its name to the Constitutional Society, organized to defend the Pennsylvania state constitution. (Several provisions of the state constitution came under attack in the late 1770s and early 1780s, but most important to the Constitutionalists was the unicameral legislature.) At the same time, a partisan group of Philadelphia elites established the Republican Society to lobby for a bicameral legislature (among other activities).[5]

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in American Thought, 1765-1800 (New York, 1985); Alan Heimert, *Religion and the American Mind: From the Great Awakening to the Revolution* (Cambridge, 1966); Garry Wills, *Inventing America: Jefferson's Declaration of Independence* (Garden City, 1978); Robert E. Shalhope, "Republicanism and Early American Historiography," *WMQ* 39 (1982), 334-56; Joyce Appleby, ed., "Republicanism in the History and Historiography of the United States," *American Quarterly* 37 (1985), 461-598; Gordon S. Wood, "Ideology and the Origins of Liberal America," *WMQ* 44 (1987), 628-40; and James D. Tagg, "The Limits of Republicanism: The Reverend Charles Nisbet, Benjamin Franklin Bache, and the French Revolution," *Pennsylvania Magazine of History and Biography* (hereafter, *PMHB*) 112 (1988), 503-43.

[2] Bernard Fay, "Learned Societies in America and Europe in the Eighteenth Century," *American Historical Review* (hereafter, *AHR*) 37 (1932), 265.

[3] Carl Bridenbaugh, "Philosophy Put to Use: Voluntary Associations for Propagating the Enlightenment, 1727-1776," *PMHB* 101 (1977), 70-88.

[4] Ibid., 70. Adrienne Koch sees the Society for Political Inquiries as another attempt to study practical political theory in the age of the American Enlightenment. See Koch's "Pragmatic Wisdom and the American Enlightenment," *WMQ* 18 (1961), 313-29.

[5] The most complete study of the conflict between the Constitutionalists and the Republicans is Robert L. Brunhouse, *The Counter-Revolution in Pennsylvania, 1776-1790* (Harrisburg, 1942). For a thorough discussion of these groups as political parties, see Jackson Turner Main, *Political Parties Before the Constitution* (Chapel Hill, 1973), 174-211. I believe Main's model to be valuable for identifying divisions, but limited in acknowledging the

The Society for Political Inquiries was one of several non-partisan political groups of the 1780s known to have formed to study and examine new theories of government.[6] The preamble of the Society, written by Thomas Paine, stated that Americans had "grafted on an infant commonwealth the manners of ancient and corrupted monarchies." The Society resolved to undertake the "arduous and complicated science of government" which had previously been left to either "practical politicians" or "individual theorists." With this in mind, the members agreed to associate themselves under the title of the Society for Political Inquiries and to abide by the Society's laws and regulations.[7]

transience of individuals between parties. For example, Thomas Paine was a Constitutionalist for the first part of the 1780s, yet he later aligned himself by the middle of the decade with Republicans such as Robert Morris and Benjamin Rush. Richard Alan Ryerson has synthesized the scholarship of Owen S. Ireland and Douglass McNeil Arnold in "Republican Theory and Partisan Reality in Revolutionary Pennsylvania: Toward a New View of the Constitutionalists," in Ronald Hoffman and Peter J. Albert, eds., *Sovereign States in an Age of Uncertainty* (Charlottesville, 1981), 95-133. Ryerson suggests that Constitutionalists tended to be outsiders, poorer economically, and by religion either Scotch-Irish Presbyterian or German Reformed. Republicans tended to come from within the state, be wealthier, and of more tolerant backgrounds, such as Episcopalian or Quaker. The result was that Republicans were liberal in coalition building, while the Constitutionalists were more exclusive and had to rely on a much narrower base of rural support. See also Douglass McNeil Arnold, "Political Ideology and the Internal Revolution in Pennsylvania, 1776-1790" (Ph.D. diss., Princeton University, 1976); and Owen S. Ireland, "The Crux of Politics: Religion and Party in Pennsylvania, 1778-1789," *WMQ* 42 (1985), 453-75.

[6] The others were the Constitutional Society of Virginia (1784-?) and the Political Club of Danville, Kentucky (1786-1790). See J.G. de Roulhac Hamilton, "A Society for the Preservation of Liberty," *AHR* 32 (1927), 550-52 (who mistakes the name of the Constitutional Society of Virginia); Bess Furman, "Signed, Sealed—and Forgotten! The Story of a Premier Promoter of the Constitution," *Daughters of the American Revolution Magazine* 71 (1937), 1004-9; and Thomas Speed, *The Political Club, Danville, Kentucky, 1786-1790; Being an Account of an Early Kentucky Society, From the Original Papers Recently Found* (Louisville, 1894).

[7] *Rules and Regulations of the Society for Political Enquiries* (Philadelphia, 1787), 1-2. Confusion over the name of the Society for Political Inquiries among historians can be traced to two sources: the *Pennsylvania Packet* announced a meeting of the Society, but erroneously called it "the Society for Promoting Political Inquiries" (probably because a society for promoting agriculture did exist—see the edition of April 2, 1787); J. Thomas Scharf and Thompson Westcott's *History of Philadelphia, 1607-1884* (3 vols., (Philadelphia, 1884), *1*:445, has one paragraph on the Society, but calls it "The Society for Political Inquiries, for Mutual Improvement in Knowledge of Government, and for the Advancement of Political Science." Scharf and Westcott apparently lifted this name from the second paragraph

Among the original members of the Society were Benjamin Franklin, Thomas Paine, Francis Hopkinson, David Rittenhouse, Robert Morris, Benjamin Rush, Tench Coxe, and James Wilson.[8] It is sig-

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on the second page of the pamphlet on *Rules and Regulations*. The pamphlet, of course, says that the title of the association is "The Society for Political Inquiries" (though the pamphlet title renders the name "The Society for Political Enquiries"). That is also the only name ever used in the minutes of the Society, as well as in the correspondence of the members. For an interesting summary of the Society's activities, see George W. Smith and William B. Davidson, "Report of the Committee Appointed to Examine the Minute Book of the Society for Political Inquiries; read at a meeting of the Council, March 18, 1829," *Memoirs of the Pennsylvania Historical Society* 2 (1830), 43-51. For an account of Thomas Paine's activity in the Society, see Moncure Daniel Conway, *The Life of Thomas Paine, with a History of His Literary, Political and Religious Career in America, France, and England* (2 vols., New York, 1892), *1*:225-26; David Freeman Hawke, *Paine* (New York, 1974), 169; and Eric Foner, *Tom Paine and Revolutionary America* (New York, 1976), 204. Tench Coxe's activity in the Society is covered in Jacob E. Cooke, *Tench Coxe and the Early Republic* (Chapel Hill, 1978), 99. Benjamin Franklin's activities are covered in Carl Van Doren, *Benjamin Franklin: A Biography* (New York, 1938), 743-44, 769-70. Franklin himself mentioned the Society for Political Inquiries in a Feb. 17, 1789, letter. See Albert H. Smyth, ed., *The Writings of Benjamin Franklin* (10 vols., New York, 1905-1907), *10*:1. The Society is mentioned in Albert Post, "Early Efforts to Abolish Capital Punishment in Pennsylvania," *PMHB* 68 (1944), 41. Johann David Schoepf visited Philadelphia in 1783, and after his return to Germany, continued to correspond with some Philadelphians. As a footnote to a book he wrote on his travels, he noted:

> Another society has recently been established here [Philadelphia], which concerns itself with political inquiries. Its objects will be the elucidation of the science of government and the furtherance of human happiness. This society is regulated on the norm of the European philosophical societies; its papers and contributions will be published annually so as to preserve many valuable contributions which would otherwise be lost in the public prints. The honorable Dr. Franklin is President of this society.

See Schoepf, *Travels in the Confederation, 1783-1784*, trans. by Alfred J. Morrison (1911; reprint ed., New York, 1968), 78. At least two members have preserved their remembrances of the Society. See T.I. Wharton, "A Memoir of William Rawle," *Memoirs of the Pennsylvania Historical Society* 4 (1840), 57. Rawle remembered that "Benjamin Rush with his ready tongue and argumentive zeal . . . commonly took the lead." Charles Biddle may have had the same person in mind when he wrote "we [referring to the Society] had one gentleman in the party, who, by his writings and incessant talking, disturbed us very much." See *Autobiography of Charles Biddle, Vice-President of the Supreme Executive Council of Pennsylvania, 1745-1821* (Philadelphia, 1883), 223.

[8] The other participants (those who either attended a meeting, signed the by-laws, or presented an essay) were: John Armstrong, Jr., Richard Bache, Charles Biddle, William Bingham, Robert Blackwell, John Bleakey, William Bradford, Edward Burd, Benjamin Chew, George Clymer, Nicholas Collin, Thomas Fitzsimons, George Fox, William T. Franklin, William Hamilton, Robert Hare, Henry Hill, Jared Ingersoll, William Jackson, John Jones, Adam Kuhn, Samuel Magaw, John F. Mifflin, Thomas Mifflin, Robert Milligan, Jacob Morgan, Gouverneur Morris, John Nixon, Timothy Pickering, Samuel Powel,

nificant that even though most of the forty-eight members of the Society were Republicans (the Pennsylvania group that disapproved of the state constitution of 1776), at least six of the members were Constitutionalists (those who supported the 1776 constitution). This mix suggests that the Enlightenment impulse, which favored diverse opinions as well as the belief that reasonable men should be able to gather together, was strong enough to overcome temporarily the factional dispute otherwise dividing the two parties during the previous decade. The members of the Society gathered to preserve, strengthen, and enhance the social and political virtues necessary to improve republican forms of government. To divide the Society along partisan lines would have been inconsistent with the anti-party attitudes of republicanism.[9]

The Society met twice a month, usually in Franklin's dining room or library, from October to May (with a summer recess). Attendance at Society meetings was highest in the first year, when the Constitutional Convention set out to propose a new system of government. From February to May of 1787 the Society's attendance ranged from thirteen to twenty-three members. The following winter, 1787-1788, twelve to fifteen members attended the first few meetings, but after Pennsylvania's ratification of the Constitution, attendance declined to six to eight members for the remainder of the year. The next winter, 1788-1789, four to eight members attended, and they agreed to meet monthly beginning in November. The meetings were never resumed after May 1789.[10]

The members at the Society's meetings discussed far-ranging topics, including the relevance of Latin usage and study, prison reform, freedom of the press, a system of taxation, and commercial policies. An underlying theme informing members' concerns about these topics

William Rawle, Joseph Redman, Thomas Rushton, Arthur St. Clair, Edward Shippen, Edward Tilghman, Charles Vaughan, Samuel Vaughan, Jonathan Williams, and Caspar Wistar. Minutes of the Society for Political Inquiries, Feb. 9, 1787 to May 9, 1789 (Historical Society of Pennsylvania).

[9] For an excellent treatment of anti-party attitudes at this time, see Richard Hofstadter, *The Idea of a Party System: The Rise of Legitimate Opposition in the United States, 1780-1840* (Berkeley, 1969).

[10] Minutes of the Society for Political Inquiries, Feb. 9, 1787 to May 9, 1789.

was the general republican concern to improve the social and economic virtues of Americans.

Questions about the usefulness of Latin and Greek studies had been raised as early as 1769, when John Wilson, a teacher at the Friends' Latin School in Philadelphia, wondered about the propriety of teaching Latin to boys who were intended for employment as either mechanics or merchants.[11] At the Society's March 28, 1788, meeting, members agreed to consider the question: "Whether the study of the Latin and Greek languages is proper in the degree in which it is now pursued?" On April 11 and 25, 1788, Benjamin Franklin, Henry Hill (merchant), Samuel Magaw (minister and vice-provost of the University of Pennsylvania), John Jones and Adam Kuhn (both doctors), Nicholas Collin (minister), and George Fox and George Clymer (merchants) gathered in Franklin's library to discuss the issue.[12]

Shortly after these evening discussions, Francis Hopkinson, a member of the Society who taught at the University of Pennsylvania and who may have heard about the conversations from Samuel Magaw, wrote and delivered two speeches on the Latin-Greek debate at the graduation ceremonies of the university; the presentations were later reprinted in the *American Museum*.[13] Hopkinson wrote the first essay with a slight trace of wit, but he rendered the second essay in a satiric

[11] Jean S. Straub, "Teaching in the Friends' Latin School of Philadelphia in the Eighteenth Century," *PMHB* 91 (1967), 452-53.

[12] Minutes of the Society for Political Inquiries, March 28, April 11 and 25, 1788. For further information on the debate over the place of classical languages, see Richard M. Gummere, "The Schools, Colleges, and the Classics in Colonial America," *Proceedings of the Numismatic & Antiquarian Society of Philadelphia* 32 (1928/1935), 178-95; Robert Middlekauff, "A Persistent Tradition: The Classical Curriculum in Eighteenth-Century New England," *WMQ* 18 (1961), 54-67; and Meyer Reinhold, "Opponents of Classical Learning in America during the Revolutionary Period," *Proceedings of the American Philosophical Society* 112 (1968), 221-34.

[13] The *American Museum* was a magazine published by Mathew Carey, an Irish immigrant who came to Philadelphia from Dublin in 1784. The *Museum* was published monthly, and it usually reprinted pieces, although it also printed original contributions. For more information, see Frank Luther Mott, *A History of American Magazines, 1741-1850* (Cambridge, 1966), 100-3. For the essays, see Francis Hopkinson, "The Use and Advantages of What are Called Learned Languages in the Education of Youth," *American Museum* (hereafter, *AM*) 3 (June 1788), 540-41; and Hopkinson, "Answer to the Preceding Speech—written by the same gentlemen as the former—and delivered by another student," *AM* 3 (June 1788), 541-44.

manner, revealing his own contempt for the classical languages.[14] Likewise, Franklin was opposed to the teaching of Latin and Greek. In a conversation with Benjamin Rush about a year after the discussion at the Society, Franklin called the classical languages the "quackery of literature" and said that although he had spent one year in Latin school as a boy, he found study of the Romance languages Italian and Spanish easier primarily because he had first learned French.[15]

Certainly Rush saw no need for the study of Latin and Greek. In a letter written to John Adams shortly after his visit with Franklin, Rush summarized his own recent essay, published in the *American Museum*.[16] Rush posed two rhetorical questions to Adams:

> Who are guilty of the greatest absurdity—the Chinese who press the feet into deformity by small shoes, or the Europeans and Americans who press the brain into obliquity by Greek and Latin?
> Do not men use Latin and Greek as the scuttlefish emit their ink, on purpose to conceal themselves from an intercourse with the common people?
> Indeed, my friend, I owe nothing to the Latin and Greek classics but the turgid and affected style of my youthful compositions.[17]

Rush's comments on concealing "an intercourse with the common people" reveal his republican aversion, shared with Hopkinson and Franklin, against elitism in the national language. But while Rush, Hopkinson, and Franklin promoted equality in the national language, they were uncertain about the liberties that could be taken with such egalitarianism, particularly with regard to the press.

During the debate over ratification of the Constitution, some newspapers (e.g., Eleazer Oswald's *Independent Gazetteer*) began to attack

[14] Hopkinson, "Answer to the Preceding speech— written by the same gentleman as the former—and delivered by another student," 541.

[15] Benjamin Rush, "Excerpts from the Papers of Benjamin Rush," *PMHB* 29 (1905), 27.

[16] Benjamin Rush, "An enquiry into the utility of a knowledge of the Latin and Greek languages, as a branch of liberal education, with hints of a plan of liberal instruction, without them, accommodated to the present state of society, manners, and government in the United States. By a citizen of Philadelphia," *AM* 4 (June 1789), 525-35. Apparently, Rush also sent Adams a copy of this essay.

[17] Benjamin Rush to John Adams, July 21, 1789, in L.H. Butterfield, ed., *Letters of Benjamin Rush* (2 vols., Princeton, 1951), *1*:524.

prominent persons in the state and country.[18] This was an era when public attacks in newspapers were something just short of invitations to duels, but it was also a time when many people were attracted to the conception of personal freedom. So the question of what constituted freedom of the press was an important one.[19] It was in this climate that, in 1787 in the *Independent Gazetteer*, the authors who signed themselves as "A Centinel" characterized Benjamin Franklin as being as much a "*Fool* from age" as Washington was "a *Fool* from nature." Oswald had overstepped proper limits of gentlemanly behavior in publishing the piece. Indeed, Tench Coxe sent a clipping of the newspaper attack to a friend, with a note that it had "astonished many people here." A spirited defense of Franklin and Washington immediately appeared in three different editions of the *Pennsylvania Gazette*, but the debate so impressed Franklin that he proposed it as a topic of discussion at the Society.[20]

Accordingly, on November 23, 1787, fifteen members of the Society gathered in Franklin's library to discuss three questions:

> What is the Extent of the Liberty of the Press consistent with the Public Utility? If it should have limits what are they? Is the Liberty

[18] Oswald published the *Independent Gazetteer* from 1782 to 1796. The *Gazetteer* began as a weekly paper, but beginning in 1786 it was published daily. Clarence S. Brigham, *History and Bibliography of American Newspapers, 1690-1820* (Worcester, 1947), 919-20.

[19] For information on dueling and the public honor, see Evarts B. Greene, "The Code of Honor in Colonial and Revolutionary Times, with Special Reference to New England," *Publications of the Colonial Society of Massachusetts* 26 (1927), 367-88; and for information on the idea of personal honor, see Robert H. Wiebe, *The Opening of American Society, From the Adoption of the Constitution to the Eve of Disunion* (New York, 1984), 14-15. Interestingly, Oswald was in a duel with Mathew Carey in 1786. Both had exchanged insults in newspapers and, on January 18, went across the Delaware River (to avoid the Pennsylvania law which forbade dueling) to New Jersey, where Oswald shot Carey through the thigh. Scharf and Westcott, *History of Philadelphia*, *1*:443. For information on the idea of freedom of the press, see Leonard W. Levy, "Did the Zenger Case Really Matter? Freedom of the Press in Colonial New York" *WMQ* 17 (1960), 35-50; and Dwight L. Teeter, "Press Freedom and the Public Printing: Pennsylvania, 1775-1783," *Journalism Quarterly* 45 (1968), 445-51.

[20] Unfortunately, I do not know (but would appreciate finding out) the exact date the *Independent Gazetteer* carried the insult, although I do know that it was in either late September or early October 1787. The response (and defense) appeared in the *Pennsylvania Gazette* Oct. 10 and 31, and Nov. 7, 1787. The topic was proposed Nov. 9, 1787; see Tench Coxe to David S. Franks, Nov. 24, 1787, Tench Coxe Papers (Historical Society of Pennsylvania).

> of attacking Private Characters in the News-papers of any Utility to Society?[21]

A few months later, in a letter to the *Pennsylvania Gazette*, Franklin revealed his own thoughts on the subject: "Nothing is more likely to endanger the liberty of the press, than the abuse of that liberty, by employing it in personal accusation, detraction and calumny."[22] To support his contention, Franklin appealed to the national sense of honor. He mentioned that as he travelled abroad, he once confronted an editor who was known to publish derogatory things about Americans and who justified himself by saying "That he had published nothing disgraceful to us, which he had not taken from our own printed papers."[23]Two key republican points appear in Franklin's remarks: first, the failure of the individual to exercise self-restraint and moderation, and second, the danger the irresponsible individual posed to American virtue by damaging the national sense of honor.[24]

Another republican concern expressed by members of the Society was the influence of public institutions on moral character. At a meeting of the Society in March 1787, Benjamin Rush addressed that concern in "An Inquiry into the Influence of Public Punishments upon Criminals and upon Society."[25] His essay dealt with the public works law passed in Philadelphia in 1786. This law replaced capital

[21] The questions were proposed at the meeting of Nov. 9, 1787: Minutes of the Society for Political Inquiries, Nov. 9, 1787.

[22] Benjamin Franklin, "To the Editors of the *Pennsylvania Gazette*, on the abuse of the Press," Smyth, ed., *Writings of Benjamin Franklin*, 9:639.

[23] Smyth, ed., *Writings of Benjamin Franklin*, 9:640.

[24] The Society promoted discussion on other topics dealing with political economy and social virtues. See, for example, the Minutes of the Society for Political Inquiries, April 20, 1787. An essay on integration may be found in the William Rawle Family Papers (Historical Society of Pennsylvania) in the three volumes, 1775-1835, entitled "William Rawle's essays on philosophical, scientific, historical, political, and social subjects." Paine's essay, "The Incorporating of Towns," discussed the disadvantages of corporations and charters to the economies of municipalities. While the original essay given at the Society has not survived, essentially the same, or at least similar, message is found in the second part of *The Rights of Man* in the fifth chapter. See William M. Van der Weyde, ed., *The Life and Works of Thomas Paine* (10 vols., New Rochelle, 1925), 7:21-25. Nicholas Collin read a paper, entitled "An essay upon the advantages resulting to a nation from the cheerful temper of its inhabitants," which was reprinted in the *Memoirs of the Pennsylvania Historical Society* 2 (1830), 48-49.

[25] Minutes of the Society for Political Inquiries, March 9, 1787.

punishment for burglary, robbery, and sodomy with a term not to exceed ten years of employment at the public thoroughfares.[26]

The "Wheelbarrow Law," as it came to be known, provided that convicts not only had to work at repairing the streets, they also had to be dressed in a "peculiar style" and had to be constantly guarded while working in public.[27] Public humiliation of other persons was hard enough on Philadelphians' sensitivity. Indeed, one observer remarked that "Pardons, so destructive to every mild system of penal laws, were granted with a profusion."[28] One Jacob Dryer, for instance, was convicted of burglary, but rather than undergo public humiliation, he told the Council that he preferred the previous punishment of hanging. Out of sympathy for his humiliation, Dryer was pardoned and paroled by the Supreme Executive Council. Dryer violated the conditions of his pardon, however, and was sentenced to be hung, but he escaped the gallows by being pardoned a second time.[29]

There were other disadvantages to the public punishments law. Many of the convicts were professional thieves, and pick-pocketing of passersby was common. The more malicious thieves were required to have a large iron ball chained to their legs which had to be lifted from place to place after they had finished sweeping or scraping their area. This ball could be thrown down so that it injured pedestrians, to the amusement of the convicts and the detriment of the citizens.[30]Escapes and riots became more common as prisoners voiced their opposition to the wheelbarrow law. Just two days before Rush gave his paper on public punishments, the *Pennsylvania Gazette* reported that "18 criminals broke out of gaol," all of whom had been

[26] Scharf and Westcott, *History of Philadelphia*, *1*:443.

