The Penitential Ideal in Late Eighteenth-Century Philadelphia

IN THE AUTUMN of 1803, Thomas Eddy wrote to Benjamin Rush. Eddy, the leader of New York's early penal reforms, enclosed a copy of his description of New York's penitentiary-house and a report of its prison inspectors. He believed both enclosures to "be highly favorable to the Institution." But the real purpose of the letter was to encourage Rush to write: "I have been a long time very desirous that some person of influence in Society, and of suitable qualifications, should write a History of the penal laws of Pennsylvania." Eddy envisioned the history beginning with the philosophy of William Penn, then continuing with a discussion of popular desires for, and opposition to, changing the British system; different plans Pennsylvanians had adopted and their effects; the present system and its defects; and plans for improving prison operations. Eddy turned to Rush, he said, because he knew of "no person in my native city, so well qualified, as thyself, to undertake such a work—Thy attachment to the public good, thy uniform zeal in promoting many of your excellent institutions, founded on benevolence and humanity, and Thy former literary productions, are sufficient to satisfy my mind that 'Thou art the man.'"¹

Nothing came of Eddy's request, but, it was not a surprising one. For in late eighteenth-century Philadelphia, Benjamin Rush, along with William Bradford, Caleb Lownes, and the Philadelphia Society for Alleviating the Miseries of Public Prisons articulated a new ideal of a penitential penal system. Drawing on both continental arguments for the efficacy of moderate yet certain punishments and recent English attempts to reform institutional discipline, these Philadelphians claimed that a properly run prison would most effectively balance the

*An earlier version of this paper was presented to the Philadelphia Center for Early American Studies seminar on March 2, 1984. I would like to thank the Center for its financial support this year and the seminar members for their comments and suggestions. I would also like to thank Bryna Goodman, Hans-Jürgen Grabbe, Julia E. Liss, Christopher Looby, and Steven Ross-wurm for their criticisms and suggestions.

¹ Thomas Eddy to Benjamin Rush, October 6, 1803, Rush Papers, Library Company of Philadelphia.
claims of "humanity" and "justice" while maintaining sufficient "terror" to deter future offenders. Because prisons were neither capital nor sanguinary, they argued, prosecutors and jurors, who had been hesitant to prosecute or convict, would now gladly surrender criminals to justice. At the same time, by a meticulous control of the prison environment, the creation of new habits of labor, and the re-awakening of conscience through solitude and religious instruction, prisons would reform inmates, leading them to a "patient submission" to justice and a new discipline in their everyday lives. Finally, prison officials, governing (and being governed) through a clear set of written regulations, would provide a model for a new form of authority. The result would be a republican society in which all individuals were bound together through a common obedience to the law.

In this ideal, as in so many others, Pennsylvania was at the forefront of late eighteenth-century social and political change. Reform laws of 1786, 1789, and 1790 replaced a system based on public corporal punishments first with public labor and then with imprisonment. Beginning in 1789, the General Assembly established prison governing boards and experimented with new forms of prison regulation. In 1794, the state limited capital punishment to first degree murder. In eight years, then, Pennsylvania had dramatically transformed its penal system, substituting penitence through labor and private solitude for shame through pain and public stigma.

Although contemporaries recognized the importance of these developments, recent historians have tended to slight them. David Rothman, the most influential historian of American institutionalization argued that late eighteenth-century reformers had little interest or faith in prisons, "They were necessary adjuncts to the reform, the substitutes for capital punishment, but intrinsically of little interest or importance. . . .To reformers, the advantages of the institutions were external, and they hardly imagined that life inside the prison might rehabilitate the criminal. . . .the fact of imprisonment, not its internal routine, was of chief importance." In Rothman's view, late eighteenth-century reform efforts consisted of little more than rationalizing and moderating criminal codes. And even this reform was largely negative in character, "A repulsion from the gallows rather than any

---

faith in the penitentiary spurred the late-eighteenth century construction." The creation of the penitentiary, according to Rothman, had to await the Jacksonian period.

Despite the influence of Rothman's argument, there is a growing body of criticism of Rothman's conclusions which has taken two primary forms. The first, exemplified by Andrew Scull, argues that Rothman's national focus is too narrow. Scull has shown the trans-Atlantic nature of Asylum reform, demonstrating that it is only the broader context of the Enlightenment which will make sense of the growth of mental hospitals. A second line of criticism focuses on Rothman's over-emphasis on the nineteenth century. John Alexander, Gary Nash, and Nancy Tomes have all documented that the growth of poorhouses and mental hospitals (in the cities at least) proceeded much further in the eighteenth century than Rothman's work acknowledged. It is becoming increasingly clear that tracing the birth of disciplinary institutions to Jacksonian angst over the decline of social order just will not do. Their origins lie in the eighteenth century.

There has been no real challenge to Rothman's treatment of the creation of the penitentiary. Perhaps due to the obvious importance of the Auburn and Cherry Hill prisons, both built in the 1810s and 1820s, recent scholars have not questioned the primacy of Jacksonian contributions to penal thinking. But Philadelphia (and New York) materials will not support this interpretation. This essay will examine in

greater detail the penitential ideal of late eighteenth-century Philadelphia and its trans-Atlantic context, discussing why it was so quickly transformed into law. While not a history on the scale Thomas Eddy sought, it will show, I hope, why he wanted one.

Montesquieu's *The Spirit of the Laws*, published in 1748, articulated two principles which became central to subsequent penal theory. First, Montesquieu argued that the laws could have a shaping influence on social character; the "spirit" of the laws helped set the tone for social interaction. This notion had tremendous implications for discussions about criminal and penal laws, especially when linked with Montesquieu's second proposition that, "If we enquire into the Cause of all human corruptions, we shall find that they proceed from the impunity of crimes, and not from the moderation of punishments." By linking corruption not to innate human depravity, but to the administration and organization of the laws, Montesquieu suggested that proper legislation, effective administration, and the progress of manners could severely diminish crimes and corruptions. Montesquieu, thereby, helped inaugurate a tradition which argued that a moderate yet certain administration of criminal law would lead to an enlightened society.

The Italian penal theorist Cesare Beccaria in *An Essay on Crimes and Punishments* (1764) developed Montesquieu's suggestions into a full-scale penal philosophy. Beccaria sought to establish three principles for criminal jurisprudence. First was the necessity that all crimes be punished according to a determined scale; second, that all punishments be proportioned to the crime, so that a clear association existed between the crime and the penalty; and third, that all penalties be legislated at their most moderate or minimal level—any excess in the penalty was an arbitrary act and hence unjust. Combined these three principles equaled "certainty" in the criminal law.

Beccaria's philosophy flowed from his conviction that the sole aim of punishment was "to prevent the criminal from doing further injury to society, and to prevent others from committing the like offence."
Beccaria's concern was limited to deterrence, which he thought could be achieved through a judicious application of the principles of human nature. Human beings responded to the stimulation of external objects, "Pleasure and pain are the only springs of actions in beings endowed with sensibility." Individuals broke laws when their desires overwhelmed their fear of punishment. Properly defined punishments, therefore, would ensure that the pain inflicted outweighed any pleasure the criminal act might produce.

At the same time, the legislator needed to consider the extent of the injury done to society. Beccaria argued that the seriousness of a crime depended entirely on its social effects. Crimes which caused the greatest injury to society should be punished more severely than those less socially dangerous.

It is not only the common interest of mankind that crimes should not be committed, but that crimes of every kind should be less frequent, in proportion to the evil they produce in society. Therefore the means made use of by the legislature to prevent crimes should be more powerful, in proportion as they are destructive of the public safety and happiness.

Any criminal code that did not distinguish crimes in this way would be self-contradictory. It would serve only to produce greater, more serious criminal acts. Punishment, then, was based on a utilitarian calculation of social necessity.

