

MAINE STATE LEGISLATURE

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RESOLVES

OF THE

THIRD LEGISLATURE

OF THE

STATE OF MAINE,

PASSED AT THE SESSION,

WHICH COMMENCED ON THE FIRST DAY OF JANUARY, AND ENDED
ON THE ELEVENTH DAY OF FEBRUARY, ONE THOUSAND EIGHT
HUNDRED AND TWENTY THREE.

PUBLISHED AGREEABLY TO THE RESOLVE OF JUNE 23, 1820.

PORTLAND:

PRINTED BY TODD AND SMITH, PRINTERS TO THE STATE.
1823.

and do estimate the same to be of the value of thirty thousand dollars.

In testimony whereof, we the said Commissioners, have to this instrument set our hands and seals this twenty-eighth day of December, in the year of our Lord one thousand eight hundred and twenty-two.

LEVI LINCOLN, (L.S.)
 JAMES BRIDGE, (L.S.)
 GEORGE BLISS, (L.S.)
 BENJ. J. PORTER, (L.S.)
 SILAS HOLMAN, (L.S.)
 DANIEL ROSE, (L.S.)

REPORT

Of the Committee on the subject of a Penitentiary or State Prison.

To the Senate and House of Representatives of Maine, in Legislature assembled :

THE Committee appointed in pursuance of a Resolve of the Legislature of Maine, passed the second day of February A. D. 1822, "for the purpose of collecting information and investigating the subject of the punishment of Convicts, and the establishment of a State Prison or Penitentiary," respectfully REPORT :—That the instructions contained in that Resolve embrace various subjects of the most extensive concern, of the highest importance to the community, and such as may affect the life and morals, the reputation, security, and happiness of individuals, and of the body politic. It has been made the duty of the Committee "to consider the effects which have in practice, resulted from different modes and degrees of punishment." Upon this part of the subject, the Committee have extended their inquiries as far, and their examinations have been as minute and particular, as their time and opportunities would permit. The result of their investigations has been, that no mode or degree of punishment which has been sanctioned and practised, either in ancient or in modern times, whether by the more barbarous, or

the most enlightened governments, have hitherto been effectual to prevent the commission of crimes. What particular mode or degree of punishment might have the most powerful effect in preventing the commission of crimes, or in reclaiming convicts, is a question, which, in the opinion of the Committee, has never been satisfactorily answered, or sufficiently tested by experiment. Cruel and vindictive punishments have generally, if not universally, been found to increase, rather than diminish the number of offenders, by exciting in the most obdurate and unprincipled, a spirit of retaliation and revenge, and by the difficulty which, in such cases, always attends procuring convictions. When the severity of the punishment has been greatly disproportioned to the character and magnitude of the offence, witnesses have testified with extreme reluctance; jurors have manifested great unwillingness to convict; and the Judges, from motives of humanity, and urged by the best feelings of the human heart, have been sufficiently inclined to recommend the guilty culprit to mercy; so that the penalty of the law has not only been frequently avoided, but the multiplied chances for escape, has operated as an encouragement to the commission of crime. On the other hand, those who have hoped to reclaim or reform convicts, and prevent the commission of crimes, by mild punishments, and moral discipline, have been equally unsuccessful. Crimes are still committed; and neither the severe corporal punishments which were formerly inflicted, nor any of the milder modes of punishment which have since been adopted, have had the desired effect. What, therefore, in practice, has been the result of the different modes and degrees of punishment, the Committee deem it extremely difficult, if not impossible, precisely to determine. But no fact has been more clearly demonstrated, by the experience of ages, than that the certainty, rather than the severity of punishment, has had the most extensive effect in preventing crime. Sanguinary punishments, such as severe corporal inflictions of every description, have long since been regarded as repugnant to the liberal and enlightened principles of our civil institutions; and abhorrent to the humane and benevolent feelings of the people of the United States; and have, therefore, with few exceptions, been erased from their criminal codes; and instead thereof, the Penitentiary system has been generally adopted. The government and discipline observed in these Institutions, as well as the modes and degrees of punishment, inflicted upon the convicts confined in them, are different, in the different States. No two States have, in all respects, agreed, either in the construction of their State Prisons, or in the employment or punishment of the *convicted* tenants of them; and

