1787

# The Case, Trevett against Weeden

# HISTORY

OF THE

# CRIMINAL LAW OF RHODE ISLAND.

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## CHARGE OF

## HON. WILLIAM R. STAPLES,

DELIVERED TO THE GRAND JURY OF THE COURT OF COMMON PLEAS IN NEWPORT AND PROVIDENCE.

(Published by order of the General Assembly.)

Previous to the year 1647, the several English settlements which are comprised within the limits of the State of Rhode Island, were entirely distinct from, and independent of each other. They were associations of individuals, formed without the consent or aid of the government of which they were subjects. All the powers of the associations resulted from the express assent of the individuals who composed them. On their petition to the Parliament of England, in 1643, they received a charter of civil government, uniting the several settlements into one colony under the name of Providence Plantations. The corporators met in a general assembly, in May 1647, for the first time, and by vote accepted the charter, and thenceforth became one colony and a corporation known to the law, and possessing all the powers conferred on them by that instrument. Among these, was "the power to make and ordain such civil laws and constitutions and to inflict such punishment upon transgressors, and for execution thereof, so to place and displace officers of justice, as they, or the greater part of them,

should by free consent, agree unto." A subsequent clause in the same charter provided, that all the laws, constitution and punishments should be conformable to the laws of England so far as the nature and constitution of the place would admit. At this General Assembly, the colonists proceeded, among other things, to pass a criminal code for the colony. This code is the commencement of all our colonial and state legislation in relation to crime or criminals. No reference is had in it to the common law or statute law of England, creating, defining or punishing crime, as being binding upon them. From the power expressly given in the charter to pass laws conformable to the laws of England as far as the nature and constitution of the place would admit, they implied the right to repeal or disallow such laws of England as were not conformable to the nature and constitution of the place, in their opinion. Hence the code embraced only a part of the criminal laws of England and then closed with this remarkable declaration,—"These are the laws that concern all men and these are the penalties for the transgression thereof which by common consent are ratified and established throughout the whole colony: and otherwise than thus what is herein forbidden all men may walk as their consciences persuade them, every one in the fear of his God, and let the saints of the Most High walk in this colony without molestation in the name of Jehovah their God forever and ever." In this view of the matter, this part of the code of 1647, which relates to crimes and punishments, is peculiarly important to him who would trace the progress of laws on these subjects in this state. I propose at this time to make a rough sketch of it with a brief historical review of the changes which have been made in it. up to the present time.

## CRIMINAL CODE OF 1647.

The crimes first named in the code are High Treason and misprision of treason. Reference is made to the English Statutes, creating, defining and punishing these offences, and it is then provided, that whenever any person shall be convicted of either of these offences by the General Assembly, he shall be sent to England for trial. Two examinations were had under this law during the continuance of this charter. In the

one (Hugh Bewit's), the General Assembly found a general verdict, so to speak, of not guilty. In the other (Wm. Harris'), they found the defendant guilty of the fact charged, but being in doubt whether that fact amounted to High Treason, they put the defendant under bonds for good behavior, and transmitted a copy to Mr. Clark, their agent in England, for further proceedings at his pleasure. This seems to have been the end of the matter. The complaint in this case was by Mr. Roger Williams, and I specially refer to it to show that Mr. Williams' views of religious liberty had reasonable bounds, and also to show, that some of our modern reformers did not originate the opinions which are their distinguishing characteristic. The General Assembly in this case declared that it was proved to their satisfaction, that Wm. Harris in his book and in his speeches had held forth—"as for doctrine, having much bowed the scriptures to maintain it, that he that can say, it is his conscience, ought not to yield subjection to any human order among us."—Williams, it seems, repudiated this doctrine, and deemed it High Treason against the parent state, and the General Assembly of the colony doubted, and very wisely too, I think, whether it was High Treason against the state of England, though they deemed the matter required that Mr. Harris should give bonds for his good behavior for expressing such opinions.

Mr. W. took one other occasion to hold forth the same doctrine. In a letter to the town of Providence he says, "that even I should speak or write a tittle that tends to such an infinite liberty of conscience, is a mistake—and which I have ever disclaimed and abhorred." To prevent mistakes, he proposed the case of a ship at sea, with many persons on board of all religions, as Protestants. Papists, Jews and Turks, upon which supposed case, he says "all the liberty of conscience that ever I pleaded for, turns upon these two hinges, that none of the Papists, Protestants, Jews or Turks be forced to come to the ship's prayers or worship, nor compelled from their own particular prayers and worship, if they practice any." At the same time he insisted that the Captain of the ship had the exclusive direction and management of the ship, that he was bound to establish and maintain justice, peace and sobriety among seamen and passengers, and that

he had a right to compel all on board, whether passengers or seamen, to defend the ship against all pirates and enemies.

Petit Treason, by this code, is defined to be wilful murder "upon any subject, by one that is in subjection and oweth faith, duty and private obedience to the party murdered," as also the malicious killing of any "judge of record" and the betraying the colony and government. The punishment was declared to be, for a man to be drawn and hanged, for a woman, to be burnt alive; together with the forfeiture of goods, also of lands for a year and a day. All accessories were to be hanged. No prosecution was ever had under this law.

Rebellion, of any inferior against a superior, to whom he "more directly oweth faith, duty, and ready obedience," as a servant to threaten or strike his master, or a child, his parent; to threaten or strike a judge of record, "or to withstand an arrest and the execution of judgment." The penalty prescribed, was imprisonment in the house of correction, not to exceed twelve months and to give bond for future good behavior.

Murder, defined to be "the killing of any one feloniously, that is, with a premeditated and malicious mind; the killing of an officer or his aid while executing his office, and for a thief to kill a true man."—Punishment, death with loss of goods and chattels and lands to the king for a year and a day.

Manslaughter or "the killing of a man feloniously, to wit, with a man's will though without malice-forethought." Punishment death.

Witchcraft was forbidden, and punishable as by the laws of England, with death. There never was a prosecution for witchcraft in Rhode Island.