But though a punishment needed to be severe enough to deter, it could not be too severe, for that would be unjust. Just punishment demanded precise calculation, one which calibrated the needs of society and the rights of the criminal. "In general the degree of the punishment, and the consequences of a crime, ought to be so contrived as to have the greatest possible effect on others, with the least possible pain to the delinquent."

The rights of the criminal delimited the legitimacy of public power.

If the criminal as "object" established a limit to the force of punishment, the criminal as "subject" of crimes played little role. When

---

10 *Ibid.,* 9
11 *Ibid.,* 28
12 *Ibid.,* 75
13 The growth of concern over the personality of the criminal, at least in European penal practices, can be followed in Michel Foucault, *Discipline and Punish* *The Birth of the Prison* (New York, 1978), especially 293-308
Beccaria calculated the severity of punishments in terms of their social effects, he also explicitly repudiated any consideration of criminal intention. Acts committed for the best reasons could produce harmful effects, while the worst-intentioned behavior could have socially useful results. Moreover, intentionality was notoriously difficult to grasp. Finally, including intentionality would mean drawing up a new code every time a crime occurred, “not only a particular code for every individual, but a new penal law for every crime.”¹⁴ Beccaria wanted a fixed, certain code of crimes, not a judicial system which established rules anew for every criminal or every criminal action. He was, after all, writing a treatise on the relationship between crimes (an abstract category), not between criminals (particular individuals) and punishments.

Beccaria elaborated a utilitarian philosophy of punishment. The conclusions he reached had great influence on later eighteenth-century penal thought: if punishment were certain, it could be moderate; a just scale of crimes and punishments should and could be established; and any punishment more severe than absolutely necessary was a “cruel and tyrannical act.”¹⁵ Beccaria was not a theorist of reformation. Nor was he much interested in imprisonment, a condition he viewed as an unfortunate but temporary one, while a person awaited trial or punishment.¹⁶ Pennsylvania took up his work when it began to transform its practice of punishment, but it did so within a penal ideal concerned not only with “certainty” and “terror” but with “reformation” through labor.

Looking back from the 1790s, William Bradford, Justice of the Pennsylvania Supreme Court, noted with satisfaction that enlightened thinkers had accepted the teachings of Montesquieu and Beccaria. Throughout the civilized world a “remarkable coincidence of opinion” existed on the principles of criminal law. This was a momentous accomplishment.¹⁷ In fact, “These principles, which serve to protect the

¹⁴ Beccaria, An Essay on Crimes and Punishments, 33
¹⁵ William Bradford, An Enquiry How Far the Punishment of Death is Necessary in Pennsylvania (Philadelphia, 1793), 3
¹⁶ Beccaria, An Essay on Crimes and Punishments, 109-111
¹⁷ Bradford overstated this point as the continued heavy use of capital sanctions in England demonstrates. Still, given the radical nature of Montesquieu’s and Beccaria’s ideas, their influence in both Europe and American was quite impressive. On England, see Douglas Hay, “Property, Authority and the Criminal Law” in D. Hay et al., Albin’s Fatal Tree: Crime and Society in Eighteenth-Century England (New York, 1975), 17-63, for changes in Europe, see Foucault, Discipline and Punish, 7-9.
rights of humanity and to prevent the abuses of government, are so important they they deserve a place among the fundamental laws of every free country."18 Criminal justice was not merely a technical problem, best placed at the periphery of public concern; it was a central element of the political order.

The authors of Pennsylvania's 1776 Constitution agreed. The constitution guaranteed trial by jury and established general rules for criminal procedure. In addition, Sections 38 and 39 mandated a reform of the penal laws, suggesting that punishments be "made in some cases less sanguinary, and in general more proportionate to the crimes" while proposing that "visible" punishments of "long duration" be employed to deter crimes.19 Beccaria's ideas had found a congenial audience. Nothing came of this mandate for several years. Prosecuting the war, debating economic forms, determining the nature of political obedience, and battling over the Constitution itself, dominated public concern. Disaffection and the subordination of soldiers and militiamen were more pressing problems of social disorder. Almost a decade passed before Pennsylvania took up the problem of punishment. In 1785, however, Pennsylvanians began to consider again the order and design of the penal system.

In September 1785, the Judges and Grand Jury of the state court of Oyer and Terminer proposed a set of penal reforms that mirrored the Beccarian philosophy. Contending that the penalties "for felonies, as well as other atrocious and infamous offences, less than Capital" were ineffective, they proposed employing prisoners at "continued hard labour, publicly and disgracefully imposed. . . not only in the manner pointed out by the [Constitutional] convention, but in the streets and cities of towns, and upon the highways of the open country, and other public works. . . ."20 The constant visibility of the prisoners' disgrace would serve to intimidate others. Forcing convicts to labor publicly would provide a "durable example" to citizens of "the dangerous consequences of an aberration from virtue, and a breach of the laws."21

20 Pennsylvania Packet, September 14, 1785.
21 Ibid.
Thomas McKean, Chief Justice of the state Supreme Court, expressed the assumptions underlying this penal vision. Since the "passions and perverse humours" of humanity could only be controlled by a "coercive power over them," it was necessary that someone have the power to restrain "the unruly wills & passions of men, by proper degrees of terror and punishment." If the legal punishments could achieve the proper degree of terror, then the suffering of "a few" would be the "preservation of multitudes." Terror so long as it was just (i.e., non-arbitrary) was a necessary component of social order. The Judges and Grand Jurors believed a system of public labor would most effectively provide the terror needed to define "the security of society."^23

The Judges and Grand Jurors linked this enlightened position to patriotism. Having argued the efficacy of public labor, they pointed out that if the aims of punishment "could be attained by certain but milder punishments, great advantage and honor would be thereby derived to the commonwealth."^24 Pennsylvania could take the lead in penal reform, the young commonwealth would outstrip older yet less virtuous and vibrant societies through the achievement of certain terror. Patriotism and Enlightenment both demanded the search for punishments fit for a republic.

But the Judges and Grand Jurors added a third variable to the penal equation. In addition to providing certainty and terror, punishments, they argued, should "correct and reform the offender." Here was a departure from the Beccarian philosophy. For Beccaria, why an individual would obey the law was unimportant—the act of obedience was all that mattered. The Court of Oyer and Terminer, however, distinguished the subject of obedience from the act of obedience. The new interest in reformation implied a concern with the habits and character of the offender, a concern previously absent from the process of punishment.^25

Support for public labor developed quickly. Citing the "uncommon number of bills for assault and battery, larceny, keeping of tippling

^22 Thomas McKean, "Notes on Charges to Grand Juries, 1777-1779," McKean Papers, Historical Society of Pennsylvania

^23 Pa Packet, September 14, 1785

^24 Ibid

^25 Traditionally, of course, character was taken into account in sentencing and in the opportunities for pardons. What was new, however, was the concern, in the actual carrying out of the sentence, that the punishment transform the character of the offender.
houses, etc.,” the Grand Jury of October’s Court of Quarter Sessions suggested that “the punishment of labouring hard, chained to wheelbarrows, which has been substituted in the city of New York, instead of whipping, has probably driven many here, to avoid what they dread more than a thousand stripes.”26 A superior system of punishment had helped stimulate a gift from New York of “a constant influx of vagabonds.” Here, then, was concrete “proof” of the efficacy of public labor.