in no one of the States, the Committee are constrained to say, have the hopes and expectations of the benevolent projectors been realized—and for obvious reasons. In most, if not in all the Penitentiaries, it has been attempted to unite, what must forever remain separate and distinct, viz : deep, solemn and humiliating reflections, combined with bodily exercise, and familiar intercourse with the most vicious and depraved of men. For a period the name of a State Prison appeared to excite no small degree of alarm in the community of the abandoned ; but of late, it has lost most if not all its terrors ; and instead of being a place, in which a convict, if he could not be reclaimed, might at least be subjected to merited punishment, has become a nursery of guilt, a school for criminal instruction, in which every species of vice may be, and too often has been, successfully taught. If any favorable impressions should be made upon the mind of a convict, by the solitary imprisonment which is usually made a part of his sentence, they will soon be lost upon his being associated with those whose pride and boast it is, to have excelled in the craft of wickedness ; and whose delight consists in the anticipation of the mischief which they hope and resolve to practice, as soon as, by any means, they may effect their escape.—The young convict becomes astonished and charmed at what he conceives to be the consummate skill, ingenuity, and daring intrepidity of those veterans in atrocity, whose councils he cherishes, and whose examples he determines to follow ; until, if he feels ashamed of any thing, it is of those few faint, serious reflections and virtuous resolutions, which he began to indulge, while in the solitude of his cell. Perhaps it is not too much to say, that for one who leaves a penitentiary with a temper and habits reformed, and with a disposition, in future, to support himself by honest industry, hundreds are discharged, much better instructed and more firmly resolved to depredate upon society, than when they entered upon their course of what has been misunderstood, and therefore misnamed, severe punishment. A sentence to labor, or even to hard labor, in a State Prison, has few or no terrors for those, who are insensible to shame, and who will not give themselves leisure for remorse. Of the place and the fare they have often been informed, by those who have experienced its hardships, its indulgencies, and its gratifications. To such, a State Prison or Penitentiary, promises more than it threatens. It arrests them, to be sure, in their career of wickedness, and abridges them, for a time, of a portion of their liberty—it requires of them more, and perhaps different labor than they would be inclined to perform—but then it ensures them comfortable lodgings, a sufficiency of wholesome

food, and the company of those whose conversation is precisely suited to their taste, and whose society they prefer to any upon earth. The labor of convicts, however employed, has turned to small account compared with the enormous expenses at which Penitentiaries have been erected and supported in most of the States, wherein they have been established—nor has the mode of punishment adopted in any of them, had a very salutary effect upon the convicts themselves, or in diminishing the number, or in altering the character of offences.

But while the Committee are of opinion, that labor as a punishment for crime, can never be required with any considerable advantage, they feel no hesitation in believing, that a Penitentiary may be so constructed, and established upon such principles, and so managed, as to prove not only the most economical, but the most effectual mode for the reformation of convicts, and for the prevention of crime, which has ever been adopted. The very great cost at which most of the Penitentiaries have been erected and finished the Committee consider worse than useless—and the annual expense of supporting, guarding, and governing them much greater than the necessary accommodation or safe-keeping of the convicts require. Instead of splendid costly edifices, whose superb exterior invites the admiring gaze of the beholder, who might indeed mistake them for the abodes of luxury and affluence, State Prisons should be so constructed, that even their aspect might be terrific, and appear like what, in fact, they should be, dark and comfortless abodes of guilt and wretchedness. The industrious and unoffending portion of the community ought always to feel a confidence in the government which they support, that they shall be protected against the violence or fraud of the unprincipled and habitually depraved—and it is the indispensable duty of the government, by all practicable measures, to check the progress of vice; to arrest the offender in his career of wickedness, and to subject him to such punishment as shall be most likely to reclaim him, if he be capable of being reclaimed, or otherwise so to dispose of him that he shall no longer disturb the peace and endanger the security of the community in which he shall have proved himself unworthy to live. The severity of punishment ought always to be graduated by the atrocity of his guilt, who is to be made the subject of it. But it can have no effect in preventing the perpetration of crime, unless the fear and dread of incurring it shall be so powerful as to overcome the propensity or the inducement to commit the offence. The humanity of our laws inflicts the punishment of death, but for a very few crimes; and those few which the law has made capital, perhaps the safety of society requires should remain so.

