

# American Legal History – Russell

*Gustave de Beaumont & Alexis de Tocqueville, On the Penitentiary System in the United States and Its Application in France, (1833).*

Though the penitentiary system in the United States is a new institution, its origin must be traced back to times already long gone by. The first idea of a reform in the American prisons, belongs to a religious sect in Pennsylvania. The Quakers, who abhor all shedding of blood, had always protested against the barbarous laws which the colonies inherited from their mother country. In 1786, their voice succeeded in finding due attention, and from this period, punishment of death, mutilation and the whip were successively abolished in almost all cases by the Legislature of Pennsylvania. A less cruel fate awaited the convicts from this period. The punishment of imprisonment was substituted for corporal punishment, and the law authorized the courts to inflict solitary confinement in a cell during day and night, upon those guilty of capital crimes. It was then that the Walnut Street prison was established in Philadelphia. Here the convicts were classed according to the nature of their crimes, and separate cells were constructed for those whom the courts of justice had sentenced to absolute isolation. These cells also served to curb the resistance of individuals, unwilling to submit to the discipline of the prison. The solitary prisoners did not work.

This innovation was good but incomplete. . . .

The true merit of its founders was the abolition of the sanguinary laws of Pennsylvania, and by introducing a new system of imprisonment, the direction of public attention to this important point. Unfortunately that which in this innovation deserved praise, was not immediately distinguished from that which was untenable. . . .

Nowhere was this system of imprisonment crowned with the hoped-for success. In general it was ruinous to the public treasury; it never effected the reformation of the prisoners. Every year the legislature of each state voted

considerable funds towards the support of the penitentiaries, and the continued return of the same individuals into the prisons, proved the inefficiency of the system to which they were submitted.

Such results seem to prove the insufficiency of the whole system; however instead of accusing the theory itself, its execution was attacked. It was believed that the whole evil resulted from the paucity of cells, and the crowding of the prisoners; and that the system, such as it was established, would be fertile in happy results, if some new buildings were added to the prisons already existing. New expenses therefore, and new efforts were made.

Such was the origin of the Auburn prison [1816].

This prison, which has become so celebrated since, was at first founded upon a plan essentially erroneous. It limited itself to some classifications, and each of these cells was destined to receive two convicts: it was of all combinations the most unfortunate; it would have been better to throw together fifty criminals in the same room, than to separate them two by two. This inconvenience was soon felt, and in 1819 the Legislature of the State of New York, ordered the erection of a new building at Auburn (the northern wing) in order to increase the number of solitary cells. . . .

The northern wing having been nearly finished in 1821, eighty prisoners were placed there, and a separate cell was given to each. This trial, from which so happy a result had been anticipated, was fatal to the greater part of the convicts. In order to reform them, they had been submitted to complete isolation; but this absolute solitude, if nothing interrupts it, is beyond the strength of man; it destroys the criminal without intermission and without pity; it does not reform, it kills.

The unfortunates, on whom this experiment was made, fell into a state of depression, so manifest, that their keepers were struck with it; their lives seemed in danger, if they remained longer in this situation; five of them, had already succumbed during a single year; their moral state was not less alarming; one of them had become insane; another, in a fit of despair, had embraced the opportunity when the keeper brought him something, to

precipitate himself from his cell, running the almost certain chance of a mortal fall.

Upon similar effects the system was finally judged. The Governor of the State of New York pardoned twenty-six of those in solitary confinement; the others to whom this favor was not extended, were allowed to leave the cells during day, and to work in the common workshops of the prison. From this period, (1823) the system of unmodified isolation ceased entirely to be practiced at Auburn. Proofs were soon afforded that this system, fatal to the health of the criminals, was likewise inefficient in producing their reform. Of twenty-six convicts, pardoned by the governor, fourteen returned a short time after into the prison, in consequence of new offenses.

This experiment, so fatal to those who were selected to undergo it, was of a nature to endanger the success of the penitentiary system altogether. After the melancholy effects of isolation, it was to be feared that the whole principle would be rejected: it would have been a natural reaction. The Americans were wiser: the idea was not given up, that the solitude, which causes the criminal to reflect, exercises a beneficial influence; and the problem was, to find the means by which the evil effect of total solitude could be avoided without giving up its advantages. It was believed that this end could be attained, by leaving the convicts in their cells during night, and by making them work during the day, in the common workshops, obliging them at the same time to observe absolute silence.