The impulse towards a new penal system was fueled by a broader concern with social disorder. The City’s Grand Jury believed that the large number of indictments at its October Sessions were “melancholy proofs of the depravity which too generally prevails.”27 Numerous other writers echoed this vision of growing social disorder. Writing in November, for instance, “A Native of Philadelphia” argued that the jail dockets of Philadelphia were disproportionately large compared to country dockets. Claiming that criminals were less likely to be caught in the city than in the country, “A Native” implied that this disproportion was extremely ominous.28 This perception of social disorder was linked to growing anxiety about the character and habits of the poor. In the mid-1780s, as John Alexander has argued, many of Philadelphia’s non-poor accelerated efforts to distinguish and separate the “deserving” from the “vicious” poor, instituting a variety of practices to uplift and control the poorer and less “virtuous” members of the Philadelphia community.29 The new penal vision paralleled these wider efforts to transform the poor, seeking, through public labor, both to discipline and reform those subject to legal punishment.

Pennsylvania’s General Assembly moved rapidly to translate the Grand Jury’s ideas into law. Citing their constitutional mandate to reform punishments, they passed, in September 1786, “An Act Amending the Penal Laws of This State,” replacing capital and corporal punishments with public labor for robbery, burglary, sodomy, horse theft, larceny, “or any other felony not capital” that called for corporal punishments.30 Within a year of the Court of Oyer and

26 Pa. Packet, October 10, 1785
27 Ibid.
28 Ibid., November 17, 1785
29 Alexander, Render Them Submissive, 51-53, 84-85, 144-159, 166-169
30 Statutes at Large of Pennsylvania From 1682 to 1801 (Harrisburg, 1908), XII, 281-283. (Hereafter, St. at Large).
Terminer's memorial, the legislature dramatically altered Pennsylvania's penal system.

In addition to its constitutional obligations, the Assembly grounded its actions in an "enlightened" philosophy of punishment. Asserting that every "good" government wished to "reclaim rather than to destroy" offenders and that "human corruptions proceed more than the impunity of crimes than from the moderation of punishments," the Assembly found that the punishments then employed did not achieve the goals of society. These goals, "to wit, to correct and reform the offenders," and to deter crimes by producing "strong impression upon the minds of others" would best be achieved by public labor "dishgracefully imposed." They then went beyond their constitutional authority and argued, in words which copied the Oyer and Terminer memorial, that public labor should be employed "not only [in] the manner pointed out by the convention, but in the streets of cities and towns, and upon the highways of the open country and other public works." 31

The close correspondence between the language of the memorial and the language of the law may have caused problems, however. Suspicion existed that the judges of the Supreme Court, especially Thomas McKean, had undue influence over the framing of the new penal code. 32 Francis Hopkinson, Judge of the State's Admiralty Court and old foe of McKean, made this charge most explicitly, but it was echoed by members of the Assembly during public debate. These suspicions were encouraged by the role assigned to judges in the new penal system. 33

The 1786 penal code invested judges with considerable sentencing discretion. Most offences had a stipulated maximum sentence (e.g., ten years' servitude for robbery) but no other sentencing guidelines. Judges, after examining the circumstances of the case and the character of the offender, would sentence in accordance with established practice.

31 Ibid., 280-21
32 G S Rowe, Thomas McKean The Shaping of an American Republicanism (Boulder, 1978), 237-238
33 Pa Packet, September 1, 1786 Hopkinson and McKean were old personal and political foes. On their personal animosity see Rowe, Thomas McKean, 188, for their conflicts over the respective jurisdictions of the Court of Admiralty and the Supreme Court, see George Hastings, The Life and Works of Francis Hopkinson (Chicago, 1926), 320-321. Hopkinson also was an early member of the Republican Society and long time opponent of the Constitution of 1776
At the same time, Section 13 of the penal law empowered judges to inquire into the conduct of convicts. If, during their imprisonment, prisoners had "evidenced by a patient submission to the justice of their punishment a sincere reformation," the judges could grant them a certificate of good behavior which would "serve as a discharge from all claims. . .of the party injured. . .as a pardon of the guilt and infamy of the offence, and give him or her a new capacity."34 In other words, judges were not only given wide latitude in determining sentences, but they were also granted the power to modify those sentences later and to distinguish different classes of criminals upon their return to society.

Critics charged that this discretion would both destroy the certainty of the criminal law and ultimately undermine the republic. Opponents of the bill reasserted the centrality of certainty in criminal justice. "For let the culprit know his punishment is certain and follows conviction, he will be more careful not to offend than if he had the chance of obtaining remission through the discretionary power of the judges."35 Not only would discretion offer hope of judicial mercy, thereby undermining the deterrent effect of certainty, but it would reintroduce extralegal considerations in the sentencing process. Hopkinson suggested that placing both "the severity of law and the high prorogative of mercy" in the hands of justices with unchecked discretion would allow them to favor their allies. Social standing and political connections would assume a great and undesirable place in criminal justice, thereby turning the law into a tool of political despotism. For, as Hopkinson asserted, "true despotism is nothing more than a power to punish according to will and pleasure."36 The only way to prevent this judicial despotism was through a scale of "certain" and "known" punishments.37

Opponents of judicial discretion faced certain problems, however. Both sides of the debate acknowledged that discretion had to be lodged somewhere; its location was in dispute. The authors of the bill, as we have seen, favored the judges. Opponents recommended either the Supreme Executive Council (where pardoning power lay traditionally) or juries.38 In any case, the principle of certainty would be compro-

34 Stat at Large, XII, 288
35 Pa. Packet, September 1, 1786
36 Francis Hopkinson, Miscellaneous Essays (Philadelphia, 1792), II, 108-109, 107
37 Ibid., 103.
38 Robert Brunhouse suggests that the struggle over discretion can be traced to party battles. He argues that the Republicans did not wish to invest discretion in a Supreme Court dominated by Constitutionals, while the Constitutionals were equally loath to empower a Republican Council. See his The Counter-Revolution in Pennsylvania, 1776-1790 (Harrisburg, 1942), 184
mised. Critics of the bill were unable to maintain a coherent defence of the Beccarian principle of certainty against judicial discretion.

In part this deviation stemmed from the difference between Beccaria's notion of justice and its Anglo-American meaning. Beccaria treated justice, like everything else, as a utilitarian issue of social necessity: "by justice I understand nothing more than that social bond . . . necessary to keep the interest of individuals united, without which men would return to their original state of barbarity." Upon consenting to the social contract people sacrificed some of their natural freedoms in order to enjoy others in security. But the desire for natural liberty remained. Only fear of the universal operations of the administration of justice kept these desires in check. Justice was a social convention, the glue that held society together. The Anglo-American connotation of justice was entirely different. Justice, according to Thomas Sheridan's *A Complete Dictionary of the English Language* (1789) was "the virtue by which we give every man what is his due." The English notion implied an evaluation of individual cases through the prism of universal rule. Courts were expected to evaluate circumstance, character, and intentionality, creating, in effect, precisely the "new penal law for every crime" that Beccaria adamantly opposed. According to this notion of justice, judgment, although constrained by an established set of rules, was a positive act of discretion. And where better to place the right of such a non-arbitrary discretion than in the hands of a justice, who after all was "a civil officer appointed to do right by way of judgment."

The idea of individual reformation further complicated the issue of certainty. Fixed and certain sentences precluded the possibility of early release for "reformed" prisoners, thereby undercutting one of the motivating forces for self-transformation. Moreover, the logic of reformation was in conflict with the logic of certainty. The ultimate purpose of punishment, Pennsylvania reformers agreed, was the "security of society" and not "the expiation of guilt." Individuals should be punished only so long as they were a threat to society's security; any additional punishment was arbitrary and unjust. How, then, could the state hold a person in servitude after he or she had been reformed?


40 Thomas Sheridan, *A Complete Dictionary of the English Language* (Philadelphia, 1789), see item "Justice".
Beccaria did not face this problem as he had never claimed a reformatory power for punishment. But Pennsylvania's penal reformers had proclaimed reformation "the noblest object of punishment." In doing so, they further undercut the logic of certainty and established the need for a discretionary power to evaluate the prisoners' transformation. Reformation and certainty existed in tension with each other.