But the perpetrators of all other crimes of an atrocious character, and such as by existing laws are punished by solitary imprisonment and hard labor, the committee respectfully recommend shall in future, on a first conviction, be punished by confinement in solitary cells, for a longer or shorter period, according to the character and aggravation of the offence. A plan for a State Prison is herewith presented, by an inspection of which it will appear that the committee propose to have each convict confined in a separate cell, and entirely secluded from all intercourse with any mortal. A well administered government never inflicts punishment of any kind, for purposes of revenge ; and the ultimate advantage of the offender should never be disregarded, so long as any reasonable hope remains that he may become a better man. That is the best possible mode of punishment, which with the least bodily suffering, is best calculated to excite the greatest abhorrence of guilt, and the greatest fear and dread of its consequences. From all the inquiry which the Committee have been able to make ; from their own reasoning upon the principles of human nature, and the motives to human action ; upon the different modes and degrees of punishment, and what have been their effects, under various circumstances, upon the different classes and characters of offenders, they have been led to the conclusion, that no mode or degree of punishment, which ever has been, or which ever can be adopted, is in its nature so well adapted to the purposes of preventing crime, and reforming criminals, as close confinement in a silent solitary cell, in which, cut off from all hope of relief during the term for which he shall have been sentenced, the convict, shall be furnished with a hammock in which he may sleep, a block on which he may sit, and with such coarse, though wholesome food, as may be best suited to a person in a situation designed for grief and penitence, and shall be favored with so much light from the firmament as may enable him to read the New-Testament, which shall be given him as his sole companion and guide to a better life. Thus separated by the impenetrable walls of his dungeon from the world, and from all intercourse with any living creature, he must, and, from necessity he will, commune with his own heart ; he will review the folly and wickedness of his past life, and retrace his guilty course to the evil and malignant passions in which it originated. His vices and his crimes will become personified, and appear to his frightened imagination, as the co-tenants of his dark and dismal cell. They will surround him as so many hideous spectres, and overwhelm him with horror and remorse ; he will loathe and detest them as the authors of all his mental agony and bodily suffering ; he will be led to compare his pres-

ent sufferings with the gratification he derived from the perpetration of the crime, which has inclosed him in a mansion, dark and silent as the tomb, from which all hope is excluded, except such as may be suggested by the sacred volume, which unmerited compassion has bestowed on him. And, if from the bitterness of remorse, he shall be directed and assisted by the light of truth, to regain the path of virtue; and after his enlargement from prison, he shall pursue a life of honest industry, civil society will have regained a useful member, and the vicious will be deterred both by his sufferings and his example. They will not fail to observe, with fear and trembling, the effect which complete and uninterrupted solitude has had upon their former companion in guilt; and will shudder at the apprehension of being consigned to the narrow limits of a solitary cell. The recollection of the many miserable days and sleepless nights which he once spent there, will come over the mind like the dark cloud of desolation and terrify and arrest the guilty in their career of outrage. But, if a convict, who shall have been so punished, shall not be reclaimed thereby, but shall, after his enlargement from prison, be convicted of a similar offence, government and society are absolved from all obligations to adopt any further measures with a view to his reformation. He shall, therefore, be adjudged an incorrigible offender, and be sentenced to hard labor for life, or for years, according to the circumstances of his case, and the nature of the offence of which he shall have been a second or a third time convicted; and while he shall be required to labor by day, he shall be confined by night in a solitary cell, which once was designed for his reformation.

And the Committee are of opinion that it is absolutely necessary that some very material alterations and amendments should be made in our criminal laws, for the more effectual punishment, of that very numerous class of offenders, who are daily convicted of crimes of a less atrocious character, and such as heretofore have been punished by fine and imprisonment in the county gaols. It is a fact, that a large proportion of such as have been convicted of petty larceny and such minor offences, and have been sentenced to pay a fine and costs, and to be imprisoned a certain number of days, have been found totally unable to pay either the fine or the costs of their prosecution during their imprisonment, and after their enlargement, are regardless of their liability or obligation to pay either. To such therefore, a fine and costs is no punishment, and a long confinement in our county gaols, is often regarded by them rather as a favor than a calamity. Many of them are vagrants, destitute of domestic comforts, careless of character, and too indolent to acquire an

honest livelihood : and though ignorant of most things which ought to have been taught them, they are well instructed in the merciful provisions of our criminal laws ; they know full well how far they may venture without exposing themselves to any punishment, which to them would be dreadful. They have therefore only to steal to a small amount, and if by an unexpected detection they shall not be permitted to enjoy the first fruits of their enterprize, they know the worst that can befall them ; they are sure of being accommodated with a comfortable home, secured from cold and hunger, where they may indulge themselves in idleness, or in contriving some mode of future mischief, which may serve hereafter to introduce them to the like well furnished lodgings and agreeable society ; and all these things they enjoy, (for it would be a perversion of language to say suffer,) at the expense of the industrious poor. The expense incurred in the prosecution, conviction and support of this class of offenders, is enormous ; and in being taxed for the discharge of this large portion of the public expenditures, it is the innocent part of the community who suffer by the infliction of what the law intended as a punishment for the guilty. This is a very great grievance, which calls loudly for redress. To remedy which, the committee propose, that in all cases where the convict shall be sentenced to pay a fine and costs, if such fine and costs shall not be paid by the convict himself, or by some person on his behalf, or security given therefor to the satisfaction of the sheriff of the county where such conviction shall be had, within ten days from the time of his conviction, it shall be the duty of the sheriff of said county to convey such convict to the State Prison, and deliver him to the superintendent thereof, together with a copy of his sentence, and the cost of conveying him from the place of his conviction to the State Prison. And such convict shall be required to labor within the precincts of said Prison, at — per day, until he shall have earned by his labor the amount of such fine and costs, together with the additional costs of transporting him from the place of his conviction to the State Prison ; or until such fine and costs shall be otherwise discharged, and the State wholly exonerated therefrom. And during the confinement and labor of such convict within the precincts of the State Prison, to be under the government and direction of the superintendent thereof, and be lodged each and every night during his abode therein, in a separate cell, and secluded from all communication with any other person ; but not required to labor in the same department, or be permitted to have any intercourse with any one who shall have been adjudged an incorrigible offender.

