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with suggestions for their improvement / by James Mease.**

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MEASE (Jas.)

Observations on the Penitentiary
system & penal Code of Penn. x x x

Disce on the

Penitentiary System.





Massachusetts

M. S. Brooks

from the author

from the author

Memorandum
from the Secretary

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from the author

ON THE

PENITENTIARY,

AND

P E N A L C O D E

OF

PENNSYLVANIA.



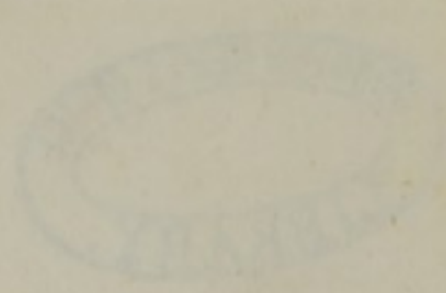
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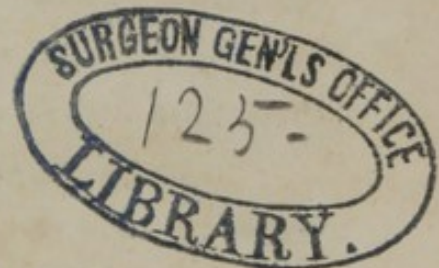
Penitentiary System,

AND

PENAL CODE OF PENNSYLVANIA:

WITH

SUGGESTIONS FOR THEIR IMPROVEMENT.



BY JAMES MEASE, M. D.

MEMBER OF THE AMERICAN PHILOSOPHICAL SOCIETY, &c. &c.

PHILADELPHIA:

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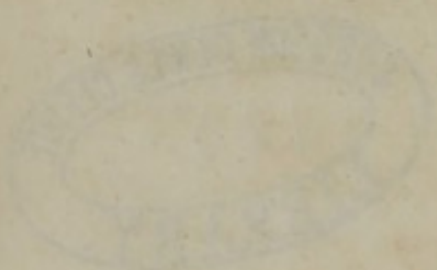
1828.

ORIGINAL

DEPARTMENT OF THE INTERIOR

LANDS OFFICE

ATTEST



BY JAMES M. SMITH, A.D.

CLERK OF THE LANDS

PHOTOGRAPHED BY THE NATIONAL ARCHIVES

PREFACE.

THE following essay was originally published in the Newspapers of Philadelphia, in the year 1820, and afterwards in a more enlarged form, in the 30th Number of the Philadelphia edition of Brewster's Edinburgh Encyclopædia. Copies were sent to the late Thomas Eddy, of New York, who was one of the Committee of "the Society in that city for preventing pauperism," from whom a circular had been received in December, 1820, relative to the penitentiary system; and to the Judiciary Committee of the Pennsylvania Legislature, who had the penal code under consideration during the session of 1820-21. The essay is again published, in the hope that it will be useful at the present time: and an appendix is added, containing many facts and remarks in confirmation, and in support of the principles originally advocated.

At the time the essay was composed, the author was not informed of the efforts which had been made by "The Philadelphia Society for alleviating the miseries of public Prisons," to effect alterations in the old penal code of the state, or he would not have failed to mention them. They commenced as early as the year 1786, and at different times since that year, they have urged the adoption of several amendments to the penal laws, among which was that of solitary labour.*

* Notices of the original and successive efforts to improve the discipline of the Prison at Philadelphia, and to reform the penal code of Pennsylvania. By Roberts Vaux. 1826.

The author thinks it his duty to mention, that many of the facts contained in the original essay, were procured through the Mayor of the city, Robert Wharton, who kindly lent the aid of his official station, to obtain answers from the keepers of prisons in different states, to queries submitted to him.

Philadelphia, December 5, 1828.

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 ERRATA.

P. 19, line 5, before "persons," add, male.

P. 48, line 14; after the word "that," insert *even*.
15; erase "even."

The notes referring to p. 60, and p. 62, in pp. 90 and 91, were by accident placed out of the regular order.

ON THE

PENITENTIARY, &c.

THE following is a short statement of the Penal Code of Pennsylvania.

By a law of April 22, 1794, it was enacted, that no crime, except murder of the first degree, should be punished by death. Aiders, abettors, and counsellors, are held equally guilty with the principals, and liable to the same punishment.

By "murder in the first degree," is understood, death by means of poison, or by lying in wait, or by any other kind of wilful, deliberate, and premeditated killing, or which shall take place in the perpetration, or attempt to perpetrate any arson, rape, robbery or burglary. All other kinds of murder shall be deemed murder of the second degree. 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.

Prosecutions for petit treason are to be conducted, and the criminal punished, as is directed in other kinds of murder.

Other crimes are punishable, by imprisonment, merely: by imprisonment at hard labour; and by imprisonment at hard labour and solitary confinement, for terms proportioned to their enormity.

Murder in the second degree, by imprisonment at hard labour for not less than five, nor more than eighteen years. For a second offence, imprisonment at hard labour for life.

Voluntary manslaughter: imprisonment at hard labour for not less than two, nor more than ten years. Second offence, not less than six, nor more than fourteen years.

Rape: imprisonment at hard labour not less than ten, nor more than twenty-one years. Second offence: imprisonment at hard labour for life.

Counterfeit bank bills: imprisonment at hard labour not less than four, nor more than fifteen years.

The crimes of maiming, and that of kidnapping a coloured person, are punishable by fines, as well as imprisonment at hard labour. The fine for the first is not to exceed \$1000: three-fourths whereof are to be for the use of the party aggrieved. The period of confinement is to be not less than two years, nor more than ten years. The fine for the latter is not to be less than \$500, nor more than \$2000; one-half whereof shall be paid to the person or persons who shall prosecute for the same: the period of imprisonment not less than seven years, nor exceeding twenty-one years.

All persons convicted of crime punished by confinement and hard labour, are to pass such part of their time in solitary cells, as the court shall direct; provided that it be not more than one-half, nor less than one-twelfth part thereof.

All claims to dispensation of clergy are abolished.

On the Penitentiary System of Pennsylvania.

The reformation of the Penal Code of Pennsylvania in the year 1790, was considered by many friends to humanity, as constituting an epoch in the history of the state, and great credit has been given to it by writers and statesmen in Europe, for the wisdom of substituting confinement and hard labour, in place of the disgusting and demoralising public punishments, to which, by the former code, criminals were subjected. The most signal good consequences were expected

to flow from the system, by reforming the morals of those condemned to submit to it, and by preventing crimes. No man was more sanguine on this subject than the writer, who heard and read every sentence of praise on the law, with great satisfaction. Its mild features raised his native state in the public estimation; this reflected honour upon the man* with whom he was connected by strong affection, and to whose ardent zeal in the cause of humanity, the United States are indebted for its promulgation, and for his steady and able support of it, for several years previously to its adoption; in opposition to the confederated influence and talents of the bench, the bar, of many ministers of the gospel, and other individuals of weight in society. Above all, the writer was led to believe from almost daily conversation with him on the subject, for some time after it went into operation, that it would in a few years work an entire reformation among the lower order of mankind. He even did not think it an Utopian idea, that crimes would scarcely be known in Pennsylvania, after the new system had been a few years tried. We all know, and some of us have felt, that such have not been the effects of it; the records of the prisons, and the presentments of grand juries, show that crimes have greatly multiplied,† and the fear of hard labour and confinement has lost

* Dr. Rush.

† The number of untried prisoners returned on the calendars, at the different sessions of the Mayor's Court of the city and county of Philadelphia, was—

In the year 1813,	-	-	-	516	In the year 1818,	-	-	-	1062
1814,	-	-	-	588	1819,	-	-	-	1165
1815,	-	-	-	829	1820,	-	-	-	1474
1816,	-	-	-	1058	1821,	-	-	-	1716
1817,	-	-	-	1106	1822,	-	-	-	2010

Convicts received in the penitentiary, from the year 1790, to the close of 1815, a period of 24 years, 2530, or about 105 annually. From 1810 to 1819, a period of ten years, there were received 2824, making the average about 282 annually. In the years 1820 and 1821, the total number of convicts admitted was 530.

The increase of crimes in the state of New York is shown by the following document, published February, 1820, by the New York prison commis-

its influence (if it ever had any,) upon the vicious, nay, even upon those who have been repeatedly subjected to them. It may therefore be useful to inquire into the causes to which the failure of the system is to be attributed; for until these are known, the proper remedies cannot be applied; nor can any means be suggested, which would be likely to check the alarming annual increase of crimes.

1. One principal cause of the failure of the system, in re-

sioners:—"During 23 years, 4,422 convicts were received into the prison; of whom about 1,841 were received during the first half, and about 2,581 during the remaining half of that period: being an increase during the latter half of the period, of two-fifths. This increase becomes peculiarly alarming and deplorable, when it is considered that, in the year 1808, an act was passed prohibiting imprisonment in the state prison in cases where the sentence could not be for more than three years' imprisonment, and exempting those convicted of petit larceny, altogether from such imprisonment in the state prison: that in the year 1817, another act was passed, declaring thefts to the amount of 25 dollars, to be petit larcenies only; and that in the same year a new state prison was erected at Auburn, in the interior of the state. From a careful perusal of the books of the state prison at New York, the commissioners are persuaded, that had the same offences which were originally punishable by imprisonment in the New York prison, continued to be so punishable there, the number received into that prison during the last eleven and a half years, would have been considerably more than double the number received during the first eleven and a half years." By a statement with which I was favoured by Mr. Savage, the comptroller of the State of New York, in July, 1822, it appears that the number of prisoners in the state prisons of New York, from the opening of the prison in 1797, was—

New York, 1797, - -	116	New York, 1810, - -	461	
98, - -	212	11, - -	447	
99, - -	225	12, - -	486	
1800, - -	283	13, - -	496	
1, - -	345	14, - -	494	
2, - -	404	15, - -	559	
3, - -	397	16, - -	659	
4, - -	419	17, - -	671	Auburn, 53
5, - -	436	18, - -	618	134
6, - -	461	19, - -	604	194
7, - -	430	20, - -	580	218
8, - -	424	21, - -	553	226
9, - -	478			

forming criminals in Pennsylvania, (and also in other states,) is the want of room for the convicts in the prison. During the day, two or three hundred are at work in the same yard (sawing marble), and numerous small parties are engaged in various branches of business in rooms or workshops. At night, from thirty to forty are confined in the same sleeping rooms, the dimensions of which are 20 by 18 feet.* In the first instance, the mere presence of numbers, and the bustle of the work going on, are sources of gratification: the conversation which most of them are enabled to hold is an additional enjoyment, and those painful reflections which solitude and silence would continually force upon them, and which would infallibly produce the most salutary effects, do not take place. It is a principle in the human mind, that company enables a man, living or dying, to bear bodily or mental suffering with more fortitude than when alone. But it is the assembling of the convicts at night that has tended, more than any other cause, to defeat the penitentiary system. Solitude at night, is much more painful to any one without mental resources, than during the day, when the stimulus of light, and the sight of external objects, serve greatly to diminish the effects of *ennui* upon the human mind. To one whose mind is not impressed with the recollection of a single good action, but filled with that of a wicked life, and of the situation it has brought him to, nightly solitude is the severest of all punishments. The depressing and sobering influence of such solitude is prevented, where many are confined in the same room. It is known that, instead of sleeping, the convicts pass hours in conversation, and even form plots and schemes of future crimes;† and take pleasure in detailing

* In the Richmond prison, (lately burnt) which was calculated to hold 200 persons, 12 convicts were confined at night, in a room 12 by 14 feet—1823.

† "In two or three instances, it has appeared on the fullest evidence at the trials, that burglaries were projected and all the circumstances of the crimes deliberately settled in jail, which the felons executed after their discharge." Judge Rush's letter in Mr. Ingersoll's Report on the Penal Code of Pennsylvania, Philada. 1813, p. 39.

scenes of villany in which they have been engaged, and the expedients practised by them to avoid detection. Hence the older criminals serve as teachers to the younger sinners, and prepare them for the commission of greater crimes than those for which they had been convicted. The seeds of infamy are thus matured in the young offender, the more wicked are confirmed in their evil ways; and the prison, instead of answering the object for which the convicts are confined, viz. their reformation, becomes the nurse and seminary of vice. Many convicts have made declarations, upon which this conclusion is grounded. One of them, afterwards hung, (it is thought at Harrisburg) in giving an account of his progress in vice, in his dying confession, stated his having passed some years in the Philadelphia prison, which he termed "the devil's school." Other facts might be stated to prove the position.

2. Another powerful cause of the defeat of the penitentiary system, is the NUMEROUS PARDONS that have been granted to convicts, either at the request of the inspectors of the prison, or of the criminals themselves, and their friends, by the governors of the state.

It has been found that artful villains, by exhibiting apparent contrition for their crimes, and by the regularity of their conduct, and their industry, have so far imposed on the inspectors of the prison, as to induce them to recommend to the governor to grant a pardon, which has seldom or never in such cases been refused.* In some cases, they have been

* The notorious Lewis, of Bedford county, Pennsylvania, may be cited as an instance in point. He had been convicted on the 22d February, 1816, of passing forged bank bills, and sentenced to six years confinement. He was employed as a cook for the convicts, behaved with great propriety, and gave information of an intended plot to break prison. He was pardoned, upon the recommendation of a majority of the inspectors, on the 9th September, 1819, and his fine remitted. A few weeks after his liberation, he robbed Mr. M'Clelan, of Pittsburgh, and was for some time at large: when taken, he was lodged in jail at Chambersburg, but soon escaped with two others, viz. Connelly and M'Guire, and robbed a wagon of a quantity of dry goods. Lewis and Connelly were finally killed in the latter end of June, 1820, by a party from Bellefonte, in Centre county, after several shots were discharged on both sides. M'Guire was taken.

granted to make room for offenders recently convicted; or as a reward to some of the criminals for having detected plots, and given information of intended insurrections in the prison; and in some instances to thin the prison, in which, from its crowded state, apprehensions were entertained of the origination of a contagious fever, or the spreading of one that had actually appeared among the convicts. In other cases, none of the reasons mentioned could be offered for the recommendation of the inspectors, or any reasonable excuse given for the exercise of the executive prerogative; as it is a fact, that wretches convicted of the most atrocious crimes have been turned loose upon society, in distant counties, even before they had reached the prison in Philadelphia, or after a short confinement therein. It is of great importance, that more caution be used in future by governors in pardoning, by the inspectors in recommending convicts, for exemption from the full penalty incurred by their crimes; and that measures be adopted to prevent the continuance of the evil, from whatever cause it may have proceeded; for there can be no doubt, that the frequency of pardons has emboldened the wicked in their courses of iniquity, and thus tended to increase the public expenses by the repeated convictions of the same criminals; and, under any system of reformed management in penitentiaries, will, if the practice be continued, defeat the object of confinement. It will even screen the wicked from punishment; for people will become careless about the prosecution of an offender, when they find the laws and justice trifled with, by those appointed to see the punishment of the criminal duly inflicted; and witnesses, for the same reason, will decline the disagreeable duty of coming forward to aid in the conviction of offenders. Rogues will thus escape, and crimes be multiplied. The records of the Penitentiary of Philadelphia, and of those in the other states in which the penal system of Pennsylvania has been adopted, prove that repeated convictions of criminals have taken place, after pardons had been granted to them; and the fact was stated by Governor Clinton, of New York, in his address to the legis-

lature in the session of 1819. "We see," he observes, "offenders imprisoned on a third conviction; and frequently the day after their release, by pardon or expiration of sentence, witnesses their apprehension for new offences."*

Other causes which have much lessened the effects of con-

* The injurious effects of the numerous pardons granted to convicts, in defeating the expectations of the friends to the penitentiary system, are noticed in the excellent reports, by the commissioners appointed by the legislatures of New York, and of Massachusetts, in the session of 1816-17, on the subject of the penitentiary. Their remarks are added to the appendix (p. 89,) of Roscoe, on Penal Jurisprudence, Lond. 1819. The prison commissioners appointed by the New York legislature, in their report of Feb 4, 1820, also "express their firm belief, that the terror of penitentiary punishment has been in a very great degree destroyed by the ease with which pardons are known to have been of late years obtained." The evil however still continues.

Number of convicts pardoned by the Governors of some of those states in which the reforming penal code has been adopted, and of reconvictions after pardon.

Pennsylvania,—Gov. McKean, from 1799 to 1808,		1180	} pardoned.
Snyder, 1808 to 1817,		1016	
Findlay, 1817 to 19th			
May, 1819, 206—June 1819, to 1st		312†	}
Jan. 1820, 106,			
New Jersey, from 1798 to 1819, prisoners	805	160	} pardoned.
Maryland, 1812 to 1819,	943	81	
Virginia, 1800 to 1819,	909	188	
New York, 1797 to 1819, of 4422 prisoners,	2242	} pardoned.	
1820	189		

From the opening of the prison in 1797 to March 1822, the total number of convicts committed has been 5,069, of which number, more than half have been pardoned, viz.

Massachusetts, from 1805 to 1819,	1305	2,819‡	} pardoned.
		213	

Reconvictions after pardon. New York.—In 1817, the prison commissioners report, "that all of those who had been committed for second and third offences, about *two-thirds* had been discharged from their former sentences by pardon." Pennsylvania.—In the summer of 1817, of 451 convicts then in

† These numbers include offences of every sort, some of which were not punishable by confinement.

‡ Report to Senate of New York, March 1822, by the committee on the Criminal Law—S. M. Hopkins, chairman.

finement and labour in society on criminals, are, 1. the number of inspectors of the prison; 2. the short time for which they are appointed; and 3. the improper exercise of the discretion given to them by the judges, in the execution of the sentences on convicts. The inspectors are fourteen in number, and are chosen by the city corporation, and those of the Northern and Southern Liberties, to serve for one year. This number is much too great, the experience of the world having amply proved, that however great the chance for increased wisdom in a multitude of counsellors may be, yet that a numerous executive is never efficient. The annual change of a part of them is highly prejudicial, for it often happens that after having acquired a knowledge of the duties of their office, made useful regulations, and feeling an interest in seeing them carried into effect, they are displaced by new and inexperienced persons, who go through their tour of duty with as little trouble to themselves as possible.

prison, 162 had been before convicted, and pardoned; how often cannot be ascertained.

New Jersey, October, 1819,—Of 160 pardoned, 38 had been convicted a second time, four a third time, and one a fourth time.

Maryland—Of 37 in prison, April 1820, 23 had been pardoned once, in Boston, Baltimore, Philadelphia, New York, or New Jersey, and ten had been pardoned twice, and 4 thrice, in those states.

Virginia—Of 175 convicts, to Oct. 1, 1819, 6 had been pardoned. The number reconvicted of all those pardoned, from the first establishment of the penitentiary, was not mentioned in the communication with which I was favoured.

Massachusetts—Of 213 pardoned, since the opening of the prison, 20 have been recommitted; and three or four have been reported to be since recommitted to other state prisons. There are also 3 or 4 in the prison of Massachusetts, who have been pardoned from other state prisons. On January 1, 1821, of the whole number pardoned, viz. 242, 20 had been recommitted. If the same praiseworthy minuteness observed in the Maryland and Massachusetts prisons, had been followed by the keepers of prisons in other states, it would doubtless be ascertained that many, said to be committed for the first time, had either been previously convicted in other states, and had served out their times, or had been pardoned.*

* See Appendix.

Inspectors have also sometimes been removed, (shameful to tell,) upon the mere principle of party spirit, notwithstanding it was known that they were deeply interested in the success of the institution, and had greatly diminished its expenses by their economical arrangements and profitable purchases, the effect of their watchful attention and meritorious zeal. On other occasions, owing to the pride of showing a little of the "brief authority" with which they were invested; or to their being the dupes of the ingenious and hypocritical, prisoners have been released from the solitary cells in which they were confined for some gross outrage, by order of an inspector, whose time of service had recently expired, and permitted to enjoy the luxury of labouring and sleeping in society, or had the nature of their work changed and lightened. Such interference with the orders of a predecessor defeats the law, encourages the turbulent in their breaches of good conduct, and is a triumph to the bad passions of a favoured convict, which cannot fail of doing away any impression which confinement might have produced on his mind. A discretionary power would seem to be properly lodged with the inspectors, respecting the length of time necessary to break down an obdurate spirit by solitary confinement; and if they were not so often changed, no evil might arise from trusting them with it; but as it has been, and will be, injudiciously exercised, provision ought to be made to prevent the intentions of the law from being thereby defeated. Prisoners are commonly doomed to undergo a certain period of confinement in the solitary cells: but the inspectors do not enforce this part of the sentence to the full extent. One reason for this omission is the want of a sufficient number of cells; but solitary confinement is often dispensed with, although expressly enjoined; or, if imposed, it is not for a twentieth part of the time ordered by the judges.

But the principle itself of the penitentiary system, that is, of the moral effect of labour in society, on convicts, is, I fear, inadequate to the reformation of most criminals. It was a plausible theory, that constant labour for several years, unin-

interrupted sobriety, mild diet, regularity of conduct, and the habit of work acquired by the convicts during their confinement, with the aid of religious instruction, would produce such a revolution in their moral faculties, that they would prefer a life of honest industry, and pursue it after their liberation; but, unfortunately, these desirable effects have not been produced. The documents of the prisons of Philadelphia, and of other states in which the penal code of Pennsylvania has been tried, show that, with two or three exceptions, it has failed to reform criminals, even after repeated and long trials of its salutary effects on the same person. As it is important to establish this point, I shall proceed to give the proofs.