Messrs. Allen, Hopkins, and Tibbits, who, in 1824, were directed by the Legislature of New York to inspect the Auburn prison, found this new discipline established in that prison. They praised it much in their report, and the Legislature sanctioned this new system by its formal approbation.

## **OBJECTIVES OF PENITENTIARY SYSTEMS**

### **A Comparison of Two Systems**

We find in the United States two distinctly separate systems: the system of Auburn and that of Philadelphia.

Sing Sing, in the State of New York; Wethersfield, in Connecticut; Boston, in Massachusetts; Baltimore, in Maryland; have followed the model of Auburn.

On the other side, Pennsylvania stands quite alone.

The two systems opposed to each other on important points, have, however, a common basis, without which no penitentiary system is possible; this basis is the isolation of the prisoners.

Whoever has studied the interior of prisons and the moral state of the inmates, has become convinced that communication between these persons renders their moral reformation impossible, and becomes even for them the inevitable cause of an alarming corruption. This observation, justified by the experience of every day, has become in the United States an almost popular truth; and the publicists who disagree most respecting the way of putting the penitentiary system into practice, fully agree upon this point, that no salutary system can possibly exist without the separation of criminals.

For a long time it was believed that, in order to remedy the evil caused by the intercourse of prisoners with each other, it would be sufficient to establish in the prison, a certain number of classifications. But after having tried this plan, its insufficiency has been acknowledged. There are similar punishments and crimes called by the same name, but there are no two beings equal in regard to their morals; and every time that convicts are put together, there exists necessarily a fatal influence of some upon others, because, in the association of the wicked, it is not the less guilty who act upon the more criminal, but the more depraved who influence those who are less so.

We must therefore, impossible as it is to classify prisoners, come to a separation of all.

This separation, which prevents the wicked from injuring others, is also favorable to himself.

Thrown into solitude he reflects. Placed alone, in view of his crime, he learns to hate it; and if his soul be not yet surfeited with crime, and thus have lost all

taste for anything better, it is in solitude, where remorse will come to assail him.

Solitude is a severe punishment, but such a punishment is merited by the guilty. Mr. Livingston justly remarks, that a prison, destined to punish, would soon cease to be a fearful object, if the convicts in it could entertain at their pleasure those social relations in which they delighted, before their entry into the prison.

Yet, whatever may be the crime of the guilty prisoner, one has the right to take life from him, if society deems merely to deprive him of his liberty. Such, however, would be the result of absolute solitude, if no alleviation of its rigors were offered.

This is the reason why labor is introduced into the prison. Far from being an aggravation of the punishment, it is a real benefit to the prisoner.

But even if the criminal did not find in it a relief from his sufferings, it nevertheless would be necessary to force him to it. It is idleness which has led him to crime; with employment he will learn how to live honestly.

Labor of the criminals is necessary still under another point of view: their detention, expensive for society if they remain idle, becomes less burdensome if they labor.

The prisons of Auburn, Sing Sing, Wethersfield, Boston, and Philadelphia, rest then upon these two united principles, solitude and labor. These principles, in order to be salutary, ought not to be separated: the one is inefficient without the other.

In the ancient prison of Auburn, isolation without labor has been tried, and those prisoners who have not become insane or did not die of despair, have returned to society only to commit new crimes.

In Baltimore, the system of labor without isolation is trying at this moment, and seems not to promise happy results.

[T]he founders of the new penitentiary at Philadelphia, thought it necessary that each prisoner should be secluded in a separate cell during day as well as night.

They have thought that absolute separation of the criminals can alone protect them from mutual pollution, and they have adopted the principle of separation in all its rigor. According to this system, the convict, once thrown into his cell, remains there without interruption, until the expiration of his punishment. He is separated from the whole world; and the penitentiaries, full of malefactors like himself, but every one of them entirely isolated, do not present to him even a society in the prison. If it is true that in establishments of this nature, all evil originates from the intercourse of the prisoners among themselves, we are obliged to acknowledge that nowhere is this vice avoided with greater safety than at Philadelphia, where the prisoners find themselves utterly unable to communicate with each other; and it is incontestable that this perfect isolation secures the prisoner from all fatal contamination.