[27] Ibid., *1*:444. For more information on prison reform in Philadelphia, see Michael Meranze, "The Penitential Ideal in Late Eighteenth-Century Philadelphia," *PMHB* 108 (1984), 419-50. Meranze mentions the Society for Political Inquiries on p. 435 and gives a good summary of Rush's essay on pp. 435-40.

[28] James Mease and Thomas Porter, *Picture of Philadelphia, giving an account of its origin, increase and improvements in Arts, Sciences, and Manufactures, Commerce and Revenue. With a compendious view of its Societies, Literary, Benevolent, Patriotic and Religious. . . .* (Philadelphia, 1831), 160.

[29] Scharf and Westcott, *History of Philadelphia*, *1*:444.

[30] Ibid.

condemned "to punishment at the wheelbarrow."[31] Two weeks later, the prisoners of the Walnut Street jail attempted another general escape, which resulted in an armed force being called in and the death of one prisoner.[32]

In a letter to her father, Susanna Dillwyn, a Quaker offended by the punishments, summed up the feelings of many Philadelphians:

> criminals clean the streets . . . with great iron chains around them—[at] the end of which a monstrous ball of iron is fast'ned to prevent their running away—it is a painful sight and in other respects I believe they find more disadvantages than was expected from it.[33]

This situation, deplorable to many Philadelphians, prompted Rush to begin his essay by noting that the purpose of punishment was both to reform the prisoner and to prevent further crimes. He argued that public punishments "tend to make bad men worse and to increase crimes."[34] Rush believed it was difficult to reform a convict through the wheelbarrow law because public punishment destroyed the criminal's dignity and removed all shame, a dangerous course, since shame "is one of the strongest outposts of virtue" and, by implication, an important deterrent to criminal acts. The removal of the deterrent not only permitted similar offenses to recur, but also encouraged revenge. Rush thought another reason that public punishments would increase crime was because future criminals could see the extent of the punishment and would be unafraid. Far better, the doctor thought, that punishments should remain unknown, since the human mind always assumes the worst.[35] Public punishments, Rush continued, also

[31] *Pennsylvania Gazette*, March 7, 1787. The *Gazette* was a weekly newspaper established in 1728 by Samuel Keimer, who sold the paper in 1729 to Benjamin Franklin and Hugh Meredith. Meredith retired in 1732, and Franklin took David Hall on as a partner in 1748. In 1766 the partnership was dissolved, and William Sellers joined Hall in printing the paper. Brigham, *History of American Newspapers*, 933-34.

[32] Scharf and Westcott, *History of Philadelphia*, *1*:444.

[33] Susanna Dillwyn to William Dillwyn, May 1787, cited in Butterfield, ed., *Letters of Benjamin Rush*, *1*:416, note 1.

[34] Benjamin Rush, *An Enquiry into the Effects of Public Punishments upon Criminals, and upon Society. Read in the Society for Political Inquiries, convened at the house of Benjamin Franklin, esquire, in Philadelphia, March 9th, 1787* (Philadelphia, 1787; microform ed., Worcester, n.d.), 4-5.

[35] Ibid.

damaged society. They made people insensitive and callous to suffering, and, Rush extrapolated, when people ignored the worst part of the human race, they no longer were able to love the whole, causing them to forget the widow, orphan, naked, and sick—as well as the prisoner.[36]

The essay's publication as a pamphlet in April 1787 had a profound effect. The pamphlet was popular in Philadelphia (Susanna Dillwyn purchased one to send to her father), and Rush could write to John Dickinson that "It has made many converts in our city from the assistance it has derived from the miserable spectacle which is daily before our eyes."[37] By the following month, interest had grown enough to support another organization, and on May 8, several members of the Society for Political Inquiries joined with Rush, as well as leading religious figures of Philadelphia, to form the Philadelphia Society for Alleviating the Miseries of the Public Prisons.[38] Later that month, Rush wrote to John Coakley Lettsom and acknowledged the influence of John Howard, a well-known advocate of prison reform in Britain, in the formation of the prison reform society. Rather modestly, Rush added that his pamphlet had aided the formation of the new society "in a small degree."[39]

The Society for Political Inquiries was more than a gentlemen's club or an academic society. It also functioned as a public voice expressing concerns about contemporary issues. In the case of the punishment issue, an essay written out of concern for a local issue was favorably received by Society members, who encouraged its publication. Rush's access to the resources and members of the Society, as well as the success of his pamphlet, led to the organization of a new society designed to alter the public punishment laws. The actions of the members of the Society for Political Inquiries showed their republican, and Enlightenment, commitment to improve the social character of society.

[36] Ibid., 7.

[37] Benjamin Rush to John Dickinson, April 5, 1787, Butterfield, ed., *Letters of Benjamin Rush*, *1*:416.

[38] See the charter of the association, "Constitution of the Philadelphia Society for Alleviating the Miseries of the Public Prisons," *AM* 1 (April 1787), 454.

[39] Benjamin Rush to John Coakley Lettsom, May 18, 1787, Butterfield, ed., *Letters of Benjamin Rush*, *1*:417.

Another public institution that influenced the character of a republican society was the method of financing government. To the members of the Society for Political Inquiries, the economic system of a republican goverment was just as important a consideration as was the nation's social character. Financing republican government became one of the major topics of discussion in Society meetings, since the foremost concern for many members was a method of taxation for the new nation.

In April 1787 Franklin wrote to Abbé Morellet on this subject (in particular referring to import duties), stating that freedom of commerce was preferable where direct taxes could be obtained. But, Franklin complained, in America "they are so widely settled, often five or six miles distant from one another in the back country, that the collection of a direct tax is almost impossible." The fees of the collector would be more than the tax taken in.[40]

The Society decided to stimulate public debate on methods of taxation by announcing an essay contest. This practice was common; it had been used previously by both the Philadelphia Society for Promoting Agriculture and the American Philosophical Society.[41] On Friday, December 14, 1787, the Society for Political Inquiries resolved to offer a gold plate worth ten guineas for the best essay that addressed the question: "What is the best System of Taxation to constitute a Revenue in a Commercial, Agricultural & Manufacturing Country?" Three Society members were instructed to prepare for publication an announcement, which was discussed at the Society's next meeting on December 28. In surprising contrast to the usually bland minutes, the secretary noted that a "long debate [over the form

[40] Benjamin Franklin to Abbé Morellet, April 22, 1787, Smyth, ed., *Writings of Benjamin Franklin*, 9:578. See also Franklin to Alexander Small, Sept. 28, 1787, ibid., 9:615, and Franklin to M. Le Veillard, Feb. 17, 1788, ibid., 9:638. For a helpful summary of the problem of taxation for the new republic, see Thomas P. Slaughter, "The Tax Man Cometh: Ideological Opposition to Internal Taxes, 1760-1790," *WMQ* 41 (1984), 566-91.

[41] Fifteen awards were offered during 1789 by the Philadelphia Society for Promoting Agriculture. See "Premiums proposed by the Philadelphia Society for Promoting Agriculture for the year 1789," *AM* 5 (Jan. 1789), 159; and also E.P. Richardson, "A Rare Gold Medal of the Philadelphia Society for Promoting Agriculture," *American Art Journal* 14 (July 1982), 56-61.

of announcements] arose."[42] Apparently, the debate over form was deep-rooted, because the prize questions were discussed January 25, March 28, April 11, and April 25, 1788. Finally, on May 9, the Society decided to have the announcement printed "in two of the public papers, also in the magazines and the *Museum*."[43]

Although the official winner apparently was never announced, some clues exist to help determine which essay was successful. By February 1789 three essays (two in German, one in English) had been submitted. The two essays in German were translated and read by Nicholas Collin, who determined that they did not "meet the questions entirely." The essay in English was submitted by Peletiah Webster.[44] Webster's essay initially was not considered for the prize because a longer version of it had previously been published in 1783.[45] This objection was overcome because the gold plate was ordered, and Webster's essay was afterward published in the *American Museum*.[46]

Webster's essay began by introducing the basic principles of government and revenue finance. He argued that the underlying principle

[42] Minutes of the Society for Political Inquiries, Dec. 14 and 28, 1787; Jan. 25, March 28, April 11 and 25, and May 9, 1788.

[43] The Society also offered a premium for the question, "Whether the imposition of government is beneficial to Agriculture, Commerce, and Manufactures?" *AM* 3 (May 1788), 446-47.

[44] Peletiah Webster to Benjamin Franklin, Dec. 18, 1788, Benjamin Franklin Papers (American Philosophical Society); and Minutes of the Society for Political Inquiries, Feb. 13, 1789. The essay contest drew at least one European's interest. Grouber de Groubentall wrote to Thomas Jefferson asking for information on the "soil, commerce, agricultural produce, manufactures, [and] exports and imports" so that he could submit a treatise to the *Société institutée à Philadelphie pour l'examen d'objets Politiques*. See Julian P. Boyd, ed., *The Papers of Thomas Jefferson* (22 vols. to date, Princeton, 1950-), *14*:50.

[45] Referring to Webster's essay: "The latter had been published before the Society's advertisement had issued, and for that cause its consideration was postponed." Smith and Davidson, "Report of the Committee Appointed to Examine the Minute Book of the Society for Political Inquiries," 50.

[46] Peletiah Webster, "Essay on Free Trade and Finance," *AM* 6 (July 1789), 67-69; (Aug. 1789), 133-36; (Sept. 1789), 190-93; and (Dec. 1789), 451-54. The essay was originally published in pamphlet form as *A Sixth Essay on Free Trade and Finance, Particularly shewing What Supplies of Public Revenue may be drawn from Merchandize, Without injuring our Trade or burdening our People* (Philadelphia, 1783). How much of Webster's moral vision was embraced by members of the Society for Political Inquiries is not known (although they did award it their gold plate), but Benjamin Franklin favored Webster's methods. In a letter to M. Le Veillard (Feb. 17, 1788) he wrote (referring to an impost): "what is paid in the price of merchandise is less felt by the consumer, and less the cause of complaint." Smyth, ed., *Writings of Benjamin Franklin*, *9*:638.

of taxation was that "the consumption of anything, on which the burden of tax is laid, will always be thereby lessened." Since taxation reduced consumption, Webster believed that those items should be taxed heaviest which were "least necessary" to the community.[47] The problem was in determining what was "necessary."

Webster defined as "necessary" those items which the United States could export. Therefore, agriculture, fishing, and manufactures would be exempt, as would trade, which would be the "servant" of all.[48] What then should be taxed? Webster recommended those items which injured the prosperity of the community or which weakened "their morals and economy." This combination of moral vision and economic practices provided a dual benefit. A tax on "harmful" luxuries would raise a revenue while at the same time reducing their use. Among the items Webster thought deserved import tariffs were: "all imported wines; silks of all sorts, cambricks, lawns, and laces, &c. &c. superfine cloths and velvets; jewels of all kinds, &c." Sugar, tea, and coffee were other items which could be effectively taxed at rates from 10 to 100 percent; to non-luxury items a small duty of 5 percent could be added.[49]

Those who favored "freedom of commerce" resisted import duties; consequently, Webster gave a barrage of reasons why the tariff was superior to other forms of taxation. Import duties were always paid in cash, thus increasing the supply of circulating money, while at the same time they helped to decrease the use of pernicious goods. Because individuals only paid the tax in proportion to their purchases, the tariff operated "in a way of general equality."[50] A tariff also helped to preserve freedom of choice. Unlike a direct property tax with an arbitrary tax collector who could demand payment at any time, consumers would know before they purchased a bottle of wine or a silk gown that there would be a tariff to pay. In Webster's train of thought the customer had the choice of whether or not he wanted to pay the extra cost.[51]

[47] Webster, "Essay," 68.
[48] Ibid.
[49] Ibid., 69.
[50] Ibid., 134-35.
[51] Ibid., 190.

Webster then considered the practical effects of the tariff on the nation. The most important effect was the gradual diminution of "useless" consumption. Webster believed that farmers were especially susceptible to buying one luxury which necessitated the use of another so that the farmer soon "finds the proceeds of the year vanished into trifles." Even more disturbing, merchants and tradesmen who had sold goods to the farmer on credit were unable to collect payment.[52]

In a cash-deprived economy, a tariff-based tax promised other benefits. Laborers and tradesmen could follow their daily occupations without having to lose work time by having to "go in quest of money to satisfy a collector of taxes." Local manufactures also would increase in response to the tariff, thereby benefiting the whole economy. Webster was not even concerned about the additional price increase, since this would be "but a light inconvenience to the people."[53] The alternative to a tariff was to restore poll and estate taxes which, Webster insisted, discouraged industry, oppressed the laborer, and ruined agriculture. The import duty was the least painful to farmers, as compared to parting with a number of animals to satisfy a direct tax, and if implemented fairly and uniformly, the duty would not hurt merchants either.[54]

Webster's proposal combined moral vision and political economy in a manner that preserved equality (since the tax would be proportional to how much one spent) and liberty (since the consumer presumably had the choice of whether or not to purchase the tariffed item). This form of republicanism relied on economic regulations to improve the moral character of Americans by reducing their consumption of luxuries. At the same time, it provided for the necessary financing of the national government.[55]

Another national economic concern which the Society for Political Inquiries addressed was the commercial role that would be played

[52] Ibid., 191.

[53] Ibid., 451.

[54] Ibid., 452.

[55] Gordon Wood notes that "like Puritanism, of which it was a more relaxed, secularized version, republicanism was essentially anti-capitalistic, a final attempt to come to terms with the emergent individualistic society" that showed itself in America: Wood, *Creation of the American Republic*, 418. Webster had a strong New England upbringing, and his economic thought reflects many puritanical strains of republicanism. See Forrest McDonald, *Novus Ordo Seclorum: The Intellectual Origins of the Constitution* (Lawrence, 1985), 73-77.

by the national government under the new Constitution. This topic was of particular concern to the many Society members who were merchants. In a series of letters written to his brother in Europe, George Fox, a Philadelphia merchant and secretary of the Society, revealed many of his hopes and concerns for the success of the new Constitution's commercial regulations. "Our domestic news is not very agreeable," Fox wrote. Citing the effects of the War for Independence on the local economy, he complained that "The War has in some measure destroyed those habits of industry and honesty which the old settlers" had possessed.[56] Fox in a later letter expressed his hope for change: "Much—very much of our future happiness as citizens of the United States depends on the Convention now sitting as well as the wisdom of the several states to adopt these alterations in the Confederation which may promise future advantages."[57]

Others expressed the need for commercial regulation in articles for the *American Museum*. William Barton (not a member of the Society) wrote "On the Propriety of Investing Congress with Power to Regulate the Trade of the United States." The author argued that since sovereignty over trade was given implicitly to the Confederation by the states, it should be granted outright so that Congress may promote "a beneficial system of foreign trade."[58]

Tench Coxe, a merchant who would later help Alexander Hamilton to draft a report on the manufactures of the United States, read an essay before the Society at this time on "The Principles on Which a Commercial System for the United States of America Should be Founded."[59] Coxe began by noting that "now is a moment of crisis" and listed the economic and political problems of the Confederation. Precious metals and hard currency were absorbed "by a wanton

[56] George Fox to Samuel M. Fox, Sept. 1786 and May 1, 1787, George Fox Letter Book (American Philosophical Society).

[57] George Fox to Samuel M. Fox, June 9, 1787, ibid.

[58] William Barton, "On the Propriety of Investing Congress with Power to Regulate the Trade of the United States," *AM* 1 (Jan. 1787), 16.

[59] Tench Coxe, *An Enquiry into the Principles on which a Commercial System for the United States of America should be Founded; to which are added Some Political Observations connected with the subject. . . .* (Philadelphia, 1787). Jacob Cooke treats this essay admirably in *Tench Coxe and the Early Republic*, 99-102. See also Minutes of the Society for Political Inquiries, May 11, 1787.

consumption of imported luxuries," and as a result, paper money was used. An ineffectual federal government under the Articles of Confederation had left foreign commerce and trade extremely weak. Even shipping between American ports faced foreign competition.[60]

To combat these problems, Coxe reviewed the state of agriculture and then suggested improvements for commerce and manufactures. Coxe's essay pointed out many benefits in agriculture. It was productive because of the abundant fertile soil in the United States, but also because few or no duties were required to strengthen it and it provided employment for a large labor force (nine out of ten people were employed in agriculture). Agriculture was "the spring of our commerce and the parent of manufactures," he argued. While Coxe may have been a little too laudatory in his exuberant praise of agriculture, he was aware of the role that farm exports played in eighteenth-century America's balance of trade.[61]

After safely remarking that nothing should be done to agriculture which would "interrupt this happy progress of our affairs," Coxe argued that positive action was necessary to encourage manufactures and commerce. First, Coxe advocated a domestic policy of reciprocity. Americans should return in kind the trade regulations that they had been forced to work under for the previous decade. For example, Coxe believed that navigation between American ports should be restricted to domestic ships, allowing foreign ships only to finish their sales, not carry cargo, between ports. This, after all, was what Europeans did.[62] Coxe next pointed out the need for trade restrictions against certain imports. The fisheries of Nova Scotia, for example, interfered with New England's trade in sea products. Regional specializaton also would promote economic growth in the new nation. He wrote: "the produce of the Southern states should be exchanged for such manufactures as can be made by the Northern."[63] The benefits of domestic manufacture were not forgotten. It seemed to Coxe that domestic manufactures had a natural advantage in America over imports. After the costs of insurance, commissions, duties, han-

[60] Coxe, *An Enquiry*, 5-6.
[61] Ibid., 7-9.
[62] Ibid., 12.
[63] Ibid., 20.

dling, storage, and shipping were taken into account, Coxe figured that American-made products had a 25 percent bonus right from the start.[64] Finally, in the area of foreign policy Coxe advocated a strict neutrality policy toward Europe. European wars would benefit "farmers, merchants and manufacturers. . . . Our ships would carry for them . . . and our lands and manufactories would furnish the supplies of their fleets."[65]

Coxe's essay on a commercial system was immediately popular. One week after presenting the essay to the Society (on May 11), Coxe wrote to Franklin that he had received encouragement from his friends to publish the essay. Published just as the Constitutional Convention began to meet, the essay was designed to influence the Convention. Coxe's intentions were all too clear. Six of Pennsylvania's delegates to the Convention had heard him read his essay, and the pamphlet was dedicated to "The Honorable Members of the Convention, assembled at Philadelphia for Federal Purposes."[66] The popularity of Coxe's essay did not subside. One month later the *American Museum* reprinted the entire essay and dedicated it and the rest of the issue to the Convention delegates.[67]

While Coxe's essay apparently had little impact on the Convention, the popularity of his ideas extended beyond his government proposals. Two months after the *American Museum* reprint appeared, Coxe addressed the opening meeting of the Pennsylvania Society for the Encouragement of Manufactures and the Useful Arts, which was organized to raise funds for manufacturing investment.[68] The Society for the Encouragement of Manufactures was first proposed July 26, 1787, at a meeting held for those interested in the scheme. Coxe,

[64] Ibid., 16-20.

[65] Ibid., 33.

[66] Tench Coxe to Benjamin Franklin, May 18, 1787, Benjamin Franklin Papers; Coxe, *An Enquiry*, 2. Thomas Jefferson received a copy of Coxe's pamphlet from John B. Cutting (then in London), who wrote to Jefferson (who was in Paris): "if a good opportunity occurs soon I will transmit to you a pamphlet or two lately written in various parts of the Union." See E. Millicent Sowerby, ed., *Catalogue of the Library of Thomas Jefferson* (5 vols., Washington, 1953), *3*:470-71.

[67] Tench Coxe, "An Enquiry into the principles on which a commercial system for the United States of America should be founded," *AM* 1 (June 1787), 496-514.

[68] Tench Coxe, "An Address to an assembly of friends of American manufactures," *AM* 2 (Sept. 1787), 248-55.

with several others, was assigned to draw up a constitution for the new organization. Preliminary officers were appointed on August 12, and by September 12, a regular election of officers and managers was held. Not surprisingly, much of the leadership came from members of the Society for Political Inquiries: the president (Thomas Mifflin), two of the vice-presidents (David Rittenhouse and Samuel Powel), one of the secretaries (George Fox), the treasurer (John Nixon), and five of the managers (William Bingham, Tench Coxe, Robert Hare, William Rawle, and Benjamin Rush).[69]

The Society for Political Inquiries drew members from both political parties in Philadelphia to discuss issues of importance to the republican experiment. If those involved were not the "men of all classes, sects, and political beliefs who showed a signal willingness to forget private animosities" (in the words of Carl and Jessica Bridenbaugh, who were writing on associations and their members prior to 1776), neither were they partisans who identified so strongly with a sense of party that a clear division prevented them from coming together.[70] The Society for Political Inquiries illustrates these aspirations and limitations in the desire to cross party lines and the inability to discuss the basic theory and structure of government. Republicans and Constitutionalists may have joined the Society to show that they could gather as reasonable, educated gentlemen dedicated to a republican pursuit to improve the nation. But the closest that the Society could come to talking about principles of government was in areas that were not yet partisanly divisive, such as political economy (when Paine talked about the economic influence of charters on towns, or in the discussions on commerce or direct taxes). The Society eschewed debate or discussion over such politically volatile topics as whether a unicameral or a bicameral legislature was better suited for the new nation. Thus Paine, who favored a unicameral legislature, "never opened his

[69] For the activities of the Pennsylvania Society for the Encouragement of Manufactures and the Useful Arts, see Cooke, *Tench Coxe and the Early Republic*, 102-8; and Neil Longley York, *Mechanical Metamorphosis: Technological Change in Revolutionary America* (Westport, 1985), 164. For an excellent discussion of how captitalistic and communitarian motives were combined in early American republicanism, see Ralph Lerner, "Commerce and Character: The Anglo-American as a New Model Man," *WMQ* 36 (1979), 3-26.