1. The number of convicts received into the Penitentiary of Philadelphia, from the year 1790, to the year 1816, amounts to two thousand four hundred and ninety. I am unable to state precisely the number of individuals included in that amount, who were convicted a second time, or oftener, in Pennsylvania, by reason of no note having been taken of the fact by the keepers of the prison; but I have it in my power to give a partial statement on this point, made at my request, from an actual examination of the convicts. Besides, the fact of such annual reconvictions is notorious.—“The whole number of convicts in the prison on the 24th of August, 1819, was four hundred and sixteen, of whom seventy-three had been twice convicted; twenty-five, three times; seven, four times; and two, five times! Of three hundred and nine, who were then imprisoned for the first time in Philadelphia, many were known to have been convicts in other states, but the precise number cannot be given. Of sixty-three women convicts, seventeen had been twice convicted; and two, three times.”

The report compiled for the “American Sentinel,” of Philadelphia, and published January, 1819, of the session of Oyer and Terminer, then recently closed, stated, that of twenty-seven persons on whom true bills were found, sixteen were old offenders. In January, 1817, of four hundred

and fifty-one convicts then in prison, one hundred and sixty-two had been before committed.* Even up to 1795, four years after the introduction of the new penal code, and when there was sufficient room in the prison for the separation of the convicts day and night, five reconvictions had taken place.†

From the year 1810 to 1819, both inclusive, the number of convicts was 2824, of these there had been

convicted once	-	-	-	-	2352
twice	-	-	-	-	409
three times	-	-	-	-	54
four times	-	-	-	-	7
six times	-	-	-	-	2

In the year 1820, 182 were discharged, having served out their times. Of these 18 were readmitted during the same year, and one of 51 who had been pardoned.

In the year 1821, 180 served out their times: 24 of whom were reconvicted during the same year.

Other states have not been more fortunate in the reformation of criminals by the same mode.—By the report first transmitted by the warden of the state prison of Massachusetts, the whole number of persons committed since its establishment in December, 1805, to October 1, 1819, amounted to 1305, viz. 1216 males, and 89 females. Of these, one hundred and eighteen had been twice convicted in Massachusetts; and eight had been once, or oftener, in some other penitentiary; fifteen had been convicted a third time, three of whom had been previously in some other penitentiary; seven were in on a fourth conviction, one of whom had undergone a similar discipline; and two were in on a fifth conviction!

Total committed from 1805 to January 1821,	1471
Of these there were committed a second time	133
A third do.	17
A fourth do.	8
Sentenced for life	126

* Report of the Philadelphia Society for alleviating the miseries of public prisons, p. 6. 1817.

† On the Philadelphia Prison, by an European, (the Duke de Liancourt,) p. 44. Philadelphia, 1795.

Seven of these are so sentenced under a new law, being "third comers." To these must be added 20 of 242 who had been pardoned.*

New York.—The total amount of convicts admitted into the state prison from 1797, to the 31st of December, 1814, was three thousand and sixty-two; of which number there had returned for the second time, two hundred and eighteen; for the third time, thirty-three; for the fifth, one!†

New Jersey.—From September, 1798, to October 15, 1819, eight hundred and five prisoners were received; of whom, thirty-seven are in on second convictions, four on a third, and one on a fourth. Of the whole number, forty-six are known to have been in other prisons, and probably more.

Richmond.—From April, 1800, to October 1, 1819, nine hundred and nine were admitted, of whom forty had been convicted a second time, and five a third time.

The number of convicts received into the Baltimore penitentiary, from 1812, to April, 1820, amounted to nine hundred and forty-three: of these, one hundred and six had been convicted either in Philadelphia, New York, Boston, or Baltimore, twice or thrice. Seventy-four were men, and thirty-two were women.‡

It will be seen by the quotations already given from the writings of the benevolent introducer of the mild penal code into the United States, that he cautioned legislators from falling into the error of pardoning criminals; but he did not contemplate the absolute necessity of such deviation from his plan, in consequence of the causes I have mentioned, or anticipate its defeat, from the effects of evil communications among the prisoners, from their working in society during the day, or from their sleeping together at night. I am led to adopt this conclusion by reason of his not having noticed such an event in any publication, and from never hinting it in

* Penitentiary Vindicated, p. 55. Charlestown, Mass. 1821. By the late G. Bradford, warden of the prison.

† View of the New York State Prison. Appendix to Roscoe, p. 31. The convict admitted the fifth time was a woman!!

‡ See Appendix.

the views which I repeatedly heard him give on the subject. But as the operation of the moral remedies has been found to fail in the manner they have been applied, after twenty-nine years' experience in restraining crimes, and in producing the salutary moral change in the convicts, which was expected from them, it behoves us to consider what alteration in the system of their application can be made, so as to render them more powerful; or what measures ought to be substituted for them, so as to prevent the multiplication of crimes, and to secure the honest part of the community from the future depredations of the vicious. I will now enter on the consideration of these subjects.

1. As the assemblage of a number of convicts at work in the same yard, or of smaller parties in rooms or workshops, during the day, has been found to defeat the effects of labour and confinement upon them; and the sleeping of numbers in the same apartment, more especially, is injurious; it naturally follows, that measures should be taken to prevent this intercourse. Indeed, to give the reforming system a fair trial, the seclusion of the prisoners ought to be complete, day and night, during the whole period of their confinement; nor ought the smallest intercourse to take place with any other individuals than their keepers during the week, and the preacher of the gospel on Sunday.—From the place of worship on the Sabbath, all the prisoners ought to be required to repair to their quarters, there to remain till the afternoon service, to meditate upon the good advice they have heard, and to eat their plain fare in solitude. After the evening service, they should again repair to their cells. The general meeting of them before or after divine service, or at meals during the week, would defeat the whole plan, which ought to be, to oblige them “to work out their salvation in fear and trembling; in tribulation and sorrow.” If religious advice were given in the cells, without even a general meeting on Sundays, the system would approach nearer to perfection; * and if kept in ignorance of the term to which they are sentenced, as urged by Dr. Rush, the salutary mental influence

* This plan is now adopted in the
C. Penitentiary.

of confinement upon the criminals, will be greatly increased. Nothing short of this will be likely to answer the object of their confinement, viz. their reformation; and it is doing injustice to the criminal, and trifling with the welfare of society, to attempt it in any other way. To continue the system at present adopted, is extremely absurd, and positively sinning against light; having been found, after a long trial, most lamentably to fail in answering the end intended by it; nay, to produce effects never contemplated by its advocates, viz. the increase of crimes. On the contrary, the system recommended, would cause the prisoner to pass his whole time in reflecting upon his situation; and his thoughts, especially during the silent hours of the night, would be of such a nature, as not to be lost upon the most hardened criminal. Upon the young offender, committed for the first time, the effect of such a course of moral discipline, it may reasonably be supposed, will be great. Left to himself, his own reflections will be melancholy and depressing; his evil propensities, instead of being confirmed by the unrestrained intercourse with his more wicked companions, will infallibly be checked; the good advice he may have received from pious parents, will recur to his mind with a force it perhaps never possessed before, and thus, instead of being more vicious, as at present, when emerging from prison, than when he entered it, he will be chastened, and disposed to follow his trade, and to lead a regular and sober life. I will venture to say, that one year passed in this way would have more effect upon criminals, than ten years passed in the continual society of numerous fellow convicts, where reflection is prevented by the bustle of the work in the day, and drowned at night by idle or wicked conversation.—The penitentiary now building at Pittsburgh, is upon the plan of individual and entire seclusion,* and it is of great importance that it be finished with all possible speed.

But it is not to convicts alone, that our attention should be

* There are 226 cells of the dimensions of 8 by 12 feet.

directed. The situation of the untried prisoners is equally deplorable. In Philadelphia, between 100 and 200 are constantly confined in one yard, and upwards of 20 sleep in the same apartment. The sexes are indeed separated, but it is obvious that such an assemblage must infallibly give rise to great contamination, by the example and precept of hardened reprobates, to youthful offenders. To prevent it, to aid in the plan of reform, and to diminish crimes, solitary confinement is as necessary for the class mentioned, as for those who are condemned to suffer the penalty of the laws; and I am convinced, if it be adopted, the number of petty crimes, at least, will be greatly diminished. Hitherto it has been the practice to employ the untried prisoners at some easy work, in order that by it they might contribute to their support; but the amount of it is so trifling, and the sale of the articles so dull, as to be unworthy of consideration. Labour moreover is a source of enjoyment, and materially interferes with the principle of deterring them from the commission of crimes; for every one who has had any experience in the management of criminals knows, that they eagerly desire employment, that the certainty of being deprived of it in case of misbehaviour, is a great inducement to propriety of conduct; as, even when not aided by the additional charms of society and conversation, it prevents those galling reflections which solitary inactivity invariably forces upon them. The prisoner, if acquitted, after having spent some weeks entirely secluded and idle, and returning to society with a broken down spirit, would be cautious how he committed a second offence, subjecting him to a repetition of his punishment; and when about to be discharged, his mind would be prepared for the reception and operation of the good advice which should invariably be given to him by one of the inspectors of the prison, or by any other person gifted with talents for such an occasion. + Experience has proved, that from such advice, and so given under the circumstances mentioned of the sufferer's mind, very beneficial results have followed, even with the most thoughtless or guilty. These remarks apply with equal force

+ The solitary confinement of untried prisoners is provided for in the new county prison new building (1833)

to prisoners confined for one month, or for shorter periods. It is to be hoped, therefore, when a new prison shall be built, that they will be attended to.

2. I would strongly recommend the transportation of all *male* persons, who shall be convicted of a second offence in Pennsylvania, or of a first offence therein, after having undergone the discipline of the penitentiary in another state. I do not see that any other measure can be adopted, with the least degree of propriety, with such convicts. To try again the reforming influence of confinement and labour, would only perpetuate the evils we are striving to prevent. "It is indeed impossible to conceive any proceeding more derogatory to the character, and destructive of the benefit of these institutions, than those repeated and inefficient attempts. By the reception of a criminal for a second offence, who has already been discharged," after having undergone the discipline to which he was sentenced, as a satisfaction to the offended laws of the country, for the time which the judges thought sufficient to give him a chance of reforming, to atone for the injury done to the society by crime, and to make reparation to the injured party; "the establishment confesses its own inutility, and is no longer a school of reformation, but a receptacle and shelter for acknowledged guilt. The prisoners confined under the expectation of being reclaimed, finding themselves intermixed with abandoned profligates, who have gone through the same process without effect, will despair of their own recovery, or be induced to relax in their efforts; and finding that such criminals can again be received, will have no higher wish than to imitate their example. Nor can it be contended, that there is any motive to operate upon the mind of the discharged criminal, with sufficient force to deter him from the perpetration of future offences, whilst he contemplates, as the worst consequence, his recommitment to a place with which he is already well acquainted, and which, by long habit, he has learnt to render tolerable, if not agreeable. In fact the readmission into a penitentiary of any per-

son who has been discharged as reformed,* affixes a stigma upon the character of the establishment."† Such offenders must therefore be considered as irreclaimable, and it may justly be deemed an act of great criminality, and an inexcusable breach of the confidence reposed by the people in those appointed to administer the laws, to turn them again loose to commit fresh depredations, however unexceptionable their conduct may have been during confinement, or upon any other consideration; nor do I think a legislature, acquainted with the fact of the confirmed wickedness of such characters, and of the certainty that they will again injure the property of the citizens, deprive them of it, or possibly of their lives, on being liberated; can safely plead an excuse to their constituents, or before a higher tribunal, for not providing effectual means against such an occurrence. A criminal, therefore, who has undergone the moral and mild discipline, which the humanity of his country had devised for his reformation, and commits a second offence, shows that he is unworthy of future trials, to reclaim him from the paths of vice, and the first law of nature requires his being removed from a community, whose laws he has so often outraged, and of which he is so dangerous a member. *Transportation* will relieve society from an incorrigible set of depraved persons, and the fear of it, as the penalty of a second offence, will have a much more powerful effect in restraining crimes, than the certainty of confinement in the prison at labour. This indeed, I repeat, has lost all influence on them. The vicious know, that, with the exception of their being permitted to wander about and indulge their evil propensities, the condition of the prisoners is far from distressing. Their food is abundant, well cooked, and of the best quality; they are well clothed, the labour to which they are subjected, is even less fatiguing than that of the labouring class of citizens, and a shower or fall of snow,

* Convicts discharged from the prisons are not supposed to be reformed, but the argument derived from such discharge against the utility of a second admission still holds.

† Roscoe on Penal Jurisprudence, p. 100.

which a common day labourer disregards, is a pretext for the immediate cessation of their work.* In Philadelphia, they

* I shall never forget the remark of a German gentleman, with whom I visited the Philadelphia prison in the year 1798.—“After seeing the prisoners at dinner,” he said, “I declare, Sir, if the convicts in our country were treated as these men are, the people would commit crimes to enjoy their fare.”—It has been often said, and with good reason, that convicts have committed crimes to insure the comforts enjoyed in our prisons during the winter. Some convicts, it is said, have declared that, “they were glad to get to the penitentiary.”—This has been deemed “a miserable stupid bravado.”† The epithet may have been deserved by some who made such a declaration; but it is clear that it never would have been made, had the author of it considered the penitentiary as a place of suffering; nor does it follow, that though criminals do make attempts to escape, others did not commit crimes to entitle them to the superior comforts of the prison. They may have been urged by hunger and cold to steal, but having enjoyed the benefits provided for them in the house, for some time, they may forget their former sufferings; and their constitutional restlessness returning on the approach of warm weather, they sigh for a change, and for liberty once more to indulge in the “sins that so strongly beset them.” Hence they are willing to take their chance for better fortune in future, to enable them to live at large on the produce of their vocations, during a succeeding winter. Besides, the attempt to escape, which the Reviewer thinks proves the absurdity of the declaration in question, may be made by those who do not seek a refuge in jail from hunger and cold; and those who do, may have declined to join the rioters. During the alarming insurrection that took place in the Philadelphia prison, in March, 1820, many convicts remained quiet. But the determination of the point is of little importance. That an expression, however, of satisfaction has been uttered by a man sentenced for one month’s confinement during the winter, to the Philadelphia workhouse, and apparently with great sincerity, there can be no doubt, and that others have gained admittance upon a similar motive, there is every reason to believe. When leaving the office of the magistrate, the man alluded to, shivering with cold, asked the constable, “how long he was to be confined?” Upon being told, “one month,” he said, shrugging his shoulders, “I wish it was for three.” The *New York Advocate*, of April 10, 1824, states, that “John M’Curdy presented himself to the police, demanding to be sent to the penitentiary. He had done nothing to entitle him to that distinction; but he had just been released from the same place, and finding that he could not obtain work, and being unwilling to steal, he desired to be sent back. When asked why he did not go to the poor house, he said, his wife

† *North American Review*, October, 1821.

are allowed the luxury of tobacco in its different forms. At night, after being locked up in their rooms, they enjoy the pleasure (and it is no small one) of free conversation; and above all, as they almost weekly see pardons granted to those even more wicked than themselves, every one indulges the hope, that, by a similar good fortune, the period of his confinement will be shortened. While, on the contrary, the sensation caused by the march of the convicts from the prison to the vessel intended to convey them to a very distant quarter of the globe, whence there is no hope of return, if I am not greatly mistaken, will be such, as to produce a speedy change in the moral state of the class of the community, upon which it is intended to operate, the good consequence of which cannot fail of being soon perceptible by the public at large.

It will not answer to wait for the commencement of the transporting system, until the effects of the entire solitary confinement, I recommend, shall have been tried upon the

was there, and that he had acquaintances in prison. He was adjudged disorderly, and committed for six months." The prison has long ceased to have terrors, and to attribute this fearlessness to the enjoyment of protection from the weather, and of warmth in winter, and food, all of which, most of the convicts would be deprived of, if at full liberty, is not an unreasonable, much less "a stupid" idea. This absence of fear will certainly prevail so long as the prisons shall continue to be places of comparative comfort, and not of suffering; and so long will they be filled by a succession of inhabitants. The sooner therefore, the discipline is changed, and made to assume a proper character, the better. When the incorrigible who are now existing, shall have finished their evil courses, and gone to their last account, we may hope, that by the help of the general diffusion of moral education among the rising classes of society, a diminution of crime will take place. What that does not effect, rigid solitary confinement and transportation will complete.*

* "Prisons," says Mr. Holford, "should be considered as places of punishment, and not as scenes of cheerful industry."—And in the words of another writer, "no punishment will be found to be wise or humane, or just or effectual, that is not the natural reaction of a *man's own conduct on his own head*, or the making him feel in his own person, the consequences of the injury he has meditated against others." *Edinb. Review*, pp. 279—346. No. 70. Working in society prevents such reflections.

hardened rogues who at present infest the country, or who may be now in prison; for they are so numerous, that prisons large enough to accommodate them, could not be built, unless at an expense not to be justified by any probable benefit to be derived to society from the measure. It should be distinctly understood, and expressly stated, that banishment will be the penalty of all those who may be in future convicted of crimes, after having been confined in any prison in the United States; and care must be taken to impress this upon the minds of the convicts, upon being discharged.

I have, as a general rule, confined transportation to second or repeated offences; but there are cases in which this punishment might with great propriety be inflicted for crimes committed for the first time; such for instance, as shall be proved to be the result of deliberation, or of premeditated malice; and the consequences of which are peculiarly injurious to society, or melancholy in their effects upon suffering individuals. These are kidnapping, rape, bigamy,* arson, counterfeiting current coin or bank-bills, forgery, perjury, subornation of perjury, malicious maiming, and fraudulent bankruptcy. With respect to the first, I may observe, that it was a great oversight in the law† to make the punishment for so great a crime merely the fine of one hundred pounds, and twelve months servitude, while the confinement for stealing a horse might extend to seven years. The least penalty for such a crime, should be something like the misfortune inflicted upon a fellow creature, through the agency of the kidnapper. Transportation, therefore, is a just punishment. So long as the foul and black stain of slavery upon the na-

* The law makes no provision for the aggravating circumstances that often attend this crime. "I have known," says the late Judge Rush, "a young woman of the fairest character and virtue, debauched by a fellow, who passed himself off for a single man, and soon after left her with child. In this case, any thing short of hanging, would be a just punishment."—Letter to Jared Ingersoll, Esq. in his Report relative to the Penal Code, 1813. Mr. Rush, in addition, told me that the act alluded to, "was a complicated crime, including perjury, and treachery, and seduction of the most villanous kind."

† Supplement to the Act for the Abolition of Slavery.

tional escutcheon is permitted to remain, will the temptation to this crime continue; and as it is frequently committed in the United States, it is time that measures should be taken to prevent or properly punish it. The reformation of a person capable of voluntarily and deliberately planning, and carrying into effect, the perpetual slavery of a free human being, is unworthy of the consideration of a legislature, for no subsequent sanctity of life can, in the smallest degree compensate for the injury he inflicts on the enslaved individual. The same remark applies to rape, a crime that cannot be atoned for. Bigamy shows so much baseness of heart, and so total a disregard to the finest and most delicate feelings of which the human mind is susceptible, and the crime is so great—inflicted probably upon two or more innocent and deserving females, that the wretch who is guilty of it, justly merits exclusion from that society, the peace of which he has so greatly outraged. Arson, in an adult, indicates such deep malice, is attended with so much risk of life, and the loss of property by the crime is often so extensive, that it deserves to be punished by perpetual banishment. In the case of minors being offenders, a commutation for imprisonment might be allowed; for it cannot be supposed, that they would be aware of the probable extent of the damage done; and cases of arson have occurred in Philadelphia, where no malignant feelings in the offender against the owner of the property destroyed, were evinced. Counterfeiting the coin, or bank bills, cannot be done without much labour, implying premeditated guilt, and strikes at the roots of commerce and the daily business of mankind; and spurious bank bills, like a destroying flood, are overrunning the land to a degree that requires immediate and powerful means to restrain the crime.* The forging of

* It may be safely said, that every one of the many hundred banks in the United States have had their bills counterfeited: some of them several times; and so well have they been imitated, that the cashiers or tellers have taken spurious bills of their own banks. Upon other occasions, presidents have declined swearing to the falsity of their signatures, so perfect was the imitation, Upper Canada has long been the seat of this manufacture, and the newspa-

X

X This is a mistake -

checks on banks is more easily effected, but the guilt of the act, and the danger to the community from it, are equally as great as from counterfeiting bank bills. Perjury, where the life, liberty, or character of a citizen is sacrificed, ought to meet with no clemency from the laws. Subornation of perjury is a double crime: it offends against a person, who, if not tempted, might have lived unstained; and also against the individual whose injury the oath is intended to affect. Malicious maiming equally merits perpetual banishment: those guilty of it ought to be deprived of a residence in a society, one of whose members they have irretrievably injured.

Fraudulent bankruptcy is becoming so frequent, and is so injurious in a commercial nation, that no person once convicted of it, should be permitted to have a chance of repeating his crime.*

The criminals convicted a second time, or oftener, with others for the first offences named, being sent away, the Penitentiaries now erected, should be properly divided into small apartments, and kept for a trial of the reforming system upon those who shall be committed for a first offence, and a decisive experiment be made of its efficacy. If confinement does not reform the heart, it will at least deter from the future commission of crime.

I had written the above remarks on the transportation of criminals, when I met with the work of Mr. Roscoe, of Liverpool, on "Penal Jurisprudence," and was pleased to find that he recommended the same punishment in place of confinement for a certain class of convicts, that is, for those who shall be convicted of a second offence, after having been discharged from a penitentiary. "By such a measure," he says, "penitentiary establishments would be devoted to their true

pers have lately announced the issue of a new batch. A broker in Portsmouth, N. H., and another in Newburyport, have just given a list of 44 banks, the bills of which were counterfeited, and in circulation in those towns.