As solitude is in no other prison more complete than in Philadelphia, nowhere, also, is the necessity of labor more urgent. At the same time, it would be inaccurate to say, that in the Philadelphia penitentiary labor is imposed; we may say with more justice that the favor of labor is granted. When we visited this penitentiary, we successively conversed with all its inmates. There was not a single one among them who did not speak of labor with a kind of gratitude, and who did not express the idea that without the relief of constant occupation, life would be insufferable.

What would become, during the long hours of solitude, without this relief, of the prisoner, given up to himself, a prey to the remorse of his soul and the terrors of his imagination? Labor gives to the solitary cell an interest; it fatigues the body and relieves the soul.

It is highly remarkable, that these men, the greater part of whom have been led to crime by indolence and idleness, should be constrained by the torments of solitude, to find in labor their only comfort. By detesting idleness, they accustom themselves to hate the primary cause of their misfortune; and labor,

by comforting them, makes them love the only means, which when again free, will enable them to gain honestly their livelihood.

The founders of the Auburn prison acknowledged also the necessity of separating the prisoners, to prevent all intercourse among themselves, and to subject them to the obligation of labor; but they follow a different course in order to arrive at the same end.

In this prison, as well as in those founded upon the same model, the prisoners are locked up in their solitary cells at night only. During day they work together in common workshops, and as they are subjected to the law of rigorous silence, though united, they are yet in fact isolated. Labor in common and in silence forms then the characteristic trait which distinguishes the Auburn system from that of Philadelphia.

Owing to the silence to which the prisoners are condemned, this union of the prisoners, it is asserted, offers no inconvenience, and presents many advantages.

They are united, but no moral connection exists among them. They see without knowing each other. They are in society without any intercourse; there exists among them neither aversion nor sympathy. The criminal, who contemplates a project of escape, or an attempt against the life of his keepers, does not know in which of his companions he may expect to find assistance. Their union is strictly material, or to speak more exactly, their bodies are together, but their souls are separated; and it is not the solitude of the body which is important, but that of the mind. At Pittsburgh, the prisoners, though separated, are not alone, since there exist moral communications among them. At Auburn, they are really isolated, though no wall separates them.

Their union in the workshops has, therefore, nothing dangerous: it has, on the contrary, it is said, an advantage peculiar to it, that of accustoming the prisoners to obedience.

What is the principal object of punishment in relation to him who suffers it? It is to give him the habits of society, and first to teach him to obey. The Auburn

prison has, on this point, its advocates say, a manifest advantage over that of Philadelphia.

Perpetual seclusion in a cell, is an irresistible fact which curbs the prisoner without a struggle, and thus deprives altogether his submission of a moral character; locked up in this narrow space, he has not, properly speaking, to observe a discipline; if he works, it is in order to escape the weariness which overwhelms him: in short, he obeys much less the established discipline than the physical impossibility of acting otherwise.

At Auburn, on the contrary, labor instead of being a comfort to the prisoners, is, in their eyes, a painful task, which they would be glad to get rid of. In observing silence, they are incessantly tempted to violate its law. They have some merit in obeying, because their obedience is no actual necessity. It is thus that the Auburn discipline gives to the prisoners the habits of society which they do not obtain in the prisons of Philadelphia.

We see that silence is the principal basis of the Auburn system; it is this silence which establishes that moral separation between all prisoners, that deprives them of all dangerous communications, and only leaves to them those social relations which are inoffensive.

But here we meet with another grave objection against this system; the advocates of the Philadelphia system say, that to pretend to reduce a great number of collected malefactors to absolute silence, is a real chimera; and that this impossibility ruins from its basis, the system of which silence is the only foundation.