Despite these problems, certainty had an importance in the thought of Pennsylvania's penal reformers which it lacked for its continental advocates. For Montesquieu and Beccaria, certainty, though an aim of penal reform, was ultimately a means to achieve more moderate punishments. In Pennsylvania, the relationship between moderation and certainty was altered. Moderate punishments, although still a goal of reform, became a means to achieve certainty. In part, this change occurred because the achievement of certainty was so problematic. Beccaria presupposed continental forms of inquisitorial justice and predicated his scheme on the development of an effective police. In Pennsylvania, however, criminal justice depended on juries and private prosecutors. Popular consent to the laws was an extremely important problem. Severe laws might eliminate this consent and undercut certainty: "[When] we fix a severe punishment for a small crime, the criminal will frequently escape; for witnesses will not give evidence nor the jury convict." Only by moderating sanguinary laws would enough certainty be achieved to assure sufficient deterrent terror. Certainty, in spite of its logical opposition to justice and reformation, retained its pre-eminent spot in the pursuit of terror.

The law, despite its critics, went into effect on November 1, 1786. Convicted criminals chained together began to clean the streets and perform other public works. Known to contemporaries as "wheelbarrow men," their situation was described by an English Quaker in her diary: "They have an iron collar around their necks and waist to which a long chain is fastened and at the end a heavy ball. As they proceed with their work this is taken up and thrown before them." Their heads were

---

41 Pa Packet, September 1, 1786
42 Unlike modern police-based systems of prosecution, eighteenth-century English and American criminal justice was based on private individuals instituting prosecutions. On the importance of this point see Allen Steinberg, "From Private Prosecution to Plea Bargaining: Criminal Prosecution, the District Attorney, and American Legal History" paper presented to the Philadelphia Center for Early American Studies seminar, March, 4, 1983.
43 Pa. Packet, September 1, 1786
shaved, their clothing was a "mixture of blue and brown stuff," and they wore multi-colored woolen caps "so that an attempt to escape would easily be discovered."  

In addition, there was a mark on their clothing to indicate their particular crime so "they may be marked out to public note... while at their ordinary occupations."  

The convicts' labor, designed to serve the state and to reform the criminal, made the prisoners function as constant signs of the correspondence between crimes and punishments.

Although the law remained in force until 1790, opposition in Philadelphia rapidly developed. The new criticism was not based in the thought of continental theorists of certain punishment. Instead, it drew upon the theory of institutional discipline and the philosophy of penitential punishments then emerging in Britain. The most significant British advocate of penitential discipline was John Howard. Both his life and his writings provided crucial support for Philadelphians critical of the "Wheelbarrow Law."

There was little in John Howard's life before 1773 to indicate he would be one of the initiators of the modern penal system.  

The son of a Nonconformist warehouseman who had achieved personal wealth, Howard chose the life of a country squire. Although he was a philanthropic landlord, creating "model" villages for his tenants and engaging in moral supervision, there was little to distinguish him from his peers.

Howard's election as Sheriff of Bedfordshire in 1773 changed all that. One of a sheriff's duties was examining and overseeing county jails. Although most English sheriffs traditionally neglected the task, Howard did not. In fact, from his first visit to the Bedford jail in 1773 till his death in 1790, Howard devoted his life to the tasks of prison and hospital reform. In both his writings and his personal behavior, Howard was the focal point of a wider British movement to improve institutional discipline in order to reform inmates.

---

44 "Diary of Ann Warden" March 30, 1787 in Pennsylvania Magazine of History and Biography, XVIII, (1894), 60.
45 St. at Large, XII, 284.
Howard published his great work, *The State of the Prisons in England and Wales* in 1777. Based upon his wide-ranging observation of British and continental prisons and hospitals, *The State of the Prisons* provided a detailed description of prison conditions, a critique of their management, and proposals for their improvement. Howard advocated imposing a disciplinary regimen similar to that found in Dutch workhouses. By renovating the prison environment and controlling prison abuses, Howard argued, it was possible to regenerate convicted criminals. Penitential discipline would cure the moral diseases which created criminals as well as the physical diseases which prisons spawned. No longer did the state need to lose members through excessive executions or unnecessary jail fevers.

Its wealth of documentation and detail helped gain authority for *The State of the Prisons*, but the influence of Howard's ideas derived from his personal behavior as well. Although evidently a difficult person, no one seemed to question his devotion to nor his conduct in prison reform. Howard's contemporaries saw him as the exemplar of a new authority, a self-sacrificing individual performing Christian duty, committed to improving secular conditions:

But who for thee, O CHARITY, will bear
Hardship and cope with peril and care?
Who, for thy sake, will social sweets forego
For scenes of sickness and the sights of woe?
Who, for thy sake, will seek the prison's gloom
Where gaily guilt implores her ling'ring doom;
Where penitence unpitied sits, and pale,
That never told to human ears her tale;
Where agony, half-famish'd cries in vain;
Where dark despondence murmurs o'er her chain;
Where sunk disease is wasted to the bone,
And hollow-ey'd despair forgets to groan.
Approving Mercy marks the vast design
And proudly cries—HOWARD—the task be thine.

When prison reformers imagined the ideal person to guide the new penitentiary, they saw John Howard.

---

Howard's vocation and personal asceticism led him into an alliance with other Nonconformists attempting to create new institutional arrangements. Howard's circle was involved in activities ranging from hospital administration to industrial organization, and from urban hygiene to political reform. The materialist psychology of Locke and Hartley provided the intellectual underpinnings for experiments in institutional discipline during the 1770s and 1780s. British reformers, convinced of the unity of mind and body, searched for new institutional environments which would root out the "moral diseases" then corrupting Britain, most especially, of course, the British poor.49 Particularly close to Howard in his search for new prison conventions were Quaker doctors John Fothergill and John C. Lettsom, both long-time correspondents of the young Philadelphian Benjamin Rush, who supported their efforts fervently.50

Rush was not, of course, the only conduit to Pennsylvania of Howard's ideas nor the only individual to help put them into practice.51 But Rush was a crucial exponent of the new philosophy of penitential punishments, sharing Howard's distaste for public punishments and executions as well as his faith in the redemptive power of re-awakened conscience. Moreover, his years studying medicine in Edinburgh grounded his thought in the materialistic psychology which provided the enlightened "scientific" justification for new institutional organization. Rush combined these two strands of thought into a critique of public punishments, and in early 1787, he sought to convince Philadelphians of the "impolicy" of their new penal laws.

49 Ibid., 60-66.
51 On Howard see, Pa. Packet, October 13, 1787, November 23, 1787, and October 10, 1789. On the spread of information about British efforts to improve institutional discipline see ibid., July 14, 1787 and the Philadelphia Society for Alleviating the Miseries of Public Prisons, *Extracts and Remarks on the Subject of Punishment and the Reformation of Criminals* (Philadelphia, 1790). (Hereafter this organization will be referred to as the PSAMPP)
Members of Philadelphia's elite formed in 1787 the Society for Political Inquiries. The Society met in the home of Benjamin Franklin. Concerned that "In having effected a Separate Government, we have yet to accomplish but a partial Independence," the Society devoted itself to "breaking through the Bounds, in which dependent People have been accustomed to think and act." Only when Americans had achieved independence in political thinking would they "properly comprehend the character we have assumed, and adopt those Maxims of Policy, which are suited to our new situation." In order to help achieve this intellectual independence, the members agreed to meet periodically to hear and discuss papers relating to the "arduous and complicated Science of Government."

The first paper read to this elite gathering was Rush's "An Enquiry Into the Effects of Public Punishments Upon Criminals, and Upon Society." Written in response to Pennsylvania's penal reform legislation of 1786, this paper was an appropriate beginning for a society devoted to "patriotic enlightenment." Rush drew on the latest materialist psychology to demonstrate the inefficacy of public punishments. In the place of such punishments, he proposed a "house of repentance" where private punishments, acting constantly on inmates, would gradually bring about a restoration of virtue. Here, before an audience which included Benjamin Franklin and James Wilson, Rush articulated a philosophy and psychology of private, penitential punishments.