* In England, fraudulent bankruptcy was formerly punished by death; but by an act passed in the first year of George the 4th, the punishment was commuted for transportation.

object, *the reclaiming those, of whose amendment a reasonable expectation may be formed*; and would not only be maintained with much less trouble and expense, but would stand high in the public estimation, as schools for inculcating industry, religion, and good morals. By these means the country would also be freed from the most incorrigible part of its population, and purified from the danger of their example and their crimes; whilst such a sentence might still admit of a hope that in a different situation, and under the influence of different motives, the most hardened criminals might find it necessary to make an effectual alteration in their conduct; nor is there in fact a greater hardship, in transporting a criminal for life, provided it be to a healthy climate, where he has a fairer opportunity of obtaining subsistence, than it would be to send him for a short term of years; because, in the one case, having no expectations but such as are connected with the country to which he is sent, he will probably employ all his faculties in bettering his condition; whilst in the other, his transportation is regarded only as a visit, during which he is to pass the time as indolently and uselessly as he can, till he is allowed to return, and renew his adventures and depredations in his native land.”*

It is essential that the transportation be for life. The infliction of banishment, for 7 or 14 years, has been a chief cause why the punishment has failed to prevent crimes in England. From the testimony of Mr. Harmer, a gentleman who “has been concerned during twenty years in constant trials at the Old Bailey, and who is equally distinguished by assiduity, acuteness, and humanity in his profession, it appears, that if it is for seven years, the novelty of the thing, and the prospect of returning to their friends and associates, reconciles offenders to it, so that in fact they consider it no punishment; and when this sentence is passed upon men, they frequently say, “Thank you, my Lord.” Indeed this

* Roscoe, p. 104.

is a common expression used every session by prisoners, when sentenced to seven years transportation.”*

The suggestion of the probability of a reformation taking place among the transported convicts, ought to have great weight in favour of the proposed measure, it being consistent with the principle upon which our penal code is founded, which is not revenge, (the basis of European penal laws) but a restoration of the vicious to the paths of virtue. The fact must never be lost sight of, that the present system is one of uninterrupted, increasing and awful demoralization; and that a considerable number of those who have entered our penitentiaries half taught, or mere novices in wickedness, have been turned out from them, finished rogues. In a remote island, they will be cut off from the temptations to the commission of sins which every where assail them in society; the necessity of tilling the earth, and of working for their own existence, will prove the most powerful stimulus to industry, that can operate upon them; and the severe police likely to be established among them, will prevent the commission of petty crimes. Moral reflections and self-reproach, under such circumstances, cannot, moreover, fail of taking place in the minds of the criminals, from the remembrance of the happiness they formerly enjoyed, and of which they have deprived themselves by their crimes. Every year that is added to their lives will increase the force of these painful reminiscences, and from them the most salutary effects on their lives and conduct may be reasonably expected. The fact of the entire reformation of Adams, one of the mutineers of the ship *Bounty*, is strong, and directly in point; and authorises the belief, that other bad men placed under similar circumstances with him, will also be reformed.† At

* Report of the Select Committee on Criminal Laws of England, p. 109.
—Edin. Rev. No. 70.

† Adams was one of the mutineers on board the ship *Bounty*, Lieutenant Bligh, commander, which had been sent by the British government in the year 1788, to Otaheite, to convey plants of the bread-fruit tree to their islands in the West Indies. After leaving Otaheite on their return, with the plants

all events, with the probability of their becoming better, they will be stationary as to the actual commission of crimes; whereas, if they remain in the United States, they will only sink deeper in sin, and their chance for reform be forever cut off. Considerations derived from the probable good effects that will result to the posterity of those, who are destined to

on board, the crew mutinied, and put Mr. Bligh, with 18 officers and seamen, adrift in an open boat, who miraculously reached the island of Timor, 3618 miles distant; after suffering dreadful torments from fatigue, hunger, and thirst, during 41 days. The mutineers sailed to the island of Toobouae, 90 leagues to the south of Otaheite, where several of the crew, and some of the natives went on shore. Nine of the mutineers, six of the native men, and eleven women, remained on board. With these, Christian, the chief mate, cutting the cable in the night, put to sea, and settled on Pitcairn's Island, Lat. 25 deg. 4 min. S. and Long. 130 deg. 25 min. W. The ship was there burnt. When the Briton sloop of war called there, in the year 1815, Adams was the only man remaining of those who came in the *Bounty*; but there were 48 descendants of the mutineers and the Otaheiteans: Adams was the civil father of the people, and instilled into them the principles of morality and religion. Prayers were offered up daily. Some having come on board, they were asked to breakfast, and Lieutenant Shilliber says, "I blushed when I saw nature in its most simple state, offer that tribute of respect to the Omnipotent Creator, which from education I did not perform, nor from society had been taught its necessity. Before they began to eat, on their knees, and with hands uplifted, did they implore permission to partake in peace what was set before them: and when they had eaten heartily, resuming their former attitude, offered up a fervent prayer of thanksgiving for the indulgence they had just experienced. Our omission of this ceremony did not escape their notice, for Christian, son of the mutineer, asked me, whether it was not customary with us also. I was embarrassed, and wholly at a loss for a sound reply, and evaded this poor fellow's question, by drawing his attention to the cow, which was then looking down the hatchway, and as he had never seen any of these species before, it was a source of mirth and gratification to him. Great good nature, modesty, and propriety, marked their deportment. Adams was near sixty years of age. Forgetting the deed which placed him in that spot, and seeing him only in the character he now is, at the head of a little community, adored by all, instructing all in religion, industry, and friendship, his situation might be truly envied, and one is almost inclined to hope, that his unremitting attention to the government and morals of this extraordinary little colony, will ultimately prove an equivalent for the part he formerly took." *Narrative of the Briton's voyage to Pitcairn's Island, by Lieutenant J. Shilliber.* p. 87. Second Edition, London, 1817.

constitute the proposed colony, ought, also, to influence every one in advocating the plan I recommend, for relieving the country of impenitent offenders. It requires no depth of reflection to assure ourselves of the state of sin in which the children of those convicts, who, with intervals of a few months, or a year or two after their liberation from confinement, occupy our prisons for the 2d, 3d, 4th, or 5th time, will be educated, and of their future career. They are destined to succeed to the hereditary vices of their parents, and become a new race of thieves: whereas, by the transportation of male convicts, their further increase will be checked, and the children left by them may be snatched from destruction by the guardians of the poor, and bound to trades.

Thus the plan of transportation, so far from being offered as a substitute for penitentiaries, as intimated by some who are opposed to it, is intended to aid them in the attempt to reform criminals; by giving more room, to make a fair trial upon such as it is deemed proper to confine therein; and to free the country from those whose crimes require an exclusion from society, or from others, who by a return to courses of iniquity, have evinced, that solitary confinement has failed to reform.

It is apprehended that any one state having resolved on the plan of transportation, other states will soon accede to it. Virginia and Maryland will probably be the first, in order to be relieved from their vicious black population, the multiplication of which, they acknowledge to be a cause of continual solicitude; and it is almost certain, that the rush of the vicious from those states in which transportation shall be first adopted, into others where they can find comfortable quarters if detected, and the chance of being soon restored to freedom, will cause the measure to be generally followed from the principle of self-preservation. Thus the country will be freed from the wide spreading moral pestilence, which, from mismanagement, romantic mistaken humanity, and criminal indifference to the public peace exhibited in the grant of pardons, has extended its influence far and wide.

3. A denial of pardon to any one convicted of crimes, (excepting under particular circumstances calling for this exercise of executive clemency,) will have a powerful effect in restraining crimes.

The importance I attach to a correction of the evil of frequent pardons, induces me to press attention to it. The testimony of all those who have had any experience in the management of criminals, and the opinions of others who have devoted their time to the consideration of penal jurisprudence, may be cited to prove the correctness of the position I have taken. The Marquis of Beccaria observes, that "as punishments become more mild, clemency and pardon become less necessary. To show mankind that crimes may be pardoned, or that punishment is not the necessary consequence, is to nourish the flattering hope of impunity. Let then the executor of the law be inexorable, but let the legislator be tender, indulgent, and humane."* Dr. Rush's sentiments are equally strong. "Where punishments are excessive in degree, or infamous from being public, a pardoning power is absolutely necessary. Remove the severity and public infamy, and a pardoning power ceases to be necessary in a code of criminal jurisprudence; nay, further, it is such a defect in penal laws, as in some measure defeats every invention to prevent crimes, or to cure habits of vice."†

As the inevitable consequence of the adoption of the plan of transportation will be the thinning of our prisons, as well by the actual removal of the criminals, as by the fear of it, preventing offences, (two of the causes above assigned for the absolute necessity of frequent pardons being done away,) no apology can be offered for asking or granting the favour. In the mean time, however, and until the transportation of criminals shall take place, some measures ought to be adopted to lessen the number; and I would recommend that a resolu-

* On Crimes and Punishments, London translation, 1768, p. 131.

† Essays, Literary, Moral, and Philosophical. Philadelphia, 1798.

tion be passed by the Legislature, requesting the governor to publish the petition of every criminal applying for pardon, together with the names of the signers thereto, at the time such pardon shall be granted; that two returns be made by him to the Legislature—one during the first week of the session, and one in the last week of the same, of the names of all the convicts pardoned by him, the names of the counties in which they were convicted, the terms of their sentence, their crimes, and the names of the signers to the petition, with the dates of their convictions and pardons; and that he be requested not to grant pardons to any, except for first offences, or in the cases and under the conditions following, viz: proofs of irregularity of conviction, or deficient testimony; the occurrence of circumstances tending to diminish the enormity, or lessen the probability of the crime for which the conviction had taken place; mere circumstantial evidence; and lastly, suspicious self-condemnation. I shall enlarge on the last mentioned point only, to show its importance.

Several cases are recorded of the conviction of both men and women, upon their own voluntary confession; of others having suffered death for crimes in which they had no concern; and even of the avowal of robberies which had not been committed, and of crimes of which they had not been even accused.* Among many cases, I may mention the following.

The brothers Stephen and Jesse Boorn, of Vermont, were convicted, in the year 1819, chiefly upon their own confession, (made too under circumstances that gave it peculiar force,) of the supposed murder, some years before their trial, of Russel Colvil, who, after being advertised in the newspapers, was found alive, in Monmouth county, New Jersey, time enough to prevent their suffering from their self-condemnation.†

The motives leading to this wanton courting of death and punishment, are, commonly, disgust of life, religious enthu-

* Eden's Penal Law, p. 167. London.

† See Appendix.

siasm, delusion of the imagination, or the strange fancy of persons perpetuating their names by falsehood against themselves. The fact of self-devotion to death was adduced by Dr. Rush, as his second argument against "the punishment of murder by death." "The punishment of murder by death," he says, "produces murder, by its influence upon people who are tired of life, and who, from a supposition that murder is a less crime than suicide, destroy life, and often that of a near connexion, and afterwards deliver themselves up to justice, that they may escape their misery by means of a halter." No references were made to support this position, which was, doubtless, founded upon facts he had met with in his extensive reading, and from his recollection of others, that had occurred in his own time. For want of cases in point, the probability of the event was denied by the advocates for sanguinary punishments, and the force of the argument was weakened with others, from the supposition of its being founded upon an extreme case. The following fact in Williams' View of the Northern Governments,* was one of those on record to which it is highly probable he alluded. "Some years ago, there were a set of melancholy people in this capital (Copenhagen) who endeavoured to persuade themselves that the most certain way to go to heaven, was to die upon a scaffold or a gallows: weary of leading a wretched life, and *struck with the courage* which some of their fellow-subjects had shown in their last moments, in the like circumstances, and regarding the preparation which is made for an approaching death, as the most sure means to make their peace with the Divinity, they even *committed murders in cold blood*, to arm the hands of justice against them, and then demanded death as a means to accomplish their ends, rather than as a punishment. But the length of the time they were kept in prison, and scourged continually, before they were brought to the gallows, soon put an end to this enthusiasm."

* Williams, vol. i. p. 353. London, 1777.

An event that took place in Philadelphia, when Dr. Rush was a boy, and which must have been often recurred to in conversation, for many years after it happened, was, doubtless, another which he had in his mind when he wrote. This was the wilful murder of Mr. Robert Scull, who, in September of the year 1760, was shot by a fanatic, to insure a speedy end to his own life, of which he was tired, but of which he did not choose to be the direct executioner. The particulars I have long since given to the public.* It was, probably, a conviction of the truth of the maxim in penal jurisprudence under consideration, that induced the Imperial Catharine II., in her "instructions to the commissioners appointed in 1767, to frame a new code of laws for Russia," to caution them against inflicting corporal or painful punishments upon those who are infected with enthusiasm, and either pretend to inspiration, or counterfeit extraordinary sanctity. "Enthusiasm, (she says,) is engrafted upon pride, and will flourish by punishment. We have seen instances of this in the late secret chancery, where such persons used to come voluntarily on particular days, merely for the sake of suffering punishment."†

4. The number of inspectors might be reduced from fourteen to six, and they ought to be chosen from that class of citizens whose standing in society would be a pledge for the faithful discharge of their duty, and whose intelligence, firmness of character, and knowledge of the human mind, would prevent them from becoming the dupes of the artful. They ought to serve during good behaviour. A small number of men thus associated, would act in harmony and concert; their decisions would be prompt, and the knowledge of the condition upon which their appointments were held, would evince to them the possibility of their being able to see the full operation of any measure they might adopt for the regulation of the prison, and be a stimulus to their energies. The solitary system I have urged, if adopted, would so

* Life of Dr. John Jones, prefixed to his *Surgical Tracts*. Philad. 1795.

† The Grand Instructions, &c. London. Translated 1768. p. 125.

greatly diminish the labours of the inspectors, as to render more than six totally useless.

One of the prominent good effects resulting from the proposed mode of disposing of certain convicts, will be, to relieve the country of the vicious part of the free BLACK POPULATION, the increase of which, and the evils thereof, are obvious to all.* They add greatly to the number of convicts, and serve to keep up the very large poor tax paid by the city and county of Philadelphia, from the great numbers which are annually admitted into the alms-house. "By an authentic statement it appears, that in one year, ending October 1, 1818, 2117 whites, and 1070 blacks, were committed to the Philadelphia prison for various crimes, giving the proportion which the number of white offenders bore to the black, not of quite two to one; whereas the proportion of white inhabitants to negroes, within the city and county, is about eight to one. In other words, it follows, that one out of every sixteen blacks was committed to prison in the space of a single year; while of the whites, only one out of sixty became amenable in like manner to justice."†

In July, 1816, of four hundred and seven convicts then confined, one hundred and seventy-six were coloured. In August, 1819, of four hundred and seventy-four convicts in prison, one hundred and sixty-five were coloured, or nearly

* By the census of the year 1810, there were 10,522 coloured persons in the city and county of Philadelphia. The census of the year 1820, states the number in the city, at 7581, county, 4310. Total, 11,891. The trifling addition of coloured persons in the city and county of Philadelphia, since the year 1810, notwithstanding the numbers which are known to have migrated from the states of Delaware and Maryland, and their rapid natural increase, is to be accounted for, from the great mortality that annually takes place among them, owing to causes not necessary to specify in this place.

In the year 1821, when the deaths of the blacks were first noticed by the Health Office, they amounted to 686, in the city and county. In the year 1822, the number was 560. In 1823, 800 died. It is believed that 500 may be fairly taken as the average for the ten years preceding 1820.

† See an excellent paper on the black population of Pennsylvania, in the *Analectic Magazine*, Philad. for 1819.

one-third. Of these 139 were men, and 26 women. In the apartment for untried and vagrant prisoners, there were 273; of these 183 were men, and 90 women. The number of blacks bears a greater proportion to the whites than those on the convict side; those committed as vagrants and sentenced to one month's imprisonment, being chiefly black.

At the court of oyer and terminer that ended January, 1819, of twenty-eight prisoners indicted, twelve were black, seven of whom were old offenders.

During the year 1820, of 687 convicts in prison, 424 were white, and 263 coloured.

In the year 1821, of 300 admitted, 113 were coloured.

In the New Jersey prison, of the total admitted (805) since it was opened, 194 were black, (158 men and 36 women.) On the 15th October, 1819, of 98 prisoners then confined, 25 were black.

In the Virginia penitentiary, of 909 admitted, to October 1819, 227 were black. Of 175 then confined, 39 were black.

By the annual census for 1819, of the humane and criminal institutions in New York, by the attending minister, the Rev. John Stanford, the following proportion of whites to blacks is given:

Bridewell,	-	-	-	-	white 70, black, 29
Penitentiary Bellevue, criminals,					do. 103, do. 82
Do.	do.	vagrants,			do. 128, do. 44
State Prison,	-	-	-	-	do. 489, do. 110

In 1820, of 655 persons in those institutions, there were 195 coloured men, and 78 coloured women—total, 173.—Of 744 convicts during the year 1823, 150 were coloured.

In 1819, the census taken by order of the corporation of New York, gave 9,923 as the total number of blacks in the city and county.

In the statement transmitted from the Massachusetts state prison, the colour of those convicted the first time is not mentioned, but of those convicted a second, third, fourth, and fifth time, amounting to 142, from its establishment in 1805, to October 1st, 1819, 31 were black. At this last date, of

340 convicts then in prison, 48 were black. In January, 1821, of 292 in prison, 46 were black. On the 30th September, 1821, of 282 convicts then in prison, 41 were coloured.

These statements show plainly an increase of black convicts in the state of Massachusetts, although the coloured population therein is much less than in New York, New Jersey, or Pennsylvania.

Should the transportation of the classes of criminals which I have specified, be resolved upon, by any one state, the other states ought to be applied to, in order that they may take the measure into consideration, and that in case of their approving of it, a sufficient number of convicts may be collected to freight one or more ships.—The general government may then be requested to furnish a convoy of two armed vessels, to conduct the transports to the destined island. If the convicts in one state were not sufficient to fill a vessel, she might go round to the ports whence those of other states are to be shipped; or they might be sent to the transport destined to convey them, which should be stationed at anchor, and at a distance from the city where she was chartered. When the stipulated number shall be obtained, the convoy may be asked to join, and all will then proceed to their place of destination.

As each state at present maintains its own convicts, so the states must be individually at the expense of their transportation: and the requisite preparatory step will be, a resolution by the legislature, empowering the governor to employ a merchant at the ordinary mercantile commission, to charter transports to carry the convicts and outfits, to contract for laying in the same rations per day, for a computed voyage, and for one year after the convicts are landed, that they now have in prison, or what may be equivalent thereto. Each county will bear its own expenses of conveying its convicts to the seaport, as they do at present when conveying them to the state prison, and for their maintenance while confined there. The state might in the first instance, advance the

price of transportation, provision, and outfits, and receive the amount from the different counties, as the county of Philadelphia now does, for the support of the convicts from the state at large.

The number safely to be carried per ton of the vessel, will be easily determined. One stipulation ought to be, that nothing be taken on board as an article of merchandise. A seaman of character and firmness, should be appointed to accompany the convicts, and to act as director-general, under proper instructions. He may be selected by the merchant, and receive his appointment from the governor of the state, from which the greatest number of convicts will be sent at a time.

In case of two vessels sailing at the same time, from different states, the superintendant will in course be selected from the state chartering the ship. Advantage may also be taken of the experience derived by the British, in the transportation of their convicts, as regards accommodation on ship-board, and precautions against insurrection. A few armed men hired for the voyage, might be necessary.

For the temporary and future accommodation and support of the convicts, the following articles must be sent.

Tents and tent poles, some poultry, hogs and goats, one year's allowance of salt animal food, and of vegetable food, particularly potatoes; a few iron mortars and hand mills, for corn and other grains; garden seeds, Indian corn and other grains; hemp, flax, seeds of both, and of cotton, with simple implements for preparing the produce of them, and for converting it into clothing; cooking utensils, jack knives, an extra suit of clothes, fish hooks and lines, spades and hoes, and tools for the exercise of the mechanic arts of the first necessity, appear to be all, or the chief articles necessary for the outfit. They should be put on board a vessel expressly appropriated for the purpose. Good books must also be sent—one which I would join Mr. Roscoe in recommending, is "A concise manual of the principles and duty of a Christian, collected from the Scriptures, arranged under proper heads, after the manner of Gastrell's Institutes, by the Rev. John Mawle,

1810.” To this I would add, the abridgment of the Bible, containing only those parts of the Old and New Testaments, which relate to the faith and practice of a Christian, selected in the manner recommended by the late Dr. Watts; the hymns and versions of the psalms by the same author: and a set of printed laws or regulations suitable to the situation of the convicts. I would not have a soldier, a gun, a particle of gunpowder, or a civil officer left with them; for an attempt to place them under any restraints, other than those which they impose on themselves, would totally fail; reaction* in their minds would inevitably take place, and destroy all subordination: but left to themselves, the consciousness of their existence depending upon their own industry and propriety of conduct, would insure peace, and have a moral effect, which no military force or civil authority could produce. The principle of economy offers another cogent argument for leaving the convicts to regulate themselves in their own way. The colony of British criminals in New South Wales, offers a solemn warning on this occasion. This has been a source of very great expense to England, chiefly owing to the large military and civil establishment which has been deemed necessary for it,† and although the arrangements of the United States, would certainly be more economical, yet upon the most saving plan, the expense of any efficient government would be so great, as to render it highly objectionable.

Having reached their destination, and the stores, convicts,

* It was from reflecting upon this natural principle of reaction, as well as the expense, that the inspectors of the Philadelphia prison, were induced to omit a military guard, as part of the establishment; and yet we have not had more insurrections in the prison, than in those where a guard of armed soldiers in uniform, is constantly before the eyes of the criminals.

† Mr. Bennet says that the colony of New South Wales, from 1788 to 1815, inclusive, has cost England the enormous sum of £3,465,983 sterling. *Edinburgh Review*, 1819.—p. 46.