We believe that this reproach is much exaggerated. Certainly we cannot admit the existence of a discipline carried to such a degree of perfection, that it guaranties rigorous observation of silence among a great number of assembled individuals, whom their interest and their passions excite to communicate with each other. We may say, however, that if in the prisons of Auburn, Sing Sing, Boston, and Wethersfield, silence is not always strictly observed, the cases of infraction are so rare that they are of little danger. Admitted as we have been into the interior of these various establishments,



and going there at every hour of the day, without being accompanied by anybody, visiting by turns the cells, the workshops, the chapel and the yards, we have never been able to surprise a prisoner uttering a single word, and yet we have sometimes spent whole weeks in observing the same prison.

In Auburn, the building facilitates in a peculiar way the discovery of all contraventions of discipline. Each workshop where the prisoners work, is surrounded by a gallery, from which they may be observed, though the observer remains unseen. We have often espied from this gallery the conduct of the prisoners, whom we did not detect a single time in a breach of discipline. There is moreover a fact which proves better than any other, how strictly silence is observed in these establishments; it is that which takes place at Sing Sing. The prisoners are there occupied in breaking stones from the quarries, situated without the penitentiary; so that nine hundred criminals, watched by thirty keepers, work free in the midst of an open field, without a chain fettering their feet or hands. It is evident that the life of the keepers would be at the mercy of the prisoners, if material force were sufficient for the latter; but they want moral force. And why are these nine hundred collected malefactors less strong than the thirty individuals who command them? Because the keepers communicate freely with each other, act in concert, and have all the power of association; while the convicts separated from each other, by silence, have, in spite of their numerical force, all the weakness of isolation. Suppose for an instant, that the prisoners obtain the least facility of communication; the order is immediately the reverse; the union of their intellects effected by the spoken word, has taught them the secret of their strength; and the first infraction of the law of silence, destroys the whole discipline. The admirable order which prevails at Sing Sing, and which silence alone is capable of maintaining, proves then that silence there is preserved. . . .

We have seen the elements of which the prison is composed. Let us now examine how its organization operates. When the convict arrives in the prison, a physician verifies the state of his health. He is washed; his hair is cut, and new dress, according to the uniform of the prison is given to him. In Philadelphia, he is conducted to his solitary cell, which he never leaves; there

he works, eats, and rests; and the construction of this cell is so complete, that there is no necessity whatever to leave it.

At Auburn, at Wethersfield, and in the other prisons of the same nature, the prisoner is first plunged into the same solitude, but it is only for a few days, after which he leaves it, in order to occupy himself in the workshops. With daybreak, a bell gives the sign of rising; the jailors open the doors. The prisoners range themselves in a line, under the command of their respective jailors, and go first into the yard, where they wash their hands and faces, and from thence into the workshops, where they go directly to work. Their labor is not interrupted until the hour of taking food. There is not a single instant given to recreation.

At Auburn, when the hours of breakfast or of dinner have arrived, labor is suspended, and all the convicts meet in the large refectory. At Sing Sing, and in all other penitentiaries, they retire into their cells, and take their meals separately. This latter regulation appeared to us preferable to that at Auburn. It is not without inconvenience and even danger, that so large a number of criminals can be collected in the same room; their union renders the discipline much more difficult.

In the evening, at the setting of the sun, labor ceases, and the convicts leave the workshops to retire into their cells. Upon rising, going to sleep, eating, leaving the cells and going back to them, everything passes in the most profound silence, and nothing is heard in the whole prison but the steps of those who march, or sounds proceeding from the workshops. But when the day is finished, and the prisoners have retired to their cells, the silence within these vast walls, which contain so many prisoners, is that of death. We have often trod during night those monotonous and dumb galleries, where a lamp is always burning; we felt as if we traversed catacombs; there were a thousand living beings, and yet it was a desert solitude.

The order of one day is that of the whole year. Thus one hour of the convict follows with overwhelming uniformity the other, from the moment of his entry into the prison to the expiration of his punishment. Labor fills the whole day. The whole night is given to rest. As the labor is hard, long hours of rest

are necessary; it is not denied to the prisoner between the moment of going to rest and that of rising. And before his sleep as after it, he has time to think of his solitude, his crime and his misery.

All penitentiaries it is true have not the same regulations, but all the convicts of a prison are treated in the same way. There is even more equality in the prison than in society.