Rush assumed, appropriated, and modified both the Beccarian and Howardian theories in the opening statement of his paper: "The design of punishment is said to be,—1st, to reform the person who suffers it,—2dly, to prevent the perpetration of crimes, by exciting terror in the minds of spectators; and—3dly, to remove those persons from society, who have manifested by their tempers and crimes, that they are

Among the Society's members were, William Bradford, Jr., George Clymer, Tench Coxe, Francis Hopkinson, Jared Ingersoll, Thomas Mifflin, Govenour Morris, Robert Morris, and James Wilson. A wide selection of Philadelphia's political elite were members. Society for Political Inquiries, Minutes February 9, 1787. Historical Society of Pennsylvania. (Hereinafter, HSP.)

Society for Political Inquiries, Preamble, HSP.

Society for Political Inquiries, Minutes March 9, 1787 HSP. It also should be noted that the committee that approved the presentation of papers included William Bradford and Francis Hopkinson. In other words, many of the major legal thinkers in Philadelphia (with the notable exceptions of McKean and George Bryan) either heard or encouraged Rush in his presentation.
unfit to live in it.” Rush hoped, in the name of reason, to overcome the “long and general prejudice” that public punishments were most effective in producing the first two of these aims. In fact, he argued, only by adding exclusion to reformation and terror could the great design of punishment be completed. Public punishments imposed infamy, but in doing so they destroyed rather than developed the criminal’s sense of shame. When corporal punishments were added, matters only because worse: “Pain has begotten insensibility to the whip; and shame to infamy.” Moreover, public punishments were generally too short to achieve any of the changes in habit necessary to return someone to the path of virtue. Finally, having been treated violently, the prisoner “feels a spirit of revenge against the whole community,” stimulating greater and greater criminal activity. In the realm of reformation, at least, public punishments were self-defeating. They succeeded in producing only vice, not virtue.

The effects of public punishments on the morals of spectators were more complicated but equally harmful. Rush found that sufferers of punishments manifested three reactions: “Fortitude, insensibility, or distress.” All three defeated the purpose of punishment. When prisoners displayed fortitude, the crowd respected them. The villain “was lost in hero.” The crowd’s respect then reinforced the prisoner’s will: “There is something, in the presence of a number of spectators, which is calculated to excite and strengthen fortitude in a sufferer.” This dynamic of mutual respect would have disastrous social results. The scene of punishment, rather than making crime and criminals “detestable,” made them objects of emulation. “Deluded people” in the crowd, seeking a “conspicuous death” or mistaking temporary bravery for heroic character, might imitate the condemned in a career of crime. The prisoner’s fortitude produced increased criminality, not improved conduct, amongst the assembled crowd.

Insensibility caused more harm than fortitude. If criminals displayed insensibility, the effect was to remove “instead of exciting terror.” Moreover, insensibility was connected with cheerfulness. The prisoner’s cheerfulness could turn the scene of punishment into a disre-

56 Ibid., 4.
57 Ibid., 5.
spectful, almost festive occasion. The condemned often engaged in “profane or indecent insults or conversation” with the spectators. The solemnity which should accompany the suffering would be destroyed. Punishment, instead of a terrible but necessary reaffirmation of order, would become the site of social discord.

Most dangerous were the effects of distress. When the criminal manifested distress, indignation over the punishment could replace indignation over the crime and produce two harmful results. First, misdirected yet frustrated sympathy for criminals would destroy the psychological roots of charity. Rush assumed that, no matter how much sympathy they might feel, the crowd would never be able to liberate the condemned. The inability of the crowd to effect a liberation could, through repetition over time, frustrate their ability to feel sympathy for others who suffered more “innocently.” Rush drew this conclusion from two psychological principles. The first was that all human beings had an instinct for sympathy which underlay all social bonds. Rush’s second psychological assumption was that character was formed through habit. Habitual behaviors were inscribed on the personality. Although human beings possessed instincts, if the instinct were not actualized through habit it would be lost. Rush contended that the constant frustration of sympathy for the condemned would eventually erode the capacity and instinct for sympathy. “The widow and the orphan—the naked—the sick. . . will have no access to our services or our charity. . . .” And even more serious, when sympathy, “the sentinel of our moral faculty,” was gone, there would be nothing left to “guard the mind from the inroads of positive vice.” The erosion of sympathy would destroy the bonds of sociability leaving everyone vicious and warring each against all. Finally, pity for the distressed criminal would ultimately destroy obedience to the state; “while we pity, we secretly condemn the law which inflicts the punishment . . . .” If the law appeared to engage in acts of cruelty, its legitimacy would disappear.

In effect, Rush argued that public punishments were complex rituals involving a variety of actors. But because they depended on so many people, it was impossible to assure that all participants would interpret them “correctly.” The public punishment was too dependent on the

---

58 Ibid., 5-6.
59 Ibid., 6-7.
60 Ibid., 7.
cooperation and behavior of the condemned. If he or she did not manifestly acquiesce in the justice of their sentence, displaying not penitence or shame, but fortitude, insensibility, or distress, they could destroy the effect of the punishment. Moreover, even if the prisoners played their parts correctly, there was no assurance that the crowd would. If the crowd viewed the criminal with contempt, this could only serve to harden the spectators against all suffering: “Every body acknowledges our obligations to universal benevolence...[and] indignation or contempt...must necessarily extinguish a large portion of this universal love.”

As with frustrated sympathy, contempt for criminals would ultimately undermine Christian charity. Finally, as if all this were not enough, Rush asserted that public punishments spread violence through society while at the same time making “many crimes known to persons, who would otherwise have passed through life in a total ignorance of them.” The multiplicity of participants and of possible meanings meant that the effects of public punishments could not be controlled. “Has not every prison door that has been opened, to conduct criminals to public shame and punishment, unlocked, at the same time, the bars of moral obligations upon the minds of ten times the number of people?” In fact, Rush implied, turning Beccarian aims against Beccaria’s advocacy of public punishments, the only terror such punishments would assure was in the minds of virtuous citizens painfully aware that there was no “security of society.”

Rush proposed to increase the effectiveness of terror by changing the “manner and place” of imposing punishments. Instead of punishing criminals in highly visible public rituals, “Let a large house [of punishment]...be erected in a remote part of the state.” The entrance to the house should be “rendered difficult and gloomy by mountains or morasses.” The mountains would serve a second purpose as well. It was Rush’s hope that they would echo the noise of the opening and closing of the prison gate and so “extend and continue a sound that shall deeply pierce the soul.” All “signs of mirth, and even levity” would be forbidden in the presence of the inmates. A suitable name for the institution should be discovered “To encrease the horror of this abode of discipline and misery.” This prison would provide a controlled arena

61 Ibid.
62 Ibid., 8.
63 Ibid., 9.
64 Ibid., 10-11.
of terror, but an arena without any audience present. Moreover, the roles of the participants would be strictly controlled. Private discipline would not generate any extraneous or undesirable meanings.

At the same time, Rush argued, the nature and duration of punishments should be fixed by law, yet remain secret. Rush felt that publicizing the nature of specific punishments would only serve to diminish their effectiveness. Knowing the punishment would enable criminals to steel themselves against their terror, but their "imagination, when agitated with uncertainty, will seldom fail to connecting the longest duration of punishment, with the smallest crime." Rush did not, however, ignore the theory of the certainty of punishment, "since the certainty of punishment operates so much more than its severity, or infamy, in preventing crimes." Although it was necessary to prevent people from imagining that they might escape unpunished, it was equally important they they imagine themselves suffering the worst degrees of punishment.