[70] Carl and Jessica Bridenbaugh, *Rebels and Gentlemen: Philadelphia in the Age of Franklin* (New York, 1962 ed.), 262; Main, *Political Parties*, 203.

mouth" when he attended the meetings, no doubt in deference to the other members' feelings on bicameralism and the Society's tacit understanding to confine discussion to issues that would not divide the membership.[71] That understanding was lost when the Pennsylvania debate over ratification strained the attendance of the Constitutionalists. After the U.S. Constitution was ratified, even Republicans lost interest in Society affairs. Only a few members continued to attend, including Charles Biddle, the one remaining Constitutionalist.

The Society for Political Inquiries was most successful when it dealt with issues that had little immediate partisan significance, such as prison reform and encouragement of manufactures. That it failed to deal with the "science of government" is not really surprising, given the contradictory demands the members of the Society put on themselves. Originally they had organized a society to search for new principles of government that could be applied to the new nation. Thus, they overlooked partisan boundaries in their memberships. But political principles were partisan, not universal, and any attempt to discuss them was potentially dividing. Political necessity restrained topics of discourse among the republican-minded members of the Society for Political Inquiries. This suggests the need for examining levels of discourse, whether republican, political, civic, or economic, and their interrelationship in the early republic.[72]

The abandonment of the search for theories of government was unavoidable if the Society were to survive beyond the first meeting. The decision might not have been explicitly made, but in effect the members avoided arguments over principles of government in favor of maintaining the appearance of a community of republican citizens—an appearance which they gave up after the struggle over ratification.[73]

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[71] Conway, *Life of Thomas Paine*, *1*:225-26. For Paine's opposition to a bicameral legislature, see Foner, *Tom Paine and Revolutionary America*, 201-2.

[72] For an examination of levels of discourse, especially with regard to federalism and republicanism, see the suggestive article by Peter S. Onuf, "Reflections on the Founding: Constitutional Historiography in Bicentennial Perspective" (forthcoming in the April 1989 *William and Mary Quarterly*).

[73] Interestingly, in April 1985, a group of civic-minded citizens joined with Roland Baumann, then of the Pennsylvania Historical and Museum Commission, in reviving the Society for Political Inquiries.

laden or unladen, ten pence; over Neshaminy creek, for every passenger, two pence; and for man and horse, five pence: over Schuylkill, for oxen, bullocks, cows, heifers, horses and mares per head, two pence; for sheep and hogs, one halfpenny; for a single passenger, two pence; and for all passengers above one, one penny a piece; for man and horse, laden or unladen, three pence: over Brandywine and Christine [Christiana], for every passenger, two pence; and for man and horse, laden or unladen, five pence; and for cattle, as over Schuylkill.

Passed November 27, 1700; allowed to become a law by lapse of time, in accordance with the proprietary charter, having been considered by the Queen in Council, February 7, 1705-6, and not acted upon. See Appendix I, Section II, and the Acts of Assembly, passed June 7, 1712, Chapters 190 and 191.

CHAPTER LXI.

AN ACT FOR THE TRIAL OF NEGROES.

Whereas some difficulties have arisen within this province and territories about the manner of trial and punishment of negroes committing murder, manslaughter, buggery, burglary, rapes, attempts of rapes and other high and heinous enormities and capital offenses, for remedy whereof and for the speedy trial and condign punishment of such negro or negroes offending as aforesaid:

[Section I.] Be it enacted by the Proprietary and Governor, by and with the advice and consent of the freemen of this Province and Territories in General Assembly met, and by the authority of the same, That from and after the publication of this present act, it shall and may be lawful for two justices of the peace of this province or territories, who shall be particularly commissionated by the proprietary and governor for that service within the respective counties thereof, and six of the most substantial freeholders of the neighborhood, to hear, examine, try and determine all such offenses committed by any negro or ne-

groes within this government, which said freeholders shall be by warrant, under the hands and seals of the respective justices commissionated as aforesaid, directed to the next constable, summoned to appear at such time and place as the said justices shall therein appoint; which freeholders the said justices shall solemnly attest well and truly to give their assistance and judgment upon the trial of such negro or negroes, who shall hold a court for the hearing, trying, judging, determining and convicting of such negro or negroes as shall be before them charged or accused of committing any murder, manslaughter, buggery, burglary, rapes, attempts of rapes or any other high or heinous offenses committed, acted or done in any the respective counties within this province or territories as aforesaid.

[Section II.] And be it further enacted by the authority aforesaid, That upon the sitting of such court by the said justices and freeholders as aforesaid, it shall and may be lawful for the said justices and freeholders to examine, try, hear, judge, determine, convict, acquit or condemn according to evidence and full proof, any negro or negroes for any the crimes or offenses aforesaid, or any other high or capital offense; and upon due proof and conviction to pronounce such judgment or sentence in the premises as is agreeable to law and the nature of the offense, or otherwise to acquit, free and discharge such negro or negroes in case the evidence shall not be sufficient for a conviction therein.

[Section III.] And be it further enacted by the authority aforesaid, That where such negro or negroes shall be convict, and judgment or sentence shall be pronounced by the respective justices and freeholders as aforesaid, and a warrant by them signed and sealed, to be directed to the High Sheriff of the county where the fact was committed, for the execution of such negro or negroes, the same shall be duly executed or caused to be duly executed by the said sheriff, on pain of being disabled to act any longer in that post or office; and if any of the said justices or freeholders neglect or delay to do their duty herein, they shall be liable to be fined by the governor and council, in any sum not exceeding five pounds, to be levied by distress and sale of the goods and chattels of such justices or freeholders so refusing as aforesaid.

[Section IV.] And be it further enacted by the authority aforesaid, That if any negro or negroes within this government shall commit a rape or ravishment upon any white woman or maid, or shall commit murder, buggery or burglary, they shall be tried as aforesaid, and shall be punished by death; and if any negro shall attempt a rape or ravishment on any white woman or maid, they shall be tried in manner aforesaid, and shall be punished by castration; and if any negro shall be convicted of robbing, stealing or fraudulently taking or carrying away any goods living or dead, the master or owner of such negro shall make satisfaction to the party wronged, and pay all costs, to be levied by distress and sale of the said master's or owner's goods and chattels, and the negro to be whipped as the said justices and freeholders shall adjudge and appoint.

[Section V.] And be it further enacted by the authority aforesaid, That if any negro shall presume to carry any guns, swords, pistols, fowling-pieces, clubs or other arms or weapons whatsoever, without his master's special license for the same, and be convicted thereof before a magistrate, he shall be whipped with twenty-one lashes on his bare back.

[Section VI.] And be it further enacted by the authority aforesaid (and for the preventing of negroes meeting and companying together upon First days or any other day or time in great companies or numbers), That if any person or persons give notice thereof, and to whom they respectively belong, to any justice of the peace within this government, the same being above the number of four in company and upon no lawful business of their masters or owners, such negro or negroes so offending shall be publicly whipped at the discretion of one justice of the peace, not exceeding thirty-nine lashes.

Passed November 27, 1700; repealed by the Queen in Council, February 7, 1705-6. See Appendix I, Section II, and the Act of Assembly, passed January 12, 1705-6, Chapter 143.

of the said corporation heretofore made or to be made touching the premises.

[Section V.] (Section VI, P. L.) Provided always and be it enacted by the authority aforesaid, That no by-laws nor ordinances of the said corporation hereafter made shall be binding upon the members or officers thereof unless the same shall be proposed at one regular meeting of the said corporation and enacted and received at another after the intervention of at least thirty days and that no sale or alienation or lease for above three years of any part of the real estate of the said corporation shall be valid unless the terms and nature of such sale or lease be proposed at a previous meeting of the said corporation.

Passed March 26, 1789. Recorded L. B. No. 3, p. 490.

CHAPTER MCDIX.

AN ACT TO AMEND AN ACT ENTITLED "AN ACT FOR AMENDING THE PENAL LAWS OF THIS STATE."[1]

(Section I, P. L.) In order to remedy several abuses arising from certain defects in the act entitled "An act for amending the penal laws of this state," and to render the provisions therein contained more beneficial and effectual:

[Section I.] (Section II, P. L.) Be it enacted and it is hereby enacted by the Representatives of the Freemen of the Commonwealth of Pennsylvania in General Assembly met and by the authority of the same, That the county commissioners of the several counties of this state except the county of Philadelphia shall and they are hereby enjoined and required as soon as conveniently may be after the passing of this act to cause to be set apart and prepared in their respective county gaols and in the yards thereof suitable and suffcient places and apartments for the accommodation of such persons as are or may be con-

[1]Passed September 15, 1786, Chapter 1241.

fined therein on account of debt or [upon] civil process and also as witnesses in cases of criminal prosecutions, which places and apartments shall be exclusively appropriated to the reception and accommodation of the foregoing description of prisoners and no felon charged or convicted shall be permitted to have access to the same or any communication with any person of the description aforesaid.

[Section II.] (Section III, P. L.) And be it further enacted by the authority aforesaid, That all persons who shall be confined in the gaol of the city and county of Philadelphia upon civil process or as witnesses in criminal prosecutions or charged with or convicted of misdemeanors only, shall upon [due] notice from the persons hereinafter mentioned to the sheriff of the said city and county that the workhouse in the said city is altered and prepared for their reception in the manner hereinafter directed, be removed to the said workhouse, and that so much thereof as shall be necessary together with the east yard to the same belonging shall be set apart and appropriated to the reception and safekeeping of such persons only, which shall be and remain under the care and custody of the sheriff of the said city and county, and shall and is hereby declared to be the gaol of the city and county of Philadelphia.

[Section III] (Section IV, P. L.) And be it further enacted by the authority aforesaid, That the mayor, aldermen and citizens of Philadelphia together with the commissioners for the county of Philadelphia shall as soon as conveniently may be cause such alterations to be made in the said workhouse and yard as shall be necessary for the safe and comfortable keeping of such prisoners and when the same shall be completed give notice thereof to the said sheriff for the purpose aforesaid.

[Section IV.] (Section V, P. L.) And be it further enacted by the authority aforesaid, That the residence of the said workhouse with the west yard thereto belonging shall be reserved for the uses to which it is at present applied, and if the present building shall be found upon experience to be too small for the purpose of safely keeping, accommodating and employ-

ing the number of persons who are or shall be confined there-[in] it shall and may be lawful for [the] said mayor, aldermen, citizens and commissioners, to cause such additional buildings to be erected contiguous thereto as they shall find necessary and expedient for the purposes aforesaid.

[Section V.] (Section VI, P. L.) And be it further enacted by the authority aforesaid, That the mayor and any three [of the] aldermen of the said city and any four justices of the peace of the county of Philadelphia shall be and they are hereby authorized and required to fix and regulate from time to time the fees of the keeper of the said workhouse and for securing the payment thereof from the vagrants and other disorderly persons who shall be committed to the same, the said keeper shall have power notwithstanding any rule or order to the contrary to detain any such person in confinement until payment or satisfaction thereof shall be made.

[Section VI.] (Section VII, P. L.) And be it further enacted by the authority aforesaid, That the said mayor, aldermen, citizens and commissioners shall as soon as conveniently may be cause to be prepared, separated and set apart such parts of the present gaol of the city and county of Philadelphia as may be necessary for the reception and safe keeping of all persons charged with or convicted of felonies or other crimes to which the provisions hereinafter contained do not extend, and that the residue of the said gaol shall be reserved for the reception, safe keeping and employment of all felons sentenced to hard labor and confinement, and that the said mayor, aldermen, citizens and commissioners shall cause the rooms [and] apartments thereof and such parts of the yard as shall be so reserved from the last mentioned purposes to be divided from the rest, and cells, sheds and other suitable buildings to be constructed for the purpose of separating, confining and keeping employed at hard labor all felons of the last mentioned description and that as well such apartments, cells and sheds as the residue of the said gaol where necessary shall be properly walled up and secured to prevent all communication among the same felons and with the persons abroad and that the [same] gaol from and after the passing of this act shall

be called and styled the common prison of the city and county of Philadelphia.

[Section VII.] (Section VIII, P. L.) And be it further enacted by the authority aforesaid, That all felons convicted in any county in this state of any felony or felonies for which he, she or they shall be sentenced to hard labor for the space of twelve months or upwards may at the discretion of the justices of the court in which such felon shall be convicted within three months after such sentence shall have been given, be removed at the expense of the said county under safe and [secure] conduct to the said prison and be therein confined, fed, clothed and put to hard labor in the manner by the act entitled "An act for amending the penal laws of this state,"[1] and by this act directed for the remaining space of time for which by such sentence they shall be liable to imprisonment.

[Section VIII.] (Section IX, P. L.) And be it further enacted by the authority aforesaid, That it shall and may be lawful for the said mayor and aldermen of the said city in the mayor's court for the said city and for the justices of the peace of the several counties in their general [courts of] quarter sessions of the peace and they are hereby enjoined and required to appoint annually or oftener if necessary six suitable and discreet persons within the said city and the respective counties as inspectors of the said prison and the several gaols and workhouses within the said city and the respective counties, whose powers and duties shall be as follows:

First. To provide a proper quantity of suitable raw materials and to see that the same is duly distributed by the prison keeper or his deputies among the felons sentenced to hard labor as aforesaid.

Secondly. To receive and dispose of the produce of their labor and apply the same in the manner hereinafter directed.

Thirdly. To examine into all breaches and neglects of duty on the part of the prison keepers and their deputies and of all keepers of gaols and workhouses and report in writing the special instances thereof to the said mayor and aldermen and to the said justices at their courts aforesaid quarterly if occasion be.

[1] Ante.

Fourthly. To inquire into and report to the mayor, aldermen or justices of the peace such repairs, alterations or additions to the buildings provided for the purposes aforesaid as may be necessary and expedient.

[Section IX.] (Section X, P. L.) And be it further enacted by the authority aforesaid, That it shall and may be lawful for the said mayor and aldermen annually to appoint a suitable and proper person to be keeper of the said common prison in the city of Philadelphia who shall however be liable to be removed by the said mayor and aldermen when occasion may require, in which case another such person shall be appointed in the manner aforesaid, who, besides the care and custody of the prisoners, shall superintend the felons employed at hard labor; that it shall be the duty of the said keeper to prevent all communication between the men and woman felons and to separate the men felons from each other as much as the construction of the buildings and the nature of their employment will admit of; to admit no persons whatever except officers and ministers of justice or counsellors or attorneys at law employed by the prisoners, ministers of the gospel or persons producing a written license from one of the said inspectors to enter within the walls where such felons shall be confined. To suffer no spirituous liquors to be conveyed to the said prisoners unless in cases of sickness and with the consent of one of the said inspectors in writing first obtained. To punish the obstinate and refractory and to reward those who shall show signs of reformation by lightening or increasing their tasks and by increasing or lessening their food, as occasion may require. To prevent profligate or idle conversation and demeanor and to preserve the utmost possible cleanliness in the persons and apartments of the prisoners.

[Section X.] (Section XI, P. L.) And be it further enacted by the authority aforesaid, That such keeper shall have power with the approbation of the said mayor and aldermen to appoint a suitable number of deputies and assistants for whose faithful execution of their offices he shall be accountable and he shall also be punishable at the discretion of the court hav-

ing cognizance thereof for all escapes wilfully or negligently assistants so much per annum as shall be allowed and agreed assistants, and neither he, his deputies or assistants shall ask, demand or receive any fee, emolument or reward of any kind except the salaries hereafter mentioned.

[Section XI] (Section XII, P. L.) And be it further enacted by the authority aforesaid, That the said keeper of the said prison shall receive as a full compensation for his services including the expense of hiring and retaining his deputies and assistants so much per annum as shall be allowed and agreed on by the said mayor, aldermen, citizens and commissioners, which shall be paid to him quarterly by orders to be drawn in his favor on the treasurer of the county of Philadelphia by the mayor of the said city for the time being and he shall moreover receive from the said inspectors of the prison a commission or allowance of ten per centum on the moneys arising from the labors of the said prisoners.

[Section XII.] (Section XIII, P. L.) And be it further enacted by the authority aforesaid, That before such prison keeper, his deputies or assistants shall exercise any part of the said office he shall give bond with two sufficient sureties to the said mayor, aldermen and citizens in the sum of five hundred pounds upon condition that he, his deputies and assistants, will well and faithfully perform the trust and duty in them reposed, according to the form and effect of the several acts of assembly of this state thereto relating, which bond, the due execution thereof being proved [before] and certified by any one of the aldermen of the said city, shall be recorded in the office of the recorder of deeds for the city and county of Philadelphia and copies thereof exemplified by the said recorder of deeds, shall be good evidence in all courts of law [in any suit brought] against such prison keeper or his sureties.

[Section XIII.] (Section XIV, P. L.) And be it further enacted by the authority aforesaid, That if any felon sentenced to hard labor and confinement shall escape, he shall on conviction thereof suffer such additional confinement at hard labor agreeably to the directions of this and of the said recited act

and shall also suffer such corporal punishment as the court in their discretion shall adjudge and direct. And if any such felon or felons shall after his or their escape be guilty of any offense for which on conviction he she or they would have been sentenced to death under the law as it stood before the passing the act entitled "An act for amending the penal laws of this state,"[1] he, she or they shall suffer death accordingly as if no such act had been passed.

[Section XIV.] (Section XV, P. L.) And be it further enacted by the authority aforesaid, That if any felon or felons who may have served or shall hereafter serve out the term or time for which he, she or they was or were or shall be sentenced agreeably to the terms of the act entitled "An act for amending the penal laws of this state,"[2] or of this act, or hath or have been or shall hereafter be pardoned for the offenses or crimes of which he, she or they hath or have been or shall hereafter be convicted agreeably to the said act or of this act, provided the offense or offenses for which he, she or they was or were or shall be convicted was or were by the former laws of the late province or of this commonwealth declared capital and is, are or shall be convicted of a second offence which was by the laws of the late province or of this commonwealth made capital, he, she or they being duly convicted of such second offense shall suffer death on such conviction without benefit of clergy.

[Section XV.] (Section XVI, P. L.) And be it further enacted by the authority aforesaid, That it shall and may be lawful for the commissioners for the county of Philadelphia with the assent and concurrence of the mayor, recorder and any three aldermen of the city of Philadelphia and any three of the justices of the peace for the county of Philadelphia, and they are hereby required to assess and levy in the manner directed by the acts of assembly for raising county rates and levies so much money as they shall judge necessary for the pur-

[1]Ante.
[2]Ante.

poses of altering, accomodating and enlarging the said [gaol] prison and workhouse in manner aforesaid and also so much per annum as shall be necessary for the payment of the salary of the said prison keeper and for providing the materials, tools and implements for the labor of the said felons.

[Section XVI.] (Section XVII, P. L.) And be it further enacted by the authority aforesaid, That the charges of clothing, feeding and maintaining the said felons sentenced to hard labor as aforesaid, of providing the necessary materials, tools and implements for labor [and the profits of such labor] shall be equally and annually apportioned and divided by the said inspectors of the said common prison among the said city and the several counties in proportion to the number of criminals from each of them respectively who shall be so confined at hard labor in the said common prison, in which settlement and distribution the city and county of Philadelphia shall be allowed the sum of one hundred pounds annually as a compensation for the additional expenses arising from the provisions of this act. Provided always, That it shall and may be lawful for the commissioners of any such county to appeal from such settlement and distribution to the supreme executive council who shall upon examination and due notice to the parties, revise, alter or confirm the same as shall be just and reasonable. And provided also, That nothing herein contained shall alter, lessen or defeat the estate and interest of the city and county of Philadelphia in the said common prison [or] lot of ground thereunto belonging and their appurtenances.

[Section XV.] (Section XVIII, P. L.) And be it further enacted by the authority aforesaid, That if the expenses attending the necessary alterations of the said [common prison] and employment of the said felons shall be found to exceed the profits arising from their labor it shall and may be lawful for the supreme executive council and they are hereby required upon the application of a majority of the inspectors of the said prison of the said city and county to draw orders upon the treasurer of the respective counties for such sums of money to be paid to the commissioners of the county of Philadelphia or their orders as upon and equal rate and [apportion]ment of

such expenses according to the principles aforesaid such counties may be severally liable to.

[Section XVIII.] (Section XIX, P. L.) And be it further enacted by the authority aforesaid, That if any keeper of the said common prison of the city and county of Philadelphia or any of his deputies or assistants shall suffer any spirituous liquors, except as is before excepted, to be introduced into the places so reserved for the employment of felons at hard labor or shall willingly suffer any communication between the men and women felons so confined or shall ask, demand or receive of or from any person whatsoever by color of his office or under any pretence whatever any sum or sums of money or other fee, gratuity or reward other than the salaries and allowances hereinbefore mentioned, he or they on conviction thereof shall be liable to a fine of ten pounds to be applied to the purchase of materials, tools and implements for the labor and employment of the said felons in the manner by this act directed for the support and maintenance of such felons.

Passed March 27, 1789. Recorded L. B. No. 3, p. 500.

The Act in the text was repealed by the Act of Assembly passed April 5, 1790, Chapter 1516.

CHAPTER MCDX.

AN ACT FOR THE MORE EFFECTUAL COLLECTION OF THE POOR TAX IN THE CITY OF PHILADELPHIA, THE DISTRICT OF SOUTHWARK AND THE TOWNSHIPS OF MOYAMENSING AND THE NORTHERN LIBERTIES AND TO PROVIDE IN A MORE CONVENIENT AND SALUTARY MANNER FOR THE CONFINEMENT OF DISORDERLY PERSONS, FOUND AND APPREHENDED IN THE SAID CITY, DISTRICT AND TOWNSHIPS.