Burglary, Robbery and Arson were punishable with death, as also the malicious burning of a barn having corn in it.

Forcible Entry and Detainer, were punishable by imprisonment; Rescues and Escapes, by some punishment that awaited the prisoner. Riots, Routs and unlawful assemblies, by imprisonment and fine. Threats, Assault and Battery, by fine and damages to the party injured, to be recovered by civil action

Rape was punishable with death and so also the crimes against nature.

Adultery and Fornication are declared offences and punishable as by the laws of England is and shall be appointed.

Taking away or contracting marriage with a maid under sixteen years of age without consent of father or mother, is declared "a kind of stealing of her" to be punished by five years imprisonment or satisfaction to the parents.

Larceny or Theft, defined as at the Common Law to the felonious taking and carrying away another's personal goods and not including choses in action, was divided into grand and petit larceny. The last petit larceny, included thefts of property not exceeding twelve pence in value. He who was convicted of this, was "to be well whipped" for the first offence, and for the second, to be imprisoned two months in the house of correction and to be twice whipped. He who was convicted of grand larceny. that is of any theft of property of more than twelve pence value, was "to be severely whipped" and kept to serve in the house of correction until the party injured be satisfied two fold the value of what was stolen, for the first offence; and for the second, to be branded in the hand and to serve in the house of correction till the party injured received two fold value, and the colony four fold value of the thing stolen. There was also the forfeiture of a thief's goods and chattels to the King. Taking a purse or other thing from the person of a man secretly or fraudulently, was larceny.— So if an officer took property fraudulently and under pretence of his office, he was to be adjudged for the second offence guilty of grand larceny. So also was he who converted property to his own use which had been only distrained or levied on.

The malicious burning or destroying a frame prepared for building, was punished the same as grand larceny.

The malicious burning or spoiling of a cart-heap of wood prepared for coals, the cutting out the tongue of a beast alive, cutting off the ears of a man or the barking of fruit trees, subjected the person convicted, to a fine of ten pounds and treble damages to the person injured.

The cutting and taking away of growing corn, the robbing of orchards and gardens, the destroying of any hedge or fence, the carrying away of fruit trees, the cutting or spoiling any standing wood, being as the code says "things which the lawyers call real and so not felony," were made punishable with double damages to the person injured, as was also the putting of one's beasts into another man's field.

Conspiracy, champorty, embracery and common barretry were punishable by one year's imprisonment. A juror accepting a bribe forfeited ten times as much as he took.

Forging, rasing and embezzling records of process whereby any judgment shall be reversed—forging of any deed, acquaintance or record, were punishable by imprisonment.

The using of false weights and measures, was punished by a fine of 6s 8d to the town for first offence, 13s 4d for second, and 20s for third, besides being set in the pillory.

The penalty for perjury was the infliction on the perjured person of the same detriment that he sought by his false testimony to bring upon another, a fine of five pounds to the colony and disability forever after to hold office or give testimony in a court of law. In case of non-payment of his fine the convict was to be imprisoned till he wrought it out or to be set in the pillory and have his ears nailed thereto.

A master who dismissed a servant without sufficient cause and in breach of his covenant, was finable 40s.

A servant who left service under similar circumstances was liable to be committed to ward without bail, till he gave sureties to perform his engagement. Hiring a servant not lawfully dismissed, subjected the hirer to a penalty of five pounds to the former master.

Every artificer or laborer hired to do any certain work was finable five pounds if he left the work unfinished without cause, unless his wages were unpaid, and was also liable in damages to his employer.

Slander and libel were subjects of action for damages, unless the words published were true, and unless the publisher would reveal the author.

Common Scolds, were punishable with the ducking stool.

No person under penalty of 20s was allowed to keep a tavern, ale house or victualling house without license from the town, which was to be granted on recognisance given with sureties to keep good order and prohibit gaming in the licensed house, and not "to suffer any townsman to remain tippling therein for an hour's space" under penalty of 10s for every default, and every townsman so taken was liable to a fine of 3s. The keepers of licensed houses if they permitted any person to tipple in their houses after nine o'clock at night, were subject to a penalty of 5s and the tippler to one of 2s 6d, unless he could give a good reason therefor. Afterward drunkenness was punishable by a fine of 5s, for non payment of fine, to sit six hours in the stocks for the first offence and for the second to give bond for his good behavior.

Every male person between the ages of seventeen and seventy was required to have a bow and four arrows, under a penalty of 3s 4d. It was also required at the hand of every parent that he furnish each of his sons with a bow and two arrows from the age of seven to seventeen.

Every man who was married without consent of parents and due publishment in town meetings, forfeited five pounds to the father of the maiden.

## CAPITAL CRIMES UNDER CODE OF 1647.

These are the principal acts declared criminal, by this code, and according to the last clause of it "otherwise than thus what is herein forbidden all men" might "walk as their consciences persuaded them, every one in the fear of his God." According to its provisions, High Treason, murder, petit treason, including therein treason against the colony, manslaughter, witchcraft, burglary, robbery, arson, including the burning of barns having corn therein, rape and the crimes against nature, were punishable capitally.—Compared with the criminal code of England or with the codes of the neighboring colonies in America, the list is small, though large enough to excite our regret. From a careful examination of records, I have not found that the dread penalty of death, was ever inflicted except for murder. The mode of inflicting this penalty,

was by hanging by the neck. The colony at that time was not divided into counties, nor was there any house of correction in it, or place of confinement of criminals, except the jail in Newport.

It seems that the sale of spirituous liquors was at this very commencement of the government a subject of legislation. No subject has given rise to so much legislation in this State since this time. The use of such liquors has always been deemed to be on the increase, and not only so, but the legislature has ever been anxious to regulate if not repress it. The first offence in either of the settlements composing the State, was drunkenness. This occurred at Portsmouth, in September 1638, while that colony was independent of the others. The several delinquents, there were eight in all, were convicted of a riot of drunkenness, and were fined and set in the stocks for their delinquency. I ought perhaps to have given precedence to the case of Joshua Verrin, who was tried at Providence, in a town meeting the year previous, and disfranchised for restraining liberty of conscience. The fact proved was his refusing to let his wife go to meeting as often as she chose.