Another powerful objection to the Botany Bay plan, is the profligacy of the convicts, owing to the bad management of those who govern them. Of 103 men and 150 women, and several children, nearly all had to find lodgings for themselves, when they had performed their government tasks. Letter to Lord Sidmouth, by the Hon. H. G. Bennet, M. P. Lond. 1819.

and every thing for their accommodation being landed, the first object of attention will be the erection of tents for themselves, and for the protection of their stores. These things being done, and the clothes and utensils apportioned among the convicts, a deputation of them to be chosen by themselves should be required to repair on board to receive suitable advice as to their future conduct, and the allowance of rations for each man. The indissoluble connexion between the preservation of harmony, their industry, strict honesty, and their future happiness, must be strongly enforced; the code of laws prepared, should be given to them, and then be told that they are to be left to their own management and control.

The place of destination of the convicts, is a point that naturally occurs, in the discussion of the important subject of transportation. On this head there is no difficulty. They might be sent to some of the islands in the South Atlantic Ocean, and I would particularly recommend those called Tristan d'Acunha, of which there are three. The group is 1500 miles distant from any land to the westward or northward of it. The largest island, which has been often visited, is in lat. $37^{\circ} 6' 9''$ S., long. $12^{\circ} 2'$ W. It is very high, may be seen at 21 leagues distance, and possesses every requisite for a colony, being about 15 miles in circumference, well watered, and having much good soil.

These islands were discovered by the Portuguese in their early voyages, when returning from India, and named after the viceroy of that country. The enterprising American, Jonathan Lambert, took possession of the largest, called Tristan d'Acunha, in the year 1810, with a view of providing refreshments for ships, and was supposed to be drowned by his companion, who was found on the island at the close of the late war with England, by Capt. Biddle, after his capture of the British armed brig Penguin in the vicinity.

It was again occupied by a detachment of troops from the Cape of Good Hope, in the year 1817, and an interesting account of its geology, soil, natural history, and capability of improvement, has been published by Captain Carmichael, in

the 12th vol. of the Transactions of the Linnæan Soc. London. The troops have since been removed. Captain C. says, "the soil is admirably adapted for the production of culinary vegetables." This fact is confirmed by a writer in Phillip's London Monthly Mag. for November, 1820, from the personal observations of a friend, and by Captain Biddle having bought a quantity of potatoes that had grown on the island, for his ship's crew. Captain C., the writer just quoted, and Sir George Staunton,* all agree as to the mildness of the climate. There are two other islands, besides Tristan d'Acunha, which deserve examination, called Inaccessible, and Nightingale islands. "The first bears by compass from Tristan S. 67° W., distant 19 or 20 miles; is the middle, and the westernmost of the group; situated in lat. $37^{\circ} 17'$ S., long. $12^{\circ} 22'$ W., or 7 miles more west than Tristan, being about 9 miles in circuit, and may be seen about 16 leagues distance; soundings are got within a mile of the N. E. point; in 20 fathoms, black sand with small reddish stones, when the middle of the island bears west."

Nightingale is the smallest and southernmost of these islands; bearing by compass from Tristan S. 33° W. distant 18 miles, lat. $37^{\circ} 26'$ S., long. $12^{\circ} 8'$ W., 6 miles in circuit, having two rocky islets off the N. E. point, and same at the south point. On the east side there are soundings, in 33 fathoms. Both islands are well watered. The following islands also deserve examination, as respects their capability of settlement.

Gough's Island, or Diego Alvarez, is situated in lat. $40^{\circ} 19\frac{1}{2}'$ S., long. $9^{\circ} 41\frac{1}{4}'$ W. Captain Heyward of the British ship Nereus, in January, 1811, made it in long. $9^{\circ} 45\frac{1}{4}'$ W., or $2^{\circ} 18'$ E., from Tristan d'Acunha by chronometer. Variation $10\frac{1}{2}^{\circ}$ west. This island is about five or six miles extent, or 15 or 16 miles round, elevated about 4385 feet above the sea; its surface is covered mostly with a light coat of mossy grass, and some bushy trees. The steep cliffs rise al-

* Account of Lord Macartney's Embassy to China, vol. i. chap. 6. Fahrenheit's thermometer stood at 67° on the 31st December, 1792.

most perpendicularly from the sea, having several beautiful cascades of water issuing from the fissures between them. The boat landed with safety at a cove on the north side of the island, just to the eastward of one of the rocky islets that adjoin to it on that side.

The church rock, resembling exactly a church with a high spire on its western end, is situated near the N. E. point of the island; and to the southward of this rock, on the east side of the island, lies an islet near the shore, within which the landing is safe and easy, being protected by the N. E. point, from the swell and northerly winds. Here some men resided belonging to the American ship *Baltic*; they procured plenty of fish, and birds of good flavour, by lighting a fire upon one of the hills at night.

Between the islet and the S. E. point of the principal island, there seemed to be a small bay or cove, where the Americans said a ship might anchor in safety, about half a mile off shore, in about 29 fathoms, sandy bottom, tolerable holding ground.”*

It has been a source of satisfaction to find, that the plan of entire solitary confinement has been approved of by those, whose long practical acquaintance with the treatment of criminals, and with its effects as partially enforced at present, have fully qualified them to judge of its moral tendency, when tried for a length of time. The experiment of it will be first made in Pennsylvania; and under the fullest conviction of the beneficial consequences likely to result from it, the hope is entertained, that other states will follow her example, as they have done in the amelioration of their penal codes. The plan however has opponents, and as their arguments may influence those legislators who are desirous to adopt it, they shall now be attended to.

The author of the pamphlet entitled “*State Prisons and the Penitentiary system vindicated*,” and the reviewer of it in the *North American Review* for Oct. 1821, are decidedly

* Captain Horsburg’s *India Directory*, vol. i. p. 70, London, 1817.

opposed to entire solitary confinement. The reviewer says it "has been recommended by some without even having considered its effects. In the first place, if this should be adopted, the views of the economists must be abandoned, for the criminals can perform no labour." Now, so far from solitary confinement having been recommended without due reflection, the fact is, that it was seriously brought before the judiciary committee of the Pennsylvania legislature, during the session of 1820, after mature consideration for several months, on the total inefficiency of the system hitherto adopted in Pennsylvania; on the good effects of short periods of seclusion experienced in Philadelphia, in subduing outrageous tempers; on the unavailing influence of labour upon the moral faculties of the convicts, when performed in society during the day; and on the equally well-known injury,—the constantly increasing contamination experienced by the convicts, from their sleeping together at night. The rationale or *modus operandi* of this grand assuager of the turbulent passions was illustrated, and the penitentiary committee, in their report preparatory to the introduction of the late bill providing for the erection of a new prison, near Philadelphia, went still further into the subject, and showed the happy effects that were likely to result from the adoption of the measure. They speak of "labour as an indulgence and a relaxation," and as tending to defeat the object of confinement; and consider idle solitude as highly distressing. Of the truth of these positions, the experience of the Philadelphia inspectors is ample,* and other authorities may be quoted to support them. Mr. Buxton says, that in the *Maison de Force* at Ghent, privation of work is a penalty sufficient to keep 99 out of 100 orderly and attentive to the rules.† Mr. Cunningham the keeper of the Gloucester jail, says that criminals "dread so-

* The convicts in the Philadelphia prison have, upon several occasions, expressed their dread of the intended plan of solitary confinement.

† Inquiry whether crime and misery are produced or prevented by our present system of prison discipline. By Th. F. Buxton, M. P. London, 1818, p. 71.

litude; that it is the most beneficial means of working reform; far better than corporal punishment, which, when severe, hardens them more than any thing else." He adds, "reflection with low diet, are the causes of the good effect of solitary confinement." Mr. Stokes, governor of the house of correction at Horsley, says, that "solitary confinement is a much greater punishment without work than with it. To the question, 'Do you think a convict would go out better, if he had been employed during the month of confinement you speak of?' the reply is, no, nor half. The prisoner who is employed, passes his time smooth and comfortable, and he has a portion of his earnings; but if he has no labour, and kept under the discipline of the prison, it is a tight piece of punishment to go through. My opinion is, that if they are kept according to the rules of the prison, and have no labour, that one month would do more than six, [with labour.] I am certain, that a man who is kept there without labour once, will not be very ready to come there again."* A convict lately in the Philadelphia prison, was asked, "Did you stay in Rhode Island, after your release from the solitary cells, there?" "Oh, no, I gave them wide sea-room." He renewed his depredations, but in Pennsylvania, where the cells are reserved for punishing atrocious and turbulent convicts. For such characters, darkness and bread and water for diet, ought to be joined to solitude. The probable increased efficacy of total abstraction of light, must be obvious to all, and as to its absolute effect, there can be no doubt, having been repeatedly proved. The governor of the jail at Devises, says, that "he had only *one* occasion to use the dark cell, in the case of the same prisoner, twice." He considered punishment in a dark cell for one day, had a greater effect upon a prisoner, than to keep him on bread and water for a month."†

In prisons, where work is deemed preferable to solitary

* Evidence before the committee of the House of Commons, in 1819, p. 391.—quoted in the Edinburgh Review, No. 70, p. 295.

† Evidence, p. 359.

idleness, the convicts ought to be compelled to earn at least five dollars per year, above the amount of their expenses,* to prevent the possibility of an excuse which has often been made, for robbing, to support life, until they can obtain the means of employment after their liberation, or to enable them to return home. Nor should they be permitted to leave the prison without this capital in hand. Convicts, knowing that their return to liberty depended on a compliance with this rule, would redouble their industry, and would never be idle; whereas, at present, not having such a stimulus to work, they often neglect their tasks, and are turned loose without a dollar, and renew their depredations on society to satisfy the calls of hunger. When the amount of the work performed by the convicts has been unavoidably less than their expenses, during their confinement, or only equal thereto, owing to sickness, they ought to have the above sums presented to them, if resident in the town or county of their confinement; and a committee of the inspectors ought to attend to the removal of the convicts to their proper homes, in case of their coming from a distance. A preferable plan is to keep them in solitude without work, during the whole period of their sentences, and then to present them with five, ten, or fifteen dollars, acquainting them at the time, that in the event of their being again convicted, they would inevitably be transported for life to a place, whence their escape would be hopeless. Such a plan would constitute perfection in criminal jurisprudence; and, when adopted, will clear our jails of all old convicts, and greatly diminish the number of first offences.

* The practice of the inspectors of the Philadelphia prison, of giving the convicts credit for their extra earnings, beyond the small amount with which they are charged for their maintenance and clothing, was early adopted, and some have received sums on their discharge, that might have been of service to them in setting up a trade, if they had been disposed to work; but indolence prevents many from doing any thing more than their daily tasks, or from accomplishing even those; and hence, when leaving prison, they are penniless. Other causes to be presently mentioned, contribute to prevent the work of a convict being equal to his support.

It does not follow that "labour must be abandoned in solitary confinement;" for the cells may be constructed of dimensions to admit of it; nor can it be considered "an abandonment of the views of the economists," if work were wholly restricted, as it is very probable that in the end, a saving to the public would ensue, if the convicts were kept idle; for,

1. They would wear fewer clothes than when at work.
2. They might do well with two meals a-day, instead of three, which are now given.
3. The quantity of food at each meal would be diminished, from the lessened appetite arising from want of exercise in the open air.
4. The horrors of confinement would be so lasting, that the criminals once subjected to it for a proper length of time, (not a few months,) will be effectually deterred from risking a repetition of it, by the commission of crimes in any of the states where such punishment awaits them. Besides, a continuation of the plan of working convicts is the less important at present, and probably for some years to come, will not deserve consideration, in consequence of the difficulty of making sale of the products of their labour; and even supposing that they remained wholly idle during their confinement, still economy would ensue, for it may be taken for granted, that from the cause just mentioned, the prison after a few years, will contain but a small number of inhabitants. *Respice finem*, ought to be the motto in all attempts at reformation of abuses, or national improvements.

Another objection to solitary confinement, is the fear of making the convicts "maniacs, if it does not destroy them." But this is altogether imaginary, being contrary to experience. The records of the Bastille of France, and other prisons in Europe, show, that men have been confined for ten, twenty, and even more than thirty years, in solitary cells, without loss of reason or life. Most of us have read the interesting story of the confinement of Henry Masers de la Tude, who, with but little interruption, was immured in the

Bastile from 1749 to 1784:* and what American youth has not been roused to indignation, at the sufferings of the high-minded but imprudent Baron Trenck, who for ten years groaned in the dungeon of Magdeburg, by order of the Prussian tyrant, whom it is the fashion to call, the *great* Frederick? Every one acquainted with the history of France has read, that Count Lauzun was shut up by Louis the XIVth, in the castle of Pignerol, from 1672 to 1684, and deprived of light, except a glimmering through a slit in the roof, and of all comfort, even of books, ink, or paper, without occupation or exercise, a prey to hope deferred, and constant horrors; and yet we are not informed of any insanity following. Blaquiere also, in his interesting letters on Spain,† says, he knew of one person being shut up in the dungeon of the Inquisition, for six years, but does not mention any injury to his mind. Our enterprising fellow citizen, W. D. Robinson, was confined in the year 1817, in a loathsome cell, an “infernal prison,” under one of the ramparts of the castle of San Juan de Ulua near Vera Cruz, for eleven months.‡ Our own prisons furnish additional proofs in point. By a reference to the keeper of the Philadelphia prison, and to an inspector, who has been for fifteen years almost successively in office, I have ascertained that some of the convicts have been confined for nearly a year in a cell. The diet, during part of the time, (about two weeks,) of those confined for long periods, is what is called “cell allowance,” viz. half a pound of bread per day, with water. Afterwards some soup is allowed, then a little meat twice a week, and at a more advanced stage, three times a week. It is not deemed necessary to state the particular cases, or to multiply proofs of a fact which is known to all who have had any intercourse with the prison, and of which any one may be fully satisfied by application to

* This account is recorded in a variety of foreign works, and also in that popular miscellany, the “Percy Anecdotes,” part 6th.

† P. 468. London, 1822.

‡ Memoirs of the Mexican Revolution, by W. D. Robinson, Philadelphia, 1820.

the keeper or board of inspectors. The man in the Philadelphia prison, before referred to, stated, that he was confined in a cell of the jail of Rhode Island, of smaller dimensions than those of Philadelphia, during ten months and twenty-one days; that during three months of the time he was chained to the floor, and that he had but two meals in a day.*

The inspectors and the keeper of the Philadelphia prison deny, positively, that any injurious effect has been observed upon the intellects of those confined in solitary cells, even for the longest period mentioned. It is to be hoped, therefore, from the facts here adduced, that no state will be influenced to prevent a trial being made of solitary confinement, from the mere apprehension of madness ensuing in a criminal. The inspectors further deny the accuracy of the statement of the writer in the *North American Review*, that "a week or ten days is generally sufficient to subdue the obstinate temper of a convict;" a much longer time being often required. One woman required fifty-two days confinement in an upper remote cell, and to increase her punishment, not a word was spoken to her during all that time. She had previously been some time confined in a lower cell, where conversation was practicable with an adjoining convict, but had not become penitent. They say further, that none are ever taken out of the cells, until completely subdued, unless the attending physician desire their removal on account of the state of their health; and it is the invariable rule to remand them to their solitary abode, whenever they are able to bear it, in order to complete the time of their sentence to that punishment. The inspectors well know the constitution of the minds of criminals, and that to restore one of them to the luxury of working, and sleeping in society, before their turbulent passions are overcome, would be a victory over the discipline of the prison, and produce the most ruinous effects upon the system. Such a triumph is therefore never permitted.

* See Appendix.

The writer in the Review says, he was "assured by the inspectors of the Philadelphia and Baltimore penitentiaries, that in each of those prisons, but one instance had occurred of solitary confinement failing to subdue the criminal. In each of these cases, after a confinement of a month, and 'when the pulse had been reduced to a cambric thread,' the criminal was still obstinate, and they were obliged to release him to prevent his perishing under it." The practice of the Philadelphia prison has been stated. The particular case just mentioned, is not recollected by the present inspectors, who have been consulted, but they have no hesitation in saying, that a repetition of the experiment would have fully succeeded. So far from the mental faculties being impaired by solitary confinement, it is a fact, that ^{even} the muscular powers often apparently suffer very little diminution; and ~~even~~ in cases where debility is perceptible, after the release of a criminal, it is only temporary. Some have actually acquired flesh during their confinement; one man carried a keg of nails the length of the yard, immediately on coming out, after a seclusion of upwards of a month. The man confined in Providence, says he tottered when taken out, but in one month he was as strong as ever. This man was exposed to a highly debilitating cause while in his cell, viz. an almost constant stench from inattention on the part of the prison-keepers, to the removal of an obvious cause of it, but once in ten days. Mr. Robinson, though debilitated by confinement, low diet, and an illness of several weeks from a violent hæmorrhage, suffered no permanent injury in his health.

The reviewer resumes the subject in the progress of his remarks, and adopting the suggestions and sentiments of the author of the pamphlet,* at the head of his paper, says, that "it is a mistake of some theorists to plan a prison so that every man shall be in absolute seclusion. It is only desirable that the greater part of the convicts, particularly the more atrocious and hardened, should be thus separated: that in many

* State prisons, and the penitentiary system vindicated, 1821.

cases a superintendant will find it advantageous to put two or three together, where he perceives a repentant disposition, and that they will sympathise and confirm each other in such a course."

It is a strong argument in favour of solitary confinement, that it is highly approved of by the most experienced among the present inspectors of Philadelphia, whose knowledge, derived from long familiarity with prison discipline, and the management of convicts, is far removed from "theory," and is not exceeded by that of any men in this country, or in Europe. There are very few convicts committed to the Philadelphia prison, who do not deserve the epithets which the writer affixes to those whose consignment to the cells he allows to be proper; and as to repentance, although "a consummation devoutly to be wished," yet it is so rare an occurrence, as not to enter into the calculation of the inspectors, so long as more than one are confined in a cell at a time. Several have successfully played the hypocrite, and one man "fairly prayed himself out of prison," some time before the expiration of the period for which he was sentenced; but he returned within the year. It is evident that the writer himself "theorises," for he speaks of "a repentant disposition," as a possible occurrence, but mentions no instance of this communion of penitent souls, having been successfully allowed, in support of the practice he recommends. He may be assured, that any useful "sympathetic" or moral influence, or "confirmation" in a repentant disposition, derived from the company of "two or three in a cell," is wholly imaginary, and will not be experienced. The greater probability is, that the discovery of any symptoms of contrition in a convict, by another in the same cell, would end in his being laughed out of it by his companions, and in the establishment of his old habits. An equally probable consequence of such intercourse would be, the planning of future robberies, or the contriving the means of escape: of this, I shall say more presently. It must be acknowledged, that although 19 out of 20 now confined in Philadelphia have been before in the prison there, or in that

of some other city, yet that numbers once released, have not again committed crimes; but it is possible that they would have behaved equally well, if they had never been punished; and it does not follow that any serious reformation has taken place in the heart of a man, merely because he has not committed a larceny or other crime, the penalty of which is confinement; for a dislike to the prison-life, and a preference to the enjoyment of domestic quiet and liberty, may be the restraining causes, and not a moral impression received during imprisonment.

The plan proposed by the reviewer, of classifying the prisoners, and confining them in different establishments,* according to their degrees of criminality, although an improvement upon the present bad plan of an indiscriminate mixture of criminals of all ages, and of every degree of vice, would not however accomplish the two great objects of confinement, which ought constantly to be kept in view, viz. punishment, and reformation of the criminal. Permission given to them to work in society, diminishes the first to a very trifling degree, and completely prevents the last. Besides, every one who has had any experience among criminals knows, that very different degrees of vice are perceived among young or first offenders, and that a youth of sixteen years of age, will be often able to increase the corruption of mind in a man of 40 years. The idea of vice, or vicious propensities, being graduated by age, can only be entertained by persons totally unacquainted with the inmates of a prison. Hence the absolute impossibility of any useful classification, of which so much has been recently written in England, and by others in the United States. It may be relied on as an axiom in criminal jurisprudence, that whenever two or more criminals are in the same apartment, evil communications will take place among them, *and plans of future mischief will be matured*. I have before referred to a fact in direct proof of this position, on the

* "One for juvenile offenders and for light offences, and convicts for the first time : and another for hardened convicts, or those convicted of heavy crimes, and second offences."

authority of the late Judge Rush, of Pennsylvania. Sir John Fielding, long a police magistrate in London, amply experienced in criminal affairs, and in all the habits and wiles of Newgate, many years since stated a similar fact. In September, 1822, a plot was discovered that had been carried on for some time, in the Baltimore prison, to alter bank bills; and thirteen plates, or parts of plates for altering genuine notes of lower denominations, were found. A correspondence between the convicts thus employed, and persons residing in and out of Baltimore, had been kept up through the medium of the post office.

One of the great benefits which the friends to humanity promised themselves, would result from the confinement of convicts at labour in prison, was the acquisition of a trade, or the improvement in one already acquired, and by which they might obtain a living after their release. Nothing in theory can be more plausible, yet nothing is found to be more opposite to the supposed consequence of such instruction, for no instance has occurred of any trade having been followed, that had been acquired in prison, whilst many proofs have been afforded of the manual skill acquired in confinement, being used to enable convicts more successfully to commit depredations on society after their release.

Another evil arising from convicts working in society, is the murders that are committed by convicts of their fellow prisoners. Two or three instances of these have occurred in Philadelphia; one in the year 1820, owing to a suspicion being entertained of the sufferer having given information of a plot to escape. Another was committed in the year 1822, in the state prison of Massachusetts, from the same cause. What has happened, will happen again. Solitary confinement will effectually prevent murders, and the formation of all plots among convicts.