(Section I, P. L.) Whereas by the eventual operation of an act entitled "An act to amend an act entitled 'An act for the better employment of the poor of the city of Philadelphia, the district of Southwark, the townships of Moyamensing, Passayunk and the Northern Liberties,' and to revive and perpetu-

CHAPTER MDXVI.

AN ACT TO REFORM THE PENAL LAWS OF THE STATE.

(Section I, P. L.) Whereas by the thirty-eighth section of the second chapter of the constitution of this state it is declared, "That the penal laws as heretofore used should be reformed by the legislature as soon as may be and punishments made in some cases less sanguinary and in general more proportionate to the crimes;" and by the thirty-ninth section "That to deter more effectually from the commission of crimes by continued visible punishment of long duration and to make sanguinary punishments less necessary houses ought to be provided for punishing by hard labor those who shall be convicted of crimes not capital wherein the criminal shall be employed for the benefit of the public or for reparation of injuries done to private persons." And whereas the laws heretofore made for the purpose of carrying the said provisions of the constitution into effect have in some degree failed of success from the exposure of the offenders employed at hard labor to public view and from the communication with each other not being sufficiently restrained within the places of confinement, and it is hoped that the addition of unremitted solitude to laborious employment as far as it can be effected will contribute as much to reform as to deter:

[Section 1.] (Section II, P. L.) Be it therefore enacted and it is hereby enacted by the Representatives of the Freemen of the Commonwealth of Pennsylvania in General Assembly met and by the authority of the same, That the pains and penalties hereinafter mentioned shall be inflicted upon the several offenders who shall from and after the passing of this act commit and be legally convicted of any of the offences hereinafter enumerated and specified, in lieu of the pains and penalties which by law have been heretofore inflicted; that is to say, every person convicted of robbery, burglary, sodomy or buggery or as accessory thereto before the fact shall forfeit to the

commonwealth all and singular the lands and tenements, goods and chattels whereof he or she was seized or possessed at the time the crime was committed and at any time afterwards until conviction and be sentenced to undergo a servitude of any term or time at the discretion of the court passing the sentence not exceeding ten years in the public gaol or house of correction of the county or city in which the offence shall have been committed and be kept at such labor and fed and clothed in such manner as is herein after directed.

[Section II.] Provided always and be it further enacted by the authority aforesaid, That no person accused of [any of] the aforesaid crimes shall be admitted to bail but by the judges of the supreme court or some or one of them nor shall he or she be tried but in the supreme court or in a court of oyer and terminer or general jail delivery held in and for the county wherein the offence shall have been committed and that peremptory challenges shall be allowed in all such cases wherein they have been heretofore allowed by law but no attainder hereafter shall work corruption of blood in any case nor extend to the disinherison or prejudice of any person or persons other than the offender.

[Section III.] (Section IV, P. L.) And be it further enacted by the authority aforesaid, That every person convicted of horse-stealing or as accessory thereto before the fact shall restore the horse, mare or gelding stolen to the owner or owners thereof or shall pay to him, her or them the full value thereof and also pay the like value to the commonwealth, and moreover undergo a servitude for any term not exceeding seven years in the discretion of the court before which the conviction shall be, and shall be confined, kept to hard labor, fed and clothed in manner hereinafter mentioned. Every person convicted of simple larceny to the value of twenty shillings and upwards or as accessory thereto before the fact shall restore the goods or chattels so stolen to the right owner or owners thereof or shall pay to him, her or them the full value thereof or of so much thereof as shall not be restored, and moreover shall forfeit and pay to the commonwealth the like value of the goods and chattels

stolen and also undergo a servitude for any term of years not exceeding three at the discretion of the court before which the conviction shall be, and shall be confined, kept to hard labor, fed and clothed in manner hereinafter directed.

And whereas by the ninth section of the first chapter of the constitution it is declared, "That in all prosecutions for criminal offences a man has a right to be heard by himself and his counsel to demand the cause and nature of his accusation, to be confronted with the witnesses, to call for evidence in his favor and a speedy public trial by an impartial jury of the county, without the unanimous consent of which jury he cannot be found guilty." Since which declaration it is not proper that persons accused of small or petty larcenies should be tried and convicted before two magistrates or justices of the peace without the intervention of a jury.

[Section IV.] (Section V, P. L.) Be it therefore enacted by the authority aforesaid, That the act of assembly entitled "An act for the trial and punishment of larceny under five shillings"[1] be and the same is hereby repealed and [that] if any person or persons shall hereafter feloniously steal, take and carry away any goods or chattels under the value of twenty shillings, the same order and course of trial shall be had and observed as for other simple larcenies and he, she or they being thereof legally convicted shall be deemed guilty of petty larceny and shall restore the goods and chattels so stolen or pay the full value thereof to the owner or owners thereof and also forfeit and pay the like value to the commonwealth and be further sentenced to undergo a servitude for a term not exceeding one year in the discretion of the court before which such conviction shall be, and be confined, kept to hard labor, clothed and fed in manner as herein after directed. And every person convicted of bigamy or of being an accessory after the fact in any felony or of receiving stolen goods knowing them to have been stolen or of any other offence not capital for which by the laws in force before the act entitled "An act to amend the penal

[1] Passed February 24, 1720, Chapter 243.

laws of this state"[1] burning in the hand, cutting off the ears, nailing the ear or ears to the pillory, placing in and upon the pillory, whipping or imprisonment for life is or may be inflicted, shall instead of such parts of the punishment be fined and sentenced to undergo in the like manner and be confined, kept to hard labor fed and clothed as is hereinafter directed for any term not exceeding two years which the court before whom such conviction shall be may and shall in their discretion think adapted to the nature and heinousness of the offence.

[Section V.] (Section V, P. L.) And be it further enacted by the authority aforesaid, That robbery or larceny of obligations or bonds, bills obligatory, bills of exchange, promissory notes for the payment of money, lottery tickets, paper bills of credit, certificates granted by or under the authority of this commonwealth or of all or any of the United States of America shall be punished in the same manner as robbery or larceny of any goods or chattels. And whereas by the eighth section of the act of assembly entitled "An act for the advancement of justice and more certain administration thereof"[2] it is enacted that if any woman shall endeavor privately to conceal the death of her child which by being born alive should by the law be deemed a bastard so that it may not come to light whether it was born alive or not and be convicted thereof shall suffer death as in case of murder "except such mother can make proof by one witness at the least that the child whose death was by her so intended to be concealed was born dead" whereby the bare concealment of the death is almost conclusive evidence of the child's being murdered by the mother or by her procurement.

[Section VI.] (Section VI, P. L.) Be it therefore declared and enacted by the authority aforesaid, That from and after the publication of this act the constrained presumption that the child whose death is concealed was therefore murdered by the mother shall not be sufficient evidence to convict the party indicted without probable presumptive proof is given that the child was born alive.

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[1] Passed September 15, 1786, Chapter 1241.

[2] Passed May 31, 1718, Chapter 286.

[Section VII.] (Section VII, P. L.) And be it further enacted by the authority aforesaid, That every other felony or misdemeanor, or offence whatsoever not specially provided for by this act may and shall be punished as heretofore.

[Section VII.] (Section VIII, P. L.) Be it enacted by the authority aforesaid, That the commissioners for the county of Philadelphia with the approbation of the mayor and two of the aldermen of the city of Philadelphia and two of the justices of the court of the quarter sessions for the county of Philadelphia shall as soon as conveniently may be cause a suitable number of cells to be constructed in the yard of the gaol 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 with 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 attrocious offenders who by virtue of the act entitled "An act for amending the penal laws of this state"[4] have been sentenced to hard labor for a term of years, or who shall be sentenced thereto by virtue of this act.

[Section IX.] (Section IX, P. L.) Be it enacted by the authority aforesaid, That for the purpose of defraying a proportionable part of the expense of erecting such cells and walls the president and supreme executive council shall be and they are hereby authorized to draw orders on the state treasurer for the sum of five hundred pounds to be paid out of the funds especially appropriated for claims and improvements when the same shall be sufficiently productive and for defraying the residue of the expense it shall be lawful for the commissioners of the said county or a majority of them to assess, levy and collect within the said county so much money as they with the concurrence and approbation of the said mayor, aldermen and justices shall judge necessary, Provided, The same does not exceed the sum of one thousand pounds.

[Section X.] (Section X, P. L.) Be it enacted by the authority aforesaid, That the said cells shall be and are hereby de-

clared to be part of the gaol of the city and county of Philadelphia and the residue of the said gaol shall be appropriated to the purposes of confining as well such male convicts sentenced to hard labor as cannot be accommodated in the said cells as female convicts sentenced in like manner, persons convicted of capital crimes, vagrants and disorderly persons committed as such and persons charged with misdemeanors only, all which persons are hereby required to be kept separate and apart from each other, as much as the convenience of the building will admit and to be subject to the visitation and superintendence of the inspectors hereinafter appointed.

[Section XI.] (Section XI, P. L.) Be it further enacted by the authority aforesaid, That it shall be lawful for the mayor or any alderman of the city of Philadelphia and any justice of the peace of the said county to commit any vagrant or idle and disorderly person (being thereof legally convicted before him as by law is directed) to the said gaol to be kept at hard labor for any term not exceeding one month any law of this state to the contrary notwithstanding.

[Section XII.] (Section XII, P. L). Be it enacted by the authority aforesaid, That in order to prevent the introduction of contagious disorders every person who shall be ordered to hard labor in said gaol shall be separately lodged, washed and cleaned and shall continue in such separate lodging until it shall be certified by some physician that he or she is fit to be received among the other prisoners and if such person be a convict the clothes in which he or she shall then be clothed shall either be burnt or at the discretion of two of the said inspectors be baked, fumigated and carefully laid by until the expiration of the term for which such offender shall be sentenced to hard labor to be then returned to him or her.

[Section XIII.] (Section XIII, P. L.) Be it enacted by the authority aforesaid, That all such convicts shall at the public expense of such county during the term of their confinement be clothed in habits of coarse materials uniform in color and make and distinguishing them from the good citizens of this commonwealth, and the males shall have their heads and beards close shaven at least once a week and all such offenders

shall during the said term be sustained upon bread, Indian meal or other inferior food, at the discretion of said inspectors and shall be allowed one meal of coarse meat in each week and shall be kept as far as may be consistent with their sex, age, health and ability to labor of the hardest and most servile kind in which the work is least liable to be spoiled by ignorance, neglect or obstinacy and where the materials are not easily embezzled or destroyed, and if the work to be performed is of such a nature as may require previous instruction, proper persons for that purpose to whom a suitable allowance shall be made shall be provided by order of any two of the inspectors hereafter named, during which labor the said offenders shall be kept separate and apart from each other if the nature of their several employments will admit thereof and where the nature of such employment requires two or more to work together the keeper of the said gaol or one of his deputies shall if possible be constantly present.

[Section XIV.] (Section XIV, P. L.) Be it enacted by the authority aforesaid, That such offenders unless prevented by ill health shall be employed in work every day in the year except Sundays and the hours of work each day shall be as many as the season of the year with an interval of half an hour for breakfast and an hour for dinner will permit, but not exceeding eight hours in the months of November, December and January, nine hours, in the months of February and October and ten hours in the rest of the year and when such hours of work are passed the working tools, implements and materials or such of them as will admit of daily removal shall be removed to places proper for their safe custody until the hour of labor shall return.

[Section XV.] (Section XV, P. L.) Be it enacted by the authority aforesaid, That the keeper of the said gaol shall from time to time with the approbation of any two of the inspectors hereafter mentioned provide a sufficient quantity of stock and materials, working tools and implements for such offenders for the expense of which the said inspectors or any two of them shall be and they are hereby authorized to draw orders to be countersigned by the commissioners of the county on the

treasurer of the county if need shall be specifying in such orders the quantity and nature of the materials, tools or implements wanted, which orders the said treasurer is hereby required to discharge out of the county stock, for which materials, tools and implements when received the said keeper shall be accountable, and the said keeper shall with the approbation of any two of the said inspectors have power to make contracts with any person whatever for the clothing, diet and all other necessaries for the maintenance and support of such convicts and for the implements and materials of any kind of manufacture, trade or labor in which such convicts shall be employed for the sale of such goods, wares and merchandise as shall be there wrought and manufactured and the said keeper shall cause all accounts concerning the maintenance of such convicts and other prisoners to be entered regularly in a book or books to be kept for that purpose and shall also keep separate accounts of the stock and materials so wrought, manufactured, sold and disposed of and the moneys for which the same shall be sold and when sold and to whom in books to be provided for those purposes, all which books and accounts shall be at all times open for the examination of the said inspectors and shall be regularly laid before them at their quarterly or other meetings as hereinafter is directed for their approbation and allowance.

[Section XVI.] (Section XVI, P. L.) Be it enacted by the authority aforesaid, That if the said inspectors at their quarterly or other meetings shall suspect any fraudulent or improper charges or any omissions in any such accounts they may examine upon oath or affirmation the said keeper or any of his deputies, servants or assistants or any person of whom any necessaries, stock, materials or other things have been purchased for the use of the said gaol or any persons to whom any stock or materials wrought or manufactured therein have been sold or any of the offenders confined in such gaol or any other person or persons concerning any of the articles contained in such accounts or any omission thereout and in case any fraud shall appear in such accounts the particulars thereof shall be

reported by the said inspectors in writing to the mayor of the said city for the purposes hereinafter mentioned.

[Section XVII.] (Section XVIII, P. L.) Be it enacted by the authority aforesaid, That in order to encourage industry as an evidence of reformation separate accounts shall be opened in the said books for all convicts sentenced to hard labor for six months and upward in which such convicts shall be charged with the expenses of clothing and subsistence and such proportionable part of the expenses of the raw materials upon which they shall be employed as the inspectors at their quarterly or other meetings shall think just and shall be credited with the sum or sums from time to time received by reason of their labor and if the same shall be found to exceed the said expenses one half of said excess shall be laid out in decent raiment for such convicts at their discharge or otherwise applied to their use and benefit as the said inspectors shall upon such occasions direct and if such offender at the end or other determination of his term of confinement shall labor under any acute or dangerous distemper he shall not be discharged unless at his own request until he can be safely discharged.

[Section XVIII.] (Section XVIII, P. L.) Be it enacted by the authority aforesaid, That no person whatever except the keeper, his deputies, servants or assistants, the said inspectors, officers and ministers of justice, counsellors or attorneys at law employed by a prisoner, ministers of the gospel or persons producing a written license signed by two of the said inspectors shall be permitted to enter within the walls where such offenders shall be confined and that the doors of all the lodging rooms and cells in the said gaol shall be locked and all lights therein extinguished at the hour of nine and one or more watchmen shall patrol the said gaol at least twice in every hour from that time until the return of the time of labor in the morning of the next day.

[Section XIX.] (Section XIX, P. L.) Be it enacted by the authority aforesaid, That the walls of the cells and apartments in the said gaol shall be whitewashed with lime and water at least twice in every year and the floors of the said cells and apartments shall be washed once every week or oftener if the

said inspectors shall so direct by one or more of the said prisoners in rotation who at the discretion of the said keeper shall have an extra allowance of diet for so doing and the said prisoners shall be allowed to walk and air themselves for such stated time as their health may require and the said keeper shall permit and if proper employment can be found such prisoners may also be permitted with the approbation of two of the said inspectors to work in the yard provided such airing and working in the yard be in the presence or within the view of the said keeper or his deputies or assistants.

[Section XX.] (Section XX, P. L.) Be it enacted by the authority aforesaid, That one or more of the apartments in the second story of the said gaol and at the extreme end of the west wing shall be fitted up as an infirmary and in case any such offender being sick shall upon examination of a physician be found to require it he or she shall be removed to the infirmary and his or her name shall be entered in a book to be kept for that purpose and when such physician shall report to the said keeper that such offender is in a proper condition to quit the infirmary and return to his or her employment such report shall be entered by the said keeper in a book to be kept for that purpose and the said keeper shall order him or her back to his or her former labor so far as the same shall be consistent with his or her state of health and the said mayor, aldermen and justices shall from time to time appoint a physician to attend at said gaol.

[Section XXI.] (Section XXI, P. L.) Be it enacted by the authority aforesaid, That the keeper of the said gaol shall have power to punish all such prisoners guilty of assaults within the said gaol when no dangerous wound or bruise is given, profane cursing and swearing, indecent behavior, idleness or neglligence in work or wilful mismanagement of it or of disobedience to the orders and regulations hereinafter directed to be made by confining such offenders in the dark cells or dungeons of the said gaol and by keeping them upon bread and water only for any term not exceeding two days and if any such prisoner shall be guilty of any offense within the said gaol which the said keeper is not hereby authorized to punish or for which

he shall think the said punishment is not sufficient by reason of the enormity of the offense he shall report the same to two of the said inspectors who if upon proper inquiry they shall think fit shall certify the nature and circumstances of such offense with the name of the offender to the mayor of the said city and the mayor shall thereupon order such offenses to be punished by moderate whipping or repeated whippings not exceeding thirteen lashes each or by close confinement in the said dark cells or dungeons with bread and water only for sustenance for any time not exceeding six days or by all the said punishments.

[Section XXII.] (Section XXII, P. L.) Be it enacted by the authority aforesaid, That it shall be lawful for the mayor and two aldermen of the said city and two of the justices of the peace of the said county on the first day of May annually to appoint a suitable person to be keeper of the said gaol who shall however be liable to be removed by the mayor, aldermen and justices aforesaid when occasion may require in which case another shall from time to time be appointed in like manner who shall receive as full compensation for his services and in lieu of all fees and gratuities by reason or under color of the said office so much per annum as the said mayor, aldermen and justices at the time of such appointment shall direct to be paid in quarterly payments by orders drawn on the treasurer of the said county by said mayor and also five per centum on the sales of all articles manufactured by the said criminals and such keeper shall have power with the approbation of the mayor, aldermen and justices aforesaid, to appoint a suitable number of deputies and assistants at such reasonable allowances as the mayor, aldermen and justices aforesaid shall think just which allowances shall be paid quarterly in like manner and before any such gaoler shall exercise any part of the said office he shall give bond to the treasurer of the county with two sufficient sureties to be approved by the said mayor in the sum of five hundred pounds upon condition that he, his deputies and assistants shall well and faithfully perform the trusts and duties in them reposed, which bond the due execution thereof being proved before and certified by any of the alder-

men of the said city shall be recorded in the office of the recorder of deeds for the county of Philadelphia and copies thereof exemplified by the said recorder of deeds shall be legal evidence in all courts of law in any suit against such gaoler or his sureties.

[Section XXIII.] (Section XXIII, P. L.) Be it enacted by the authority aforesaid, That it shall be lawful for the said mayor, aldermen and justices aforesaid on the first Monday in May next to appoint twelve inspectors, six of whom shall be in office until the first Monday in November next and six until the first Monday in May following, and so from time to time six inspectors shall be appointed in manner aforesaid on the first Mondays in May and November annually, and if any person so appointed not having a reasonable excuse to be approved of by the said mayor, aldermen and justices shall refuse to serve in the said office he shall forfeit and pay the sum of ten pounds to be recovered by action of debt as debts of like value are recoverable by the laws of this commonwealth, the one half thereof to the use of the person suing, the other half to be paid to the treasurer of the said county to be applied to the purposes hereinbefore mentioned.

[Section XXIV.] (Section XXIV, P. L.) Be it enacted by the authority aforesaid, That the said inspectors, seven of whom shall be a quorum, shall meet once in three months, in an apartment to be provided for that purpose in the said gaol and may be especially convened by the two acting inspectors when occasion may require, and they shall at their first meeting appoint two of their members to be acting inspectors who shall continue such for such time as shall be directed by the said inspectors or a majority of them when met together. And the acting inspectors shall attend at the said gaol at least once in each week and shall examine into and inspect the management of the said gaol and the conduct of the said keeper and his deputies so far as respects the said offenders employed at hard labor and the directions of this act and shall do and perform the several matters and things hereinbefore directed by them to be performed.

[Section XXV.] (Section XXV, P. L.) Be it further enacted

by the authority aforesaid, That the board of inspectors at their quarterly or other meeting shall make such further orders and regulations for the purpose of carrying this act into execution as shall be approved of by the mayor and recorder of the said city and such orders and regulations shall be hung up in at least six of the most conspicuous places in the said gaol and if the said keepor or any of his deputies or assistants shall obstruct or resist the said inspectors or any of them in the exercise of the powers and duties vested in them by this act such person shall forfeit and pay the sum of twenty pounds to be recovered as aforesaid and shall moreover be liable to be removed in manner aforesaid from his respective office or employment in the said gaol.

[Section XXVI.] (Section XXVI, P. L.) Be it further enacted by the authority aforesaid, That the present house of correction in the city of Philadelphia shall be reserved for the exclusive reception and confinement of debtors and persons committed to secure their appearance as witnesses in criminal prosecutions and not charged with any misdemeanor or higher offense, which witnesses if bound in recognizances for their appearance in favor of the prosecution shall be allowed the sum of six pence per diem to be paid out of the county stock, and the commissioners of the said county are hereby authorized to make such alterations in the same not exceeding the sum of sixty pounds as shall be necessary to accommodate all such prisoners and to distinguish the said house of correction by a proper title henceforward it shall be called and known by the name of "The Debtors' Apartment."

[Section XXVII.] (Section XXVII, P. L.) Be it further enacted by the authority aforesaid, That the keepers of the said gaol and of the said house of correction respectively shall forthwith exchange the several prisoners in their respective custody conformable to the true intent and meaning of this act and shall be and are hereby indemnified for all such prisoners as shall be safely delivered into proper custody pursuant to the directions of this act:

And whereas it may not at present be practicable to introduce all the above mentioned regulations into each of the

counties of this state although it is neecssary that an uniformity of punishment should as much as possible prevail in all:

[Section XXVIII.] (Section XXVIII, P. L.) Be it enacted by the authority aforesaid, That the malefactors sentenced to hard labor as aforesaid in the several counties of this state other than the county of Philadelphia shall be employed in the several gaols and work houses in the respective counties in such hard and servile labor and fed and clothed in such manner as is hereinbefore directed. And the sheriff of the proper county to whom the said malefactors shall be committed in execution of their sentence shall from time to time with the approbation of the justices of the court of quarter sessions of the proper county in open court appoint so many keepers of the said malefactors as shall be necessary, whose wages shall be ascertained and allowed by the said court and paid by the treasurer of the county out of the moneys in his hands raised for the use of the said county by a warrant drawn by the said sheriff and at least one of the commissioners of the proper county and that the duty of the said keepers shall be to superintend and direct their labors, manage and attend to their clothing, diet and lodging and take care that they be safely kept and the better to effect this purpose they shall have authority to confine in close durance apart from all society all those who shall refuse to labor, be idle or guilty of any trespass and during such confinement to withhold from them all sustenance except bread and water, and also to put iron yokes around their necks, chains upon their leg or legs or otherwise restrain in irons such as shall be incorrigible or irreclaimable without such severity.