Several minor changes took place in this code during the continuance of the first charter. In 1650 it was enacted that if any one was molested by an unjust indictment, that is adjudged not guilty as charged, he should receive his costs of defence and his damages of the complainant if his oath proved untrue, and the complainant was adjudged to be set in the stocks and pay a fine of 20s. This was amended in 1655, so that on a verdict of not guilty, the colony paid the expenses and the complainant was left liable to a suit for slander. Either of these provisions, if adopted now, would very much decrease the criminal business before the courts of the State.

In 1655, Adultery, which by the code of 1647, was left punishable by the laws of England, that is by the ecclesiastical courts, was declared an offence cognizable by the courts of the colony and punishable for the first offence by whipping fifteen stripes in two successive towns in two successive weeks, and for the second the same number of stripes in each of the four towns of the colony, and by a fine of twenty pounds.

"A notorious and accustomed swearer and curser"

in the same year was declared liable for the first offence to be admonished by the magistrate, and for the second to be set in the stocks or fined 5s.

## CHANGES IN CRIMINAL CODE AFTER 1647.

These constituted the general, the outlines of the laws in relation to crimes and punishment, under the charter of 1643. The adoption of the new charter in 1663, led to but few alterations in the laws on these subjects, until all the public laws of the colony were revised and printed in 1718. By the code then adopted, High Treason, petit treason, murder, manslaughter, witchcraft, burglary, robbery, and the crimes against nature were declared felonies and punishable with death.

The same penalty is provided for the same offences in the digests of 1730, 1745, 1767, excepting that in the last, witchcraft is omitted. In the digests of 1797 and 1822, the same crimes, except High Treason and the crimes against nature, were punishable capitally, and the crimes of arson and rape were added to the list. These constituted the catalogue of capital offences until January 1838. At that time imprisonment was substituted for the death penalty for all crimes, except murder and arson, and the latter was punishable by death or imprisonment for life or for a term not less than ten years at the discretion of the court. In January 1852, capital punishment was abolished in this State, and imprisonment for life substituted for it.—The number of public executions has not been large in this State and colony, compared with adjoining States, or in proportion to population. Most of them have been for murder.

Forging or altering records, &c., by the digest of 1718 was punishable with imprisonment or a grievous fine. The punishment remained the same under the digests of 1730, 1745 and 1767. By the digest of 1797, forging or counterfeiting bank bills and current coin, and the passing of counterfeit money, and the having the same with the intent to pass, were placed in the same statute with forging deeds, and the punishment then prescribed, was, standing in the pillory, the cropping of both ears, the branding the cheek with the letter C., imprisonment not exceeding six years and fine not exceeding $4000, all or any of which were to be

imposed on the convict for this offence, at the discretion of the court, and such continued to be the punishment until January 1838.

The punishment of theft or larceny by the digest of 1718, on the first conviction was, restoration of two fold value of the goods stolen, whipping or fine at discretion of the court. On the second conviction, restoration of two fold value to the owner and four fold value to the colony, with whipping or fine. In either case if the convicted person had not sufficient goods and chattels to answer the sentence against him, he was sold by the sheriff, under the direction of the court. for a term of years sufficient to raise the sum required. The digests of 1730, 1745 and 1767, provide the same punishment for this offence. In the newspapers of those days are to be found many advertisements by sheriffs under this law. The sales were at auction and the advertisements set forth the name and age and physical good qualities of the convict in terms similar to those now used to describe a horse offered for sale. By the digest of 1797, the punishment was changed to restoration of property stolen as before and to a fine not exceeding $1000, or imprisonment not exceeding two years, or whipping not exceeding fifty stripes.— The court could impose the whole if they deemed it expedient. Such continued the punishment till January 1838. In 1720, petty thefts of property under 20s value were made cognizable by two justices of the peace. They were empowered to sentence a convict on his first conviction to restore two fold the value of the goods stolen to the owner and to be fined or whipped not exceeding thirty-nine stripes, on the second conviction, to the same restoration to the owner, four fold value to the colony, and to be fined or whipped at discretion. They had also the power to order a convict sold as aforedescribed. The jurisdiction of the two justices over this offence was retained till 1838, and the punishment was modified as in thefts of greater magnitude.

Adultery, by the digest of 1730, was punishable with not exceeding thirty nine stripes, or fine not exceeding ten pounds. In 1752, a person convicted of this crime was to be set on the gallows for one hour with a rope about his neck and then to be whipped not exceeding thirty-nine stripes. The same punishment awaited

him who was convicted of polygamy. These punishments continued the same under the digest of 1667. but in that of 1797, adultery was made punishable by a fine not exceeding $200, and imprisonment not exceeding six months. Polygamy by the same digest subjected the convict to be set on the gallows with a rope about his neck for one hour, to pay a fine not exceeding $1000, or to be imprisoned not exceeding two years, and so it remained until 1838.

Perjury and subornation of perjury, by the digest of 1797, were punishable with standing four hours in the pillory, or a fine not exceeding $1000, or imprisonment not exceeding three years, or cropping, or branding, or all, at the discretion of the court, and so it remained till January 1838.

By the same digest, that of 1797, the punishment of duelling, challenging to a duel, &c., were punishable by sitting one hour on the gallows, or imprisonment not exceeding one year, or both. Horsestealing was made a distinct offence by the same digest, punishable by a fine not exceeding $1000, imprisonment not exceeding three years, and whipping not exceeding one hundred stripes. These punishments remained unaltered till January 1838. By the digest of 1822, the burning of a house or other building not arson at common law, was made punishable by fine not exceeding $5000, and imprisonment not exceeding five years, and by pillory, cropping and branding.

I have not posted up the legislation of the State in relation to licenses for the sale of strong liquors. The reason I think will be apparent when it is known that between 1822 and May 1853, there are no less than forty-nine acts on the subject among the public laws of the State.