A greater evil from the same cause, is the insurrection of the convicts, and their attempts to escape. Accounts in the newspapers, of several, are distinctly remembered, although the particular dates of only a few can now be given; but the

fact is notorious, and cannot be forgotten by those whose duty has called them, or whose attention has been directed to the subject of prison management. One occurred in the Massachusetts prison in the year 1816. In the year 1818, there was a very dangerous one in New York, and a great amount of property destroyed.* In March, 1820, one equally serious, occurred in Philadelphia. The convicts had reached the outer gate of the yard, and were not intimidated, although several were wounded, by shots fired among them by citizens, and one was killed. They were finally dismayed by seeing through the key-hole of the gate, the street filled with armed men formally drawn up, and by the entrance of others into the prison yard, from the front. In 1822, a second took place in the prison of Massachusetts; another during the present spring, which was not quelled, until the arrival of the marine corps from the navy yard. One happened in New York, in the present month of April (1824). After the restoration of order in the prison, in 1820, in Philadelphia, it was ascertained, that in case of the prisoners having succeeded in breaking jail, the city was to be set on fire, in several places. The consequences to society of nearly 500 convicts being at liberty, and excited to madness, may be easily conceived. Solitary confinement will prevent insurrections. Now, after knowing these facts, shall we hear any more of the moral benefits from working classified convicts in societies?†

The reviewer and the author of the pamphlet, recommend to the other states a recent law of Massachusetts, which condemns criminals to a further term of seven years, on a second conviction, and to imprisonment for life, if they come there a third time. Seven convicts were confined for life under this law. In January, 1821, forty-six males were in for life under the former law. In this way, he says, all those who are incorrigible will be taken away from preying on the pub-

* Report to the Senate of New York, on the criminal law. March 5, 1822.

† See Appendix.

lic, and having learned a trade in the prison, can be advantageously employed. The objections to this plan are,

1. The multiplication of such criminals, and the expense of their support.

2. Upon the supposition that the convicts are to be kept at work in society, these inveterate rogues will serve as teachers to their less accomplished associates, the bad effects of which tuition are well known, and greatly deplored as one of the most powerful causes of preventing a change in the habits of vicious men, which was expected from the adoption of labour and confinement. If they are kept by themselves, upon the theoretical principle of classification, they will still mutually corrupt one another, and all hope of amendment or change of mind will be at an end.

3. If confined in solitary cells, they would take up the room that ought to be reserved for first offenders, of whom some expectation of reformation might be entertained. This last argument alone, ought to prevent our having recourse to perpetual confinement. It must always be remembered, that it is only from first offenders, that any reasonable expectation of reform can be entertained.

4. The perpetual confinement of the criminals must be recommended upon the principle of just punishment for crimes, and as a safeguard against their future depredations. As it certainly can do society no possible good to imprison them, merely as a punishment, their long confinement does not seem to constitute a reason sufficiently strong to justify its infliction; it is, therefore, certainly a more eligible plan to send them away to the place proposed, to which the objections just urged do not apply, where the safety of the public from their future depredations, will be as great as by their confinement in prison, and where there will be some chance of reformation, and none of being pardoned. They will indeed be in society, but under circumstances so different from those in a prison, as not to justify the belief that contamination will take place, even on the supposition that an inequality in the scale of guilt prevailed among them; because from the

obvious necessity that will appear of depending upon their own labour for existence, they will not have time to think of mischief. There can, moreover, be no inducement to lay schemes for future robbery, to break prison, or to set it on fire, and the discipline established by themselves, will insure the enjoyment to every man of his own little property. The criminal will be no longer forced to act at the will of a keeper, but will become a free agent, and one of the lords of the soil which he cultivates.

If it be an argument in favour of "perpetual imprisonment," that "we shall no more hear of a fourth conviction," it certainly is a stronger one in favour of transportation, that we shall not hear of a third, or, for some offences, even of a second, and that thus the expense of one or of two convictions, of supporting the criminals in prison for a time previously to trial, and of paying for the excess of the cost of their maintenance over the value of their labour, while serving out the periods of conviction, will be saved. So long as the convict is confined at home, there will be reason to fear his liberation, and the renewal of his crimes, owing to the misplaced lenity of governors, or their disposition to gratify the friends of the criminals.—Transportation secures us from all such apprehensions. It might be added, as a consideration of no small importance, that, by their removal for a second, instead of a third conviction, there will be a vast gain, as respects morality, among the inferior classes of society; for it may be easily conceived that the moral infection diffused by three or four hundred reprobates, annually, for seven or ten years, during which they may be supposed to be at large, before they would commit a third offence and be finally shut up for life, must be very great. He who is not reformed after one imprisonment, or deterred from repeating crimes, after having once experienced the discipline of the institution, will not be affected by a second experiment; the absurdity of making it, therefore, must be evident. Besides, on the principles of humanity, and justice to the miserable wretch himself, it ought not to be repeated, because every

new association with criminals in a jail, only tends to increase or confirm his evil habits, and to lessen his chance of reform. Transportation will prevent this wide spread of moral contamination.

The author of the pamphlet, and the reviewer, think that the only improvement necessary to perfect the penitentiary system, is, to have separate cells for criminals to sleep in.— But I do not hesitate to say, that those who expect reformation in criminals from this, will be disappointed. It is only a half-way measure. Nothing short of entire separation, one from another, day and night, will have the desired effect of producing that great moral revolution in the constitution of their minds, which is essential to reformation.

A more decided opposition is made to the plan of transportation. It was early seen, that the novelty of the measure, and imperfect and crude ideas of the difficulties in carrying it into effect, from want of reflection or information on the subject, would give rise to objections; they were therefore provided for in the details of the plan as given above. Thus “the want, by the United States, of colonial establishments: the supposed necessity of purchasing, seizing, or conquering a foreign island, and dispossessing the natives, the expense of retaining it; the necessity of organizing and supporting a military establishment, and civil government, and the admission of principles foreign to the Federal constitution; the difficulty of fixing upon the necessary officers, and rules for the government of the settlers, and in apportioning the expense among the states; the expense of voyages round Cape Horn, and the cost of the establishment of New South Wales to England,”* are all anticipated.

The question “by whom are the criminals to be transported,” is also answered; and the deduction grounded upon a *petitio principii*,† proved to be without weight. Lastly,

* See report of the New York committee “of the Society for Preventing Pauperism,” on the penitentiary system, p. 77. New York, 1822.

† “By whom would our criminals be transported? By the nation, or by the different states? If by the nation, then the nation is to execute state

the plan of "the states carrying away their own convicts, instead of involving too many objections to permit its investigation," is shown to be simple in the extreme, and admitting of no difficulty.

But it is said, that "the constitution knows of no such policy as the appropriation of money by Congress to purchase a territory, that is not to be governed by that constitution, that is not to be a part of the American confederacy." If the island in question should be ceded to the United States by the Portuguese government, to which, by right of discovery, it belongs; I presume the objection on the ground of the purchase will be given up; and it would be well for our government to ask for the cession of it, in order to put the question of the right of occupancy at rest. That no difficulty will be made by Portugal on the occasion, is presumable from the fact of the total neglect with which that power has treated the island ever since the discovery of it by her ships; and by the indifference she exhibited when it was taken possession of, in 1810, by the late Capt. Lambert; by the British troops, for nine months, during the years 1817 and 1818, as already stated; and by the few renegadoes who are known to be settled there at present. Thus, instead of there being "only two methods" whereby we can acquire a foreign settlement, we find there is a third; and that if the mode of purchase be "out of the question," that of accepting it, or the whole group, as a gift from the *only rightful owners*, is within it.

Another objection urged by the committee, is, the want of constitutional right to transport criminals. If this should have any weight, it may be overcome by offering pardon to the convict, on condition that he will remove himself to such place, out of the bounds of the United States, as shall be pointed out to him, and not to return; the pardon to take effect when such removal shall have been effected. Provi-

laws, over which the national government has no control—laws different in their provisions, in their enactments, in severity, in their tendency to increase or prevent crimes."

sion may also be made by law, in the event of his not agreeing to this proposal, for perpetual imprisonment in a solitary cell.

It is asserted also, that if the states are to carry away their own convicts, "they would avoid indicting, arraigning, and convicting felons, from the apprehension of heavy pecuniary burdens." This assertion is hazarded upon the supposition that transportation would be more expensive than the present system; but before taking the fact for granted, it ought to have been established. Enough has been said to induce a belief that the contrary is the fact;—why, then, should the states decline arraigning convicts, when for probably a less sum, certainly not a greater than they now pay, they may send them away, and rest satisfied of their never again being troubled with them?

But, finally, we are told that "the United States can never resort to the transportation of criminals, to any distant spot, beyond the jurisdiction of municipal authorities, while the present form of government remains, and the people cherish their existing moral and civil institutions."

This position, although delivered in a tone so authoritative, will not, on that account, influence those who are to decide upon the measure in question. It will require much discussion and proof, before it can be received, without hesitation, as an axiom in American penal jurisprudence. At present let the *onus probandi* remain with those who have brought it forward. The American legislators, after reading the proposed plan, will be able to give a just decision, as to its conformity or opposition to "our moral or civil institutions."

Let it be shown, what connexion exists between the "cherishing those institutions," and keeping at home a host of reprobates, at a great expense, who will occasionally be let loose by pardons, or expiration of sentences, to renew their depredations upon society, before the position be admitted as an argument against transportation. I deny the justness of its foundation, and, until the required proof be adduced, I

shall adopt the sentiments of the respectable committee of the New York legislature, and with them, "ASSERT THE RIGHT OF SOCIETY TO PROTECT ITSELF BY ANY SUCH MEANS AS MAY BE MOST EFFICIENT, AND DENY THAT CRIMINALS, WHO MAKE WAR UPON MANKIND, HAVE IN THIS RESPECT ANY RIGHTS, WHICH ARE NOT SUBORDINATE TO THE HIGHER RIGHTS OF THE INJURED COMMUNITY;"* wretches, who, by the enormity of their crimes, have utterly disgraced themselves, mortified and distressed those to whom they are related, and have rendered themselves unworthy of living in a society, by the irreparable injury they have inflicted upon some of its members. Nor do I see any prohibition in the constitution to the removal of another class of men, who have become public pests, and have shown themselves incorrigible and past reformation by solitary confinement; determined to go on vexing mankind with their depredations, or until, by their crimes, accident, or the course of nature, they are dragged down to destruction, and sent to appear before the awful tribunal, to "give an account of the deeds done in the body." No other certain resource is left to us to check the increase of crimes, and the useless expenditure of the public money on criminals.

"Society grown weary of the load,
Shakes the incumbered lap, and casts them out."

The public safety imperiously demands the measure.

Criminals, it is said,† are "a miserable kind of material for new settlements. It is inexcusable in any nation to resort to it, until the accumulation of distress, and petty offences in consequence, have increased to an inconvenient and alarming degree." The idea of "new settlements," implies that we are to hold future intercourse with the convicts, but this is far from entering into my views. After having placed them in a secure spot, from which their escape would be impossible, furnished them with the means of temporary and future sustenance, and

* Report to the Senate, of the Committee on Criminal Law, March, 1822.

† North American Review, Oct. 1821. p. 422.

even comfort by the aid of their own labour: and, lastly, having provided for their moral improvement, they ought, as I have already said, to be left to themselves, and all intercourse with them provided against under the severest penalty. An argument in favour of effectually relieving ourselves from certain convicts by the proposed measure, is derived from the actual existence of the state of things, which, in the opinion of the Reviewer, could alone justify it, viz. "the accumulation of petty offences," and I will add, of heinous crimes, to "an inconvenient and alarming degree;" for do we not daily see accounts of them in every part of the union, and do not the criminal courts of our capitals exhibit abundant proofs of them, from the gentlemen-robbers of banks, (who commonly contrive to escape punishment,) paricides, and every species of daring crime, down to the sly pilfering of a fruit stall? But "transportation" is said to be of all "modes of punishment, the most costly, and of little importance in deterring the unprincipled from crime, as they do not see the punishment." Of the comparative cost of transportation, and confinement at home in prison, I shall presently treat. It is certainly a singular argument, at this day, against the salutary influence of transportation upon the wicked, "that they do not see the punishment," because it was taken for granted, that the principle was fully established by the experience derived from European penal codes, that "public examples," as they are called, so far from deterring from the commission of crimes, increase their number, and that their enormity is proportioned to the severity and publicity of the punishment.* The use of the argument is the more extraordinary, considering that the inefficacy of the barbarous corporal inflictions of the old American, and present Euro-

* In France, and in other countries, formerly, highway robbers, and those who robbed and murdered, suffered the same punishment, viz. breaking on *the wheel*. This want of distinction in the punishment, led to the assassination of the robbed, that witnesses might be prevented from appearing against the criminal. But murder ceased to accompany the robbery, when punishment was proportioned to the crime.

pean penal codes* is fully portrayed by the writer himself: and any one who believes in the influence of such examples in restraining crimes, may be satisfied of the delusion under which he labours, by resorting to the next public execution with one end of his handkerchief a little out of his pocket. On the day of the public execution of Lechler, at Lancaster, (Nov. 1822,) for murder, Thomas Burns, who was present, stabbed Wilson, and killed him. Fifteen persons were also taken up for thefts committed under the gallows. At the late execution of the murderer, Johnson, in New York, it was stated that the pick-pockets were very busy; one man lost \$230. On both these occasions, there were solemn processions, and all the "pomp, pride, and circumstance" of military parade. These facts show in strong light, the inutility of the punishment of murder by death. Why therefore ought it to be continued?

So fully am I convinced of the inefficacy of public punishments, in preventing crimes, that it is firmly believed, the execution of a convict at midnight in the jail yard, in the presence of his fellow convicts, and by torch light, would have a much greater effect upon them, and the public at large, than the most solemn and ostentatious parade. But as it is possible, that some persons, who from prejudice or want of information on the subject, are still persuaded of the admonitory and moral effects of public punishments on society, I beg leave to recommend to their perusal, the unanswerable arguments against them, by our late eminent philanthropist Dr. Rush,†

* It is somewhat singular, that notwithstanding the daily proofs exhibited in England, of the inefficacy of public punishments and corporal mutilations in preventing crimes, a magistrate of Middlesex, (Mr. Beaumont,) in a *project* for a new penal code, should recommend, for certain crimes, "branding on each cheek, and on the forehead: amputation of offending members: and death with previous amputation of the hands."—PAMPHLETEER, vol. xviii. p. 416.

† "An Enquiry into the Effects of Public Punishments on Criminals," 1787. "An Enquiry into the consistency of the punishment of murder by death, with reason and revelation, 1788—See Essays, Literary, Moral, and Philosophical," Philadelphia, 1798. See also Roscoe on Penal Jurispru-

which laid the foundation for their abolition in Pennsylvania, for all crimes, except murder in the first degree. He has proved that public punishments make men worse; that they never reform; never terrify, and so far from preventing crimes, tend to increase them, by destroying the sense of shame; by exciting revenge against the community, and from a strange propensity among fanatics and the miserable, even to commit capital crimes, that they may imitate an heroic death, and draw forth a repetition of expressions of admiration and praise for fortitude and suffering, which they may have heard uttered by spectators of a public execution.

The plan of punishing convicts by labour on the highways and streets, was fully tried in the year 1786, and I well remember the shocking scenes then exhibited, and the universal disgust they excited among all classes of citizens. The law was intended to continue only three years, and during that period, petitions for its repeal, covered the tables of the legislature. It was accordingly permitted to die, and another was passed upon the first proposed principles of labour and confinement.*

dence, and Montague "on the punishment of murder by death." London, 1818. This last author has published three vols. containing extracts from various authors on this subject, but has omitted to mention Dr. Rush, who first wrote on it in the United States; and whose pamphlet was republished in the year 1793, by J. Johnson, St. Paul's Church Yard, London: and yet he quotes the tract of the late William Bradford, who refers to that of his predecessor in the same humane cause.

* The following relation may not be without use. A bill for substituting labour and confinement for public punishments, had been draughted in the session of 1786, in which the "wheelbarrow law" was passed; when, on a meeting of the committee preparatory to the offer of it to the house, it was unfortunately resolved, upon the motion of a member, who probably thought they were treading on sacred ground, to refer it to the chief justice, (the late Governor M'Kean,) who it was supposed must be master of the subject, and would set them right if they were wrong. His approbation was also deemed important to insure the passage of the bill. He returned the bill, and proposed as a substitute the "wheelbarrow law," which met the approbation of a majority of the committee, from deference to the authority of so great a legal character, and was approved of by the legislature. This information comes from the late George Clymer, who was a member of the first

If the expense of transportation be urged, I apprehend that its superior economy will afford an argument in its favour. The late Paul Cuffee stated that thirty-eight persons taken out by him to Africa, cost one hundred dollars per head; and it is not probable that the expense of the convicts will be greater. But granting that it will amount to \$150 per head, it will be still less than that incurred by keeping the convicts in penitentiaries. Let us see what is the cost of the present plan. The annual expense of a convict in New York is \$177.81,* and at the last return, previous to the report of the committee of the senate being made, the number of convicts amounted to 817. The sum which these cost, as remarked by the committee, would prepare 800 of the youth of our country, for lives of public usefulness, by an education at college. Now, as crimes must necessarily multiply with the rapidly increasing population of the United States, it is to be presumed, that the expense here complained of, will be doubled at the end of the next ten years, if the system of keeping reconvicted reprobates in prison be continued. But suppose that the price of transportation, and of the annual cost at home of a convict be the same, the advantage would still be in favour of the former plan, because the first expense will be the last, without taking into consideration collateral advantages to be presently mentioned. In Philadelphia, according to the prison inspectors' report to the legislature, Feb. 1822, "the expense of feeding and clothing a healthy prisoner for one year, is about \$103: his labour, if constantly employed, is worth about \$100," but from various causes, he is often idle, and hence there is generally an annual balance

committee, and warmly opposed the reference to the judge. Thus for a short time were suspended the happy effects of Dr. Rush's anxious labours for years, in preparing the public mind for the amelioration of the penal code, and in breaking down the strong holds of prejudice and ignorance which supported the detestable old system.

* This includes cost of prisons, interest, repairs, insurance; transportation of convicts to prison; sheriff, attorneys, salaries of officers of prison, expenses of guarding, support, and clothes of convicts. Report to the Senate of New York, on criminal law, March 5, 1822.

against him, which is paid by the county in which he was convicted.* From the year 1816 to 1820, both inclusive, this balance amounted to \$47,434 74

The costs attending the criminals, their support in prison before trial, and of the expenses of the courts at which they were convicted, will certainly amount to the same sum \$47,434 74

94,869 48

The cost of bringing prisoners to the city from the counties during the same period, was 33,391 29

128,260 77

The whole cost of bringing them to prison, from 1794 to 1820, as stated at my request by the auditor of the commonwealth, was \$75,504 79.

Cost of provisions for the prison, untried prisoners, vagrants; expenses of criminal courts in city and county of Philadelphia, from 1814 to 1821, inclusive 195,678 54

The items constituting this last gross sum were taken from

* These causes are thus stated by the inspectors.

"1. There are always a number of aged, infirm, and sick prisoners, who are a burden to the institution.

"2. Most of the prisoners are afflicted with disease of some kind, in the course of the year, owing to their confined and crowded state, low diet, hard labour, and those ills which are incident to their condition.

"3. Most of the prisoners from the country are farmers, unacquainted with the branches of business carried on in the institution, and much time is lost before they are rendered capable, by instruction, of affording any profit.

"4. Many of the prisoners are, from vicious habits, idle, dissolute, unaccustomed to labour, and impatient of restraint; and, therefore, require considerable punishment in the cells, to make them even manageable; of course, but little labour is obtained from them, in the course of the year.

"5. A large number of convicts are employed at sawing stone. This business cannot be followed in wet or extreme cold weather. Much time is lost, especially in winter, when the days are short, and therefore, less labour is performed by a prisoner than by a labourer out of prison. At times,

the books of the county commissioners. It is however only a partial statement of expenses connected with criminals, between the years 1814, and 1821; the sums paid in some years for the prisons and courts being overlooked. It has not been deemed necessary to go further back than the year 1814, or to calculate the precise cost, in any one year, of a convict. The sums here stated, must lead every one to attribute much of the expense to repeated convictions, a great part of which would have been saved, if the criminals upon a second conviction, had been sent away. In forming an estimate of the actual amount of the loss sustained by the support of convicts, it is obvious that the value of the work done by them must be deducted from the gross sum disbursed on their account; but it is known that for many years past, the amount received for the produce of their labour, has been much below the cost of their maintenance. The accounts of the prison are not laid before the public annually, as in other states,

and particularly since the stagnation of business, this branch, and many others, carried on in the institution, have failed in a great degree, for want of employ.

"6. The number of hours per day, in which convicts work, is considerably lessened, by the necessity of locking them up early, and not letting them out, till late in the morning. This arises from precaution; and its propriety will not be questioned, when it is recollected, that the number now confined amounts to 450 males and 40 females.

"7. The last reason to be offered, is found in the nature of man: the man, who is free, and is paid for the sweat of his brow, labours with a willing mind, to the extent of his power,—the prisoner, in bondage, who toils for others, works with a dejected mind, and spares himself so far as he can.

"The mode of keeping the accounts, is as follows. The convict is charged with his clothing, his daily support, his medicine, and credited with the value of his work, which, in some branches, is a per diem allowance, and in others, by the piece. To ascertain the quantum to be charged for daily support, the whole expense of the institution, including what is paid for the manufactures, is divided among all the prisoners. The allowances for labour, are regulated by the inspectors, from time to time, and are as various, as the different branches of business, carried on in the institution. To enumerate them, and the reasons for them, would be tedious, and, it is presumed, unnecessary." *Report, 12th Feb. 1822.*

but a few items have occasionally been published, from which some opinion on the subject can be drawn.