[Section XXIX.] (Section XXIX, P. L.) Be it enacted by the authority aforesaid, That the court of quarter sessions of any such county shall have power either ex officio or upon information against any such keeper for partiality or cruelty to call before them such keeper together with the material witnesses and inquire into his conduct and if it shall appear that he hath been guilty of gross partiality or cruelty it shall and may be lawful for the said court to suspend or remove him, and any of the judges of the supreme court when upon the cir-

cuit in such county either on their own motion or on complaint made by any other may take original cognizance of the misbehavior of any keeper and remove him from office if they see cause and in case of suspension or removal of all or any of the said keepers either by the justices of the quarter sessions or the judges of the supreme court the sheriff of the proper county with the approbation of the justices of the quarter sessions of the same county shall and he is hereby authorized and directed to appoint another keeper or keepers in the room of such as shall have been so suspended or removed.

[Section XXX.] (Section XXX, P. L.) Be it further enacted by the authority aforesaid, That the keepers of the gaols and workhouses or houses of correction in such counties shall once every three months or oftener if required furnish the commissioners of their respective counties with a complete calendar or list of all persons committed to their respective custody under sentence of such servitude, together with the names of their crimes, the term of their servitude, in what court condemned, the ages and the description of the persons of such as shall appear to be too old and infirm or otherwise incapable to undergo hard labor out of the gaols or work houses, and the said commissioners shall at the charge of the proper county provide the clothing and the food hereinbefore directed for them as also such articles and materials of labor and manufacture as shall be most suitable for the employment of all those who are capable of labor or manufacture and deliver the same to the said gaoler or workhouse keeper, taking a receipt therefor; and that the gaoler or workhouse keeper shall render an account quarterly or oftener if required to the commissioners of the work done by the said malefactors and dispose of the same in such manner as the commissioners shall direct and the said commissioners are hereby authorized from time to time to draw orders or give their warrants on the treasurer of the proper county for the advance of such sums as they shall think reasonable and necessary for carrying this act into execution and all expenses and charges incurred or to be incurred by virtue of this act shall be levied and raised as other county charges are and be accounted for in like manner excepting the said sum of five

hundred pounds directed by this act to be paid out of the treasury of the state towards erecting the said cells in the yard of the gaol of the county of Philadelphia.

[Section XXXI.] (Section XXXI, P. L.) Be it enacted by the authority aforesaid, That the said keepers of any of the gaols, and houses of correction within this commonwealth, their deputies and assistants in case any of the said offenders shall escape from confinement without the knowledge or consent of the said keepers, deputies or assistants shall forfeit and pay the sum of ten pounds to be recovered and applied in manner aforesaid. Provided, That nothing in this act contained shall be deemed or taken to extend to escapes voluntarily suffered by any such keepers of the said gaols or workhouses.

[Section XXXII.] (Section XXXII, P. L.) Be it enacted by the authority aforesaid, That if any such offender sentenced to hard labor shall escape, he or she shall on conviction thereof suffer such additional confinement at hard labor agreeably to the directions of this act and shall also suffer such additional corporal punishment not extending to life or limb as the court in which such offender shall have been convicted shall adjudge and direct. And if any such offender shall after his or her escape be guilty of any offense for which he or she would have been sentenced to death by the laws in force before the passing of the act entitled "An act for amending the penal laws of this state" [5] he or she shall suffer death as if the said act or this act had not been made.

[Section XXXIII.] (Section XXXIII, P. L.) Be it enacted by the authority aforesaid, That any such offenders who have been or shall be pardoned for the offenses or crimes of which he or she hath been or shall be convicted in pursuance of the said act or of this act, provided such offense was by any law in force before the passing of the said act made capital and who shall be convicted of a second offense of the like nature shall suffer death on such conviction without the benefit of clergy and any constable who shall take up and convey to gaol any convict who shall escape from his confinement shall be allowed mileage at the same rate as constables are commonly allowed to be paid by the treasurer of the proper county.

[Section XXXIV.] (Section XXXIV, P. L.) Be it enacted by the authority aforesaid, That any felon convicted in any county in this state other than the county of Philadelphia of any felony or felonies for which he or she shall be sentenced to hard labor for the space of twelve months or upwards may at the discretion of the court in which such felon shall be convicted within three months after such conviction be removed at the expense of the said county under safe and secure conduct to the gaol in the said county of Philadelphia and therein be confined, fed, clothed and employed at hard labor as is hereinbefore directed for the remaining part of the time for which by such sentence he or she shall be liable to imprisonment, and the commissioners of the said county of Philadelphia upon the application of the said inspectors shall have authority from time to time to draw orders upon the treasurer of the county from which such felon shall have been so removed for the expenses of feeding and clothing such felon, if the labor of such felon shall not be sufficient to pay the same, which orders the treasurer of such county shall accept and pay.

[Section XXXV.] (Section XXXV, P. L.) Be it enacted by the authority aforesaid, That if any gaoler or other person whatever shall introduce into or give away, barter or sell within any gaol or house of correction in the said city or any of the counties of this state any spirituous or fermented liquors excepting only such as the gaoler or keeper of such gaol or house of correction shall make use of in his own family or such as may be required for any prisoner in a state of ill health and for such purpose prescribed by an attending physician and delivered into the hands of such physician or other person appointed to receive them, such person shall forfeit and pay the sum of five pounds to be recovered as debts of like value may be recovered by the laws of this state, one moiety thereof to the use of the person suing, the other moiety to be paid to the said inspectors for the purposes in this act contained.

[Section XXXVI.] (Section XXXVI, P. L.) Be it enacted by the authority aforesaid, That the act entitled "An act for amending the penal laws of this state" [1] and the act entitled

[1] See Ante.

"An act to amend an act entitled 'An act for amending the penal laws of this state' "[1] shall be and they are hereby repealed.

[Section XXXVII.] (Section XXXVII, P. L.) Be it enacted by the authority aforesaid, That this act shall be in force for the term of five years and from thence to the end of the next session of the general assembly and no longer.

[Section XXXVIII.] (Section XXXVIII, P. L.) And be it further enacted by the authority aforesaid, That the force and operation of the act hereinbefore mentioned entitled "An act for amending the penal laws of this state"[2] shall notwithstanding the said act is herein repealed remain valid and effectual as to all persons convicted and sentenced to confinement, servitude and hard labor conformably to the true intent and meaning of the said act and of this act.

Passed April 5, 1790. Recorded L. B. No. 4, p. 105. See the Acts of Assembly passed September 23, 1791, Chapter 1513; April 4, 1792, Chapter 1636; April 22, 1794, Chapter 1777; April 18, 1795, Chapter 1861; March 20, 1797, Chapter 1929; April 4, 1799, Chapter 2051.

Sections 1, 2, 3, 4, 5, 6, 7, 32 and 33 repealed by the Act of Assembly passed March 31, 1860. Chapter 376. P. L. of 1860, p. 452.

CHAPTER MDXVII.

AN ACT FOR THE PAYMENT OF THE CLAIM OF TURNBULL, MARMIE AND COMPANY.

(Section I, P. L.) Whereas it appears to this house that Messrs. Turnbull, Marmie and Company late contractors for a part of the continental army had on the first day of June one thousand seven hundred and eighty-seven a warrant drawn by the board of treasury of the United States on Thomas Smith, Esquire, continental loan officer, for the sum of three thousand

[1] Passed March 27, 1789, Chapter 1409.

[2] Ante.

Crosstabs of race of defendant and then race of victim, by death penalty outcomes

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. tabulate dp_filed0 FD_white, column row
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Key
frequency *row percentage* *column percentage*

dp_filed0	FD_white 0	1	Total
0	429	138	567
	75.66	24.34	100.00
	64.41	64.49	64.43
1	237	76	313
	75.72	24.28	100.00
	35.59	35.51	35.57
Total	666	214	880
	75.68	24.32	100.00
	100.00	100.00	100.00

. tab dp_filed0 FD_black, column row

Key
frequency *row percentage* *column percentage*

	FD_black		
dp_filed0	0	1	Total
0	173	394	567
	30.51	69.49	100.00
	59.86	66.67	64.43
1	116	197	313
	37.06	62.94	100.00
	40.14	33.33	35.57
Total	289	591	880
	32.84	67.16	100.00
	100.00	100.00	100.00

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. tab dp_filed0 FD_hispanic, column row
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Key
frequency *row percentage* *column percentage*

	FD_hispanic		
dp_filed0	0	1	Total
0	540	27	567
	95.24	4.76	100.00
	66.01	43.55	64.43
1	278	35	313
	88.82	11.18	100.00
	33.99	56.45	35.57
Total	818	62	880
	92.95	7.05	100.00
	100.00	100.00	100.00

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. tab dp_filed0 anywhite_v_dum, column row
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Key
frequency *row percentage* *column percentage*

	anywhite_v_dum		
dp_filed0	0	1	Total
0	401	166	567
	70.72	29.28	100.00
	67.06	58.87	64.43
1	197	116	313
	62.94	37.06	100.00
	32.94	41.13	35.57
Total	598	282	880
	67.95	32.05	100.00
	100.00	100.00	100.00

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. tab dp_filed0 anyblack_v_dum, column row
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Key
frequency *row percentage* *column percentage*

	anyblack_v_dum		
dp_filed0	0	1	Total
0	207	360	567
	36.51	63.49	100.00
	56.87	69.77	64.43
1	157	156	313
	50.16	49.84	100.00
	43.13	30.23	35.57
Total	364	516	880
	41.36	58.64	100.00
	100.00	100.00	100.00

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. tab dp_filed0 anyhisp_v_dum, column row
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Key
frequency *row percentage* *column percentage*

dp_filed0	anyhisp_v_dum 0	1	Total
0	536	31	567
	94.53	5.47	100.00
	66.92	39.24	64.43
1	265	48	313
	84.66	15.34	100.00
	33.08	60.76	35.57
Total	801	79	880
	91.02	8.98	100.00
	100.00	100.00	100.00

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. tabulate dp_retracted0 FD_white, column row
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Key
frequency *row percentage* *column percentage*

dp_retracted0	FD_white 0	1	Total
0	547	187	734
	74.52	25.48	100.00
	82.13	87.38	83.41
1	119	27	146
	81.51	18.49	100.00
	17.87	12.62	16.59
Total	666	214	880
	75.68	24.32	100.00
	100.00	100.00	100.00

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. tab dp_retracted0 FD_black, column row
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Key
frequency *row percentage* *column percentage*

dp_retracted0	FD_black 0	1	Total
0	240	494	734
	32.70	67.30	100.00
	83.04	83.59	83.41
1	49	97	146
	33.56	66.44	100.00
	16.96	16.41	16.59
Total	289	591	880
	32.84	67.16	100.00
	100.00	100.00	100.00

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. tab dp_retracted0 FD_hispanic, column row
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Key
frequency *row percentage* *column percentage*

dp_retracted0	FD_hispanic 0	1	Total
0	691	43	734
	94.14	5.86	100.00
	84.47	69.35	83.41
1	127	19	146
	86.99	13.01	100.00
	15.53	30.65	16.59
Total	818	62	880
	92.95	7.05	100.00
	100.00	100.00	100.00

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. tab dp_retracted0 anywhite_v_dum, column row
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Key
frequency *row percentage* *column percentage*

dp_retracted0	anywhite_v_dum 0	1	Total
0	497	237	734
	67.71	32.29	100.00
	83.11	84.04	83.41
1	101	45	146
	69.18	30.82	100.00
	16.89	15.96	16.59
Total	598	282	880
	67.95	32.05	100.00
	100.00	100.00	100.00

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. tab dp_retracted0 anyblack_v_dum, column row
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Key
frequency *row percentage* *column percentage*

dp_retracted0	anyblack_v_dum 0	1	Total
0	300	434	734
	40.87	59.13	100.00
	82.42	84.11	83.41
1	64	82	146
	43.84	56.16	100.00
	17.58	15.89	16.59
Total	364	516	880
	41.36	58.64	100.00
	100.00	100.00	100.00

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. tab dp_retracted0 anyhisp_v_dum, column row
```

Key
frequency *row percentage* *column percentage*

dp_retracted0	anyhisp_v_dum 0	1	Total
0	672	62	734
	91.55	8.45	100.00
	83.90	78.48	83.41
1	129	17	146
	88.36	11.64	100.00
	16.10	21.52	16.59
Total	801	79	880
	91.02	8.98	100.00
	100.00	100.00	100.00

```
. tab sentence0 FD_white, column row
```

Key
frequency *row percentage* *column percentage*

sentence0	FD_white 0	1	Total
0	634	195	829
	76.48	23.52	100.00
	95.20	91.12	94.20
1	32	19	51
	62.75	37.25	100.00
	4.80	8.88	5.80
Total	666	214	880
	75.68	24.32	100.00
	100.00	100.00	100.00

```
. tab sentence0 FD_black, column row
```

Key
frequency *row percentage* *column percentage*

sentence0	FD_black 0	1	Total
0	263	566	829
	31.72	68.28	100.00
	91.00	95.77	94.20
1	26	25	51
	50.98	49.02	100.00
	9.00	4.23	5.80
Total	289	591	880
	32.84	67.16	100.00
	100.00	100.00	100.00

```
. tab sentence0 FD_hispanic, column row
```

Key
frequency *row percentage* *column percentage*

sentence0	FD_hispanic 0	1	Total
0	773	56	829
	93.24	6.76	100.00
	94.50	90.32	94.20
1	45	6	51
	88.24	11.76	100.00
	5.50	9.68	5.80
Total	818	62	880
	92.95	7.05	100.00
	100.00	100.00	100.00

```
. tab sentence0 anywhite_v_dum, column row
```

Key
frequency *row percentage* *column percentage*

sentence0	anywhite_v_dum 0	1	Total
0	579	250	829
	69.84	30.16	100.00
	96.82	88.65	94.20
1	19	32	51
	37.25	62.75	100.00
	3.18	11.35	5.80
Total	598	282	880
	67.95	32.05	100.00
	100.00	100.00	100.00

```
. tab sentence0 anyblack_v_dum, column row
```

Key
frequency *row percentage* *column percentage*

sentence0	anyblack_v_dum 0	1	Total
0	328	501	829
	39.57	60.43	100.00
	90.11	97.09	94.20
1	36	15	51
	70.59	29.41	100.00
	9.89	2.91	5.80
Total	364	516	880
	41.36	58.64	100.00
	100.00	100.00	100.00

```
. tab sentence0 anyhisp_v_dum, column row
```

Key
frequency *row percentage* *column percentage*

	anyhisp_v_dum		
sentence0	0	1	Total
0	757	72	829
	91.31	8.69	100.00
	94.51	91.14	94.20
1	44	7	51
	86.27	13.73	100.00
	5.49	8.86	5.80
Total	801	79	880
	91.02	8.98	100.00
	100.00	100.00	100.00

```
. logistic sentence0 anywhite_v_dum anyhisp_v_dum p_v_witness p_felony p_d_risk p_torture p_death p_
>  d_noconvict d_impaired d_age sum_other_mit MultiVictims sex_convict rob_convict0 burg_convict0 p
> h_resis v_1h_brutal v_1h_hide v_1h_execution v_1h_ambush age_mean private courtappt gp_acc mst_id
> eapon witness1 co_def IQ71_90 Allegheny Phila