In January 1835, the following crimes were punishable capitally: murder, arson, rape, robbery, burglary, and petit-treason. Six in all. Corporeal punishment might form a part of the sentence of every person convicted of forgery, passing and having counterfeit money or tools to manufacture it, counterfeiting, perjury, subornation of perjury, inciting to perjury, duelling, challenging to a duel. horsestealing, larceny, polygamy, burning buildings not arson at common law, and crimes against nature.

## ABOLITION OF CORPOREAL PUNISHMENTS.

Many years previous to 1835, the whipping post and cat, the pillory, the stocks, and the branding iron, had been generally abandoned in the neighboring States. In our State, public opinion was decidedly against their use, though sanctioned and in some instances imperatively required by statute. When left to the court to impose fine and imprisonment on either of the above, they uniformly selected the former. In those cases where the statute required the infliction of corporeal punishment, the execution of the sentence was postponed until after one or more sessions of the General Assembly, who generally and almost uniformly, remitted that part of the sentence, or commuted it.

Preceding the January session of the Assembly in 1835, petitions to that body had been circulated in most of the towns, praying the abolition of corporeal punishments and the substitution of labor in a state prison in their place. Some have supposed that this was the earliest movement in this State for the establishment of a penitentiary or state prison in this State. But this is no fact. The subject came before the State Legislature in 1796. Before the October session in that year, a committee had been appointed to revise the public laws, and at that session they were instructed by the Assembly to substitute confinement at hard labor in place of all capital and corporeal punishment. At the June session 1797, the Assembly directed a committee before that time appointed to build a new jail in the county of Providence, to proceed and build not only a county jail but a state prison also, according to the plans which they then presented to the Assembly for their approval. The committee proceeded and laid the foundation for the prison as directed, but their labors were interrupted in the January following, 1798, by a repeal of the act directing the erection of a state prison. The county jail was afterward erected on the foundation laid for the state prison.— This building stood at the foot of the court house parade, on the west side of Main street, and about 150 feet from it. It was abandoned in 1838, and will be remembered by some as the disgrace of the State for many years before that time. It will be difficult to account for the legislation on this subject in 1796 and

1798. In the absence of all evidence it might be safe to believe that the body of the people favored one side and the party leaders favored the other side—a state of things which often produced similarly discrepant legislation both before and after this time.

## PETITION FOR STATE PRISON.

The petitions presented to the Assembly in January 1835, were signed by some hundreds of citizens in various parts of the State of all political parties and religious sects. The Assembly referred the subject to the freemen to be considered and voted on at April town meetings, whether or no a state prison should be erected to be paid for by the State. It was hoped by some who opposed the establishment of a State prison, that the addition of this mode of paying for the prison, by tax, would destroy the popularity of the measure, and probably defeat it. The result of the vote in April showed that the people were in earnest in the matter. Party lines and sectional prejudices were forgotten, and on counting the votes at May, there were found 4433 in favor of building a state prison and paying for it by a direct tax, and 502 against it. The legislature took measures to carry the will of the people into immediate effect.

## STATE PRISON ERECTED.

At that period, as now, there were two classes or kinds of state prisons or penitentiaries in the different States of the Union, which varied in their construction and discipline, the one known as the Auburn, taking its name from the town of that name in the State of New York, in which is a model prison of that class, and the other as the Pennsylvania system. The former or Auburn system provides for separate confinement of its inmates by night, and united labor and instruction by day, under keepers, interdicting all communication between the inmates, at all times, as far as practicable. The latter or Pennsylvania system provides for the separate confinement of each person at labor, with instruction. No prisoner under this last system is permitted to see another, or to have any communication with any one except his keepers, unless under very peculiar circumstances. There was of necessity a great difference in the buildings required in these two systems, as also

in the expense of erecting them and carrying them out. Each seems to have its peculiar advantages and disadvantages, and among the friends of reform in prison discipline each had its advocates and opposers.—The Assembly made such inquiries on the subject as they deemed expedient, and directed a prison or penitentiary to be erected on the Pennsylvania system.—This was completed in 1838, and in November of that year, convicts then in custody were immured within its walls.

## NUMBER OF COMMITMENTS, &c., IN STATE PRISON.

Up to the present time, (October 10, 1853,) there have been one hundred and ninety-three comitmments to this prison. Five persons have been twice committed there, one person a fourth time. Of the whole number committed, seventy-nine have been discharged at expiration of their sentences; fifty-nine pardoned out by the General Assembly; nine have died; three have escaped, and forty-three are there now confined. Of the whole number committed, one hundred and eighty-six have been males, and seven females, and of these now confined all are males.

## CHANGE OF SYSTEM.

After a trial of about four years, the Inspectors and Warden to whom the immediate government of the prison is entrusted, became satisfied that this mode of discipline, separate confinement with labor, had an injurious effect on the mental powers of the convicts.—Several cases of insanity occurred among them, and the General Assembly, in 1843, abolished separate confinement at labor, and substituted labor in common workshops, which they erected the next year, adjoining the prison.

After thus abandoning the system for which the prison building was erected, the disuse of the building would seem to follow almost of course. During the last year, this took place. There was completed a new wing to the prison upon the most approved plan, containing eighty cells in three stories. The old state prison was thenceforth used as a county jail only—each cell being occupied by at least two persons. A new workshop was also finished about the same time.

so that now the establishment contains ample accommodations for eighty prisoners in the state prison, and for about the same number in the county jail. The workshops are large, airy and commodious, far more comfortable than those used by many of our mechanics. The convicts are employed mostly in making furniture and cabinet work, and at present are hired out at a certain sum per day.