The expense in 1816, exclusive of the value of the convict's labour, and expenses of the institution, was \$36,411 55 cts. In 1817, including the vagrant department, it was \$37,772. The value of labour that year, was \$19,949; leaving a balance of \$18,223. In 1818, the expense was, \$36,655. The value of the labour was \$20,829; balance against the prison, \$15,826. "In the year 1819, the deficiency was \$18,941, and it was presumed that the deficiency for the year 1820, would be quite as great."* What strength is there then, in an argument derived from fears of the cost of transportation, when expenses equally great, nay, greater, are daily incurred by the states in convicting and reconvicting their criminals and keeping them at home?†

The superiority of the cost of the home system, is not the only argument in favour of the transportation plan, on the principle of economy. We ought to take into consideration, that the country will annually save a considerable sum, by the diminution of reconvictions, of the losses of property, and of the passing forged bank bills; and that the wide spread of immorality and consequent increase of convicts, arising from the intercourse of reprobates with less hardened offenders, will be greatly checked. Finally, we should reflect upon the opportunity which the removal of the convicts will afford, of paying increased attention to the reformation of those convicted of first offences. This last consideration ought to outweigh even that of the superior expense of the transportation plan, if such expense should actually take place.

I have said that the plan of each state sending away its own convicts, is simple in the extreme. It is really singular that there should be a question, or any difficulty made about it, especially by men brought up in a seaport, and who are fami-

* Report of visiting committee of the Society for alleviating the miseries of public prisons, to the legislature, 1820-21.

† See Appendix.

liar with the mode adopted in conducting commercial transactions, and with the practice pursued by government in conveying munitions of war, or other articles, in chartered vessels, to a distant country. It is equally singular, that objections should be made to transporting convicts, on grounds, all of which, except one, (compulsion,) apply with equal force, but have never been urged, in respect to the colonization society for the blacks, a scheme, which, notwithstanding the disastrous results that have followed it, is pursued with undiminished zeal.

An objection to transportation has been derived from fears, that if the criminals were placed on an island they would quarrel, and destroy one another. To this I reply, that there is little danger of such events taking place; but, on the contrary, that we have more reason to suppose they will live orderly, from the operation of the causes before mentioned; the influence of a natural principle of self-preservation, from the uncontrolled freedom they will enjoy, and the want of temptation to steal. Besides, by living single and being deprived of spirituous liquors, they will not have an opportunity of gratifying propensities which constantly assailed them at home, and which powerfully lead to the excitement of bad passions, and the obvious necessity of enforcing severe discipline, will speedily put a stop to any riotous disposition that may appear. But further, as a means of passing away time at night, or in bad weather, we must suppose that they will read the religious books left with them; that their situation will be highly favourable to the serious reflections, to the origination of good resolutions, and to the revival of early pious impressions, which a long course of guilt had put to sleep; to the exercise of kind feelings and to friendly actions and intercourse between them; and to the excitement of deep self-condemnation, arising from the comparison between their past and present situation. From all these, favourable results may be expected; hence there is great reason to believe, that the criminals will be employed in providing the means of

present and future subsistence from land and sea,* and will live in harmony. If, however, contrary to our reasonable expectations, and to the natural course of the operations of the human mind, they should quarrel and destroy one another, we cannot be blamed. It is enough that we have submitted to their repeated depredations, for any one of which, had they been committed in Europe, they would have been hanged, and that they have proved incorrigible, after being placed in a situation the most likely to produce reformation, if any spark of grace had been left in them. The sin be on their own heads.

The escape of convicts, cannot be admitted as an objection to their transportation to the islands mentioned. Their deficiency in trees large enough to cut into boat timber, (a fact well ascertained,) the want of tools and materials, for constructing and rigging boats, or vessels by the convicts, and the ignorance of their use if they had them, are enough to allay our fears on that subject. The remoteness of the islands from land, may be added as an additional argument to believe, that once deposited, the convicts will not find their way back to the United States. Vessels will avoid an island filled with desperate outcasts. A heavy penalty, moreover, might be imposed upon any master of a vessel bringing a convict back, or their return might be made a capital offence; and the fact of any being on board a vessel, should form one of the interrogatories to be put to the captains at the custom house, when they enter. Finally, there are an hundred chances to one, that we shall never see a single criminal after they enter a transport ship.

I have been thus full on the subject of transportation, as I consider the adoption of the measure upon the plan I propose, connected with the best interests of the nation, and feel assured, that the terror of it will diminish crimes; that with the probability of the convicts sent away, becoming more moral,

* Fish abound in all the coves, and near the rocks, at Tristan d'Acunha, and are easily taken with the hook and line. Phillip's Monthly Mag. Nov. 1820.

by their removal, they cannot fail of being stationary as to the actual commission of gross crimes; whereas, if they remain in the United States, in, or out of prison, they will only sink deeper in sin, and their chance for reform be for ever cut off. The legislatures of the United States will determine whether the plan is worthy of experiment, or to be thrown aside upon the same summary argument that was often urged against the introduction of the mild penal code in Pennsylvania, viz. "that it is visionary, romantic, and impracticable."*

Having thus given my outline of a plan for relieving the evils we at present lie under, from the existence of crimes among us, it is proper to point out the means of preventing or diminishing them in future. Without such an attempt, my labours would be imperfect. The means may be pointed out in a few words. It is to instil the principles of morality and religion in the minds of the rising generation, and to extend the benefit of education to all classes throughout the whole state.

If this were a new subject of discussion, if, like those connected with national finance, or public wealth, it admitted of dispute; or there could be a doubt as to the beneficial influence upon the moral character, deportment, and orderly habits of a nation from the people composing it, being well educated, it might be proper to endeavour to establish the point; but there can be no necessity for such digression. The history of all nations, particularly of those over whom the lights of Christianity have been partially shed, fully proves the intimate connexion between moral conduct in the man, and his mental improvement when a youth. I cannot however omit to remark, that the effects of the general diffusion of early instruction, and of the principles of morality in a nation, are notably exemplified in the superior good order, industry, frugality, and comfort, prevalent among the laborious classes of society in Scotland, and the small number of crimes committed by them, when contrasted with the same

* See Appendix.

classes in England and Ireland. In Scotland, a plain education is within the reach of the children of every poor family, by means of the parochial schools established in 1696; while in England and Ireland, little attention had been paid to the instruction of the poor, until the introduction of the simple and efficacious mode of Joseph Lancaster. Provision to a great amount, had indeed been made for the important object, by various benevolent men, particularly in England, but the funds thus humanely appropriated to the purpose, have been most shamefully misapplied, or purloined, by the corporate bodies, or individuals entrusted with their expenditure, or criminally permitted to remain unemployed.* In Ireland, that nursery of brave and generous souls, the vigour of whose faculties, and warm feelings, furnish the finest materials for benevolence and humanity to work upon, the poorer classes of society are so oppressed, that the means of decent subsistence are scarcely attainable. Education, even of the most elementary nature, is not therefore to be expected among them. Hence, the majority of the poorer classes labour under the most deplorable intellectual and moral degradation. It cannot therefore be a cause of wonder, that among a people thus constituted, the controlling power of a sense of right and wrong, is found to be weak; or that crimes should more abound, than among their fellow subjects in other parts of the empire, who enjoy the blessings of mental improvement.†

The difference in the conduct of the Scotch and other troops, during the late war on the continent, also exhibited a striking contrast in the moral habits of the several divisions

* Brougham on the Abuse of Charities: Edinburgh Review, March, 1819. Some shameful abuses have been lately detected.

† By a table of the proportion of persons committed for criminal offences in different parts of Britain, to the population of these parts, formed upon an average of the five years from 1805 to 1809, it appears that in London and Middlesex, it was 1 in 854: in the middle circuit, 1 in 5414; and in Scotland, 1 in 19,967. This disproportion can only be accounted for, by the difference in the care with which the Scotch people are trained up in moral and religious habits.

of the allied army. The Scotch, equally brave in the presence of the enemy, as civil in the families on which they were billeted, and inoffensive among the people in the vicinity of whom they were encamped; acquired the esteem of all those with whom they were connected, while the troops of all other nations were avoided, whether friends or foes. These facts are related by visitors to the scenes of the sanguinary contests, in June, 1815, shortly after the close of the war.*

To lay the foundation for accomplishing the great objects under consideration, the legislature ought to comply with the injunction of the Constitution of Pennsylvania, (Art. 7, Sect. 1,) "to provide for the education of the poor, gratis, throughout the state." No plan is equal in point of economy, or efficiency, to that of Joseph Lancaster; and where practicable, it ought to be adopted. It is in successful and extensive operation in the city of Philadelphia and its liberties.†

In thinly settled districts, the admirable laws of Connecticut and New York, for the dissemination of elementary instruction, may be substituted; the Pennsylvania law of 1809, for that purpose, having been from false pride, but partially taken advantage of in the interior of the state.

* Paris revisited in 1815. By John Scott, pp. 51, 139, 151.

† It is a pleasing and important fact, that of the many thousand children educated at Christ Church Hospital, and the Lancaster School, in the Borough Road, London, it is not known that one was ever arraigned at a criminal bar.—*Appendix to Rules of the Lancasterian Free Schools, Bristol.*

APPENDIX.

P. 5.—The increase of crimes in the United States, may reasonably be supposed to follow the increase of population. In the first report of the Boston Prison Society, p. 34, the proportions between crimes and population are given, by which it appears that in the State of Vermont, crimes increased faster than the population, between the years 1813 and 1818, but not so fast between 1818 and 1823: that in New Hampshire, New York, and New Jersey, they have not multiplied as fast; and that in Pennsylvania, they have not increased more than the population. The principle upon which these calculations are made, is liable to objections, but it is not necessary to enter into the discussion of the question at present; one point is clear—a penal code which gives rise to such frequent reconvictions as those of the United States, must inevitably increase crimes.

P. 8.—*Abuse of Pardoning Power.*

I have no hesitation in saying that the continual and monstrous abuse by Governors, of this great privilege, is a very powerful cause of the increase of crimes; and that the best code of penal laws that can be framed, will be defeated, unless it be checked. The obvious consequence of such a favour being obtained, is, the hope that it will be again extended upon the occasion of another conviction, and hence the pardoned villain is induced to renew his depredations upon the first opportunity after his liberation. The records of all our prisons show, that the same criminals have been repeatedly pardoned. I have given, p. 10, from official documents, a statement of reconvictions; these, and the numerous facts by the committee of the New York legislature, (January, 1825,) of convicts who had returned to Auburn prison, after being pardoned, once or oftener, are decisive on this point.

Governors have much to answer for, who thus defeat the laws, and offer a premium for vice. They should judge for themselves, and not take the recommendation of inspectors of prisons as a rule of conduct, for the vote may be passed by only one of a majority, and they have, to my knowledge, used their influence for unworthy objects. Nor should any attention be paid to a long list of signers to a petition; for men who, in the common concerns of life, pride themselves upon their caution, will put their names to almost any paper offered by a friend. The most audacious frauds and conduct

are moreover practised in obtaining names. The late Governor Snyder, of Pennsylvania, was in one instance imposed upon by the subscription list to some publication, containing the names of men of great respectability in Philadelphia, being attached to the petition of an old convict. In New York a "pardon broker" is a regular business, and the above committee give curious and important details on the subject. Six hundred dollars in one instance, and a farm in another, were the premiums for which the pardon broker "laboured in his vocation" with success. Cases to which I have alluded may occur, which will render a pardon an act of justice, but these are so few, that they would not encourage crime. It was pardons which defeated an experiment of solitary confinement, in Auburn prison, New York. In 1821, the legislature of that state ordered a trial of it upon "the oldest and most heinous convicts," and it was made upon 80 of them, in December, 1821; but Governor Yates put an end to it in the summer of 1823, and "determined to pardon them all gradually." His reasons were, "that their punishment was changed, and increased beyond their sentence, and that the health of the surviving convicts had become much impaired."* The consequence was, that many of them, even those who had been longest in confinement, returned to prison, in three, four, and eight months!†

Mr. Powers adds, that "twelve have been reconvicted; one committed a burglary in the vicinity the very first night after being released from a long confinement, and some others are known to be a terror in their neighbourhoods, and not one instance of reformation among that class has been known."‡ So much for pardons!!

In the New Jersey prison, where the solitary convicts were forced to serve out their times, of 77 who had been confined, one for three years and six months, only one had returned to that prison.§

Pp. 11, 15.—Documents in my possession, and various others which have been given to the world, since the first publication of my essay, prove that reconvictions after pardons, have been common in all the States. The preceding pages contain several facts in point. The fact of the inefficacy of labour in society, whether in silence, aided by solitary sleeping at night, or when conversation is permitted, and many are confined in the same room at night, is equally well established. Much stress has been laid upon the returns made to the agent of the Auburn prison, and inserted in his report, of the altered lives of 112 convicts, out of 160, who had been released from that prison; but it should be noticed, that by far the greater part of the persons said to be reformed, were recently discharged: we must wait for a few years before a positive

* Report of G. Powers, agent of the Auburn prison, p. 81. 1828.

† Report to the legislature of New York, January 25, 1825.

‡ Report on Auburn prison, p. 83.

§ Letter to the Author from Mr. F. S. Labaw, keeper of the prison, November 24, 1826.

conclusion can be drawn respecting the permanent effect produced on their morals by the discipline they had undergone. A visit to Auburn prison during the past summer, satisfied me, that every good effect which can possibly result from labour in silence, and solitary sleeping, is to be expected from the discipline there; yet it appears from the report of the agent, that 26 of 160 discharged convicts are still "decidedly bad, and to these may be added two who are of "suspicious character, and twelve who are only "somewhat reformed," and who will probably give way to the first temptation. If the solitary system should go into operation in Pennsylvania, we shall be enabled to form a comparison between the permanent effects of the two plans.

P. 31.—Another instance of self-condemnation, by a man who was tried for murder, occurred a few years since in Albany. This man confessed that he had murdered a Miss Hamilton, and gave a circumstantial account of the affair; but the jury were induced to believe, that the whole was a fabrication, and acquitted him.

P. 47.—The arguments in favour of the idle solitary confinement of convicts are derived—1. From our knowledge of the human mind: 2. From long experience in Pennsylvania, and in other states, of the failure of labour by convicts in society to prevent crimes. 3. From its well known salutary effects in subduing refractory tempers, when inflicted for short periods in Philadelphia, and in England. 4. From its decided influence in preventing a return to prison in New Jersey.

In illustration of the first argument, I refer to the principles upon which the avoidance of crime is founded, or repentance ever has, or ever can be brought about in a human being; these are, 1. *Ennui* or a tiresome state of mind from idle seclusion; and 2d. Self condemnation, arising from deep, long continued, and poignant reflections upon a guilty life. All our endeavours therefore ought to be directed to the production of that state of mind, which will cause a convict to concentrate his thoughts upon his forlorn condition, to abstract himself from the world, and to think of nothing except the suffering and the privations he endures, the result of his crimes. Such a state of mind is totally incompatible with the least mechanical operation, but is only to be brought about, (if ever,) by complete mental and bodily insulation. Self pride, and a strong sense of the injustice of a sentence inflicted from political motives by a despot, and fortified by an approving conscience, have a thousand times enabled men, and even women to bear solitary idle confinement, corporal punishment, mutilation of limbs, the tortures of the inquisition, the rack, and the slow combustion of the body at the stake, without a change of sentiment, or the confession of guilt, of which they felt innocent; but the stings of conscience have produced reformation in many persons, even when the subjects of them were surrounded by all the allurements and pleasures of the world, and men have often voluntarily given themselves up to suffer the penalty of the law, preferring death to the perpetual mental horrors they endured. The history of mankind is full of

such instances. We every year hear of suicides from the mere contemplation of imaginary evils, or the strong presumption of impending, or remotely expected, but impossible events. To produce this state of mind, a convict must be placed in a secure situation, totally abstracted from all human intercourse except that of his keeper when giving him food, or a religious comforter, and he must be sustained by diet not more substantial, than will be sufficient to prevent the occurrence of debility, and be supplied with such moral and religious books, as will co-operate with the other means in producing a frame of mind, calculated to give force to the self-condemning reflections which will infallibly arise in it. But neither this frame of mind, nor these reflections can take place, without a special interposition of Providence, so long as a convict is occupied by manual labour, or the slightest occupation, either in society with fellow convicts, or in a solitary cell. The reason is obvious; his whole attention will be required to be fixed on his work, and therefore it is impossible that any salutary moral reflections, any penitential reactions of the mind, can take place. It has been contended that labour in silence, unless when speech becomes absolutely necessary, followed by solitary sleeping, with religious instruction, will be sufficient to render the penitentiary system complete; and it has been almost insinuated that a convict, however obdurate, if placed under such discipline, will leave prison in a state of grace. At night, on the supposition that he will sleep alone in a cell, he will indeed be forced to think deeply while awake, but his labours during the day, added to his intense solitude when locked up, will quickly induce sound sleep, so that it is probable only a few minutes will be spent in reflection, and no ennui, no stings of conscience, and consequently no reformation, no determination to avoid crimes, can take place. Upon the return of the morning, he will be cheered by the light and the company of his fellow convicts; and the renewal of his work, although performed in silence, will interrupt if not obliterate the good effect of his short and few night-thoughts: he will therefore pass his day as before, in a measure comfortably. A convict thus treated, will not be deterred from renewing his depredations upon the first opportunity offered to him after liberation.

"Who fears not to commit the crime, will ne'er
Be frightened at the curse that follows it."

2. The facts related in pp. 14, 15, show the little effects which confinement at labour in society have in preventing crimes, in different states; and others from Auburn prison, prove, in part, the correctness of the course of reasoning in the preceding paragraph.

By the report of the committee of the New York assembly of January, 1825, it appears that "16 of those who were then in on a second conviction, had been previously confined for the first offence in that prison." Details are given of "18 other convicts who had been subjected to the usual routine, after one, two, and three commitments for different periods, from 21 days to seven years and

four months, all of whom returned to the same prison, after different intervals of from three months to seven years!" It is as reasonable to suppose that they had repeatedly robbed, but escaped detection, until their last crime, as that they had lived honestly. The explanation of these facts is not difficult. The presence of the keepers may partially prevent the unrestrained intercourse which takes place among convicts in other prisons, but some conversation is indispensably necessary between them or their keepers, in the course of their work: this therefore is a source of gratification to them; but even upon the supposition of absolute silence among them, yet the merely working of convicts in company, is quite enough to prevent the salutary operation which total solitary idle seclusion would have upon them.

Sd. The tranquillizing influence of solitary cells upon criminals of the most turbulent tempers, manifested after they had been confined in them for different short periods in the Philadelphia prison, and those of England,* does not permit a doubt to remain of the most beneficial and permanent effects being produced by them upon others, when continued for longer times. Solitary confinement in Philadelphia has only been inflicted hitherto upon offenders against the rules of the prison; it is always idle, and has never failed sooner or later, to break down and subdue the most obdurate temper. In some instances a few weeks, in others, a year, and in one case 16 months were required. After being in the cells for some time, the convicts earnestly beseech the keepers for work, but it is always refused, being obviously requested for the purpose of "killing time," and preventing reflection. Unfortunately the experiment has never been tried for a sufficient length of time, to insure a lasting influence on their minds; for after they evince signs of contrition, they are taken out, and indulged with the gratification of working and sleeping in society with other convicts, so that in a few months all the horrors of idle solitude are forgotten, and when liberated from prison, they have no inward monitor—no recollection of bodily or mental sufferings to restrain them from committing fresh crimes. The only effect of solitary confinement, perceptible, is to teach convicts lessons of propriety of behaviour, while in prison. Brevity requires that I should omit the history of particular cases.

The anticipated permanent good effect derived from idle solitary confinement, upon criminals, if continued long enough, is confirmed by a communication from Mr. Francis Labaw, keeper of the New Jersey State prison, to me, under date Nov. 24, 1826. It appears that the cells there were built in the year 1820; and since that year, 77 convicts have been sentenced to solitary confinement for 18 months, two years, and one three years and six months, but only one of those discharged, has returned. The convicts in cells are prohibited from labour, but provided with a Bible, Testament, or some religious work. Facts from Auburn prison are no less deci-

* See p. 43, and Buxton's Inquiry, p. 71. Evidence before the Committee of the House of Commons on Jails, 1819—p. 390—91.

sive of the horror entertained by convicts, of idle solitude. The New York Report before referred to, p. 35, states that the convicts "declared they preferred the hardest labour, and the coarsest food, to their present condition, and two of them begged they might have work in their cells, in order to make the time pass off less irksome. A shoemaker begged for no greater indulgence than to be allowed to work in the shop, upon condition of earning a dollar per day for the State. Several who had served in the New York prison, assured us, that they would rather serve seven years in that place, than as many months here." I am prepared for these facts: they are in strict conformity to a powerful principle of human nature, and will always occur, when an occasion offers for its development.

Objections to Solitary Confinement.

The following objections are usually urged against solitary confinement:

1. The expense of maintaining convicts in idleness.
2. The necessity of keeping them at hard labour, as a punishment, and as a means of supporting themselves, and of even deriving a revenue from them: of giving them habits of industry, and of teaching them a trade which they may follow for their support, after they leave prison; and lastly, the danger to their health, and mental faculties, from confinement.

In reply to the first; there is a well-grounded belief, that no convict, after having had a competent experience of the horrors of solitary idle confinement, will subject himself, (unless he be pardoned,) to a repetition of them; whereas, if permitted to labour, whether in solitude, or in society, he will most probably return to prison. On the solitary idle plan, therefore, the first expense will be the last, and will, in course, be economy in the end; while on the plan of labour, there will be a routine of convictions, (unless the convicts are transported,) the cost of which will amount to double or treble that of their support, if they are confined without labour. The maintenance of a convict in Philadelphia, at present is about \$60,* and at Auburn prison, it was \$34 78 in the year 1823; to these must be added, the repeated costs of bringing them to prison, when reconvicted; and those arising from their apprehension, support in prison until tried, and of witnesses, juries, and court expenses; those of detection in case of escape, and loss of labour by sickness. In New York the cost of every conviction, amounts to \$101 25.† But in Pennsylvania, I know it has been often much more.