Rush thus displaced the medium of "terror" from public visibility to private imagination. Whereas the advocates of public labor sought to make prisoners physical indicators of the correspondence between crimes and punishments, Rush aimed to make individual corporal signs superfluous. The silent, immobile House of Repentance, not groups of marked convicts laboring throughout the city, would establish the connection between criminal acts and their legal punishment. The effective terror of punishment would not depend on any individual or group of convicts; instead, it would assume an abstract horror of its own. Disciplining the scene of punishment would discipline its effects. No longer would punishments generate vice; instead, they would produce virtue.

The transference of penal terror to private imagination served, as well, to reintroduce individualization into punishment. Individualization assumed two forms. First, and most immediate, was the act of separating (individuating) prisoners from communal support. Rush, as we have seen, was aware of and opposed to the support networks provided by crowds. This opposition was part of Rush's attack on a wide range of popular group recreations. But within the confines of crim-

---

65 Ibid., 11
66 Ibid., 14
inal justice, Rush was convinced that it was only by separating the condemned from larger group interaction that reformation could commence. Prisoners confronting authority individually would be less able to resist, more inclined to obey.

Isolating the criminal was only the first step in punishment. The process of punishment, Rush argued, should be individualized "to the constitution and tempers of the criminals, and the peculiar nature of their crimes." Rush assumed that a variety of punishments would be employed, suggesting that they "consist of BODILY PAIN, LABOUR, WATCHFULNESS, SOLITUDE, and SILENCE." These would be "joined with CLEANLINESS and a SIMPLE DIET." Rush was willing to include bodily pain in his prescription for the "cure" of crime because he saw criminality as essentially a medical problem. He accepted the proposition that God had given humanity a "Moral Faculty" (i.e., an instinctive sense of right action); but although morality, and moral actions, were ultimately determined by God, Rush argued that an individual's moral faculty could be affected by "secondary" material or environmental causes. In a lecture to the American Philosophical Society discussing the impact of "material" conditions (including idleness, cleanliness, diet, and disease) on the moral faculty, Rush assumed a unity of mind and body. A person's physical habits and medical condition affected his or her moral behavior. Material conditions could cause aberrations of the moral faculty, but they could also cure them. The importance of this psychology for punishment was clear. Penal officials, operating with knowledge of "the principles of sensation, and of the sympathies...in the nervous system" and in accord with "the laws of the association of ideas, of habit, and of imitation" could create individualized programs to re-form prisoners. The penal process would employ pain, solitude, and silence to break down habits of vice and isolate the prisoner from new sources of evil. Then, through cleanliness, diet, and labor, the process could inculcate a new morality of discipline and health.

68 Rush, An Enquiry into the Effects of Public Punishments, 12.
69 Ibid., 13.
70 Benjamin Rush, An Inquiry into the Influence of Physical Causes upon the Moral Faculty (Philadelphia, 1786). For a broad ranging discussion of the importance of habit and education to the eighteenth century, see Jay Fliegelman, Prodigals and Pilgrims: The American Revolution Against Patriarchal Authority 1750-1800 (New York, 1982).
Not all of Rush's fellow penal reformers shared his psychological assumptions, and few shared his willingness to employ "Bodily Pain." But a growing number did share his critique of public punishments, his desire to isolate criminals from the community and from themselves, and much of his prescription for the organization of a prison. During the late 1780s, echoes of Rush's argument reverberated in the opposition to public labor and in attempts to reform the Walnut Street Jail. Finally, in the early 1790s, these efforts led to the articulation of a penitential ideal which incorporated "certainty," "reformation," and "terror."

In 1789, the Assembly took the first steps towards modifying Pennsylvania's reformed penal system. The legislature ordered that increased efforts be made to separate convicted felons from civil prisoners, witnesses, and prisoners awaiting trial. In order to facilitate these efforts, Philadelphia was empowered to alter and expand its jail and workhouse. The jailor was granted increased powers over prisoners and prison deputies, and penalties were imposed for allowing spirituous liquors in the jail. Finally, the Assembly created the position of Inspector of the Prison to ensure that the prisoners had adequate supplies for their labor; to dispose of the products of the convicts' work; to enquire into any abuse of authority within the prison; and to make suggestions for modifying prison structures in the future. Although the penal system remained centered on public labor, the new statute indicated a growing awareness that the prison was not merely an unimportant if unavoidable adjunct to the penal process.

Concern with the internal structure of the prison emerged rapidly after implementation of the reform legislation of 1786. In September, 1787, the Grand Jury of the Court of Oyer and Terminer reported with dismay the results of their visit to the prison. Having discovered conditions they thought "productive of consequences that must shock every good citizen," they presented the Court with two "grievances." First, they alleged that the prison allowed a "general intercourse between the criminals of the different sexes." The Grand Jurors complained that there was "not even the appearance of decency...with respect to the scenes of debauchery that naturally result from such a situation." The jail had become so "desireable" to the "more wicked and polluted of both sexes" that there were "numberless instances" of the "vicious"

72 St. at Large, XIII, 243-251.
actively seeking commitment to the jail. Under these circumstances it was impossible for the prison to be a reformatory institution.

The Grand Jurors' second grievance was the mixing of debtors with criminals. The "Common Hall," originally a place for debtors only, had become a "resort for the criminals and debtors indiscriminately." The panel was appalled that "many worthy characters" who had been "reduced by misfortune" to the debtors' apartment could not congregate without being surrounded "by wretches who are a disgrace to human nature; together with the horrid noise of chains and disorder of every kind." To make matters worse, the mingling of debtors and criminals was caused by the indiscriminate sale of liquor in the common hall.\(^73\) Chaos and depravity reigned.

On both sides of the Atlantic, the idea that prisons were "schools of vice" and the source of a variety of diseases, both physical and moral, had long been a truism. But this concern was circumscribed by the role of the traditional prison. In the unreformed penal system, prisons had been primarily places of temporary detention. With the exception of long-term civil prisoners, or the rare individual whose sentence included a short term of incarceration, the prison held witnesses or prisoners awaiting trial who were unable to post bond or convicted criminals awaiting execution of their sentences.\(^74\) Although their terms of confinement could be lengthy, this was due to the vagaries of the legal system (e.g., infrequency of court sittings, problems with witnesses or prosecutors, administrative foul-ups) rather than by design.\(^75\) Prisons were unavoidable devices to ensure that all the players made it to the stage of justice, but they were not part of the theater itself.

\(^{73}\) Pennsylvania Gazette September 26, 1787
\(^{74}\) Rothman, *The Discovery of the Asylum*, 52-56, Barnes, *The Evolution of Penology in Pennsylvania*, 71. It does appear that there was some increase in the use of imprisonment as a penal sanction in the early 1780s. In the twenty-one sittings of the Philadelphia County Court of Quarter Sessions between December 1780 and December 1783, there were 17 individuals who were sentenced to some sort of imprisonment as part of their punishment. But it should be noted that of these seventeen only two did not endure some type of public punishment as part of their sentence, and that the terms of imprisonment were usually only for between three and six months. Moreover, during the same period there were eighty-eight individuals whipped at the order of the court, a point which gives a clear idea of the predominence of public corporal punishment in the traditional system. Philadelphia County Court of General Sessions of the Peace 1780-1785, Philadelphia Court Papers, HSP

\(^{75}\) For an example of an individual who suffered extended detention see the case of George Armstrong. Armstrong, committed on September 26, 1781, on suspicion of stealing a mare, had his case (and his confinement) continued at the December 1781 sessions because the owner of the mare was "absent on public service." December 1781 Session in Philadelphia County Court of General Sessions of the Peace, 1780-1785, Philadelphia Court Papers, HSP
The late 1780s provided a radically altered context. By replacing corporal or capital sanctions with servitude at labor, the legislature of 1786 had transformed punishment into an ongoing process. No longer was the act of punishment compressed into a few hours. Nor was the duration of confinement incidental to the penal process; now it constituted one of its central elements. Whereas corporal penalties were assumed to reform (or at least control) the behavior of criminals through pain and shame, the law now hoped to reform the manners and habits of the prisoner through continual re-education. If the time spent in prison undercut the time spent at public labor, then the penal system was at war with itself.