## PECUNIARY RESULTS OF STATE PRISON.

The pecuniary results of the state prison have not been so favorable as was anticipated. No one ever believed that the Pennsylvania system of discipline could ever be rendered as profitable as that of Auburn. Of late these results begin to be more satisfactory. Similar institutions on this (Auburn) system in other states have been made a source of revenue. But it is not probable that our state prison will ever become so.—The small number of its inmates and the short terms of imprisonment which public sentiment will tolerate, forbid that it ever should be so. The numbers and expense of officers does not bear an equal ratio with the number of the criminals confined. The greater part too of the convicts require some instruction before their labor can be made very profitable, and in many instances the terms of their imprisonment expire before they are well fitted for any business carried on within the walls.

## REFORMATION POWER OF PRISON DISCIPLINE.

But pecuniary results ought not to be the sole, nor even the most prominent object of State legislation in relation to crimes and criminals. State prisons are not workshops: criminals are not artificers to be regulated only with a view to pecuniary profit and loss. The balance of receipts and expenditures is by no means the true index of their beneficial results. When this prison was erected, it was hoped that separate confinement at hard labor with instruction would reform the objects of punishment. It was felt that the stocks and the pillory and the whipping post only hardened the criminal and made it necessary for him, indelibly disgraced as he was, to associate only with individuals of the same stamp with himself. Such

punishment set the mark of Cain on the offender. Nothing could screen him from the scorn of his fellow men. and there was no hand outstretched to assist him in the contest which was always being waged between his habits and his conscience. He was abandoned to his equally debased associates, among them to whet his revenge against society, from which he had found himself an outcast, and against the law, which had rendered his life a curse. The advocates of a State prison calculated much on its reformatory powers. Viewing the guilty as fellow-men notwithstanding their guilt, and as men entitled to their commisseration and sympathy, they desired to change their habits, to separate them from their companions, to strengthen their moral powers, and then to restore them to society without any mark of infamy on their persons. They fondly hoped that when a man was shut up in his cell and all communication between him and the world cut off, that conscience would resume her sway, and that its dictates, confirmed by precept and strengthened by habits of industry and reflection, would influence his future life. When compelled to abandon the system first adopted, their hopes were by no means abandoned. The friends of the Auburn system always contended that its reformatory power equalled that of the Pennsylvania, while they admitted that the theory of the last was preferable. they insisted that its practical workings were no more than equal. Whether this idea be correct or not, humanity required that the solitary system should be discarded, inasmuch as it was dementing those upon whom it operates. No general reformatory power could compensate for this evil. If this power be less in the Auburn system, and we are still compelled by imperious necessity to adopt that or none, care should be taken that every obstacle to its success should be removed, and every aid afforded it that can be suggested.

## DEFECTS OF COUNTY JAILS.

No single cause has exerted so great an influence in paralysing the reformatory powers of our State prison as the construction and consequent management of our County Jails. In these, no great attention has or can be paid to the classification of their

inmates. A person suspected of crime, is sent to one of these to await his trial, unless he can find some friend to become surety for his appearance and good behavior in the meantime. While there unless he is a very dull scholar, he can learn more of the ways of iniquity in a month, than he can in any other place in a year. Their mode of construction affords but little means of interrupting communication between all the prisoners, between the youth accused of his first indiscretion and the hoary headed veteran in crime. They are schools in which the former before his trial, may become an adept, and when discharged he goes forth into society more its enemy from the restraint to which he has been subjected, and well instructed how to evade punishment for future infractions of law. A large proportion of the persons so committed are under thirty years of age.

The following statistics from the Providence county jail will not be deemed unimportant.

| | | |
|---|---|---|
| In Jail October 1st, 1848, - - | 39 | |
| Between that and Oct. 1, 1849, there were committed on sentence, - - | 246 | |
| For want of surety, - . - | 229 | |
| | | 514 |
| Males, - - - - | 461 | |
| Females, - - - - | 53 | |
| | | 514 |
| Over 70 years old, - - - | 1 | |
| From 60 to 70, - - - | 10 | |
| " 50 to 60, - - - | 35 | |
| " 40 to 50, - - - | 59 | |
| " 30 to 40, - - - | 128 | |
| " 20 to 30, - - - | 186 | |
| " 10 to 20, - - - | 94 | |
| Under 10, - - - - - | 1 | |
| | | 514 |

Of the 246 who were sentenced, 168 reported themselves, or were known to be intemperate.

| | | |
|---|---|---|
| In Jail, October 1st, 1849, - - | 66 | |
| Between that and October 1, 1850, there were committed on sentence, - | 215 | |
| For want of surety, - - - | 202 | |
| | | 483 |

| | | |
|---|---|---|
| Males, | 448 | |
| Females, | 35 | |
| | | 483 |
| From 60 to 70 years old, | 5 | |
| " 50 to 60 " | 20 | |
| " 40 to 50 " | 46 | |
| " 30 to 40 " | 99 | |
| " 20 to 30 " | 188 | |
| " 10 to 20 " | 118 | |
| Under 10 | 7 | |
| | | 483 |

Of the 215 who were sentenced, 140 reported themselves, or were known to be intemperate.

| | | |
|---|---|---|
| In Jail, October 1st, 1850, | 66 | |
| Between that and Oct. 1851, there were commited on sentence, | 228 | |
| For want of surety, | 210 | |
| | | 504 |
| Males, | 460 | |
| Females, | 44 | |
| | | 504 |
| From 60 to 70 years old, | 1 | |
| " 50 to 60 " | 12 | |
| " 40 to 50 " | 54 | |
| " 30 to 40 " | 109 | |
| " 20 to 30 " | 206 | |
| " 10 to 20 " | 122 | |
| | | 504 |

Of the 228 who were sentenced, 149 reported themselves, or were known to be intemperate.

| | | |
|---|---|---|
| In Jail, October 1st, 1851, | 57 | |
| Between that and Oct. 1, 1852, there were committed on sentence | 177 | |
| For want of surety, | 161 | |
| | | 395 |
| Males, | 349 | |
| Females, | 46 | |
| | | 395 |
| From 70 to 80 years old, | 2 | |
| " 60 to 70 " | 1 | |
| " 50 to 60 " | 12 | |
| " 40 to 50 " | 46 | |
| " 30 to 40 " | 88 | |

| | | |
|---|---|---|
| " 20 to 30 " | - - | 179 |
| " 10 to 20 " | - - | 67 |
| | | —— 395 |