Females and juvenile offenders, the Committee are of opinion, should never be confined in the State Prison ; but for any crime other than capital, the sentence of the Court shall be executed upon females and juvenile convicts, in the cells and within the precincts of the gaol of the county, where any such conviction shall be had. And that all classes of convicts may in future be so dealt with and punished, for all crimes and offences, which shall be by them committed within the jurisdiction of this State, agreeably to the foregoing recommendations of the Committee. The Committee further propose, that there shall be erected and built at Thomaston, in the county of Lincoln, a State Prison or Penitentiary, of stone, according to the plan, which is herewith exhibited, which shall be under the care and direction of a superintendent, who shall have the government thereof, agreeable to such by-laws and regulations as shall from time to time be sanctioned and approved by the Legislature of the State; and a Committee annually appointed by the Legislature, whose duty it shall be to visit the State Prison as often, and to investigate as far as they may think expedient, the management and policy thereof, and to make such report, and suggest such alterations and amendments as they shall judge proper or necessary.

It is not the intention of the Committee to recommend labor in any case as a punishment for crime ; but so far as it may be found necessary to employ those who shall be adjudged incorrigible, and past all hopes of reformation, and such as may be employed for the purpose of remunerating the State the costs which have been incurred by their vicious conduct. The Committee are decidedly of opinion that stone is the material upon which convicts of either description may be employed, with the surest prospect of deriving a profit from their labor.

The Committee have not been able to satisfy themselves whether the newly invented mode of punishment by the stepping wheel will be found advantageous ; it is now in operation in Europe, and in several of the United States ; its utility therefore will soon be tested by experiment, and should it be found expedient to have recourse to this mode of punishment, it may be easily introduced, and well adapted to the purposes of sawing and polishing marble.

The probable expenses of procuring the materials and of erecting a State Prison, with the necessary and convenient appendages, and of enclosing the Prison and yard with a sufficient wall, according to the plan proposed, including what may be required to purchase a convenient site, on which the whole establishment may be permanently founded, according to such

estimates as the Committee have been able to make, will not exceed the sum of thirty thousand dollars.

The Committee further report, that they have ascertained that the amount of expenses incurred in the prosecution and for the support of persons charged with or convicted of crimes and offences against the State, from June 1820, to November 1822, is forty-six thousand nine hundred and thirty dollars, and eighty-six cents; of this sum, thirty-one thousand three hundred and thirty dollars, and thirty-one cents, have been paid by the State, and fifteen thousand six hundred dollars, and fifty-five cents, by the several counties. For the more particular illustration of the facts and the principles upon which the Committee have founded the foregoing report, they would respectfully refer to documents herewith submitted, and marked from one to fourteen.

All which is respectfully submitted by

DANIEL ROSE,
BENJA. GREENE, } Committee.

Portland, January 13, 1823.

REPORT

Of the Committee on the location of the Seat of Government.

To the Senate and House of Representatives of the State of Maine :

THE Committee appointed in pursuance of a Resolve of this State, of the 8th day of February, 1822, authorizing and directing them "to visit such towns as they might deem proper, and designate some central and suitable place at which the Seat of Government may be permanently fixed and established; to ascertain the terms upon which a convenient lot for the accommodation of the State can be obtained; and the time when it will be proper for the Legislature to meet at the place thus to be designated;" ask leave to REPORT:—

That they have attended to the duty assigned them. That they might be enabled more correctly to determine upon the place, which in their opinion would be the most central and suitable for a permanent establishment of the Seat of Government; and ascertain the terms upon which a convenient lot for the accommodation of the State might be obtained; they have visited the following towns, viz: Portland, Brunswick, Hallowell, Augusta, Waterville, Belfast and Wiscasset. In each of those towns, (following the directions of the before mentioned Resolve,) they were received by the respectable inhabitants with the most gratifying politeness; and in each of those towns a choice of very valuable lots are freely offered to the acceptance