The desire that prisons become places of reformation was reinforced by the belief that they had on occasion been sources of individual transformation. Howard's work, by publicizing examples of "effective" institutions of reformation, helped legitimate efforts to transform prison structure and the prisoners themselves. Howard seemed to show that a prison controlled by a clearly defined set of rules and regulations could function without any of the "abuses" common to places of confinement. If principled individuals, like Howard, imposed and oversaw a new order in the prison, the institution could regenerate its inmates. Howard's researches and the materialist psychology propounded in Philadelphia by Rush provided a model for scientific, enlightened reform of the prison environment. What should be, could be.

The Philadelphia Society for Alleviating the Miseries of Public Prisons best represents the new impulse to make prisons houses of reformation. Established in May, 1787, the Society had three goals: First, to help prevent the "undue and illegal sufferings" of the prisoners. Second, to ensure that "the links, which should bind the whole family of mankind...be preserved unbroken." Third, to help discover and suggest "modes of punishment" which, "instead of continu-

---

76 The early membership of the PSAMPP was dominated by merchants, professionals, and ministers. Among the early leaders were Benjamin Rush, William White, Episcopal Bishop of Pennsylvania, George Duffield, a Presbyterian minister, William Rogers, a Baptist minister, and John Oldden, a merchant. Caleb Lowens, a Quaker and ironmonger, who later became a leading figure in the administration of the Walnut Street Prison was also an early member. Negley Teeters, They Were in Prison: A History of the Pennsylvania Prison Society 1787-1937 (Philadelphia, 1937), 89-92. Many of the early members were Quakers, although their exact number and influence is unclear. Harry E. Barnes, The Evolution of Penology in Pennsylvania, 83-85.
ing habits of vice,” would be the “means of restoring our fellow-
creatures to virtue and happiness.” The first of these goals was a
continuation of traditional charity towards prisoners. The second and
third goals, however, were newer, signaling the influence of the idea of
individual reformation and the new philosophy of prison reform.

Traditionally, Philadelphians had provided charitable contributions
to prisoners. Especially during the winter months, prisoners appealed
for, and citizens responded with, gifts of food and clothing. This
charity tended to be indiscriminate; little effort was made to separate
“worthy” from “unworthy” inmates. Charity was neither a reward for
moral behavior nor a tool to induce future reformation. Prisoners were,
of course, expected to display appropriate gratitude, a sentiment which
might help restore their sense of virtue. But there was no sense of
charity as part of an ongoing process of moral transformation. Instead,
it, like the prison itself, was seen as a necessary but unfortunate adjunct
to the legal system. Charity was a means to compensate for the inade-
quacy of social policy, not a social policy itself.

The Philadelphia Society altered the nature of charity in two ways.
First, it linked its efforts to inmates’ behavior. The society helped in-
mates who, after having their characters judged, appeared to be worthy,
repentant, and redeemable. To these prisoners, and to those whose
confinement was clearly unjust (e.g., acquitted individuals held for
court or jail fees), the Society provided aid to effect their liberation
from jail. For the most part, the Society’s charity was not indiscrim-
inate. As much as it could, it inquired into the characters of its aid
recipients and the validity of their requests. Charity, then, was both
motive and reward for moral behavior.

Second, even the Society’s more general acts of charity became linked
to moral reformation. Rush, one of the Society’s founders, displayed
this attitude most clearly. Having sent a Christmas gift of turkeys to the
prisoners, Rush dispatched an accompanying note. The gift, he said,

77 PSAMPP, Constitution (Philadelphia, 1787).
78 For a discussion of an earlier prison society which does not appear to have tied charity to any
process of reformation see Negley Teeters, “The Philadelphia Society for the Relief of Dis-
tressed Prisoners,” Prison Journal, XXIV, no. 4., (October, 1944), 452-460.
79 Cf. PSAMPP, Report of the Acting committee, Papers, July to December 1787. HSP. See
also, Turnbull, A Visit to the Philadelphia Prison, 65.
80 Dr. [?] Edwards to George Duffield, on Tobias Crosden, August 20, 1787, in PSAMPP
Papers, July to December 1787 HSP, and “Report of visit to Jail,” September 4, 1787, Ibid.
was “a proof that they [the prisoners] are still remembered in their present suffering condition by some of their fellow creatures.” He hoped that this proof might induce them “to consider the infinite love of God to their souls...and to introduce them when penitent into a state of everlasting rest and happiness.” Charity, no longer only an obligation to the ever present suffering, was a positive tool of reintegration and reformation. By demonstrating to inmates that they were still bound to a community, a community which forgave them, charity might help induce a transformation of morals and manners.

The clearest difference between the Philadelphia Society and earlier efforts to aid prisoners lay in its efforts to effect changes in public policy. From its establishment in 1787 until the reorganization of the prison in 1790, the Society sought to modify both the place of the prison in the penal process and the prison itself. Its efforts took three forms: criticizing “abuses” within the prison, criticizing the use of public labor, and proposing a new form of punishment within the prison. In so doing, it made the positions taken by Rush in his “Enquiry into the Effects of Public Punishments” more concrete and specific.

In its criticism of prison “abuses,” the Society echoed and elaborated the “grievances” presented by the Grand Jury at the September 1787 session of the Court of Oyer and Terminer. The Society complained of the “promiscuous” intermingling of the sexes, the sale of liquor in the jail, the failure to separate debtors and criminals, the inadequate provision of bedding (which they argued contributed to promiscuity) and the lack of labor within the prison. Essentially, the Society sought to overcome the traditional social economy of the prison. Seeing the prison as a moral quarantine, it hoped to impose a new morality on the prison. The Society, like the Grand Jury, drew the obvious conclusion: only “by means of some amendments” would the new penal system prove effective.

82 PSAMPP Minutes, January 29, 1788, and December 18, 1788 HSP
83 These attempts to reform the interior structure of the prison parallel efforts to restructure the interior of the House of Employment. On these latter efforts see Alexander, Render Them Submissive, 94-95, 107-108. It is also of interest to note that the PSAMPP received support for their efforts from imprisoned debtors who may have felt threatened by the social atmosphere of the prison. PSAMPP Minutes, December 18, 1788, and “Address from Jail, January 30, 1788” PSAMPP Papers, January to June 1788. HSP.
The Philadelphia Society felt certain about how best to rectify the problems within the penal system. First, eliminate public labor. The Society was convinced that public labor failed to "reclaim" criminals; moreover, it familiarized "young minds to vicious criminals." An insufficient social distance separated the criminals from the community; interaction on the streets reinstated precisely the network of communal support which reformers hoped to eliminate. The result of these factors, the Society felt, was increased criminality. This argument was supported by other writers. One correspondent, writing to the *Universal Magazine of Knowledge and Pleasure*, alleged that the difficulty of disciplining and controlling the convicts at public labor had made the city streets unsafe. "The consequence of this is, that no person, at such a time, can venture to walk the streets or roads, out of reach of the watch, after eight in the evening." Public labor, opponents charged, in an argument that mirrored Rush's larger criticism of public punishment, made punishment into an undisciplined spectacle. And, as with other public punishments, the result was not reformation and order, but criminality and disorder.