Of the 177 committed on sentence, 123 reported themselves, or were known to be intemperate.

| | | |
|---|---|---|
| In Jail, October 1st, 1852, | - - | 51 |
| Between that and October 1, 1853, there were committed on sentence, | - | 204 |
| For want of surety, | - - | 161 |
| | | —— 416 |
| Males, - - - - | | 372 |
| Females, - - - - | | 44 |
| | | —— 416 |
| From 60 to 70 years old, | - - | 4 |
| " 50 to 60 " | - - | 15 |
| " 40 to 50 " | - - | 35 |
| " 30 to 40 " | - - | 78 |
| " 20 to 30 " | - - | 177 |
| " 10 to 20 " | - - | 102 |
| Under 10 - - - - | | 5 |
| | | —— 416 |

Of the 204 committed on sentence, 144 reported themselves, or were known to be intemperate.

Of the 1104 sentenced from October 1848 to October 1853, 553 report themselves able to read and write, 128 able to read only, and 293 can neither read or write.

If inquiry were made of the persons now in our State prison, I fully believe that many individuals would be found who were first accused of some trifling breach of the peace, or some petty theft, and sent to a county jail, for a short period—that they left the jail impressed by their elder fellow prisoners with the firm belief of the wrong they had suffered, resolving to avenge themselves by other criminal acts. A second conviction, and perhaps a third followed, and on each imprisonment they were steeped deeper and deeper in iniquity in these schools prepared for them by the State.

The convicts in your State prison are educated for the places they now occupy, at the expense of the state treasury. Your county jails are nurseries which supply your State prisons with inmates.

Let us look at another feature in this system of im-

prisonment. In the county jail no means are provided by the State, and no pains taken to reform criminals. In only one, are the inmates obliged to labor, In all others they are left to brood over their fancied wrongs, and to plan deeper schemes of villany. After one or two terms of imprisonment in the county jails they are sent to the State prison, and then commences the care of the State to reform them. Then the heart of the philanthropist and the christian begins to yearn for their reformation. I would not stop any movement in favor of any class of convicts, but is it not true that before any attempt is made to reform, such is the age and such the habits that little beneficial results can be expected. Before a man arrives at the age of thirty years, his habits are generally fixed, and his character formed for life. A twig is easily bent, a sapling can be readily straightened, but who can bend the trunk of the full grown tree. And are we not spending our strength, our money, our time and sympathy, in bootless endeavors to straighten by our State prison the mossy white oaks in crime, and in making crooked by our county jails the twigs and saplings, in order that the next generation may spend their strengh and money and time and sympathy in endeavoring to make them straight again by the State prison. Would it not be more reasonable, to strive to keep the twigs and the saplings straight, and then the next generation of trees will be straight also. And as for the distorted and crooked trees which deform our moral landscape, use them as crooked trees, nor hope by human means alone ever to straighten them.

## REFORM IN COUNTY JAILS.

If these things are so, interest coincides with humanity in requiring an alteration in our county jails. The structures themselves should be so changed as to afford the means of keeping separate those who are committed for trial, and those who are committed on sentence. Provision should also be made to classify those committed on sentence, or so as to interdict a free communication between them. But above all, the inmates should all be compelled to work. There should be no exception. Of course I speak throughout of those committed at the suit of the State. No man is there confined unless some court or magistrate,

after a trial, has decided that he is guilty or rightfully suspected to be guilty of some breach of criminal law. After either judgment, it may be, that he is innocent, for no human tribunal can unerringly decide upon such questions. Men have been condemned on their own confessions, and capitally punished, who were perfectly innocent. But human laws are necessary for the protection of society, and human tribunals, though not infallible, must be entrusted with their execution. Every man then, imprisoned at the suit of the State, whether upon the judgment of a court that he is guilty, or that there is ground to suspect that he is guilty, stands in the condition of a criminal. The safety of society, it has been adjudged, requires that his personal liberty should be restrained. Where the injustice then, of requiring him to labor, so that the imprisonment which is the result of his own misconduct toward society, should not inflict a further injury on society by compelling it to support him. While he is in jail he should be compelled to labor, to defray his expenses, and also, with a view that the imprisonment may not become necessarily injurious to him.— The constitution of man requires labor of the body to keep not only the body but the mind itself in a state of health. The best interests of society, and the soundest philanthropy require that all the inmates of our county jails should be kept at labor.

When our county jails are thus improved in their structure and management, instead of being nurseries of crime, they will exercise a healthful reformatory power over all their inmates, and decrease, instead of increasing the numbers confined in our State prison and the consequent expenses of the State.

## INEQUALITIES OF MORAL TRAINING.

There are some other considerations in relation to criminals, which should not be lightly passed over.— A large proportion of the persons who offend against the criminal laws of the State, are in a great measure ignorant of their duties and of the requirements of these laws. And this ignorance is not so much the result of their choice or even of their negligence, as of the circumstances which have surrounded them in their infancy and youth. They have been brought up in ignorance, without any moral culture, allowed

and perhaps taught by their parents to pilfer from their earliest infancy, and praised for acts of violence toward their youthful playmates. Is there not something specious if not sound in the reasonings which charges the criminal acts of such persons to the society in which they reside. Ought not society to educate, before it punishes. Has the State, have the towns done all that they ought to do, all that will be required at their hands to remedy this evil. True the schoolmaster is abroad. But what is generally deemed his principal business. Is it not to teach such as are put under his care, in reading, writing, arithmetic, grammar, geography—to cultivate the understanding, improve, draw out and expand the intellect. This is right. but it is but the mint and cummin of the education which the children of freemen ought to receive. The teacher who cannot or will not go further is not fit for his office. The school committee who are satisfied with such a teacher, are traitors to the best interests of the towns where they belong. They are trifling with the welfare of the rising generation and too surely undermining our free institutions. That youth or man is a moral monster whose intellect is cultivated and his moral powers neglected, whose head is improved and his heart neglected—whose understanding is enlightend and whose passions are unrestrained. It is the neglect of moral culture that fills our county jails and our State prison, that peoples our asylums for the poor and our hospitals for the insane. Intellectual culture without attendant moral instruction makes greater rogues than nature ever intended, moral monsters in civilized society. When moral instruction shall be equally diffused through the community, then must cease the complaint which is now raised against the infliction of the same punishment on all classes of offenders against the law.