Logistic regression                               Number of obs     =        880
                                                  LR chi2(47)       =     162.34
                                                  Prob > chi2       =     0.0000
Log likelihood =  -113.5761                       Pseudo R2         =     0.4168
```

sentence0	Odds Ratio	Std. Err.	z	P>|z|	[95% Conf.	Interval]
anywhite_v_dum	5.36465	2.658665	3.39	0.001	2.030929	14.17059
anyhisp_v_dum	2.6502	1.753163	1.47	0.141	.7247546	9.69095
p_v_witness	.5306675	.5008996	-0.67	0.502	.083439	3.375015
p_felony	.1942402	.1483568	-2.15	0.032	.0434719	.8679001
p_d_risk	1.41316	1.008233	0.48	0.628	.3490541	5.721234
p_torture	1.178532	.9406226	0.21	0.837	.2465875	5.632634
p_death	.8944817	.7771245	-0.13	0.898	.1629478	4.910144
p_murder	5.768042	5.48684	1.84	0.065	.8939729	37.21623
p_drug	.0159394	.0232194	-2.84	0.004	.0009173	.2769773
p_v_drug	.0468635	.0606164	-2.37	0.018	.0037139	.591339
p_v_12	.7595297	.7134825	-0.29	0.770	.1204892	4.78786
p_agg	2.66695	.9504617	2.75	0.006	1.326353	5.36254
d_disturbed	6.071074	4.424823	2.47	0.013	1.455052	25.33102
d_noconvict	1.102019	.6945109	0.15	0.877	.3204406	3.789925
d_impaired	1.088792	.780765	0.12	0.906	.2670267	4.439514
d_age	2.747855	1.700643	1.63	0.102	.8169329	9.242747
sum_other_mit	.9779456	.1436629	-0.15	0.879	.7332817	1.304243
MultiVictims	.1766735	.169622	-1.81	0.071	.0269119	1.159843
sex_convict	4.335771	4.217081	1.51	0.132	.6444155	29.17203
rob_convict0	.7511734	.4987831	-0.43	0.667	.2044268	2.760213
burg_convict0	2.025261	1.419723	1.01	0.314	.5126043	8.001653
psych0	.7509677	.3664663	-0.59	0.557	.2885636	1.954344
v1family	1.108993	.7621255	0.15	0.880	.2883789	4.264755
v1hadkids	.7017091	.3271111	-0.76	0.447	.2814221	1.74967
v1knife	1.020852	.6357505	0.03	0.974	.3012069	3.45988
v1barehands	.7601397	.6047004	-0.34	0.730	.1598645	3.614387
v_1h_resis	.8846184	.4491854	-0.24	0.809	.3269932	2.393168
v_1h_brutal	.4267988	.2673201	-1.36	0.174	.12505	1.456675
v_1h_hide	.5317614	.3004264	-1.12	0.264	.1757187	1.609221
v_1h_execution	.4073522	.2174497	-1.68	0.092	.143083	1.159717
v_1h_ambush	1.291922	.6943359	0.48	0.634	.4505705	3.704329
age_mean	1.009212	.0227997	0.41	0.685	.9655006	1.054903
private	.2826385	.1394009	-2.56	0.010	.1074998	.743113
courtappt	1.103713	.5979848	0.18	0.855	.3816636	3.191772
gp_acc	.8758869	.8289724	-0.14	0.889	.1370373	5.598315
mst_id	.7283492	.4399388	-0.52	0.600	.2229438	2.37949
gp_nc	1.594897	.8123451	0.92	0.359	.587735	4.327965
gp_not1st	1.46638	.7717875	0.73	0.467	.5226862	4.113886
ad_guilt	.3162547	.2264775	-1.61	0.108	.077709	1.287072
gp_d_psyiat	.5100853	.3005542	-1.14	0.253	.1607293	1.61879
p_evi	1.761888	.8496636	1.17	0.240	.6846831	4.533848
ev_weapon	.7194602	.3380768	-0.70	0.483	.2864338	1.807129
witness1	.4049126	.1952619	-1.87	0.061	.1573564	1.041929
co_def	1.876992	1.031118	1.15	0.252	.6395261	5.508922
IQ71_90	4.179393	1.820779	3.28	0.001	1.779434	9.816226
Allegheny	.5187414	.3534216	-0.96	0.335	.1364653	1.971876
Phila	.1331595	.0921227	-2.91	0.004	.0343156	.5167161
_cons	.0172487	.0175169	-4.00	0.000	.0023568	.126238

Note: _cons estimates baseline odds.

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Variable Names Key
FD_white: White defendant
FD_black: black defendant
FD_hispanic: Hispanic defendant
Anywhite_v_dum: Any white victim
Anyblack_v_dum: Any black victim
Anyhisp_v_dum: Any Hispanic victim
p_v_witness3: Victim was a prosecution witness, as determined by field coders (the death penalty given analysis used the variable p_v_witness, indicating that prosecutors filed this aggravator)
p_v_felony3: Murder committed in perpetration of felony, as determined by field coders (the death penalty given analysis used the variable p_v_felony, indicating that prosecutors filed this aggravator)
p_d_risk3: Defendant knowingly created grave risk of death, as determined by field coders (the death penalty given analysis used the variable p_d_risk, indicating that prosecutors filed this aggravator)
p_torture3: Victim was tortured, as determined by field coders (the death penalty given analysis used the variable p_torture, indicating that prosecutors filed this aggravator)
p_death3: Defendant convicted of other offense carrying life/death, as determined by field coders (the death penalty given analysis used the variable p_death, indicating that prosecutors filed this aggravator)
p_murder3: Defendant convicted of another murder, as determined by field coders (the death penalty given analysis used the variable p_murder, indicating that prosecutors filed this aggravator)
p_drug3: Murder committed during drug felony, as determined by field coders (the death penalty given analysis used the variable p_drug, indicating that prosecutors filed this aggravator)
p_v_drug3: Defendant was associated with victim in drug trafficking, as determined by field coders (the death penalty given analysis used the variable p_v_drug, indicating that prosecutors filed this aggravator)
p_v_12_3: Victim was under 12, as determined by field coders (the death penalty given analysis used the variable p_v_12, indicating that prosecutors filed this aggravator)
p_agg3: Number of Aggravating Factors, as determined by field coders (the death penalty given analysis used the variable p_agg, indicating that prosecutors filed this number of aggravators)
d_noconvict: No significant history of prior crime
d_disturbed: Extreme mental or emotional disturbance
d_impaired: Subst. impaired capacity to appreciate criminality
d_age: Youthful age of defendant at time of crime
sum_other_mit: Number of mitigating factors presented by defense
MultiVictims: Multiple victims
sex_convict: Concurrent sex offense conviction
rob_convict0: Concurrent robbery conviction

burg_convict0: Concurrent burglary conviction
psych0: Defense asked for psychiatric evaluation
v1family: Victim was a family member
v1hadkids: Victim had children
v1knife: Victim killed with knife
v1barehands: Victim killed with bare hands (reference: killed with gun)
v_1h_resis: Victim didn't resist
v_1h_brutal: Victim was killed in an especially brutal manner
v_1h_hide: Defendant tried to hide victim's body
v_1h_execution: Victim killed execution style
v_1h_ambush: Defendant ambushed victim
age_mean: Defendant age (years)
private: Private attorney
courtappt: Court appointed attorney (reference category: public defender)
gp_acc: Defense claimed killing was an accident
mst_id: Defense claimed mistaken identity
gp_nc: Defense claimed witnesses not credible
gp_not1st: Defense claimed killing not first-degree murder
ad_guilt: Defendant admitted guilt
gp_d_psyiat: Defense presented psychiatric expert witness
p_evi: Physical evidence present
ev_weapon: Weapon linked to defendant
witness1: Eye-witness testified
co_def: Co-defendant testified against defendant
IQ71_90: Defendant IQ between 71-90
jurydum: Sentenced by Jury (in death penalty models only)
Allegheny: Allegheny County (in some models) (reference catetgory: other field data counties).
Phila: Philadelphia County (in some models) (reference catetgory: other field data counties).

SUPREME COURT OF PENNSYLVANIA

AND

THIRD JUDICIAL CIRCUIT OF THE U.S.

REPORT

JOINT TASK FORCE

ON

DEATH PENALTY LITIGATION

IN PENNSYLVANIA

July 1990

TABLE OF CONTENTS

EXECUTIVE SUMMARY[1]

Recent decisions of the Supreme Courts of the United States and Pennsylvania, the willingness of the Governor to sign death warrants in appropriate cases, the number of litigated capital punishment cases in Pennsylvania crystallize the fact that the Commonwealth and the federal courts soon will be faced with numerous, actively litigated death penalty cases, as well as executions. The recent experience of the state and federal courts in the southern states which are confronted with a huge number of inmates on death row displays the tremendous burden on the entire legal system caused by this litigation. Nationwide, median defense costs for federal collateral attack litigation is $120,000 per litigant, with fees and expenses in some cases as high as $1.2 million.[2] Litigation often stretches over a multi-year period. Yet retrials, mandated by state or federal review due to fundamental defects in the trial or sentencing process, are ordered in thirty-five percent of the actively litigated cases. The litigation is complex, as it involves difficult constitutional and procedural issues and matters of comity, as well as voluminous records.

As a matter of necessity, for reasons of fundamental fairness, and because of the impact these cases have on the legal system, prosecutors, defenders, state legislatures, bar associations, and state and federal courts have joined forces to consider systematic responses to a problem of major proportions.[3] Pennsylvania, now, is squarely confronted with the problem, and creative responses have been sought under the leadership of a Task Force jointly commissioned by the Supreme Court of Pennsylvania and the Third Judicial Circuit of the United States.

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[1] This summary is provided merely as a convenience to the reader. The Report is the definitive work product of the Task Force. Number references in the Summary correspond to numbered sections in the Report.

[2] This amount represents the average cost per case where no resource center is involved. In a study prepared by the ABA Post-Conviction Death Penalty Representation Project for the Florida legislature and the Governor of Florida, attorney time, expenses, and fees were surveyed at every level of the conviction/appeals/collateral attack process. The study covered a sample of 24 states. Median attorney hours were as follows: state trial court, 400; state supreme court, 200; U.S. Supreme Court (1), 65; federal district court, 305; federal circuit court, 320; and, U.S. Supreme Court (2), 180; total, 1470 hours. Similar figures were reported on support staff hours and expenses. (The Spangenberg Group, Caseload and Cost Projections for Federal Habeas Corpus Death Penalty Cases in FY 1988 and FY 1989 , Sept. 1987.)

The costs described here are for the defense of condemned prisoners. Costs to the state are not immediately apparent, but nonetheless are real. Costs borne directly by prosecution are presumably subsumed in state and county budgets but which nonetheless impact on the administration of justice by forcing reallocation of scarce resources. Constitutional and statutory mandates generally require the state or county to bear the costs of defending an indigent defendant. Thus, all branches of the state government have cooperated in the development of a systematic approach to the problem.

[3] With 116 inmates on death row, Pennsylvania has the fifth largest death row population in the nation. Fifty-six (56) cases in Pennsylvania are in an advanced stage of litigation. Assuming the median cost of defense ($120,000) and case-related expenses($4,000), the potential cost of litigation for just these cases would amount to $6.94 million. (Figures derived from the Spangenberg Group, Caseload and Cost Projections for Federal Habeas Corpus Death Penalty Cases in FY 1988 and FY 1989 , Sept. 1987.)

1.0 BACKGROUND

The Task Force was initiated by Chief Justice Robert N.C. Nix, Jr., and then-Chief Judge John J. Gibbons, on behalf of the state and federal courts in Pennsylvania. They appointed a distinguished Task Force chosen from each governmental branch of the Commonwealth, from the federal courts, from the Bar, and from community and national organizations. U.S. District Judge Alan N. Bloch (W.D. Pa) was appointed Chair of the working group. The first task was to identify specific problems confronting Pennsylvania.

A Review of the Problems

The Task Force identified the following problems being faced by Pennsylvania directly impacting on capital litigation:

(a). There is an absence of any widely accepted method for the identification, training, and appointment of counsel who are qualified to handle capital cases at the state and federal trial, appellate and post-conviction levels.

(b) Attorneys appointed at the federal habeas level are often unable to return to state court to exhaust critical issues.

(c) There is no centralized agency to track cases.

(d) There is a volume of cases ripe for state or federal post-conviction proceedings within the next two years.

(e) Few attorneys are well-versed in this area of criminal law and public defender offices are ill-equipped to deal with the potential onslaught of coming cases.

(f) There is a potential shortage of attorneys able and willing to litigate this type of case in the state and federal courts.

(g) Concerns regarding the adequacy of resource assistance and training, as well as the adequacy of compensation and reimbursement for expenses, may deter otherwise available attorneys from accepting appointment in these cases.

2.0 THE RESOURCE CENTER

The Task Force has recommended the establishment of a Resource Center as the primary method of addressing these problems. The Center would be established as a non-profit Pennsylvania corporation to be designated as a federal community defender organization as outlined in 18 U.S.C. § 3006A(g)(2)(B). Staffed initially by five attorneys and three support staff, the Resource Center would be funded by state, and federal monies allocated for its authorized activities. It would be subject to traditional methods of fiscal accountability, satisfying generally accepted accounting principles, and to audits required by the state and federal governments.

In developing the Resource Center, members of the Task Force considered pilot programs already in operation in other jurisdictions, notably California, Tennessee, Florida, and Georgia. In shaping the various models to meet Pennsylvania's unique character, guidelines were established. Though cases are being litigated and funding is generally available at most

levels of the process for continuing representation, the Task Force determined that there is a shortage of qualified capital litigators and that a primary objective of the Center is to train counsel. In contrast to models developed in other states, the Task Force suggests that an organization be established that would be primarily a "resource" as opposed to a "litigation" center, although some direct representation in the State and Federal courts of Pennsylvania would be done by the Resource Center staff attorneys.

The Responsibilities of the Resource Center

The Task Force recommends that the following responsibilities be assigned to the Center:

A. To track all capital cases through the trial, appellate and post-conviction levels to further the provision of continuing, competent representation and the gathering of relevant data.

B. Through recruitment and screening, to establish and maintain a panel of attorneys who are qualified and available to represent persons at all levels of litigation in capital cases.

C. To provide assistance to these appointed defense attorneys, and other retained defense attorneys involved in all stages of capital litigation, in identifying legal issues and preparing, appropriate legal documents and arguments on behalf of their clients.

D. To coordinate educational resources with other state and national organizations which provide legal assistance to inmates in capital cases in other states at both the state and federal levels.

E. To develop Pennsylvania specific resources, such as substantive and procedural manuals, and coordinate CLE activities concerning capital litigation.

F. To directly represent defendants in appellate and collateral attack litigation, in both state and federal courts in Pennsylvania. Resource Center staff attorneys' direct representation and participation in litigation will be limited by federal and state law to cases arising from the respective jurisdictions.

3.0 ATTORNEY QUALIFICATIONS AND COMPENSATION

The Task Force determined that a critical component in any solution to the problems of capital litigation is the provision of minimally certified and adequately compensated counsel. The Task Force recommends the adoption by both the state and federal courts of standards similar to those of American Bar Association and Philadelphia County. A statewide certification board will apply the standards in specific cases and authorize waivers where appropriate. State and federal judges will appoint attorneys who have been approved by the Board of Certification.

Qualifications

While noting that a relatively small pool of qualified attorneys currently exists, the

committee does not suggest dilution of the standards to create a larger pool. Instead, it is anticipated that a properly funded and staffed resource center, continuing legal education, and the experience of serving as associate counsel in capital cases will combine to create, gradually, a larger pool of qualified counsel.

The Task Force relied heavily on the Philadelphia County standards which have proven successful and acceptable to the courts and the prosecutorial and defense bars. In addition, the vast majority of defendants emanate from Philadelphia and Allegheny Counties and the experiences of these jurisdictions were instructive. The Task Force recognizes that the experience of smaller counties may not mirror that of the larger, urban areas, but it nonetheless recommends uniform application of standards in all counties. It is recognized that not every attorney will meet the standards in the first instance, but with waivers in appropriate cases and the training program, it is assumed that the pool of qualified counsel in all regions of the state will grow.

The standards should be mandatory and uniformly applied statewide in both the state and federal courts. Standards should be implemented by rules promulgated by the Supreme Court, by the Judicial Council of the Third Circuit, or by the United States Court of Appeals and the individual District Courts, as appropriate. The Task Force recommends that appointing judges choose only attorneys certified by a statewide board.

Certification Board

A Board of Certification will review the qualifications of attorneys and administer pools of qualified attorneys. The Board will consider applications from attorneys, with a regional breakdown similar to that of the federal district court divisions, forming Western, Middle, and Eastern districts. The Board will certify attorneys in strict adherence to the standards, but where appropriate the Board may recognize certain kinds of experience which would be treated as equivalent to particular standards. The Board periodically may review the continuing qualifications and performance of pool attorneys and revise the list as necessary.

Compensation

A statewide compensation plan for the costs of state court litigation should be mandated. A critical component of the plan is a provision for payment of preliminary expenses via interim petitions for reimbursement. While most attorneys can await the final payment of fees, advancing expenses for lengthy litigation can be burdensome or impossible for small firms.

4.0 TRACKING

There exists a need within Pennsylvania to identify capital cases and update the status of such cases as they move through the state and federal court systems. Presently, there is no single source to collect and process information on the status of capital cases within Pennsylvania. Research indicates that in other states, where there exists no single organization which has responsibility for defending capital cases, haphazard and unreliable methods of tracking are employed.

The dual function of the proposed tracking system is to identify the existence of all state and federal capital cases in Pennsylvania at the earliest possible time in order to facilitate the appointment of qualified counsel if necessary to the case, and to maintain the status of all capital cases at all levels of the state and federal court systems in Pennsylvania. Cases will be

tracked through the state and federal trial and appellate court systems and will include dispositions by the Supreme Court of the United States.

Various options were explored but for purposes of tracking state cases, it is recommended that Supreme Court of Pennsylvania amend Rule 352, Pa.R.Crim.P., which requires the District Attorney to give notice of aggravating circumstances which trigger a capital case. The Rule should be amended to require that notice of a capital case be provided to the Resource Center at the same time.

Once the case has been reported, the Resource Center will collect data regarding the status of the case at all levels within the state and federal court systems.

As to the design of a computer tracking program, personnel within the Administrative Office of Pennsylvania Courts and the U.S. Court of Appeals are available to develop a program to meet the requirements recommended herein.

5.0 FUTURE INITIATIVES

The Task Force recommends secure, adequate and continuing funding for the Resource Center and its related activities. Various sources of funding, such as foundation grants and bar association donations, were dismissed as unreliable, because the experience nationwide has been that such sources often provide only temporary assistance. A permanent, secure source of funding is essential to the viability of the Center, and is a precondition to continuing federal funding. The most appropriate source of funding is a combination of the state and federal governments. Federal funding is available, but contingent on comparable state funding.

Over a single dissent, the Task Force recommends that funding for the Resource Center and related activities be sought in the form of a line item in the budget of the Judiciary of Pennsylvania. The proposed funding should represent 50% of the estimated budget for start-up and first year expenses (approximately $300,000), with the federal judiciary authorizing the remaining fifty percent. Future budgets should be funded in a similar way, consistent with the needs of the Center.

Conclusion:

The Task Force concludes that the establishment of the Resource Center and the implementation of other suggestions of its Report will serve the needs of the all interested parties. The issue is not the morality or legality of the death penalty; the former will remain subject to debate--the latter has been and will be tested in the courts. Nor is the issue one of favoring the interests of one group over those of another.

Instead, the problem is systemic, affecting individuals, all branches of government, and society at-large. The Task Force has focussed on proposing means to address a major problem, while accommodating a variety disparate needs and interests: the constitutionally required provision of adequate representation of counsel to capital defendants; the training and support of, and compensation for attorneys dedicated to capital litigation; the interest of finality in litigation which will be provided by better-tried cases and fewer necessary retrials; the provision of all of the above in a manner which is cost-effective in a time of scarce resources, yet in a manner which is consistent with fundamental fairness.

The document reflects substantial disagreements and compromises. All members

agree, however, that the Resource Center and related proposals should be implemented, with the only substantial dissent being in the appropriate budgetary locus of the Center. (Other disagreements with respect to exact attorney qualifications and standards are within the scope of policy properly determined by the courts.) Yet all are in agreement that in order to address a problem of major dimensions confronting the Commonwealth and the federal system, all interested authorities should act favorably on the Report and its provisions.

1.0 BACKGROUND

Recognizing a variety of complex and vexing problems with respect to death penalty litigation in Pennsylvania, Chief Justice Robert N.C. Nix, Jr., of the Supreme Court of Pennsylvania, and then-Chief Judge John J. Gibbons, of the United States Court of Appeals for the Third Circuit, convened a Task Force to consider the problems. The Task Force, comprised of distinguished members of the State and Federal Judiciary, the State Legislative and Executive branches, the Bar, academia, representatives of the American Bar Association, and court executives, met on April 18, 1989.

The Task Force identified the following primary problems:

(a) Providing competent representation of counsel at the trial, appellate, post-conviction levels of state litigation, as well as federal habeas corpus review;

(b) Monitoring the status of cases and representation in the state and federal courts;

(c) Establishing qualification standards for court appointed attorneys;

(d) Providing adequate compensation for court appointed attorneys; and,

(e) Developing means to provide continuing legal education.

The Task Force named and charged a Subcommittee to explore the problems and to propose appropriate actions. The charge to the Subcommittee reads, as follows:

" WHEREAS, the Task Force jointly convened by the Supreme Court of Pennsylvania and the United States Court of Appeals for the Third Circuit has identified the following needs with respect to the provision of counsel in death penalty cases, to wit:

(a) To monitor and track all cases involving death-sentenced inmates to assure that competent counsel are available to the inmate at all times;

(b) To recruit and screen qualified attorneys willing to be appointed in post-conviction death penalty cases;

(c) To develop training programs for all attorneys qualified and interested in accepting post-conviction death penalty cases in both state and federal courts;

(d) To provide expert legal consulting services to attorneys appointed in state and federal post-conviction cases including joint visits to the inmate, his family and friends; frequent travel to meet with counsel of record to review pleadings, motions and briefs; review of the trial transcript; review of the entire record; attendance at court hearings; provision of sample pleadings and briefs; and provision of full moot hearings before oral argument;

(e) To develop clinical programs at law schools to provide law student assistants to appointed attorneys and for educational purposes;

(f) To make available paralegals, investigators and expert witnesses as needed; and

(g) To develop a comprehensive list of local and national expert witnesses who might prove valuable to appointed counsel.

"NOW, THEREFORE, the subcommittee is charged to explore structures and processes which will solve Pennsylvania's needs with respect to the provision of counsel in cases in which indigent prisoners are sentenced to death. The subcommittee is further charged to consult and confer with representatives of the Bar, academia, the judiciary, the legislative and executive branches of government, as needed. The subcommittee is charged to report back to the Task Force with a report and recommendation at its earliest convenience.

" /s/Robert N.C. Nix, Jr.
Chief Justice
Supreme Court of Pennsylvania

/s/John J. Gibbons
Chief Judge
United States Court of Appeals
for the Third Circuit "

The Subcommittee was convened by U.S. District Judge Alan N. Bloch (W.D. Pa.). It met as a whole and in committee numerous times, and it now issues this report and recommendation to the Task Force. A primary emphasis has been to examine and propose solutions which would apply to all levels of death penalty litigation in Pennsylvania, from state trial through habeas corpus review in the federal courts. Uniformity has been emphasized in the areas of tracking methods and attorney qualifications and compensation. The Task Force views the establishment of a resource center as an essential element in the provision of constitutionally mandated, adequate representation of counsel for capital defendants. Members of the Subcommittee are listed in the appendix.

The Task Force and the Subcommittee met on April 17, 1990, to consider the draft report. After substantial discussion of the merits of the draft, the joint group approved the Report, over a single dissent. The dissent focussed on the budgetary locus of the Center and whether the Report should aggressively support additional funding and training for prosecutors. In an attempt to reach a workable accommodation, Chief Justice Nix and Chief Judge Higginbotham requested a small focus group to consider approaches which would render the Report unanimous. The focus group met and considered various options. It was concluded that a dissent would be filed. The Final Report, with the addition of footnote and the Executive Summary, is issued as approved by the Task Force, April 17, 1990. The dissent also is attached.

As a final note, the Task Force notes with sorrow the passing of a member, George Schumacher, Federal Public Defender of the Western District of Pennsylvania, who died May 1, 1990. His contributions were substantial, and his presence is missed.

2.0 NEEDS, ISSUES, AND PROPOSED SOLUTIONS IN PENNSYLVANIA

2.1 A Review of the Problems

The problems being faced by Pennsylvania directly impacting on capital litigation are:

(a) There is an absence of any widely accepted method for the identification, training, and appointment of counsel who are qualified to handle capital cases at the state and federal trial, appellate and post-conviction levels.

(b) Attorneys appointed at the federal habeas level are often unable to return to state court to exhaust critical issues.

(c) There is no centralized agency to track cases.

(d) There is a volume of cases ripe for state or federal post-conviction proceedings within the next two years.

(e) Few attorneys are well-versed in this area of criminal law and public defender offices are ill-equipped to deal with the potential onslaught of coming cases.

(f) There is a potential shortage of attorneys able and willing to litigate this type of case in the state and federal courts.

(g) Concerns regarding the adequacy of resource assistance and training, as well as the adequacy of compensation and reimbursement for expenses, may deter otherwise available attorneys from accepting appointment in these cases.