The Society hoped to privatize, discipline, and individualize punishment. It proposed that a reformed prison take center stage in the penal process. Public labor in the streets would be replaced by "more private or even solitary labor," which the Society felt could be "conducted more steadily and uniformly & the kind & portion of labor better adapted to the different abilities of the criminals." Steady labor would provide new habits, and solitude would cause the reflection needed to reinvigorate fallen moral sensibilities. Solitude and labor combined with "a total abstinence from spiritous liquors" were the best means of reforming the criminal. Moreover, the Society argued, solitude and labor held greater terror for prisoners than any public labor. An enclosed prison environment could best impose the ongoing discipline needed to effect a transformation of manners and behavior.

Between 1787 and 1790, then, Philadelphians took Rush's abstract critique of public punishments and applied it to their own, more particular, penal situation. Convinced of the possibility and need of mak-

---

84 PSAMPP Minutes, January 29, 1788. HSP.
87 PSAMPP Minutes, January 29, 1788. HSP.
ing the prison a morally reformative institution, they, like Rush, drew on Howard's theories of institutional discipline. Critical of the effects of public labor, they insisted that private punishments would more effectively promote deterrent terror. By 1790, a positive vision of the prison as a place of "reformation" and "terror" had emerged.

Whereas the laws heretofore made...have in some degree failed of success from the exposure of the offenders employed at hard labor to public view and from the communication with each other not being sufficiently restrained within the confines of confinement...it is hoped that the addition of unremitted solitude to laborious employment as far as it can be effected will contribute as much to reform as to deter.88

* * *

In 1790, the legislature moved to establish a system of private punishments. Servitude within the jail replaced servitude at public labor. At the same time, the state moved to refashion the jail itself. The County Commissioners of Philadelphia were directed to cause "as soon as conveniently may be...a suitable number of cells to be constructed in the yard of the goal...for the purpose of confining therein the more hardened and atrocious offenders."89 This building, known to contemporaries as the "Solitary Cells, or Penitentiary House," employed architecture to introduce solitary confinement into the penal process. Beginning in 1794, all convicts convicted of crimes which before 1786 had been capital were required to spend a portion of their confinement in the "Penitentiary House."90 In addition, solitude was to be employed as a tool of discipline; prison officials were empowered to impose solitary confinement upon refractory prisoners.

Solitude had two perceived virtues. Separated from all companionship and outside influence, a prisoner’s conscience would be reawakened and activated. Once "loose" upon the criminal, the conscience would drive him or her back to the path of virtue. "For this reason, a bad man should be left for some time without anything to employ his hands in his confinement. Every thought should recoil wholly upon himself."91

88 St. at Large, XIII, 511.
89 Ibid., 511.
90 St. at Large, XV, 178.
91 Benjamin Rush to Enos Hitchcock, April 24, 1789, in Butterfield, ed., Letters of Benjamin Rush, I, 512.
Turned in upon themselves, criminals would be forced to confront their own "wickedness." This recognition of wickedness, which occurred in way that paralleled Protestant conversion experiences, was the first step towards reformation.

Faith in reawakened conscience was strengthened by the fear that solitary confinement was intended to provoke in inmates. "These cells are an object of real terror to them all, and those who have experienced confinement in them, discover by their subsequent conduct, how strong an impression it has made on their minds." Solitary cells were the ultimate expression of the philosophy of private, penitential punishments. Solitary confinement effectively dissolved networks of collective support, forcing the inmates to confront authority alone. Authority, however, was not alone; it was aided by anxiety, conscience, and terror.

Solitary confinement was merely a part of penal incarceration, however. Even more important was the imposition of labor. The Penal Code of 1790 prescribed continual hard labor for the inmates. Although the type of labor was left to the discretion of prison officials, the law attempted to ensure the constancy and amount of labor required of inmates. Most penal reformers were convinced that criminality stemmed from idleness and the "bad habits" it produced. "Uniform" labor was designed to root out idle habits, transforming the inmates into productive citizens. If solitude broke down the inmates by letting the conscience loose, constant labor would discipline the body, teach new habits, leading to a recovery of lost virtue.

A most important effect of the new penal code was the internal transformation of the prison. The law expanded the number of Inspectors from six to twelve and increased their power over prison organization, prison keepers, and inmates. At the same time, the duties and responsibilities of the Inspectors were more clearly defined. A new system of record-keeping was established, both to assure greater knowledge of the prisoners and greater surveillance of the prison itself by city and state officials. The Inspectors, despite their power, were merely one link in an evolving bureaucratic chain of penal administration. Moreover, the Inspectors were required to draw up in writing rules and regulations for the prison—rules explicitly designed to elim-

---

92 Caleb Lownes, *An Account of the Goal and Penitentiary House of the City and County of Philadelphia* (Philadelphia, 1793), 93. This pamphlet was an appendix to Bradford's *Enquiry*.

93 *St. at Large*, XIII, 517.
inate arbitrariness in the jail. 94 Prisoners' diet was specified, and a code of prison violations and punishments set down. 95 The law required that these regulations be "hung up in at least six of the most conspicuous places of the said goal" to ensure that prisoners knew both their duties and their rights. 96 Through these rules and regulations the system brought together in an ordered fashion the three elements of the "penitentiary"—"one who prescribes the rules and measures of penance; one who does penance; the place where penance is enjoined." 97 All of the actors on the penal stage would have clearly prescribed roles. The "arbitrariness" of customary prison life would be eliminated; certainty would be brought into the penal process itself. The result would be even greater reformatory power. Prisoners would know that the prison was a machine-like organization of reformation. "The present state of the prison holds out to the offenders no other scenes than those of annihilated liberty, the obligation to labour, and the injunction of regularity and silence." 98 Pennsylvania sought to implement Howard's vision of a new authority of written rules; an authority which was both "just" (because non-arbitrary) and "certain" (because known).

The reformed prison, then, would achieve the last goal of late eighteenth-century criminal justice: certainty. Prisoners learned "the difficulty of evading justice. . .that juries are not unwilling to convict, and that pardons are not granted till they [the prisoners] discover some appearances of amendment." 99 Although discretion still existed in the judicial system, the "humanity" of the prison encouraged prosecution and conviction. Pardoning power passed effectively to the Prison Inspectors, who employed it only upon evidence of reformation. Prisoners were confronted by certain punishment outside the prison, certain administration within. "Certainty," "reformation," and "terror" were joined in the architectural and social space of the prison.

Pennsylvania's legislators in 1790 moved the prison to the center of the penal process. Advocates of the prison had effectively argued both for the moderation of punishments and against the use of public pun-

94 Ibid., 522-523.
95 Rules, Orders, and Regulations for the Goal of the City and County of Philadelphia (Philadelphia, 1792).
96 St. at Large, XIII, 523.
97 Sheridan, A Complete Dictionary of the English Language, see "penitentiary .
98 Rochefoucauld-Liancourt, On the Prison of Philadelphia, 27
ishments. Appropriating the Beccarian tradition, they were able to use Philadelphia's experience with public labor, a materialist psychology of habit, and recent experiments with institutional discipline in Britain and Europe, to develop a positive philosophy of private punishments. Drawing on a Protestant faith in the morally redemptive power of solitude and labor and, I would add, tapping both the perfectionist and patriotic strands of revolutionary republicanism, Pennsylvania's penal reformers moved rapidly towards the adoption of reformative incarceration. The prison appeared to them self-evidently humane and just because it seemed to embody certainty, reformation, and terror. Thus even the prison could demonstrate the superiority of the New World and help establish a new republican order of social discipline.

University of California at Berkeley

Michael Meranze

100 Rothman suggests that some of the impetus for late eighteenth-century reform grew out of the revolutionary concern with controlling arbitrary power combined with early national patriotism. The Discovery of the Asylum, 59-61 It also seems possible that within the confines of an ideology which prized "liberty," confinement would seem a self-evident punishment. Finally, the utopianism generated during the course of the revolutionary experience may have helped convince people of the feasibility of the reform and perfectibility of character.