2. There never was a greater mistake than to suppose that labour is a punishment to a convict. It is at best one which they do not dread. Forty years' experience in Philadelphia, and that of twenty-five or thirty years in other states, is directly opposed to the idea. The work done by convicts is mere pastime, when compared with that of a wood-sawyer, or carpenter on a house-top, or a man

* Report of the Commissioners on the Penal Code, 1828.

† Report to New York Legislature, 1822, p. 6.

in a brick-yard, in the blazing sun all day, with the thermometer at 120°; and the duration of it is less in a day, by many hours, than those prescribed by custom, for honest mechanics. It is well known, that convicts prefer work to solitary idleness, as it prevents ennui, and the galling reflections forced upon them when alone, and unemployed. The idea also of convicts maintaining themselves, is specious but fallacious. With the exception of the prison of New Hampshire, and of Wethersfield, Connecticut, all the prisons in the United States are an expense to the public. Even in N. H., the revenue derived from the convicts' work is a recent event, for in the year 1817, the balance against the prison was \$4,235 61.* In 1819, it was \$862 72. In 1820, \$345 45. In 1821, \$232 89. In 1825, the profit was \$6,305 44*—but in 1827, it has diminished to \$145 60.* The profit of the work in this prison, arises from the discovery of a quarry of fine building stone, near the prison, which is dug by the convicts, works easily, and is in great demand. Calculations, therefore, of expected profits in other prisons, from an accidental and probably temporary source of profitable employment, ought not to serve as data upon which to found a system of discipline for states in which resources of a similar nature, or of equal value, do not exist. Prisons which do not enjoy the same source of profit, will always be in debt, and even in New Hampshire, we see the profit is greatly diminished.

The profits of labour in the new prison at Wethersfield, Connecticut, are stated at \$1017 16, for six months ending in March, 1828. This is a good beginning, but it remains to be seen whether this profit will continue.

The prison of Massachusetts, was last year exultingly quoted as another instance of the profit derived from convicts' labour. In 1826, it was stated to have been \$9,719 17: but in the year 1827, the governor announced that "the balance against it was more than \$6,000!" In former years this balance was much greater. In the year 1817, it was \$16,809 51, and in this same year \$20,000 were received from the state treasury. In 1818, it was \$8,479 98. In 1820, it was \$6,758 31. In this year \$3,000 were again received from the state treasury. In 1823, it was \$5,706 31. The profit in 1826 arose, as in the case of the New Hampshire prison, from the sale of building stone which the convicts worked. To the above balances against the prison, should be added the amounts of the salaries of the officers, which are not charged, in the above balances, as they ought to be, to the prison; and, in like manner, they ought to be deducted from the profits just stated of the year 1826. The salaries amount to \$2,900, and if added or deducted from the above sums, they would increase the debit, and lessen the credit sides

* Boston Prison Society's First Report, p. 56. Second ditto, p. 28. "For several years the stone business was good, producing ready cash at the moment the work was turned out. It had been anticipated that this business could not so continue, and the FACT IS NOW REALISED." This statement is taken from the New Hampshire Patriot, Oct. 6, 1828, and evidently appears to come from the warden of the prison.

of the accounts. The deficiency in the year 1827, it appears from the statement in the third report of the Boston Prison Society, was owing to gross mismanagement, and abuses, but these do not lessen the force of the conclusion drawn from the fact, for they may again occur in the same and other prisons. Solitary confinement does not give rise to such abuses.

The balance against the New York prison in 1823, was \$30 82 for each man. At Auburn prison last year, it was \$1000:* for which it is said "the fees of admission for visiters, will *nearly* provide:" but such a precarious resource ought not to be taken into a general calculation. The inspectors of this prison in their report to the legislature of New York, dated January 5, 1828, say, that "no further appropriation will hereafter be necessary to support it, *except for expenses of discharged convicts, of building and repairs, and the transportation of convicts.*† But these expenses ought certainly to be deducted from the annual revenue derived from convicts' labour, inasmuch as they are incurred for their accommodation, and by their convictions. It would indeed be a novel system of Dr. and Cr. to argue in any other way. To these items, it is clear, should also be added, the salaries of the officers during the year, and the expenses attending the apprehension and conviction of the prisoners.

The acquisition by a convict of habits of industry, by being kept regularly at a mechanical employment for several years in prison, or of a trade, which he would follow for honest support after being liberated, were the great benefits expected from the new penal code in Pennsylvania. But those pleasing expectations have been greatly disappointed: for no trade, (if any had been acquired) has been followed by a convict after liberation, and so far from habits of industry being instilled and kept up, it has been often ascertained, that many convicts have applied the mechanical knowledge they gained in prison, to facilitate the perpetration of fresh crimes, to which they were inadequate when they entered it. I allude to the arts of key and lock making, and lock-picking, which have been successfully followed by several who served some time in prison. But granting, that this partial evil, does not militate against the general principle, still there are other objections to it in practice. To teach a trade, preceptors are required, the pupils must be docile, and time is essential. Now it often happens, that some one or more of these requisites are wanting. Few cases occur of a master and pupil being kept together long enough to teach and learn a trade: besides, many of the convicts are blessed with no more faculties than will enable them to perform the duties of an automaton; to be mere hewers of wood, or delvers of the earth;—animals, who cannot be trusted to saw stone straightly. Of 522 convicts in the prison of New York, in 1810, 218 had no particu-

* This refers to the prison generally.

† That is, the bringing of them to prison from the counties in which they were convicted. Boston Prison Soc. 3d Report, p. 20.

lar occupation; and in 1826, of 997 who had been in Auburn prison, from its opening, only 365 had been engaged in any mechanical occupation.* To teach such men trades, would require much more time, than that of their sentences: and any attempt to instruct them, would be attended with a wasteful expenditure of time that might be profitably employed, and of materials, and would cost more than their necks were worth.

In p. 63, sickness was stated, on the authority of the inspectors of the Philadelphia prison, as one of seven causes, why the convicts did not support themselves. To show the force of this argument, the following fact may be stated. In the year preceding 1818, the loss in the Massachusetts prison from sickness, and from "invalids being unable to perform a full day's labour," amounted to 13,015 days. The value of a full day's work was 40 cents, equal \$5,206.†

Perversity of temper, and carelessness, will also diminish the money amount of labour. From both these causes, work has been spoiled in the Philadelphia prison, for which the inspectors have paid those with whom contracts had been made: and some articles have been returned as unmerchantable from a distant state. To these must be added, the bankruptcy of men to whom the labour of the convicts had been hired in some of the states, and of those to whom articles had been sold on account of the prison. Auburn prison lost by the first cause, in 1823, \$2,320 46,‡ and by the last, in 1824, \$220 21. Mr. Powers speaks of "*very serious losses*" from bad debts, p. 41. The prison of Massachusetts also lost by bad debts, in 1820, \$1,046 06,§ and in 1823, \$1,425 75: \$3000 were appropriated to the New Hampshire prison at the last session, to prevent embarrassments for want of ready money, owing to "a suspended debt of more than that amount," due the prison.|| The Philadelphia prison has also suffered in these ways; \$800 were not long since lost, and \$1000 more recently, from the failure of two men. Such losses are inevitable.

Great losses have also been sustained by fires in the prisons, which must be ascribed to the convicts. One occurred in that of New York, in 1804: another in 1813: the prison in Richmond was burnt down in August, 1823¶—and in that of Massachusetts all the work shops, and "an immense amount of property were destroyed" last August, by a fire, which was ascribed to the prisoners. The work shops were also burnt in Philadelphia, some years since. Solitary confinement will infallibly prevent losses from the above causes.

These remarks refer to the labour of convicts in society: but the difficulties increase greatly, when labour is to be performed in soli-

* Report of the Pennsylvania Commissioners on the penal code, 1827: and yet they dwell on "the productiveness of the labour of convicts," as a strong argument in its favour.

† State Prisons Vindicated, by G. Bradford, warden of the prison, p. 60.

‡ Report of 1825, p. 11.

§ Prisons Vindicated, p. 59.

|| New Hampshire Patriot, Oct. 6, 1828.

¶ The loss was estimated at \$200,000.—*Nile's Register*.

tude. There, no work can be performed, except that of which the convict already possesses the knowledge, but if that trade be one, in which the division of labour, not only tends to perfect the article in hand, but to expedite its completion, all idea of profit must be given up, if not of self-support.

Finally, whatever may have been done in the way of profit from convicts' labour in other states, it is certain that none will be derived from it in Pennsylvania. The balance against this prison during the period of six years, viz. from 1819 to 1825 inclusive, was \$179,373 30.* The concerns of the prison have doubtless been as well managed by the men to whom the charge has been committed, as it could have been by any others. We must therefore, in a question of revenue, reason upon data before us;—upon events which have happened, and which are again likely to occur; not upon the management of other prisons, differently situated, and enjoying advantages of which those of Pennsylvania, have been, are, and will be deprived. If profit, or if the support of the prisons, by the labour of convicts be objects of consideration, we must give it up, for neither can be obtained.

The fear of danger to the health, or to the mental faculties, from solitary confinement, is much less than is commonly imagined.

In addition to the facts and remarks on this subject in p. 46, I may add the following. Calet, a French protestant, was confined in the Bastille, for upwards of twenty years, upon bad bread and water, in total silence and solitude, without fire in winter, and in bad air; and was liberated upon the demolition of that engine of despotism.† The Marquis D'Aremberg was confined in the same prison for 12 years, during the reign of Louis the 14th, yet neither of these men sickened, nor lost their reason.‡ Francis de Bonniard, the patriot of Geneva, was confined for six years in the dungeon of the Chateau of Chillon, by the Duke of Savoy, (1530 to 1536,) and yet lived to render important services to his country, until about the year 1570.§ L. H., one of the gang of mail-robbers (two of whom, Hare and Alexander, were hung in Baltimore, in the year 1818,) recently stated, that he "was confined there in a large cell, three feet of which were under ground, for 22 or 23 months, and afterwards for two years in an upper room, alone in both places, yet preserved his health and reason." In the prison of New Jersey, where the cells are six feet by eight feet, and seven feet high, men have been confined, as already mentioned, 18 months, two years, and one three years and six months, without injury to body or mind. The facts I have related in p. 47, prove that a similar exemption, resulted from confinement in the cells of

* Boston Prison Soc., Third Report, p. 15. See also p. 65, of this essay.

† Account published by himself.

‡ Lord J. Russell's Memoirs of the Affairs of Europe from the Peace of Utrecht, 4to. p. 408.

§ See the particulars, which were obtained at Geneva, in the notes to the poem, "The Prisoner of Chillon," by Lord Byron.—Works, vol. iv.

the Philadelphia prison. I may add, that one man was confined during 16 months.*

The Committee of the New York Legislature, in their report of January, 1825, state, that of 36 men confined in the cells of the Auburn prison, for various periods, from seven to twenty-nine months, none suffered in their minds. A few, who had been confined for a year or more, were stated to have been indisposed with rheumatic affections, general debility, &c. &c.—but “when permitted to go into the yard a few weeks, the fresh air and light labour generally restored them to health:”—a proof of the slight nature of the complaints. The Philadelphia Prison inspectors make the same remark.†

There is great reason to believe that many of the alleged complaints in Auburn, were feigned. Nothing is more common among sailors and soldiers, than to feign sickness, when an object is to be gained by deception. The pretext of sickness was attempted at Auburn in 1825, in the presence of the Committee, and the visiting physician, “when out of twenty-six persons who complained of illness, only seven were retained: the remainder were sent back to their work.”‡ In Philadelphia, cases of illness multiply rapidly when a new physician commences duty; in such cases, a blistering plaster will soon determine the point as to their real, or pretended nature. The obvious causes of the debility and diseases experienced at Auburn, were, 1st, the narrow dimensions of the cells, which are only seven feet long, three and a-half feet wide, and seven feet high: 2dly, the cruel refusal to permit the convicts to lie down during the day: and 3dly, the total neglect to check the diseases on their first appearance.

Mr. Powers says, that “a number of the convicts became insane while in solitude,” and relates the desperate conduct of three of them. It is singular that this fact should not have been communicated to the Committee of the New York Legislature, whose report was first mentioned. How many of this “number” were real, and how many feigned, might be a question. “*The pretence of insanity, is one of the most frequent artifices of prisoners.* There are high inducements to carry the imposition through, even at the peril of much suffering; for, relief from labour, good rations, early pardon, and the triumph of successful fraud are the reward.”§ But the same causes which produced bodily disease in some, might also have indirectly affected the mental faculties of others; and when we add to this consideration, that the subjects of the punishment were composed of the oldest and most heinous offenders; that they were shut up in small cages, without the benefit of religious instruction, and that the voice of kindness and compassion seldom

* Report of Inspectors of the Prison. Journal of the Senate, p. 475—1827, 1828.

† Journal of the Senate of Pennsylvania, 1827–8, p. 475.

‡ Report, January, 1825, p. 27.

§ Report of the Commissioners appointed to visit Auburn Prison, January, 1827, p. 30.

or never reached their ears,"* we cannot think the occurrence of at least, a temporary derangement of mind, or of furious passion amounting thereto, a strange event in men who may possibly have had a constitutional predisposition to mania. These remarks apply with greater force to the prison of Maine, in which also cases of madness have occurred. The cells there are gloomy pits, which are entered from the top with a ladder through an opening two feet square, and secured by an iron grate, used as a trap-door. The diet consisted of a pound of bread a day, with water. Any bad effects therefore on the corporeal health, or mental faculties of men confined under such circumstances, as those in Auburn or Maine, cannot justly be brought to bear against solitary seclusion in the light, well-ventilated, clean, comfortable cells of the new Philadelphia Penitentiary, with exercising yards eight feet wide, and twenty feet long, attached thereto.

To show how well-founded is the importance I attach to the causes of mania at the Auburn prison, I may refer to the numerous cases mentioned in pp. 46, 80, of men who did not become deranged, although confined for years in European dungeons, under circumstances far more favourable to the excitement of mental aberration, than those at Auburn, but who were not prevented from lying down. These circumstances were the deep wound given to the personal pride of men of rank, their sentiments of the degradation and injustice inflicted on them by a revengeful enemy, and their confinement in narrow, dark, unwholesome cells, and on bad diet. Causes of a nature so powerfully exciting, will not operate upon American convicts. "They will not be men of unblemished virtue, moral habits, high and honourable spirit, whose sensibilities are keenly alive; but generally, criminals of degraded and vicious character,"* who must confess that their confinement is the just punishment of their crimes. For this reason, and also, judging from what has taken place in Philadelphia, none of the angry feelings, which have been anticipated, and strongly urged, will be produced by it. This entire absence of all sentiments of revenge on the part of the convicts, arising from their confinement, is asserted upon the authority of a prison inspector of long experience.

Mr. Roscoe speaks of the result of the Auburn solitary confinement, as "a great experiment," and as having been "fairly and conclusively tried."† But it is evident, from the foregoing remarks, that the experiment had not a fair trial, and the attempt at it in the manner just mentioned, was unfortunate, because, without knowing the causes of the events which took place, and of its suspension, the general principle of solitary seclusion, has been, and will be again unjustly condemned. I hope, therefore, when the philan-

* Report of the Commissioners appointed to superintend the erection of the Eastern Penitentiary, near Philadelphia, to the Senate of Pennsylvania, January, 1828.

† Letter to the author, October 20, 1827, in the Liverpool Commercial Chronicle.

thropic La Fayette, and Mr. Roscoe,* shall have read this statement, that the wound given to their amiable sensibilities, by the details of the diseases at Auburn, will be healed. At all events, that their apprehensions of similar results taking place, in the cells of the Philadelphia Penitentiary, will be calmed. From what I have stated on this subject, and from the mild discipline, and kind treatment of convicts which will be exercised, there need not be the remotest fear of them. The period of confinement, will be proportioned to the crimes and the characters of the convicts, a course of moral discipline with respect to them pursued, and diseases of either body or mind early attended to. Justice then requires that there should be a suspension of a final opinion on solitary seclusion, until after the experiment of it has been fairly made.

It is important to note in defence of this measure, that according to Mr. Power's own statement, "*with all the privileges enjoyed by convicts in Auburn, insanity is no uncommon occurrence. There are several now (1828) more or less insane.*"—p. 85. This fact authorizes the conclusion, that there are some local causes operating at Auburn to produce mania.

P. 65.—*On the Transportation of Convicts.*

My arguments in favour of the transportation of convicts have never been fairly met, nor answered. The places I designated, and the only places within my knowledge which are suitable in all respects, for the permanent settlement of the convicts, are the Islands of Tristan d'Acunha, and the adjacent islands in the South Atlantic. Their position, and many particulars respecting them, are given in p. 40. The Committee of the New York Society for the prevention of pauperism, were in possession of my paper, yet without attending to what I had written, they begin by pronouncing the scheme "impracticable," and then adduce a variety of imaginary difficulties on the subject, several of which I have noticed in p. 55. Although I distinctly say that the expense of the colony of British criminals in New South Wales, offers a solemn warning against adopting the British plan of supporting a civil and military government for the convicts, they reason against my scheme, on the ground of the expense of such a government being adopted for them. They mention the expense of voyages round Cape Horn, and a settlement at the mouth of Columbia river, neither of which I ever dreamed of; and refer to the cost of transporting convicts from England to Botany Bay as enormous, without inquiring or knowing, how cheaply convicts have been sent to Monrovia, in Africa, by the American Colonization Society. These arguments require therefore no notice. But the Committee end by pronouncing the plan "visionary, romantic, and impracticable." Such epithets have often been applied to projects for which the public mind were not prepared, or against which violent prejudices were

* Letter to the author, in the appendix to Additional Observations on Penal Jurisprudence, 1823.

entertained. They were used, in addition to much ridicule, when Dr. Rush published his pamphlet in 1774, on the abolition of slavery in Pennsylvania,* and when he afterwards wrote, and spoke daily against the public punishments which for a long period, disgraced the country, such as ear-cropping, scarifying the back with lashes tipped with lead, and disfiguring the heads and faces of men in the pillory with eggs and mud thrown at them by the mob, four or five times a year, (to the edification of our citizens,) in the open space formed by the crossing of High and Third streets, and urged the substitution of confinement and labour for those demoralizing public exhibitions. When Dr. Franklin at a dinner party, in company with a number of learned and scientific members of the Royal Society of London, said he hoped the day would come when a woman would be able to spin two threads of cotton and wool at once, the act was also pronounced by all present as "impracticable," and yet we now see that several hundred threads can be spun at the same time.

The Commissioners appointed to revise the penal code of Pennsylvania, like the New York Committee, dwell on the immense expense of sending to, and maintaining British convicts at New South Wales. But this argument does not apply to the United States, as I have already given the reasons of the great cost of the establishment there; and the price of passage money which is paid for a convict, viz. 100*l.* sterling, is equally inapplicable, as I shall presently prove. The commissioners add, 2d, that "deportation† confounds all distinction of crime, by imposing upon all the same extent of punishment, and by the difficulties in the way of the criminal's return on the expiration of his sentence." The first argument shows that they did not attend to the classes of convicts for which I assign the punishment in question; and as to the "return of the convict, I may ask, is it possible that they can for a moment wish for such an occurrence? Why is the attempt made to frighten American legislators with details of British extravagance, and British plans, when I protest against the adoption of either, and show that they are unnecessary, and to be avoided, in the scheme I propose? The reference to British practice is entirely out of place.

3. The Commissioners further say, "the plan of deportation presupposes the existence of a suitable place of deposit, and the power to acquire such place, neither of which is very obvious to our appre-

* Dr. Rush informed me, that he was met in the street by a citizen, who, after laughing at his proposal for abolishing slavery, said "why, Doctor, I suppose you will be for freeing the horses next." The man who could thus speak, was a professor of religion, and an elder of a church!

† The Commissioners use the legal distinction between deportation and transportation. The first is the compulsory removal of offenders to some foreign shore, where they should be left without further care on the part of the government. The latter refers to the removal and subjection to the penal government and discipline of the mother country. I use the familiar word "transportation."

hension." I am at a loss to discover how any difficulty of apprehension can take place, on either point, as I show that the islands I have designated for the convicts exist, and propose the means of obtaining them. These means were, to ask the cession of them to the United States by the government of Portugal, the only power which could lay claim to them. But this claim is a mere shadow, and rests upon the discovery of the islands by her merchant vessels in their early navigations when returning from India; and in addition to the reasons given in p. 39, for supposing that Portugal will make no difficulty about the taking possession of them by the U. States, I may add, that no formal claim was ever laid to the islands in question by her, nor was any settlement ever made on them by the subjects of that power. She moreover offered no objection to the taking possession of the largest island in the year 1810, by Lambert, which he did by a pompous proclamation, nor to the subsequent occupation of the same island, by English troops from the Cape of Good Hope, in the year 1817. She appears to have been either altogether ignorant of the existence of the islands, or to consider them beneath notice. I am satisfied, therefore, that no necessity exists for any application for them, and from the character of the man who now is at the head of the nation, the mere request would certainly delay, and might defeat the scheme altogether. Any of the states may send their convicts to the islands as soon as convenient.

4. "Another, and perhaps, the most serious objection, arises from the proposed abandonment of the convicts as soon as landed. It must be presumed, that all the convicts to be removed are able-bodied persons, capable of acquiring the means of support, which of course implies that all others are to remain and be subjects of some other kind of punishment."

In answer to this I say, that I propose to send away certain classes of male convicts, (pp. 19, 23,) and deny the justness of the conclusion, that the weak are to remain at home. The weak are to accompany the strong, and will be likely to recover their health in a fine sea-island, much sooner than by being kept in confinement in a prison-cell, or prison-yard.