All have the same dress, and eat the same bread. All work; there exists in this respect, no other distinction than that which results from a greater natural skill for one art than for another. . . .

Their food is wholesome, abundant, but coarse; it has to support their strength, but ought not to afford them any of those gratifications of the appetite, which are agreeable merely.

None can follow a diet different from that of the prison. Every kind of fermented liquor is prohibited; water alone is drunk here. The convict who might be possessed of treasures, would nevertheless live like the poorest among them; and we do not find in the American prisons, those eating houses which are found in ours, and in which the convict may buy everything to gratify his appetite. The abuse of wine is there unknown, because the use of it is interdicted.

This discipline is at the same time moral and just. The place which society has assigned for repentance, ought to present no scenes of pleasure and debauch. And it is iniquitous to allow the opulent criminal, whose very riches increase his criminality, to enjoy himself in his prison by the side of the poor wretch whose misery extenuates his fault.

Application to labor and good conduct in prison, do not procure the prisoner any alleviation. Experience shows that the criminal who, while in society, has committed the most expert and audacious crimes, is often the least refractory in prison. He is more docile than the others, because he is more intelligent; and he knows how to submit to necessity when he finds himself without power to revolt. Generally he is more skilful and more active, particularly if an enjoyment, at no great distance, awaits him as the reward of his efforts; so

that if we accord to the prisoners privileges resulting from their conduct in the prison, we run the risk of alleviating the rigor of imprisonment to that criminal who most deserves them, and of depriving of all favors those who merit them most.

Perhaps it would be impossible, in the actual state of our prisons, to manage them without the assistance of rewards granted for the zeal, activity, and talent of the prisoners. But in America, where prison discipline operates supported by the fear of chastisement, a moral influence can be dispensed with in respect to their management.

The interest of the prisoner requires that he should never be idle; that of society demands that he should labor in the most useful way. In the new penitentiaries none of those machines are found, which, in England, the prisoners set in motion without intelligence, and which occupy them merely in a mechanical way.

Labor is not only salutary because it is the opposite of idleness; but it is also contemplated that the convict, while he is at work, shall learn a business which may support him when he leaves the prison.

The prisoners therefore, are taught useful trades only; and among these, care is taken to choose such as are the most profitable, and the product of which finds the easiest sale.

The Philadelphia system has often been reproached with rendering labor by the prisoners impossible. It is certainly more economical and advantageous to make a certain number of workmen labor together in a common workshop, than to give each of them employment in a separate place. It is moreover true, that a great many arts cannot be pursued with advantage by a single workman in a narrow place; yet the penitentiary of Philadelphia shows that the various occupations which can be pursued by isolated men, are sufficiently numerous to occupy them usefully. The same difficulty is not met with in those prisons in which the convicts work in company. At Auburn and at Baltimore, a very great variety of arts is pursued. These two prisons offer the sight of vast manufactories which combine all useful occupations. At Boston and Sing Sing

the occupation of the convicts has, so far, been more uniform. In these two prisons, the greater part of the criminals are employed in cutting stones. Wethersfield offers, on a small scale, the same spectacle as Auburn.

We shall soon see, when we have occasion to treat of the expenses and income, that the labor of the prisoners is in general very productive. Visiting these various establishments, we have been surprised by the order, and sometimes the talent, with which the convicts work, and what makes their zeal quite surprising, is, that they work without any interest in its produce. In our prisons, as well as in those of the greater part of Europe, a part of the produce of their labor belongs to the prisoners. This portion, called the *pécule*, is more or less in various countries; in the United States it does not exist. There the principle is adopted, that the criminal owes all his labor to society, in order to indemnify it for the expenses of his detention. Thus, during the whole time of their punishment, the convicts work without receiving the slightest remuneration, and if they leave the prison, no account is given to them of what they have done. They merely receive a certain portion of money, in order to carry them to the place which they propose to make their new residence.

This system appears to us excessively severe. . . .

let us now examine by what disciplinary means the order of things which we have explained above, is established and maintained.

How is silence so rigorously maintained among a number of assembled criminals? How are they made to work without any interest of their own?

Here also we have to distinguish between the Auburn and Philadelphia systems.