2.2 The Resource Center

The Resource Center would be established as a non-profit Pennsylvania corporation to be designated as a federal community defender organization as outlined in 18 U.S.C. § 3006A(g)(2)(B). Staffed initially by five attorneys and three support staff, the Resource Center would be funded by state, federal, and private monies allocated for its authorized activities. It would be subject to traditional methods of fiscal accountability, satisfying generally accepted accounting principles, and to audits required by the state and federal governments.[4]

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[4] Careful auditing is required by both the Pennsylvania Judiciary, under the Judicial Auditing Agency, 42 Pa.C.S.A.§3529, and the Administrative Office of the U.S. Courts, 18 U.S.C. §3006A(i).

In developing the Resource Center, members of the Task Force considered pilot programs already in operation in Tennessee, Florida, and Georgia. In shaping the various models to meet Pennsylvania's unique character, some guidelines were established.

Unlike Florida, where there is a problem with a shortage of both attorneys and funding to meet the demand, Pennsylvania may be faced with a different problem. Though cases are being litigated and funding is generally available at most levels[5] of the process for continuing representation, it is believed that the effectiveness of the representation may be affected by a shortage of trained and experienced capital litigators and the absence of any means to effectively recruit and train lawyers. The decision was made to establish an organization that would be primarily a "resource" as opposed to a "litigation" center. Some direct representation in the State and Federal courts of Pennsylvania would be done by the Resource Center staff attorneys, to complement the primary function of the Center as a resource and educational facility. The appropriate amount of direct representation will be determined by the Director in light of circumstances.

2.3 The Responsibilities of the Resource Center. The Task Force committee recommends that the following responsibilities be assigned to the Center:

2.3.1 To track all capital cases through the trial, appellate and post-conviction levels to further the provision of continuing, competent representation and the gathering of relevant data.

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[5]There is a often a gap in representation, for example, after the completion of the state appellate process and the initiation of post-conviction relief. At the initiation of federal proceedings, there may also be a gap between the exhaustion of available state remedies (appellate or PCRA) and the filing of the federal petition for writ of habeas corpus. Counsel can be appointed after the filing of the petition, but not during its preparation phase. There is provision, however, for nunc pro tunc appointment of counsel after the filing of the petition in the federal district court, provided that the inmate is indigent. Thus, subsequently appointed federal counsel may be able to be compensated for preparation.

Commentary

The Resource Center will begin to track all potential capital cases as early in the process as possible. Utilizing a number of sources, the Resource Center will attempt to identify potential capital cases at the trial level and monitor them through the entire process.

Once an individual has been sentenced to death, the Resource Center would continue to monitor the case through the appellate and post-conviction process.

In addition to assisting the work of the Resource Center, the tracking function will provide information to the several courts which have authority to appoint counsel, as well as to other governmental agencies.

2.3.2 Through recruitment and screening, to establish and maintain a panel of attorneys who are qualified and available to represent persons at all levels of litigation in capital cases.

Commentary

When it becomes apparent through case monitoring that an attorney is needed at some level in the process--trial, appeal, or post-conviction, the Resource Center would assume responsibility for identifying qualified counsel willing to be appointed. The Resource Center will use a list of qualified attorneys furnished by the Board of Certification. (See, Section 3, infra.) That Board will certify qualified attorneys for inclusion on the panel according to its procedures and rules as promulgated by the Supreme Court of Pennsylvania. Only attorneys certified by the panel shall be available for appointment in these cases.

2.3.3 To provide assistance to these attorneys, and other attorneys involved in all stages of capital litigation, in identifying legal issues and preparing, appropriate legal documents and arguments on behalf of their clients.

Commentary

When an attorney has been appointed to a capital case, the Resource Center will be available to provide a number of services. The Resource Center staff will provide information concerning the various avenues for litigation and requirements at each step.

Once issues are identified, the Resource Center will make available to the attorney, written resources such as sample pleadings and briefs. The staff of the Resource Center will develop a manual which clearly describes each step of the process, what is required of defense counsel, and the resources available.

The Resource Center staff will be available to assist in the preparation and review of briefs and pleadings throughout the litigation process. In cases in which expert assistance may be needed, the Resource Center will be available to assist in identifying this need and to provide information concerning the availability of experts.

2.3.4 To coordinate educational resources with other state and national organizations which provide legal assistance to inmates in capital cases in other states at both the state and federal levels.

Commentary

It is imperative that agencies involved in capital litigation establish and maintain a network to share educational information. The Resource Center would enhance already existing networks in order to work cooperatively with other state and national organizations involved in capital litigation. Joint projects may include a regular exchange of information through newsletters or brief sharing, joint development of mutually advantageous resources, and a division of labor among organizations to develop comprehensive resources. Networking will also allow simultaneous litigation on issues relevant to various states or regions and aid in identifying regional or national issues through shared case data.

Areas which would benefit greatly through networking would be the recruitment and training of attorneys available for appointment.

2.3.5 To develop Pennsylvania specific resources and coordinate CLE activities concerning capital litigation.

Commentary

One of the first training projects of the Resource Center staff should be the development of manuals for attorneys at every level of the process: trial, appeal, state post-conviction and federal post-conviction. The rapidly expanding library of resources on capital litigation should allow the Resource Center staff to draw from already existing material for the majority of the manual. An early task of the Resource Center will be the editing of materials and the developing of Pennsylvania-specific resources which enable the attorney to draw from existing materials. Included in the manuals should be an outline of the legal steps at all levels of the process, sample motions, an issues index, and a comprehensive and current list of resources available through the Resource Center.

In addition to preparing written resources, the Resource Center would work cooperatively with Continuing Legal Education (CLE) providers, such as the Pennsylvania Bar Institute to develop capital seminars and conferences.

The Resource Center will be active in recruiting law students interested in working as interns in the area of capital litigation.

2.3.6 To directly represent clients in appellate and collateral attack litigation, in both state and federal courts in Pennsylvania. Resource Center staff attorneys' direct representation and participation in litigation will be limited by federal and state law to cases arising from the respective jurisdictions.

Commentary

Planned primarily as a Resource Center, there will be some direct litigation of capital cases at the post-conviction stage, state or federal. Beyond the basic criteria of need, cases litigated by the Resource Center might include: those which present broad constitutional issues pertinent to a number of cases; those which involve emergency situations; those in which a court appoints the Center because it has particular familiarity with a case and\or other counsel could not go forward. Direct representation shall be limited to capital

litigants in the State of Pennsylvania and the federal courts.

The goals to be achieved through direct representation include: quality representation of the defendant; enhanced staff credibility by dispelling the image of "ivory tower" litigators who do not work in the trenches; development of resources for wide circulation; and, direct education of co-counsel.

2.4 Potential Caseload

Prediction of the number of new capital trials each year is easier to predict than the number of cases in which state remedies have been exhausted and are ready for federal review. While state remedies may have been exhausted, there is no impetus to seek federal review until a death warrant has been signed. Under Pennsylvania law, a sentence of death imposed in the trial court is subject to automatic direct review by the Supreme Court of Pennsylvania. 42 Pa.C.S.A. § 9711(h)(1). Upon affirmance and proportionality review, the Supreme Court transmits the case to the Governor. Before the Governor signs a warrant, his office engages in an independent review of the record. Prior to the signing of a warrant, litigation proceeds at a moderate pace. Once a warrant is signed, the process is stepped-up, and several stages of litigation may be completed within a few weeks time. Given these procedures, it is difficult to predict exactly the flow of cases through the state trial, appellate, and collateral processes to the federal litigation stage. However, reasonable estimates, based on current statistics, can be considered.

The latest information available indicates that there are one hundred and sixteen (116) inmates on death row in Pennsylvania. The convictions and sentences of fifty-six (56) of these prisoners have been affirmed on direct appeal by the Pennsylvania Supreme Court and have been transmitted to the Governor. Of these fifty-six (56) cases, no cases are pending in the Supreme Court of the United States,[6] seven (7) cases [1 in the Court of Appeals; 2 in the

[6]The decision of the Supreme Court of Pennsylvania in case of Blystone v. Pennsylvania (U.S. No. 88-6222) was affirmed by the Supreme Court of the U.S. on February 28, 1990. A petition for writ of certiorari in a different case was denied recently.

Western District; and, 4 in the Eastern District] are pending in the federal system at various stages of habeas corpus proceedings. Of the remaining cases, forty (40) are pending in various stages of direct appeal in the Supreme Court, approximately 10 are in PCRA proceedings, with the balance of cases in the trial court. New death sentences are being entered at the rate of 15-25 per year.

The number of new death judgments, however, does not reflect the total number of state cases in which the Center could be involved in either consultation or direct representation. The Center is intended to provide assistance at the state and federal trial, appellate, and post-conviction levels. It is estimated that in an average year the Resource Center could be involved in a maximum range of 90-105 state cases.[7] This range does not reflect the estimated number of new capital trials, death judgments, and warrants. The issuance rate of warrants is a critical factor to both state and federal estimates.

The experience in other states with death penalty laws indicates that the fastest rate of signing warrants has occurred in Florida, where recently two warrants a month have been signed.[8] If the Governor of Pennsylvania were to sign warrants at similar rate, two per month,

[7] This table indicates the number of cases in which the Center could be "involved" at the state trial, appellate, and post-conviction levels. "Involvement" indicates the range of activities from pure resource activities to direct representation.

POSSIBLE STATE WARRANTS	24	12
Capital Trials-State(est.)	60	60
New Appeals-State	20	20
New State PCRA's*	24	12
TOTAL STATE CASES	104	92

* These figures assume a number of cases equal to the number of warrants signed.

[8] Two warrants per month (one in a well-litigated case, one in a new case) have been issued. In Pennsylvania, issuance at a rate of two per month would roughly equal the number of new death sentences entering the system.

it would be expected that in mid-1991, a stream of 20-25 cases per year could enter the federal courts.[9] In an average case, it is estimated that the post-conviction relief process (Court of Common Pleas; Superior Court; Supreme Court of Pennsylvania, allocatur; and, Supreme Court of the United States, certiorari) will require a minimum of one year to complete. Assuming an issuance rate of one per month, the stream of cases could average 10-12 cases per year entering the federal courts.[10] In light of the Blystone decision, issuance of warrants can begin immediately.[11] Thus, it is reasonable to assume that the inflow of actively and extensively litigated cases to the federal courts will begin in mid-1991. Given the assumption that the signing of a warrant will propel state PCRA and federal habeas litigation, the downstream number of federal habeas cases should approximate the number of warrants signed. A range of 12 to 24 cases per year is postulated.

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[9] This table indicates the number of cases in which the Center could be "involved" at the state and federal trial, appellate, and post-conviction levels. "Involvement" indicates the range of activities from pure resource activities to direct representation.

STATE CASES		
New State Warrants	24	12
New State PCRA's*	24	12
FEDERAL CASES		
Resulting § 2254's*	24	12
Capital Trials-Federal#	1	1
New Appeals-Federal#	1	1
New § 2255's#	1	1
TOTAL FEDERAL CASES	27	15

* These figures assume a number of cases equal to the number of warrants signed.
# The estimates on federal capital trials, appeals, and § 2255's are guesses.

[10] It is postulated that the number of warrants issued will approximate the number of PCRA and habeas cases filed as a result. While it would appear on initial review that the case inventory ought to remain relatively steady, given the facts that not every warrant will result in an execution, that some cases (particularly in the current inventory) will be subject to several levels of litigation, and that there will be a inflow of new cases, gradually the inventory of cases will increase.

[11] The Governor had held in abeyance the warrant process, pending Blystone. Recent press accounts indicate that issuance of warrants will begin the Spring of 1990.

While the warrant process is in the Governor's discretion, these estimates and the relative unavailability of qualified counsel suggest the need for prompt establishment of the Resource Center and adequate staffing. Firsthand information was related which indicates that there are attorneys within Pennsylvania who are willing to accept court-appointed assignments in capital cases but who are reluctant to do so without expert assistance available. Accordingly, the resource function has been structured, and staff requirements have been projected, to meet with what is perceived to be the greatest need: providing expert assistance to appointed counsel.

2.5 Staffing

Based on information from studies conducted by the Spangenberg Group,[12] the minimal, initial level of authorized staffing for the Resource Center should be five attorneys: a director, a senior staff attorney, and three staff attorneys. These attorneys would provide services as described herein. The Spangenberg Group materials indicate that, in providing assistance to other lawyers appointed in capital cases, Resource Center staff attorneys expend approximately 150 hours per case per year. The Spangenberg Group estimates that an experienced post-conviction death penalty attorney could provide assistance in up to 10 cases per year and still have some time during the year for training, development of brief banks and model pleadings, and the providing of other professional legal services required for the operation of the Resource Center, in addition to allowing for some direct representation of death penalty litigants in collateral proceedings.[13] It is estimated that in an average year the Resource Center could be involved in a range of 90-105 state cases and 15-27 federal cases.

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[12] The Spangenberg Group, Caseload and Cost Projections for Federal Habeas Corpus Death Penalty Cases in FY 1988 and FY 1989 (Sept. 1987), prepared for the Criminal Justice Act Division, Administrative Office of the United States Courts.

[13] The Spangenberg Group estimates 150 hrs./case. At 10 cases, or 1500 hours, roughly 75% of an attorney's yearly "billable" hours, assuming 2000 hours/year, would be attributable to case participation.

While the level of Resource Center involvement will vary, it is reasonable to assume initial involvement in at least 40-50 cases per year, because there are at present 96 potentially "active" cases in the system, with an average of 20 cases per year added. The attorneys will also be devoting a large portion of their time initially to developing training programs in order to have qualified attorneys available for appointments in proceedings in the State and Federal courts. As more cases enter the post-conviction stage, consideration will have to be given to increasing the size of the Center's professional staff (with a necessary increase in its support staff).

2.6 Benefits

The establishment of a Resource Center would positively affect the litigation of capital cases and the aforementioned problems in the following ways.

(a) The Resource Center would identify qualified attorneys and offer extensive advice and assistance to appointed counsel and other counsel representing death-eligible or death-sentenced inmates.

(b) The staff of the Resource Center would identify counsel from across the state, as well as outside the state, who are available for appointment, assist the courts involved in the appointment process, and offer support for appointed counsel. Additionally, the Resource Center would work with the bar in developing and presenting periodic continuing legal education programs and materials on the topic of capital litigation.

(c) The provision of certified and adequately trained counsel should inure to the benefit of all participant in the litigation process: the defendant, the prosecutor, and the courts. Properly trained and qualified counsel should provide better representation for the defendant, as well as alleviating burdens on the justice system due to inadequately tried cases.[14]

(d) The Resource Center will provide assistance to counsel at the trial and post-conviction levels which may lead to the early identification and preservation of issues. The Resource Center also may serve as liaison between counsel litigating the habeas corpus petition and those litigating unexhausted issues in the state courts.

[14] While the Task Force's charge and primary concern is with competent representation by counsel for defendants, it recognizes that additional resources will be necessary for prosecutors throughout the state. Resources, including development of training programs, can be provided through either the Pennsylvania District Attorneys Institute, the Office of the Attorney General, or both.

(e) The Resource Center will track capital litigation at all levels.

(f) The Resource Center would become the office with primary responsibility for monitoring representation in all capital trials, appeals, post-conviction proceedings, and federal habeas corpus petitions.

2.7 Funding

To truly address the problems discussed, the Resource Center will need to provide services at both the state and federal levels, therefore requiring financial support from both areas.[15]

A prerequisite to federal funding is the designation of the Resource Center as a federal community defender organization. The Resource Center, then, would request Criminal Justice Act (CJA) funds adequate to support 50% of the salaries of the Director and four full-time attorneys, and necessary support staff to provide services in the manner outlined above. Utilizing formulas developed by the Spangenberg Group, it is estimated that at least[16] $299,215 in CJA funds, or half of the estimated annual budget, would be required to adequately fund this part of the Resource Center in FY 1991 (assuming a start-up date of 7-1-91). A

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[15] As noted above, the Resource Center's workload cannot be anticipated with certainty. If cases follow a normal progression, as evidenced by capital litigation in other states, those cases that have been affirmed on direct appeal will proceed through State post-conviction remedies before federal habeas corpus petitions are filed. Given the time it will take to adjudicate those anticipated State post-conviction petitions, it is impossible to say with any degree of certainty how much of the staff attorneys' initial work will be spent aiding attorneys in federal proceedings.

Nonetheless, there will be substantial "federal" work. In anticipation of a case entering the federal system, resource center staff will have to devote substantial efforts to assisting appointed counsel in this new forum. The Resource Center may provide consultation services in connection with reviewing the record of the case and conducting any necessary factual investigation for the purpose of identifying post-conviction claims. Even while this federal work is proceeding, an unexhausted state claim may be identified that will require comparable state work to proceed on a parallel plane, i.e., providing consultation services with respect to state court proceedings. In short, a Resource Center which has sufficient funds to fully support both its state and federal work components will foster continuity of representation and, in so doing, enhance the quality of services provided while reducing the likelihood that resources will be expended on repetitious and costly efforts on the part of all involved.

[16] Advances on rentals, equipment purchases, etc., may require initial CJA funds to exceed the estimated one-half of the annual budget.

proposed Resource Center budget for FY 1991, which details the figures referenced above, is listed at section 2.11 infra.

Funding from state and federal agencies will be pursued simultaneously. The problem of improving the quality of representation must be addressed at both levels to improve it throughout the capital procedures. It is difficult to accurately separate what is a "state" issue and what is a "federal" issue. The representation of a federal habeas corpus petitioner is impacted by the representation that the petitioner receives at every level of litigation in the state system. Improved representation at the trial, appellate, and post-conviction levels may result in higher quality litigation in the state courts and will reduce the likelihood that a federal court will find it necessary to remand a case to the state courts for a new trial years after the crime. For this reason, it is imperative that adequate funding be procured to ensure the operation of the Resource Center at all levels of the capital litigation process.

2.8 Location

Because of its centrality, it is recommended that Harrisburg be the location of the Resource Center. With two law schools in proximity to the State Capital, there will be a pool from which to obtain the voluntary, and possibly paid,[17] assistance of law students. Harrisburg is also the location of the State library and law library, with their excellent research capabilities. Additionally, office space should be less expensive there than in either Philadelphia or Pittsburgh.

[17] It may be possible for qualifying, financially needy, Pennsylvania resident students to be paid by PHEAA (Pennsylvania Higher Education Assistance Act) funds available through their law schools.

This location, and its access to major highways and rail and airline transportation, should also permit staff attorneys to get to all areas of the state for consultation in a matter of hours. It is also a central location for the capital prisoners who are housed at institutions throughout the state.

2.9 Personnel

The permanent staff of the Resource Center will initially consist of five full time attorneys, an administrative assistant, a paralegal, and a secretary. Student interns will be recruited from area law schools to provide assistance utilized where possible. The specific job responsibilities, qualifications, and annual compensation of permanent staff are outlined.

2.9.1 Director Position

Qualifications: Extensive trial and appellate experience in the defense of capital cases with the necessary administrative skills to coordinate the activities of the Resource Center staff.

Responsibilities: Overseeing the overall operation of the resource center; making personnel decisions; developing an operational budget and aiding the Board of Directors in raising the necessary finances to sustain the operation of the resource center; recruiting and appointing staff; participating in the process of certifying qualified attorneys; working directly with the staff attorneys in identifying and developing resources; aiding attorneys involved in capital litigation. Representation, as lead or associate counsel, in state or federal capital proceedings.

Compensation: $60,000

2.9.2 Senior Staff Attorney Position

Qualifications: Trial and/or appellate experience in the defense of capital cases with the ability to train other attorneys involved in capital litigation.

Responsibilities: Working directly with the Director in identifying and developing resources; assuming primary responsibility for aiding attorneys involved in litigation. Representation, as lead or associate counsel, in state or federal capital proceedings.

Compensation: $50,000

2.9.3 Staff Attorney Position

Qualifications: Capital appellate experience or substantial equivalent.

Responsibilities: Working directly with the Senior Staff Attorney in identifying and developing resources; assuming responsibility for aiding attorneys involved in capital litigation. Representation, as lead or associate counsel, in state or federal capital proceedings.

Compensation: $40,000

2.9.4 Administrative Assistant Position

Qualifications: Strong experience in case management, budget preparation, grant applications, and general office management; familiarity with the workings of the criminal justice system and possessing the necessary skills to aid in case management, data acquisition, budget preparation, and office administration.

Responsibilities: Managing the daily operation of the resource center,

developing and administering an efficient system of resource procurement, reproduction, cataloging, and distribution; working with the Director and Board of Directors in procuring funds for the ongoing operation of the resource center.

Compensation: $28,000

2.9.5 Paralegal Position

Qualifications: A degree in criminal justice, social work, psychology, or a related field, or equivalent experience; familiarity with the workings of the criminal justice system and possessing the necessary skills to aid in case management, date acquisition, and office administration.

Responsibilities: Overseeing the tracking of capital cases within the state, monitoring their progress, and bringing any significant cases to the attention of the staff attorneys; participation in research and drafting manuals; correspondence; interviewing families, witnesses, etc., with respect to developing mitigating evidence.

Compensation: $25,000

2.9.6 Secretary Position

Qualifications: Secretarial skills adequate to assume primary secretarial tasks.

Responsibilities: Working directly with the attorneys in the research, development, and distribution of resources; assisting the Administrative Assistant in the operation of the Resource

Center; receiving and screening all incoming phone calls and written correspondence and directing them to the proper member of the Resource Center staff.

Compensation: $19,000

2.10 Board of Directors

The Board of Directors of the Resource Center will oversee the operation of the project, assist in establishing the annual budget, and select the Director.

The Board will consist of six persons (five appointed, voting members, and the Director of the Resource Center ex officio) and will be representative of the criminal defense bar of Pennsylvania. Membership of the Board shall be as follows:

(a) A federal defender from the Eastern, Middle, or Western Districts of Pennsylvania appointed by the Chief Judge of the United States Court of Appeals for the Third Circuit;

(b) A county public defender appointed by the Chief Justice of Pennsylvania;

(c) A representative of the legal academic community with a background in criminal defense, chosen by the Deans of the University of Pennsylvania School of Law, Temple University School of Law, Villanova University Law School, the Widener University School of Law, the Dickinson School of Law, the Duquesne University School of Law, and the University of Pittsburgh School of Law;

(d) The President of the Pennsylvania Bar Association, or his\her designee;