Children there are, and there always will be, who cannot avail themselves of the most free institutions of learning. So there are others whose progress in morals will be checked by the examples set them at home. Ought such as these to be held amenable to the law as strictly as those who sin against greater light. Does justice demand, does humanity permit that such as these should for light offences be immured in our county jails, and there fitted for our State

prison. Philanthropy pleads loudly in their behalf, and yet that same philanthropy, when directed toward the good of society, requires that they should not be permitted to be at large, to go unpunished for their misconduct, and so on from misdemeanor to crime, till from being a simple nuisance they become the pests and scourge of society.

## GENERAL OBJECTS OF SCHOOLS OF REFORM.

The most simple and perfect remedy for this evil is the establishment of a house of correction or school of reform for juvenile offenders. The subjects of such an establishment are such children as are unmanageable by their parents, and those young persons who have rendered themselves amenable to the criminal law, and subject to imprisonment either in a county jail or in a State prison. The inmates of such an establishment are separated as far as may be from all intercourse with their former vicious associates, and in fact from all the rest of mankind, except under the supervision of one of the officers. There is no retiring to their homes at night, or at stated intervals, by which is effaced the best moral instruction in our common schools by the bad examples of their parents. A part of each day is devoted to the acquisition of useful knowledge, while moral instruction and the promotion of industrious habits are mingled with their labors and studies and recreation.

## SKETCH OF PROVIDENCE REFORM SCHOOL.

An institution of this kind is now in successful operation in Providence. In May, 1847, the Providence Association of Mechanics and Manufacturers, a Corporation which embraces very many of the active artisans of the city and State, memoralised the City Council of Providence for the establishment of a House of Correction or Reformation. This is by no means the first movement of this association for the improvement of the rising generation. The public school act in this State of 1800, originated in this association, and after its repeal in February, 1803, the public school system in Providence was established and sustained by their influence. The memorial of this association in relation to a reform school, met with a very favorable reception by the City Government. Meas-

ures were immediately taken to ascertain what system should be adopted, and what regulations should be passed in relation to it. At the January session of the General Assembly in 1850, they passed an act to authorize the city of Providence to establish a reform school for the "confinement, instruction and reformation of juvenile offenders, and of young persons of idle, vicious or vagrant habits, to be under the direction of seven trustees, of whom the Mayor is always one and the remaining six are chosen annually by the City Council." The general control and supervision of the establishment is vested in this Board of Trustees, and the appointment of the necessary officers. They are empowered by this and subsequent amended acts, to receive into this school all children under eighteen years of age, who shall be convicted before any Court or Magistrate in the State, of criminal offences, and also, of such other children as shall be convicted in the city or any town as vagrants or disorderly persons. They are further empowered to admit into this school any child over the age of five years at the request of his parent or guardian. All children in said school are kept, disciplined, instructed, employed and governed until they are either reformed and discharged, or bound out by the said Trustees, unless found incorrigible, in that case they are remanded to jail or State prison according to the alternative terms of the sentence of the Court sending them to such school. No child can be sentenced to said school for a term longer than his minority, nor less than two years. A discharge at the expiration of a sentence, or as being reformed, or as having attained the age of twenty-one years, is a release of all legal disabilities consequent on the sentence. The Trustees are empowered to bind out any children under their care, as servants or apprentices, until they are twenty-one years of age. They are required to instruct them in morality and such branches of useful knowledge as shall be adapted to their age. The actual cost of supporting children sent to this school on sentence for any criminal offence, is paid out of the General Treasury. The balance of the expenses, including the cost of building, grounds, salaries, instructors, &c., is paid by the city of Providence.

The Tockwotton House, so called, was purchased

and fitted up by the city as the location for the school. and the Providence Reform School was declared to be established and opened in October, 1850.

## STATISTICS OF THE PROVIDENCE REFORM SCHOOL.

During the first year, from November 1, 1850, to October 31, 1851,—

There were committed,—48 boys, and 3 girls; escaped 1; discharged 5 boys and one girl; leaving in school, Oct. 31, 1851, 43 boys and 2 girls.

Of the whole number there were committed by Supreme Court, 5; Court of Common Pleas, 1; Court of Magistrates, 35; at request of Parents by Trustees, 11.

They were of the following ages:—7 years, 1; 8, do. 2; 9, do. 1; 10, do. 2; 12, do. 6; 13, do. 7; 14, do. 6; 15, do. 5; 16, do. 10; 17 and upwards, 12. Expense, $2,421 46.

They spent in labor, 7 1-2 hours; in school, 5; meals and recreation, 2 1-2; religious exercises, 1; sleep, 8.

### SECOND YEAR.

| | | | |
|---|---|---|---|
| November 1, 1851, in school— | 43 | boys and | 2 girls; |
| Since received, - - | 57 | " | 8 " |
| Total, - - - - | | | 110 |
| Discharged, - - | 25 | " | 6 " |
| Being in school Oct. 31, 1852, | 75 | " | 4 " |

Of these there were committed, in 1852,

| | | |
|---|---|---|
| By Supreme Court, - - | 7 boys, | 5 girls. |
| Court Common Pleas, - | 4 " | 1 " |
| Court Magistrates, - - | 24 " | 35 " |
| Justices of the Peace in other towns, | 4 " | " |
| At request of Parents by Trustees, | 25 " | 11 " |
| Total, - - - | 64 " | 52 " |

Discharged, 31,—by Trustees, 7; Supreme Court, 2; remanded as an improper subject, 1; bound out to Farmers, 2; Engravers, 2; Telegraph, 1; Merchant, 1; Clock Manufacturer, 1; Printer, 1; Laborer, 1; returned to Parents, 12; total 31.

| | |
|---|---|
| Aged 7 years, - - - - | 0 |
| " 8 " - - - - | 4 |
| " 9 " - - - - | 3 |

| | | | |
|---|---|---|---|
| Aged | 10 | years, | 4 |
| " | 11 | " | 1 |
| " | 12 | " | 6 |
| " | 13 | " | 9 |
| " | 14 | " | 16 |
| " | 15 | " | 6 |
| " | 16 | " | 8 |
| " | 17 | " and over, | 8 |

Expense, $6,312 73.