In Philadelphia, the discipline is as simple as the system itself. The only critical moment is that when the prisoner enters the prison. The solitary cell of the criminal is for some days full of terrible phantoms. Agitated and tormented by a thousand fears, he accuses society of injustice and cruelty, and in such a disposition of mind, it sometimes will happen that he disregards the orders, and repels the consolations offered to him. The only chastisement which the

regulations of the prison permits, is imprisonment in a dark cell with reduction of food. It is rare that more than two days of such discipline are required, to curb the most refractory prisoner. When the convict has overcome the first impressions of solitude; when he has triumphed over the terrors which almost surrendered him to insanity or despair; when, in his solitary cell, in the midst of the pains of a stinging conscience, and the agitations of his soul, he has fallen into a dejection of mind, and has sought in labor a relief from his griefs; from that moment he is tamed, and forever submissive to the rules of the prison. What breach of order is it possible to commit in solitude? The entire discipline consists in the isolation of the prisoners, and the impossibility of their violating the established rule. . . .

The discipline at Auburn, Sing Sing, Boston, Wethersfield, and Baltimore, could not have the same character of simplicity: these various establishments themselves, follow, in this respect, different courses.

At Sing Sing, the only punishment for those who infringe the established order, is that of the whip. The application of this disciplinary means is there very frequent; and with the least fault is punished with its application. For various reasons this punishment is preferred to all others. It effects the immediate submission of the delinquent; his labor is not interrupted a single instant; the chastisement is painful, but not injurious to health; finally, it is believed that no other punishment would produce the same effects. The same principle is admitted at Auburn, but in its application is extremely rare. The penitentiaries of Boston and Baltimore, a little more severe than that at Auburn, are nevertheless much less so than Sing Sing: Wethersfield differs from all others by its extreme mildness.

In this latter prison stripes are not altogether objected to; but their application is as much as possible avoided: Mr. Pillsbury, superintendent of the establishment, has assured us, that for three years he has but one single time been obliged to inflict stripes. It is a severity to which recourse is had only if it is well ascertained that every other and milder way has been tried without effect. Before resorting to stripes, absolute solitude day and night without labor is tried: if we believe the officers of the prison, nothing is rarer

than to see a prisoner resist this first trial; he has been scarcely subjected to the rigor of absolute isolation, than he solicits the favor of again taking his place in the common workshop, and submits willingly to all that discipline requires. However, if he is not curbed at the first moment, greater severity is added to his solitude, such as entire privation of light, and diminution of food; sometimes also his bed is taken from him, etc. If the prisoner still obstinately resists, then, and then only, the whip is used, as the still more effective means of submission. The directors of this establishment seem to have a decided aversion to corporal chastisement; yet they would regret it much if they were not invested with the right to inflict it. They reject the application of cruel pain, but they find a powerful means of acting upon the criminals in their authority to order it. . . .

We have noticed the remarkable differences which exist in the disciplinary order of the various establishments. All, however, admit the principle of corporal punishment; and it is just to say, that there exist in the particular situation of each of the prisons, certain circumstances, which tend to explain the mildness or severity of its discipline.

If we remember the nature of the labors executed at Sing Sing, and the order established in that prison, we easily understand the insurmountable obstacles with which disciplinary order would meet in this prison, were it not supported by the most energetic measures of repression. Auburn does not require so much severity, because the same dangers do not threaten the order of the establishment. Wethersfield is, in this respect, in a still more favorable position; it contains less than two hundred criminals, while Auburn has six hundred and fifty, and Sing Sing more than nine hundred. It is evident, that the number, more or less considerable, of criminals, and the nature of the labor, render the penitentiary more or less easy of government.