5. "If we believe that order will prevail among those removed, and that, contrary to all probability, rapine and bloodshed will not ensue among themselves; it cannot be doubted that this band of criminals will obtain the means of escape, or resolve themselves into a nation of pirates. Accident, shipwreck, or other causes, must occasionally throw vessels, or the materials of vessels, on their shore, and the history of navigation teaches us how readily men in similar circumstances, obtain the means of escape, and return to their own country."

In p. 66, I give my reasons for supposing that the convicts will preserve peace and good order among themselves. To suppose the contrary, is to deny the operation of the first principle of our nature—self-preservation. But if, "contrary to all probability, rapine and bloodshed ensue among them," they must abide the event. So far from "not doubting" the escape of the convicts, or that they

will not "resolve themselves into a band of pirates"—I doubt the probability of either event. These objections show how little their authors have reflected on their force, or the grounds for using them.

But granting again that a vessel should be cast on shore, and leave the island in a sea-worthy condition, is it to be supposed that the master would be so insane as willingly to permit any of the convicts to take passage with him? They might, indeed, force him to set sail with the whole colony, and as the nearest land is the Cape of Good Hope, they would probably be taken there: if so, the government of that settlement would quickly attend to their return to the place they had left. Their appearance in the United States is altogether improbable, because when first landed on the islands, they would be informed of the severe provision against such an event, and would not subject themselves to the penalty of it. Lastly, I deny that "the history of navigation teaches us how readily men in similar circumstances, obtain the means of escape, and return to their own country." Where are the facts which authorize this assertion? I can assure those who are frightened at the idea of filling the seas with pirates from the *depôt* of American convicts, that the business of pirate-making, "would be found in practice, attended" with many more "unavoidable, and insurmountable difficulties," than those which the commissioners apprehend are connected with the scheme of transportation. These I shall now detail.

In the first place, I ask, in which way are the convicts to turn pirates? for this calling, good fast sailing vessels are essentially necessary; arms, too, great and small, must be provided, with skilful daring commanders and active crews, accustomed to their use. It is clear that none of these requisites are to be procured in the islands proposed for the residence of the convicts. But it has been urged in conversation that they will become the rendezvous for pirates, and that crews of those depredators will be made up from the convicts. But I see no ground for this fear. The classes of men who will be sent to the islands, are of the most unfit character for the business of a pirate. They are all landsmen, and many of them of the most awkward description. A weaver, or other tradesman, a mechanic, farmer, or day labourer, would be greatly out of his element on board a cruiser. The convicts would be absolute incumbrances, instead of efficient agents in wickedness. Sea sickness, of more or less duration, would be inevitable, and probably at the very time when their services were required to defend their vessel against an attack. On the supposition that merchant vessels would take the convicts to fill up their crews, I ask, what man would risk the loss of his boat, or the murder of himself and boat's crew, by going on shore among a set of desperate outcasts, or subject himself to the ruin of character if cast away, and the certain loss of insurance of vessel and cargo, by calling at an island not mentioned in his policy? Every merchant will reply, no master of a vessel would take such risks upon himself.

These remarks apply with equal force, to the use of the argument derived from the alleged possible occurrence of the extreme case assumed by the Commissioners. How, I ask, will the possession of a "shipwrecked vessel, or the materials of vessels," avail to a parcel of men of the description of our convicts, and in the condition, too, and under the circumstances in which they are placed? The islands are of volcanic origin, and are covered merely with grass, bushes, and crooked scrubby trees; and I have stated, that ship or boat timber is not to be found on them; that the convicts possess none of the tools or other materials necessary for building a vessel; and if they had them, a total ignorance of their use, would render the possession of them unavailable as respects their furnishing the means of escape.

I have in p. 67, suggested the means of effectually providing against any of the convicts being brought to the United States; and I may add, that in the event of a master of a vessel perjuring himself when interrogated at the Custom House on the subject, his detection by some of the crew of his vessel would be inevitable, and the infliction of a penalty attached to the breach of the law, and to his false oath, would infallibly prevent a second attempt by any other person. Convicts once set down on the islands would live and die there. Upon the whole, it is thought, that the apprehension of improbable evils, ought not to prevent an experiment being made of a measure which promises so fairly to be productive of immense advantages to the public safety.

No necessity exists to wait for the taking possession of the islands in question by the United States government. Any state or states may, without "let or hindrance," send their convicts to them. The subject, if brought before Congress, would create an interminable debate—might not be decided for years—and in the mean time, we might lose the islands, by their being taken possession of, by some European power.

In p. 56 I have noticed the objections to the removal of convicts beyond sea, on the ground of the measure being not warranted by the federal constitution. It is amusing to hear the constitutional right to rid the country of an incorrigible villain questioned, when we every year see them pardoned in New York, (the very state in which the objection was first made,) upon condition of the criminal leaving the commonwealth, without any regard being had to the injury which is thus likely to be inflicted upon a sister state. We have recently (1825—6) even had a case of a monstrous compact to that effect made in the city of New York, between a notorious villain,* who had a short time before been liberated from the solitary cells, and a judge on the bench. The state of South Carolina had no scruples in sending to Mexico, a number of slaves who had been concerned in the deep-laid plot of general massacre in Charleston, in 1822; and another negro in 1824, whose life had been spared in 1822, upon condition of his voluntary deportation. It is clear that

* Hiram Maxwell.

every state has a right to annex such conditions to a residence in it, as may be thought expedient, and such persons as cannot give security for a compliance with those conditions, may be sent away; if so, there is no limit to the place of deportation. They may even be sold, by public auction for a time, as long practised in the state of Delaware.* Hanging and transportation are only two modes of relieving a state of an obnoxious person, and it possesses an inherent right to adopt both. During the war of the revolution, the last mentioned measure was put in force by several states on political grounds; and the right to transport wretches, whose residence at home endangers the very existence of society, is equally, if not more justifiable. As regards objections from the European powers to the taking possession of the islands in question, what power has a right to interfere with the will of a sovereign state which may declare certain persons to be dangerous to the community, and order their removal beyond sea? and more than this, what power will think proper to interfere?

But, lastly, in which part of the federal constitution is the prohibition to transport convicts to be found? This instrument is entirely silent on the subject. The right therefore remains with the states.†

In addition to the classes of convicts before mentioned, as indispensably requiring transportation, I would send away all guilty of murders of the first and second degrees: for although he who wilfully takes away the life of a human being, is himself rendered thereby unworthy of living, yet a statesman, when engaged in preparing a system of measures of general policy, ought to consider less the arguments by which he may justify the propositions he brings forward, than the bearing they will have upon society at large. Now, as there can be no question of the manifold, and very serious evils as regards morals, produced by public executions, and as the law is very often rendered nugatory by jurors, they ought to be abolished. It is an old and just principle that ranks that government which is best administered, highest in the scale of excellence, and it is equally true, that laws had better not be enacted, if they are not obeyed.

The advantages resulting from this change of punishment, would be, the certainty of the country being relieved from murderers, and the prevention of the necessity of jurors having recourse to the verdict of "murder in the second degree,"—that happy expedient, by which those guilty of the most deliberate and atrocious murders now escape the punishment due to their crimes, and provided for by law, owing to the conscientious scruples of some men in being instrumental in causing the death of a fellow creature. Ample

* Revised Laws of Delaware, chapter 362.

† Amendment to the 10th article of the Federal Constitution. "The powers not delegated to the United States, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

experience has demonstrated—that hanging does not restrain crimes for which that punishment is ordained.

As regards the crime of murder, I have stated, p. 60, a strong fact in point, and another may be added in reference to a different offence. It is on record, that a few years since, a man was hung in London, for passing counterfeit bank-bills, and his body having been given to his friends, his wife was detected, in the evening of the same day, in selling similar bills, in the very room that contained the corpse of her husband! A few years only will elapse before the abolition of the punishment of death will be called for in Pennsylvania, and, it is believed, that the measure would be at the present day acceptable to our citizens; but until the public expression with respect to it, shall have been made, it would be well to provide for the transportation of all men convicted of “murder in the second degree,” a verdict, the effect of which is, to punish atrocious murderers in the same manner, (though not to the same extent) as those who quietly purloin a little property, to satisfy hunger. The murderer just referred to, was condemned to confinement and labour, and another one, Michael M^cGarvey,* who, in November, 1828, killed his unresisting and inoffensive wife, in Philadelphia, by, “beating her head with the butt-end of a cart-whip, for one hour and a half,” was also sentenced to the same punishment.†

In this last case, the plea for the verdict was, the want of sufficient evidence of an intention by the prisoner to kill, and that the law of the state requires that such intention should be ascertained.‡ It appeared by the testimony, that he beat her after she was speechless, and said, when going to jail, “he would have cut her throat, if he had had a knife!” There can be no question, that the repugnance to the being instrumental in bringing a person to the gallows, influenced the decision of the jury. Similar cases have often occurred in Philadelphia, and in England. Sir Samuel Romilly stated, in the House of Commons, in 1810, that “not prosecutors only, but witnesses and jurors, were deterred by the severity of the law, from a just discharge of their duty: that jurors were in the habit, to avoid the severe penalty of the law, of acting in direct violation of the sacred oaths they had taken, and of finding verdicts against the clearest evidence.” Sir John Newport said, “instances of this occur daily.” The public feeling, in Pennsylvania on the subject of hanging, is strongly marked by the verdicts of juries; is it not far preferable, therefore, to have a law ordaining transportation as the penalty for murder, against which no objections will lie, than to continue the present law, the provisions of which are so frequently defeated?

* A foreigner.

† The Chief Justice told the prisoner, when delivering his sentence, that “the evidence was amply sufficient to warrant a conviction.”

‡ In the same month and year, a negro was hung at Washington, Pennsylvania, for killing, with his handcuffs, a noted slave-dealer, to prevent himself from being taken to, and sold at New Orleans. Which of these crimes most deserved death?

That men who are sworn or affirmed to decide according to evidence, and who have the plainest proofs of wilful murder laid before them, can make up their minds to bring in a verdict contrary to those proofs, is one of the curious facts in the history of the human mind. Such men appear to think it of no account to trifle with a solemn appeal to God, that they will act up to certain rules prescribed by the laws of the country, when these rules violate prejudices upon a theoretical question, for the decision of which they are not responsible.

I would urge the transportation of a murderer, upon the principle of the punishment being more severe than hanging. A wretch suffers only momentary pain when hung; whereas, if forced to drag out his life in a remote island, he would constantly suffer the pangs of a guilty conscience, or be rendered miserable by the recollection of the comforts he once enjoyed, but of which he had deprived himself by his crimes.

P. 52. Whenever convicts are permitted to work in society, insurrections will be inevitable, and experience, in the Massachusetts and New York prisons, has proved, that even the presence of the guard has not been sufficient to prevent them. One or two desperate men are enough, even without any previous general concert, to rouse in an instant the furious passions which lurk in the breasts of the convicts. They may be overpowered, and a few may lose their lives, or be severely wounded; but in the mean time, some will escape, or the building may be set on fire. Such events have several times taken place in the United States, and have been already noticed.

P. 60. The serious evils and demoralizing effects of public executions in open fields, or on the road side, have for several years been a cause of great concern to the writer, and he has frequently exposed them in the newspapers. It is familiar to every one, that on such occasions, the idle, the dissolute and vicious classes of society assemble with thousands of others, and that gambling, low debauchery, quarrels, temptations to vice, and the commission of first crimes take place, with the inevitable expenditure of money, and loss of one or more day's work, by men, who cannot, without injury to themselves, or their families, waste the one, or neglect the other. Besides frequent but fruitless appeals to the public, on this subject, to the religious, to ministers of the gospel, and the friends to morality, to protest against the evils, personal applications were made on two occasions, to the sheriffs of Philadelphia, and of Chester counties, to hang the culprits in the prison yards, but without success. The sheriffs have the privilege to select the place of executions; they however will never have sufficient firmness to oppose the morbid inclination for the horrible spectacle, of those upon whom they may hereafter depend for another office. The monstrous, the crying evil, can only be checked by legislative interference: and to this end, a memorial has been some time ready to present to the Pennsylvania Assembly, praying, that so

long as the punishment of hanging is permitted to continue a part of our penal code, provision may be made for its taking place in the prison yard, in the presence of a specified number of witnesses, composed of the magistrates and constables of the city or county in which the execution is to take place, and if necessary, of a few other citizens, to be selected by the sheriff, to the exclusion of all others. The hope was indulged that Pennsylvania would be the first to set this desirable example, but the legislature of New York, in their present session, have provided for the proposed measure. May the representatives of our state be the second to adopt it.

Besides the evils of public executions just mentioned, others not less serious have taken place. About eighteen months since, a stage, which had been erected for the accommodation of the populace, in the interior of New York, on the occasion of an execution, gave way, by which several were crushed and had their bones broken, and two or three persons killed on the spot, leaving widows and children without the means of support! In May, 1827, the following shocking scene took place—

“Joseph Sollis, who was convicted in Duplin county, North Carolina, of the murder of Abraham Kornegay, underwent the sentence of the law. From the want of proper caution in tying the rope, the feet of the criminal came to the ground and broke the fall. He remained in this position (partly hanging and partly standing) groaning in the greatest apparent agony, for above seven minutes. All was now in confusion—the crowd murmuring and nothing doing. The sheriff himself appeared completely unmanned, and incapable of making any exertion to put the unfortunate man out of pain. At length a gentleman present took up a piece of plank, pushed back the rope, and suspended him in this position about fifteen minutes. A medical gentleman present observed ‘that he was coming to life.’ On hearing this, the sheriff had him taken up and pitched off the scaffold again, and ended his sufferings.”

Can legislators who are professors of religion—can others who only possess humane feeling, rest satisfied with the knowledge of these scenes, and of their probable recurrence, and take no steps to prevent them?

Besides the provision for executions in the prison yard, the memorial prays, that to wound as little as possible, the feelings of those whose duty may call them to attend the sheriff, the criminal may be dropped through an enclosed platform.

P. 68. I am convinced, that upon a fair calculation of the comparative expenses attending the confinement of convicts in prison, and of transporting them, the latter will be found by far the most economical of the two plans. In p. 62, the maximum cost of landing a convict at Tristan D’Acunha was put at \$150 per head; but from recent enquiries, there is reason to believe it will not amount to so much. The items of the expenses will be as follow.

Passage	-	-	-	-	-	\$50
Clothes, two suits, two yards cloths	-	-	-	-	-	18
Shoes, hat, blanket	-	-	-	-	-	5
Spade, hoe, rake, wood-saw	-	-	-	-	-	8 50
Knife and fork, jack-knife, spoon	-	-	-	-	-	1 25
Pick-axe, quarry-pick, mallet	-	-	-	-	-	2 25
Fishing lines and hooks, iron pot, tin cup	-	-	-	-	-	2 75
Scissors, needles and thread	-	-	-	-	-	2
Tent* for 6 men, \$9.00—($\frac{1}{6}$)	-	-	-	-	-	1 50
One year's rations (a soldier's allowance) at 12½ cents, without whiskey	-	-	-	-	-	45 62
						<hr/> \$136 87 <hr/>

The cost of passage is put down at the sum for which a merchant of Philadelphia offered to undertake to transport convicts to Tristan D'Acunha; but others say, that at \$40 per head, the business would be a good one. Dr. Ayres, agent of the Colonization Society, reported, on his return in 1825, that the cost per head of the blacks sent to Africa, was \$44.35. But Mr. Clay stated that the "entire average expense of each colonist, young and old, was \$20 per head."† The distance to both places is about the same.

Besides the above articles, there will be required as general stock, say for 100 men,

2 looms, &c	-	-	-	-	-	\$30
Shoemakers' tools	-	-	-	-	-	5
2 spinning wheels	} with extra heads	-	-	-	-	9
2 wool do.		-	-	-	-	9
100 bushels potatoes for seed	-	-	-	-	-	50
4 bushels cotton seed \$1—4 do. hemp seed \$8	-	-	-	-	-	9
10 do. Indian corn \$6—4 do. flax seed \$4	-	-	-	-	-	10
hemp and flax brakes and hackles	-	-	-	-	-	15
4 pair cotton cards \$2.50—garden seeds \$5	-	-	-	-	-	7 50
4 sheep \$10—iron mortar \$20	-	-	-	-	-	30
						<hr/> \$174 50 <hr/>

Poultry, pigs, and goats, may be added, in case they be deemed necessary.

The cost of the above articles divided among 100 men, will be

* Tents will be required when the convicts are first landed; and to render them durable, they will no doubt be covered with the skins of seals, which abound on the shores of Tristan D'Acunha; but they will not require to be renewed, for caves can be dug in the friable rocks, with the quarry picks.

† Address in the 11th Annual Report of the Colonization Society, 1827, p. 18.

\$1.74½ per head; but supposing it is estimated at \$2, the whole outfit will amount to \$138.87 for each man. This sum will be reduced on the supposition that the passage out will cost less than \$50;* but granting that the expenses will amount to the sum first stated, it would be greater economy to pay it, than to keep the convict at home; for it must never be forgotten, that the first expense will be the last; whereas, if the convicts be not sent away, they would probably cost three or four times the price of their transportation in the course of their lives, by repeated convictions.

Temporary Support of Discharged Convicts.

The propriety of preventing any excuse for stealing by destitute convicts, to appease hunger, after liberation, is so obvious, and so accordant with wise policy, that it is a cause of wonder, no provision has been made by law to remedy the evil in Pennsylvania. In New York and Georgia, "money to discharged convicts" forms an item in the prison accounts. This subject is noticed in p. 44. But as putting money in the hands of a liberated felon, is attended with the danger of his using it for improper purposes, provision ought to be made by law for his temporary support, and for procuring employment for him. An officer of the prison should be charged with this duty. When a convict comes from a remote county, or state, he should be sent home without delay, and his expenses in returning paid. If confinement be accompanied by labour, the half of his earnings should be laid up for his use, after the expiration of his sentence. Such a provision was made in the first reformed penal law, and has been attended with beneficial effects in many instances. Where labour is restricted, the requisite assistance should be given from the funds of the institution. The money would be well laid out, inasmuch as fresh crimes, and greater expenses would be saved to the state, than the amount advanced.

FEMALE CONVICTS.—No notice has been taken of female convicts. They should be kept in solitary confinement, and made useful by being employed in washing for the prison; and where they possess the talents, in making up, and mending the clothes for the convicts generally. In this way they may be able to pay for their support.

THE HOUSE OF REFUGE demands particular notice. The establishment is in fact a **JUVENILE PENITENTIARY**, and is therefore as much an object of legislative attention, as one for adult criminals. Private subscriptions were sufficient to set it on foot, but no one can suppose that they will be adequate, even with the partial aid

* But even at \$50, the alarming argument derived from the cost of sending a British convict to Botany Bay, viz. £100 sterling (\$444 44), vanishes almost into airy nothing.

given by the legislature, to the continued support of so expensive an establishment.

The claims which the institution have upon the state are derived from the consideration, that it will be the means of saving children from becoming adult convicts—an event altogether unavoidable, if the subjects to whom the attention of the managers will be directed, and who will be trained to industry and morality, are permitted to grow up in the paths of wickedness. The public will in that case, have to pay a larger sum for punishing, than would be required in the first instance, to prevent crimes, by early attending to the morals and education of children. Every one is familiar with the old adage—"an ounce of prevention is worth a pound of cure,"—and the legislators of the present day will deserve the thanks of posterity, for relieving them of a load of expense, immorality and crime, by providing for the support of the House of Refuge at the public charge.

"The persons contemplated as subjects for instruction and reform, are young individuals of both sexes, who have been arrested and committed by magistrates;—who have been convicted of crimes punishable with imprisonment;—who are destitute and abandoned by their parents;—who are without ostensible means of support from their parents, or otherwise;—who are vagrants or beggars."*

The following facts show the necessity for such an institution. They formed part of an address delivered by the author, to the town meeting, in Philadelphia, in February, 1826, called to take the subject of a house of refuge into consideration.

"In the proposed institution, besides being taught the necessary branches of education, and instructed in their duties to God and man, they will be taught one or more useful trades, by which they will be enabled to support themselves with comfort. The facts I shall now detail, and which are the result of my inquiries yesterday, will give a faint idea of the depravity existing among the youth of Philadelphia.

"In the Prune street prison, which contains all the boys, and unfortunately many men, there are at present 29 boys under the age of 21 years. Two of them are only 12 years old, and both were convicted of larceny. They had been once before arraigned for the same crime, but were discharged for want of proof. One of them is the son of convict parents, and he has one brother and two sisters who are also convicts. Another went out on the 24th December, after serving three months, and on the 27th of the same month, was sentenced to confinement for seven years, at the mayor's court. Several are now in prison, who have been in before, and others acknowledge that they had been convicts in New York. Some who were discharged from this prison were so destitute, as to be obliged to go out with their convict clothes on. The evil propensities of some boys are truly a cause of melancholy reflection. One, aged 14 years, was convicted in Nov. 1820, to

* Address of the Managers, 1826.

six months' imprisonment—his time expired in June, 1821—and after the additional schooling he received from older convicts, he became a finished and hardened sinner. He was brought back for new crimes in eleven days, under a sentence of three years. He was pardoned in May, 1824, and has recently been sentenced to ten years' imprisonment in New York.

"Among the untried prisoners in the Arch street prison, there are seven boys under the age of 15, and fifteen or eighteen others, between the ages of 15 and 21 years. *They have no parents and have no homes.* One of these, between 15 and 21 years, has been sentenced to hard labour twice, and is now waiting trial for a highway robbery. Two boys (brothers) are now in for the third time within six months. Their father was recently convicted at the same court with his sons, but he was pardoned. The boys served out a short imprisonment, and are now in again waiting trial for new crimes."

FINIS.