November, 1, 1852, in school, 75 boys and 4 girls. Received since Nov. 1, 1853, 73 boys and 18 girls. Total, 170. Discharged, 55 boys, 3 escaped.

In school, November 1, 1853, 90 boys and 11 girls, in all, 101.

Of these there were committed by Supreme Court, 1; Court of Magistrates, 35; Justices Court, 8; Trustees, 47,—91 in all during the year.

Of those discharged, there were returned to Parents or Guardians, 31; by General Assembly, 2; as reformed, 5; on expiration of sentence, 2; bound out to Farmers, 7; Carriage Maker, 2; Laborer, 2; Carpenter, 2; Moulder, 1; Engraver, 1; Painter, 1; Engineer, 1; Jeweller, 1; Blacksmith, 1; Silversmith, 1; Baker, 1; Soapboiler, 1; sent to sea, 3; sent to Butler Hospital, insane, 1; returned to Police office, 1; escaped, 3,—69 in all.

Ages when committed:—

| | | |
|---|---|---|
| 6 | years, | 1 |
| 7 | " | 4 |
| 9 | " | 5 |
| 10 | " | 8 |
| 11 | " | 8 |
| 12 | " | 12 |
| 13 | " | 13 |
| 14 | " | 9 |
| 15 | " | 8 |
| 16 | " | 11 |
| 19 | and upwards, | 12 |

Such is the history of the rise, progress and present condition of the Providence Reform School. It is but in its infancy. It was opposed in the beginning by some of the citizens of Providence, as not being within the range of objects properly belonging to a municipal corporation. On the trustees and other officers,

it imposed duties and responsibilities, every part of which to them was new and untried. They had gleaned some information from other similar institutions, but that knowledge was, of course, only theoretical. The buildings where it is established, were erected for very different objects, and, of course, not so convenient or well adapted for its present use, as one built expressly for such a school would be. The grounds about the buildings are not so extensive as they should be. The situation, though highly salubrious and pleasant, would not probably have been selected had it not been for the comparative low price at which the same was obtained, and the facility and dispatch with which it could be fitted to accommodate the institution. Many are the disadvantages under which it has had to labor. Still it has been more successful in its results than its friends anticipated, and promises to give effectual aid in diminishing the number of prisoners in our county jail and State prison, and thus curtailing the most expensive part of our State government.

I have now shown the inefficiency of the reformatory power of our own State prison, exerted as that power is, and ever must be, upon those whose habits have become fixed, and who have grown old in crime. I have also shown the anti reformatory power of our county jails, both in their mode of construction and in their management, making as they do the bad worse, the longer they remain in them. I have referred to the great deficiency there is of a general diffusion of moral instruction among the rising generation, and to the circumstances which will always render that instruction nugatory in some classes of the community, and especially those most in need of it. And I have given a sketch of the rise, progress and present condition of the Providence Reform School. This is the kind of institution which exerts a reformatory power on the juvenile offender, on those vagrant, vicious, truant and disobedient children who are growing up with little or no care or right education to fill our jails and our State prison. Within these walls they are secluded from all the associations which tend further to corrupt them. There, habits of industry, sobriety and sober reflection are substituted for idleness, profanity, intemperance and folly. There, all

the deficiences of their early moral culture may be supplied, and they have, to use the language of the memorial of the mechanics and manufactures of Providence before referred to "the benefit of good example and wholesome instruction, the means of improvement in virtue and knowledge, and the opportunity of becoming intelligent, moral, and useful members of society."

I would respectfully urge your personal attention to this institution. Permits to enter and examine it, are cheerfully granted by the trustees, and sometimes even these are dispensed with by the superintendent of the establishment. As grand jurors of the county I doubt not you would be welcome to a thorough examination of it. And I know not how you could render greater aid to the cause of humanity, than by visiting this as well as the State prison, county jail, and other establishments in which any of our citizens are restrained of their liberty by law.

When our State prison was erected, I was among those who hoped much and believed much in the reformatory powers of its discipline on its inmates. For one, I confess, I have been greatly disappointed. Its want of success in this particular is not owing to its management,which has always been judicious, nor to its system of discipline, but to the age and habits of its inmates. The State does well in inmmuring them within the walls of the prison, to prevent their further invasion of the rights of others. It does well in requiring them to labor, thereby to repay the expense to which they have subjected the State. It does well in affording them the means of instruction and improvement, and of keeping open before them, the hope of being restored again to their liberty whenever their reformation and the interests of society will warrant it. They should be treated like incurables in a hospital. They are hopelessly incurable by human means. yet man should not despair of them so long as the mercy of heaven bears with them. But the State has higher and other duties to perform toward juvenile offenders, and it has greater encouragement to perform them. So far from being incurably sick, they, many of them, need only a better atmosphere, and more nutritious food, to restore them to perfect moral health and vigor.

By extending the present reform school, or by assuming the control of it, and enlarging it, so as to meet the wants of the State, results might confidently be anticipated which would gladden the heart of the citizen, and the philanthropist. The citizen would be made to rejoice in the increased protection which would attend his property, his person, and his character, and in the diminished calls upon his purse for the support of criminals and the execution of penal laws. And the philanthropist, in the rescue of many of the suffering sons of sin and wretchedness from degradation and misery, and in the consequent increase of the sum of human happiness.