Now, could these various penitentiaries dispense with corporal chastisement? This is a question which we dare not solve. We are merely able to say, that, deprived of this assistance, prison discipline would meet with difficulties very difficult to be overcome. Its embarrassments would be so much the greater, as it is founded on an unique basis, that of absolute silence; and should it ever be

deprived of this foundation, the whole fabric must inevitably crumble to pieces; now, how is it possible to maintain absolute silence among criminals, if they are not continually overawed by the fear of a prompt and rigorous chastisement? In the American prisons, this discipline, founded upon stripes, is so much more powerful, as it is practised more arbitrarily. At Sing Sing, and at Auburn, there are no written regulations: the superintendents of these prisons, have only, in their government, to conform themselves to the verbal prescriptions which they receive from the inspectors, and to a few principles expressed in the law. These principles are: solitary imprisonment of the convicts during night, and labor in silence during day. For the rest, they enjoy, as to all acts of execution, a discretionary power. At Sing Sing, the superintendent has even the right to delegate this discretionary power to all his inferior agents; and in fact he has transmitted his power to thirty jailors, who are invested like himself with the power of chastising the convicts. At Auburn, the superintendent alone has the power to punish; yet the same authority belongs to the inferior keepers, in all cases of urgent and absolute necessity. The same is the case in Boston. In Wethersfield, the regulations of the prison are in writing. The subaltern officers can in no case exercise the right of punishing, with which the superintendent alone is invested, and which he uses with so much moderation. Important debates have taken place in the state of New York, on the question whether the presence of an inspector ought to be required when inflicting stripes upon a prisoner. According to the letter of the law, this guaranty was indispensable, but the obligation of the inspectors to be present at such punishments, was so frequently inconvenient, and caused them such painful feelings, that they asked immediately to be absolved from this duty. At present the right of the officers to inflict stripes without these official witnesses is acknowledged. The inspectors have nevertheless a great influence on the application of disciplinary chastisement. Sing Sing is the only prison where their superintendence has appeared to us superficial upon this point. The administration of this vast penitentiary is so difficult, that there seems to be no disposition to dispute the least part of the absolute power of the keepers. . . .



To what point are corporal chastisements, reconcilable with the object of the penitentiary system itself, which is the reformation of the guilty? If this pain be ignominious, does it not go directly against the end which we propose to obtain, viz. to awaken the morality of an individual, fallen in his own opinion? .

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The punishment of stripes is in use in the American navy, with no idea of infamy attached to it. In the beginning, the whip was not admitted as a disciplinary means in the penitentiary system. When it was introduced as an auxiliary to the regulations, some voices were raised against it, but this opposition was much more a dispute of philosophy than one of repugnance to the national customs.

Pennsylvania is, perhaps, the only state in the Union which continues to protest against corporal punishment, and which excluded it from the regulations of her prisons. The Quakers cease not to protest against the inhumanity of this punishment, and their philanthropic protestations are joined by the eloquent voice of Edward Livingston, who also rejects this means of discipline from his code. It is chiefly on account of corporal punishment, made use of at Auburn, that he declares himself the adversary of the system which is in practice in that prison.

But their words find few corresponding voices in most parts of the Union, and, at present, all new penitentiaries, that of Philadelphia only excepted, make use of the whip. The laws of the country authorize the discipline which they have adopted, and these laws have the sanction of public opinion.

There is certainly much exaggeration in the reproaches made against the Auburn discipline. First, stripes are not so frequent as is believed. Necessary, as they are, to establish silence in a newly founded prison, the are seldom made use of in order to maintain this regulation if once established.

Now, is the whole system of these prisons, as is asserted, injurious to health, and are the rigors of solitude and the cruelties of the discipline, fatal to the life of the imprisoned? We are able to furnish positive documents upon this point.

All prisoners, whom we have seen in the penitentiaries of the United States, had the appearance of strength and health; and if we compare the number of those who die there with the mortality in the old prisons, we shall see that the new penitentiaries, in spite of their severe regulations and barbarous discipline, are much more favorable to the life of the imprisoned. Mr. Edward Livingston wishes to see solitary confinement during night and day, without labor, and reduction of food substituted for the whip, as a disciplinary measure. It does not seem that at Wethersfield this punishment, which as we have seen, is preferred to stripes, has produced bad effects. However, ten individuals are mentioned as having died in consequence of this kind of punishment in the prison of Lamberton in New Jersey, while there is no case yet on record of a prisoner having become the victim of corporal whipping.

In the old Walnut street prison, there was formerly, during each year, one death out of sixteen prisoners, and in that of New York (Newgate) one out of nineteen. In both these prisons, the criminals were neither in solitary confinement, nor obliged to be wholly silent, nor