(e) A member of the criminal defense bar chosen by the President of the Pennsylvania Association of Criminal Defense Lawyers; and,

(f) The Director of the Resource Center, ex officio.

The Board of Directors will serve staggered [three year] terms with vacancies to be filled by the by the persons or the organizations which originally appointed the member. Board

members shall not be compensated for their service. They shall, however, be entitled to reimbursement of expenses reasonably incurred in the performance of their duties.

2.11 Proposed Budget for Pennsylvania Death Penalty Resource Center. We project the following budget for fiscal year 1991:

Expense Category	Cost
Personnel	
Director/Attorney	$ 60,000
Senior Staff Attorney	$ 50,000
3 Staff Attorneys	$120,000
Administrative Assistant	$ 28,000
Paralegal	$ 25,000
Secretary	$ 19,000
SUBTOTAL	$302,000
Fringe Benefits @ 34%	$102,680
Temporary help	$ 10,000
Expert services	$ 17,000
-Investigators	$ 5,000
-Psychiatrists	$ 7,000
-Other Experts (such as ballistics, accountants, handwriting, etc.)	$ 5,000
TOTAL PERSONNEL COSTS	$431,680
Operating Expenses	
Travel	$ 10,000
-General(case related)	$ 8,000
-Administrative	$ 2,000
Training	$ 7,000
Telephone	$ 15,000
-Local	$ 5,000
-Long Distance	$ 10,000
Postage	$ 3,000
Freight/Federal Express	$ 1,750
Equipment Maintenance	$ 5,000
Contractual Maintenance (eg.,Lexis)	$ 7,500
Office Space Rental (3,000 sq. ft @ $10/sq. ft.)	$ 30,000
Office supplies	$ 8,000

Printing & Reproduction	$ 2,000
Library Subscripts	$ 1,000
Malpractice Insurance	$ 2,000
Audit	$ 3,000
TOTAL OPERATING EXPENSES	$ 95,250

Start-Up Costs

Library	$ 10,000
Furniture	$ 25,000
Equipment	$ 36,500
-Photocopier	$ 14,000
-FAX	$ 2,500
-Computers	$ 20,000
TOTAL START-UP COSTS	$ 71,500

TOTAL PROJECT COSTS (INCLUDING START-UP)	$598,430

3.0 ATTORNEY QUALIFICATIONS AND COMPENSATION

3.1 Overview

The Task Force committee reviewed American Bar Association (ABA), Philadelphia County, and Allegheny County standards for certification of death penalty litigators and for compensation. In summary, the committee recommends the adoption by both the state and federal courts of standards similar to those of Philadelphia County, as modified. A statewide certification board will apply the standards in specific cases and authorize waivers where appropriate, e.g., where an attorney has substantial litigation or other specialized experience. State and federal judges will appoint attorneys who have been approved by the Board of Certification.

The Task Force relied heavily on the Philadelphia County standards which have proven successful and acceptable to the courts and the prosecutorial and defense bars. In addition, the vast majority of defendants emanate from Philadelphia and Allegheny Counties and the experiences of these jurisdictions were instructive. The Task Force recognizes that the experience of smaller counties may not mirror that of the larger, urban areas, but it nonetheless recommends uniform application of standards in all counties. It is recognized that not every attorney will meet the standards in the first instance, but with waivers in appropriate cases and the training program, it is assumed that the pool of qualified counsel in all regions of the state will grow.

In its discussions, the Task Force considered the question of whether minimum certification standards would create new substantive rights or issues for collateral attack. Indeed, comments to an earlier draft addressed these concerns, as well. While creative litigants may always present many novel issues, appellate courts traditionally have reviewed ineffective assistance of counsel claims focussing only on the performance of the attorney in a specific case not the presence or absence of minimum qualifications. Appellate review centers on allegations

of fact-specific conduct or omissions, together with prejudice of constitutional dimensions emanating therefrom. The Task Force deems a successful collateral attack based on an issue of attorney certification highly improbable given the governing case law of the Supreme Courts of the United States and Pennsylvania and the Court of Appeals.

3.2 Qualifications

The qualification standards of Philadelphia County meet and exceed, in certain instances, those suggested by the American Bar Association. While concerned that a relatively small pool of qualified attorneys currently exists, the committee does not suggest dilution of the standards to create a larger pool. Instead, it is anticipated that a properly funded and staffed resource center, continuing legal education, and the experience of serving as associate counsel in capital cases will combine to create, gradually, a larger pool of qualified counsel.

The standards should be mandatory and uniformly applied statewide in both the state and federal courts. (See Standards, Section 3.5, infra) Standards should be implemented by rules promulgated by the Supreme Court, by the Judicial Council of the Third Circuit, or by the United States Court of Appeals and the individual District Courts, as appropriate.[18] Appointing judges will choose attorneys certified by a statewide board of certification. An attorney's willingness to have his/her name placed on the Statewide roster would constitute a certification that he/she is willing to undertake one capital case per year outside of the attorney's county of practice," i.e., over and above any cases to which he/she might be appointed in his/her home county. The idea is to develop a pool of lawyers who are willing to engage in limited travel in order to assist smaller counties that lacked attorneys who are qualified to handle capital cases. Thus, while each county would try to develop a pool of local

[18] The process of (Rule-making implementation) is a supervisory function of the Supreme Court and the Court of Appeals. There are adequate provisions for public comment on any proposed rule or standard. See, Pa.R.J.A. No. 103; 28 U.S.C. § 2071 et seq.

attorneys who met Statewide qualification criteria, there would also exist a pool of attorneys who are willing to travel outside of their county. Any attorney who qualified to handle capital cases within his/her home county would also have the option to have his/her name included on the Statewide roster, i.e., an attorney could not opt to be included on the Statewide list even though qualified to handle capital cases. However, if an attorney opted to have his/her name on the Statewide list, it would mean that the attorney would be willing to do one case per year in a nearby county. Certification, according to the appropriate standards, can be for trial, appellate, PCRA, and federal collateral attack proceedings.

It is presumed that in most cases both lead and associate counsel will be appointed. In very small counties, where capital cases are infrequent, there may be few or no qualified attorneys. Where no local, qualified attorneys are available, necessary appointments should be in conjunction with an appointment of local counsel. Local counsel will gain valuable associate counsel experience, and qualified lead counsel from another county can benefit from the local attorney's knowledge.

3.3 Certification Board

A Board of Certification will review the qualifications of attorneys and administer pools of qualified attorneys. The Board will consider applications from attorneys, with a regional breakdown similar to that of the federal district court divisions, forming Western, Middle, and Eastern districts. The Board will certify attorneys in strict adherence to the standards, but where appropriate the Board may recognize certain kinds of experience which would be treated as equivalent to particular standards. The Board periodically may review the continuing qualifications and performance of pool attorneys and revise the list as necessary.

The Board would be comprised of members chosen as follows:

(a) A federal defender chosen by the Chief Judge of the United States Court of Appeals;

(b) A county defender chosen by the Chief Justice of the Supreme Court of Pennsylvania;

(c) A member of the criminal defense bar chosen by the Supreme Court of Pennsylvania;

(d) A member of the bar selected by the President of the Pennsylvania Bar Association;

(e) A member of the criminal defense bar chosen by the President of the Pennsylvania Association of Criminal Defense Attorneys; and,

(f) The Director of the Resource Center, ex officio.

Thus, there would be six (6) Members of the Board, five voting members, with staggered terms, and the Director. It is suggested that the terms be staggered over a three (3) year period. Vacancies will be filled by the person(s) or agency which originally appointed the member.

3.4 Compensation

A statewide compensation plan for the costs of state court litigation should be mandated.[19] The plan should permit the payment of preliminary expenses via interim petitions for reimbursement. While most attorneys can await the final payment of fees, advancing expenses for lengthy litigation can be burdensome or impossible for small firms.

[19] Compensation for litigation in the federal courts, whether in direct criminal representation or collateral attack, is governed by the Criminal Justice Act, 18 U.S.C.§ 3006A, and 21 U.S.C. § 848(q).

3.5 Proposed State-Wide Qualification Standards for Court-Appointed Counsel in Capital Cases

3.5.1 Standards for Certification in Capital Homicide Trials

3.5.1.1 General Principle

The Board of Certification should seek attorneys from the criminal defense bar who can demonstrate excellence in homicide litigation. In all capital homicide cases, an attorney qualified as lead counsel must be appointed from the list of qualified attorneys maintained by the Death Penalty Certification Board. It is presumed that both lead and associate counsel will be appointed in most cases.

3.5.1.2 Qualifications for Lead Counsel

To be certified lead counsel, it is required that an attorney demonstrate that he/she:

(a) Has been admitted to the Bar of the Pennsylvania Supreme Court (or to the bar of the federal district court) or admitted to practice pro hac vice;

(b) Is an active practitioner with at least five years' litigation (trial and/or appellate) experience and demonstrated expertise in the field of criminal law in this or any other jurisdiction;

(c) Has prior experience as sole or lead counsel in no fewer than ten criminal jury trials of serious and complex cases which were tried to completion in this or any other jurisdiction;

(d) Has been sole or lead counsel in the trial of at least one homicide case, tried to completion; or, has participated as associate counsel in at least two homicide trials tried to completion in this or any other jurisdiction;

(e) Is familiar with the practice and procedure of the Pennsylvania Supreme Court, or the federal district court and the United States Court of Appeals for the Third Circuit;

(f) Is familiar with, and experienced in the use of expert witnesses and scientific and medical evidence, including, but not limited to, psychiatric and pathological evidence;

(g) Has attended and successfully completed within the last two years at least one training or educational program on criminal advocacy which

focused on the trial of cases in which the death penalty is sought and which includes training in federal habeas corpus jurisprudence. (This requirement may be waived if the attorney has demonstrated outstanding performance as lead counsel in two or more death penalty trials within the preceding two years.)

3.5.1.3 Qualifications for Associate Counsel

To be certified as associate counsel, it is required that an attorney demonstrate that he/she:

(a) Has been admitted to practice before the bar of the Pennsylvania Supreme Court (the federal district court) or has been admitted to practice pro hac vice;

(b) Is an experienced and active practitioner with at least three years' litigation (trial and/or appellate) experience and demonstrated expertise in the field of criminal law in this or any other jurisdiction;

(c) Has prior experience as sole or lead counsel or co-counsel in at least *five criminal jury trials of serious and complex cases* which were tried to completion in this or any other jurisdiction;

(d) Has been sole counsel, lead counsel, or co-counsel in a homicide trial in this or any other jurisdiction, which resulted in a verdict; or, has attended and successfully completed within the last two years at least one training or education program on criminal advocacy which focused on the trial of cases in which the death penalty is sought.

3.5.2 Standards for Certification--Death Penalty Appellate Counsel

3.5.2.1 General Principles

(a) The Board of Certification should seek attorneys from all sectors of the bar who can demonstrate excellence in appellate advocacy to represent appellants under sentence of death.

(b) The court ordinarily should appoint two attorneys. To be appointed associate counsel, an attorney should be qualified to handle state PCRA or federal motions to vacate sentence, (28 U.S.C.§ 2255) cases where death penalty is not authorized.

3.5.2.2 Qualifications for Counsel Certified to Represent Appellants Under Sentence of Death

An attorney may be certified to represent an appellant under sentence of death only if that attorney:

(a) Has been admitted to the bar of the Supreme Court of Pennsylvania (United States Court of Appeals for the Third Circuit) or has been admitted to practice before that Court pro hac vice;

(b) Has had primary responsibility for at least five briefs submitted to any appellate court;

(c) Has presented oral argument to an appellate court on at least three occasions involving criminal cases;

(d) Submits to the Board of Certification at least one appellate brief that was written primarily by himself/herself and demonstrates to the Board excellence in written legal advocacy;

(e) Is familiar with the practice and procedure of the Pennsylvania Supreme Court (United States Court of Appeals for the Third Circuit);

(f) Demonstrates, by training or experience, knowledge of principles of criminal and constitutional law as they apply to death penalty cases, as well as familiarity with state PCRA and/or federal habeas corpus jurisprudence.

3.5.3 Standards for Certification Post-Conviction Relief[20] Counsel--PCRA; § 2254; § 2255

3.5.3.1 General Principles

(a) The Screening Committee should seek attorneys from all segments of the bar who can demonstrate excellence in litigation to represent post-conviction petitioners under sentence of death.

(b) The court ordinarily should appoint two attorneys to represent the petitioner.

(c) The Board of Certification shall certify attorneys eligible to be placed on death penalty PCRA panels, or death penalty "habeas corpus" panels, 28 U.S.C. §§ 2254, 2255, of the United States District Courts of Pennsylvania. The Board will ascertain who among these attorneys are willing to accept appointments in death penalty post-conviction

[20] The term "post-conviction," except where it explicitly applies to a specific state or federal statute, is understood to encompass both state and federal avenues of post-conviction relief.

petitions, subsequent appeals, and federal "habeas corpus" petitions, 28 U.S.C.§§ 2254, 2255.

(d) There is a presumption in favor of continuity of representation of counsel in the post-conviction process. PCRA counsel will ordinarily continue representation in subsequent federal proceedings, unless counsel or the petitioner objects. When a state petitioner, whose federal habeas corpus petition, 28 U.S.C. § 2254, has been dismissed for failure to exhaust state court remedies, was represented by counsel appointed under the Criminal Justice Act, that petitioner should be represented by the appointed attorney in subsequent state proceedings, unless either the petitioner or the attorney objects.

3.5.3.2 Qualifications for Counsel Appointed to Represent Prisoners Under Sentence of Death in Post-Conviction Petitions

An attorney may be appointed to represent a post-conviction petitioner under sentence of death only if that attorney:

(a) Has been admitted to the bar of the Supreme Court of Pennsylvania (the federal district court) or has been admitted to practice pro hac vice;

(b) Is an active practitioner with at least five years' litigation (trial and/or appellate) experience in this or any other jurisdiction;

(c) Has experience as sole or lead counsel in no fewer than ten trials or other hearings before a judge or other judicial officer where contested factual issues were actually decided;

(e) Submits to the Screening Committee at least one sample of legal writing for which he/she was primarily responsible. This writing must advocate the position of a party in an adversary proceeding and must demonstrate excellence in written legal advocacy;

(f) Is familiar with the practice and procedure of the Pennsylvania Supreme Court, and with PCRA, and/or federal habeas corpus, 28 U.S.C.§§ 2254, 2255, jurisprudence;

(g) Has taken at least one training or educational program, within the past two years, which focused on state and federal post-conviction litigation in death penalty cases. (This requirement may be waived if the attorney demonstrates to the Screening Committee knowledge of the principles of Pennsylvania and federal death penalty post-conviction litigation.)

3.5.4 Experience Exception To Standards

If any applicant fails to meet any of the above specific standards, the Board of Cerification, after examining the applicant's qualifications and conducting a personal interview with nthe applicant, may rate the applicant to be qualified if the applicant's experience, knowledge and training are clearly equivalent to the standards for the category in which applicant seeks qualification.[21]

3.5.5 State Compensation Rates for Court-Appointed Counsel

3.5.5.1 The appointment of certified counsel in homicide cases in which the State seeks the death penalty shall be made in accordance with these guidelines and applicable Rules.

3.5.5.2 The court ordinarily will appoint lead and associate counsel in cases in which the State seeks the death penalty.

3.5.5.3 (a) Assigned counsel may make a written request to obtain investigative, expert or other services necessary to an adequate defense. Upon finding that such services are necessary, the court shall authorize counsel to obtain such services on behalf of a defendant.

(b) In order to expedite reimbursement to counsel for services rendered by investigators or other experts authorized by the court at the conclusion of such expert services rendered on behalf of the

[21] It is likely that appropriate waivers will be more necessary during the implementation phase of the standards. Given aggressive training and support by the statewide bar, more attorneys gradually will meet certification standards.

defendant, counsel may submit a petition and order for reimbursement to counsel of such expert fees. Said petition and order shall be submitted to either the trial judge, if there is a trial, or to the judge presiding over the disposition of the matter and may be submitted at any stage of the proceedings. The petition and order for reimbursement must contain all information and exhibits relevant to the reimbursement of expenses as may be prescribed by rule. Upon submission by counsel of the petition and order for reimbursement, the appropriate judge will review the petition and authorize payment to counsel of such expert fees as are considered reasonable and necessary. The reviewing judge will then forward the petition and order for reimbursement to the proper payment authority for prompt payment.

3.5.5.4 Upon the conclusion of counsel's representation, or any segment thereof, the judge sitting at the trial of the case, if there is a trial, or to the judge presiding over the disposition of the matter shall, after the filing of the claim and sworn statement, allow such counsel all reasonable personal and incidental expenses, and compensation for services rendered.

3.5.5.5 Counsel in state proceedings shall be compensated for services rendered at a rate not exceeding seventy five ($75.00) per hour for time reasonably expended in court, and fifty dollars ($50.00)[22] per hour for time reasonably expended out of court. When two counsel have been assigned, their claims for compensation and reimbursement shall be stated separately.

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[22] The recommended rates reflect the budget constraints facing the local counties. The higher rates in the federal courts, a rate of $125/hour for in-court and out-of-court time reflects the current rates approved by federal courts throughout the country.

3.5.5.6 Counsel so appointed must file with the judge an affidavit that he has not, directly or indirectly, received, nor entered into a contract to receive, any compensation for such services from any source other than herein provided, or any other affidavit required by law.

4.0 TRACKING

There exists a need within Pennsylvania to identify capital cases and update the status of such cases as they move through the state and federal court systems. Presently, there is no single source to collect and process information on the status of capital cases within Pennsylvania.

The dual function of this proposed tracking system is to identify the existence of all state and federal capital cases in Pennsylvania at the earliest possible time in order to facilitate the appointment of qualified counsel if necessary to the case, and to maintain the status of all capital cases at all levels of the state and federal court systems in Pennsylvania. A computer based system needs to be designed which would consist of the collection and processing of factual information necessary to support these two functions. Cases will be tracked through the state and federal trial and appellate court systems and will include dispositions by the Supreme Court of the United States, if applicable. Collateral reviews, regardless of the number in both the state and federal systems, and all appeals therefrom, will be included. The system must necessarily allow for cross-indexing, given the fact that a case takes on a different number and caption depending on where it is initiated. The information on the system should be available to the bench, bar and public.

The information to be included in the case tracking system would be similar to that appearing in a docket and include, but not be limited to, the following: caption of the case, the county of origin, the case number, defense counsel's name, address and telephone number, trial date, or argument or hearing date whichever is applicable, disposition by the fact finder and/or court, the date for filing of briefs or motions such as post-trial motions and the filing of appellate briefs, when the record is lodged with the appellate court, whether a warrant of execution has issued and date of execution, and whether a stay has been granted. This outline of information is only illustrative; the actual details of the system ultimately will be determined

during the design phase.

Research has indicated that other states, where there exists no unified defender's organization which has responsibility for defending capital cases, employ methods such as reviewing newspaper clippings to become aware of the filing of a capital case, as well as by word of mouth. These methods are viewed as insubstantial and haphazard at best. Thus, to carry out the purposes of this tracking system, it is critical to become aware of the existence of capital cases at the earliest opportunity. Various options were explored but for purposes of tracking state cases, it is recommended that Rule 352 of the Pennsylvania Rules of Criminal Procedure be amended as appropriate and utilized in carrying out this function. This Rule provides that the Commonwealth, i.e., the District Attorney, must notify the defendant in writing of any aggravating circumstances which it intends to submit at the sentencing hearing, at or before the time of arraignment unless the Commonwealth becomes aware of the existence of an aggravating circumstance subsequent thereto, or that the time for notice is extended by the court for cause shown.[23] Utilization of the Rule seems to be the most expeditious means to accomplish the objective and would represent a sound mechanism for reporting. The Rule should be amended to require that notice of a capital case be provided to the Resource Center at the same time. It is understood that amending the Rule is within the discretion of the Supreme Court of Pennsylvania. Initiatives should be undertaken to submit a rule change to the Court for its consideration.

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[23] Rule 352, Pa.R.Crim.P., reads as follows:

> Rule 352. Notice of Aggravating Circumstances
>
> The Commonwealth shall notify the defendant in writing of any aggravating circumstances which the Commonwealth intends to submit at the sentencing hearing. Notice shall be given at or before the time of arraignment, unless the attorney for the Commonwealth becomes aware of the existence of an aggravating circumstance after arraignment or the time for notice is extended by the court for cause shown.

Once the case has been reported to the Resource Center, it is incumbent upon that entity to pursue the collection of data regarding the status of the case. The Resource Center must take the initiative by contacting defense counsel, or whatever other sources necessary to ensure that the information on the case is current and complete. This applies to all levels within the state and federal court systems.

With respect to the notification of the existence of federal original jurisdiction capital cases and habeas corpus capital cases, reporting procedures be implemented regarding original capital cases complementary to those already in place in the Third Circuit Court of Appeals for habeas corpus capital cases. Rule 29 of the Third Circuit Rules and Procedures, and Chapter 15 of the Internal Operating Procedures of the U.S. Court of Appeals for the Third Circuit govern the procedure for capital habeas corpus cases as well as the administration of those cases. Rule 29 requires the filing in the U.S. District Court of a Certificate indicating that the case is capital in nature, which in turn is transmitted to the Third Circuit. The Third Circuit Judicial Council or local district courts should develop rules requiring the filing, by the United States Attorney, of a certificate of death penalty case at the time of arraignment. See Fed.R.Crim.Pro. Rule 10; 21 U.S.C. § 848(h). On the Circuit level, a designee will monitor all federal capital cases and transmit such information to the Resource Center. Thereafter, the Resource Center should exercise initiative to complete necessary information and maintain case status.

As to the design of the computer program, personnel within the Administrative Office of Pennsylvania Courts and the U.S. Court of Appeals are available to develop a program to meet the requirements recommended herein. The Courts' computer specialists have indicated that the system can be developed to run on a personal computer at a minimum cost.

Members of the Task Force will continue to design this function of the Resource Center and are prepared to implement the tracking function as quickly as possible.

5.0 FUTURE INITIATIVES

Possible alternatives for securing adequate and continuing funding for the Resource Center and its related activities were considered. Various sources of funding, such as foundation grants and bar association donations, were dismissed as unreliable, because the experience nationwide has been that such sources often provide only temporary assistance. A permanent, secure source of funding is essential to the viability of the Center, and is a precondition to continuing federal funding. The most appropriate source of funding is a combination of the state and federal government. Federal funding is available, but contingent on comparable state funding.[24] Accordingly, the Subcommittee was instructed to explore appropriate sources of state funding, and it makes the following recommendations.

Funding for the Resource Center and related activities should be sought in the form of a line item in the budget of the Judiciary of Pennsylvania. The proposed funding should represent 50% of the estimated budget for start-up and first year expenses (approximately $300,000), with the federal judiciary authorizing the remaining fifty percent. Future budgets should be funded in a similar way, consistent with the needs of the Center.

Upon final issuance of this Report of the Death Penalty Task Force, it should be presented to the Supreme Court of Pennsylvania for approval and subsequent inclusion in the budget of the Pennsylvania Judiciary. (Submission to Pennsylvania legislature and to the Governor, then, will follow the traditional means of budget preparation, adoption, and final appropriation.) The Report should also be submitted to the Judicial Council of the Third Circuit and the Judicial Conference of the United States for approval and authorized funding.

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[24] The Resource Center Plan must be approved by the Judicial Council of the Third Circuit, the Defender Services Committee of the Judicial Conference, and the Judicial Conference of the U.S. Funding will be administered by the Defender Services Division of the Administrative Office.

The target state budget cycle is FY'91-'92 (July 1, 1991--June 30, 1992). That target will require consideration and approval by the Supreme Court prior to its budget submission for FY'91-'92. Budget preparation typically begins in the fall preceding the new fiscal year. A continuing committee should be appointed to pursue all steps necessary to the final implementation of the Resource Center. Members of the Task Force, the Chief Justice, the Chief Judge, and other interested parties should stand ready to testify about the need for the Center or to explicate aspects of the Report during the implementation period.