

Faith and Failure

Experimenting with Solitary Confinement in America's Early State Prisons

Wherever solitary confinement has been tried, it has produced the most powerful consequences. In the state prison of Philadelphia, offenders of the most hardened and obdurate description – men who entered the cells assigned them with every oath and imprecation that the fertility of the English language affords – beings who scoffed at every idea of repentance and humility – have in a few weeks, been reduced by solitary confinement and low diet to a state of the deepest penitence. This may be set down as a general result of this kind of punishment in that prison.

Society for the Prevention of Pauperism in the City of New York (1822),
*Report on the Penitentiary System of the United States*¹

AUBURN'S FATAL EXPERIMENT

On Christmas Day 1821, New York's bold experiment with solitary confinement began.² Prison administrators at Auburn State Prison sent eighty of their "oldest and most heinous offenders" to the new, mostly complete solitary cellblock. There, prisoners would remain alone, sleeping and eating in cells nearly four feet wide, with no work, communication, or other distractions except a Bible; they were further prohibited "from laying

¹ Society for the Prevention of Pauperism in the City of New York (SPPNY), *Report on the Penitentiary System in the United States*. New York: Manlon Day, 1822, pp. 51–52.

² Orlando F. Lewis, *The Development of American Prisons and Prison Customs, 1776–1845: With Special Reference to Early Institutions in the State of New York*. Albany: Prison Association of New York, 1922, p. 81.

down in the day time.”³ The first experiment with long-term solitary confinement would be severe and extreme.

Its results were disastrous. The solitary cells were too narrow to allow prisoners sufficient exercise, causing muscle atrophy and disease;⁴ insanity and suicide were also common. Auburn’s agent, Gershom Powers, reported, “one [prisoner] was so desperate that he sprang from his cell, when the door was opened, and threw himself from the gallery upon the pavement.... Another beat and mangled his head against the walls of his cell until he destroyed one of his eyes.”⁵ The surviving prisoners – whose “health and constitutions ... had become alarmingly impaired” – received pardons, and the experiment was officially concluded in 1823.⁶ Adding insult to these injuries, the experience had apparently not deterred the prisoners: twelve were reconvicted within several years and one other man “committed a burglary ... the very first night after being released from a long confinement.”⁷

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Failures like this one with solitary confinement had a significant impact on the development of the modern prison – especially Eastern State Penitentiary, still under construction during Auburn’s fatal experiment. America’s early prisons – first the proto-prisons built after the American Revolution and then the modern prisons built in the 1820s and later – failed repeatedly and dramatically. These failures, and the debates they precipitated, gave modern prisons a perennial air of uncertainty. Would they solve the problems endemic to the proto-prisons – and serve the prison’s original purpose? Moreover, news of penal failures like Auburn often had sudden and unpredictable impacts on the penal imagination and what commentators believed to be acceptable design choices for the new prisons. In the resulting atmosphere, deviations from the norm seemed even more risky and penal actors routinely sought assurance that they were on the right path. Thus, it is only by understanding this tumultuous, unstable beginning – when reformers repeatedly experimented with

³ Gershom Powers, *A Brief Account of the Constitution, Management, & Discipline &c. of the New-York State Prison at Auburn*. Auburn, NY: U. F. Doubleday, 1826, p. 32. See also W. David Lewis, *From Newgate to Dannemora: The Rise of the Penitentiary in New York, 1796–1848*. Ithaca: Cornell University Press, 1965.

⁴ Harry Elmer Barnes, “The Historical Origin of the Prison System in America,” *Journal of the American Institute of Criminal Law and Criminology* 12:1 (1921), pp. 35–60, p. 53.

⁵ Powers, *A Brief Account*, p. 36. ⁶ *Ibid.* ⁷ *Ibid.*

variations of prison and failed – that we can begin to understand how Eastern became a deviant prison, and how the Pennsylvania System could become personally institutionalized at Eastern in the decades to follow.

THE RISE AND FALL OF AMERICA'S PROTO-PRISONS

The American Revolution had ushered in a new era of penal reform in the former colonies.⁸ New state constitutions included provisions requiring legal reforms that would reduce states' reliance on corporal and capital punishment. In the 1780s, states began writing new penal codes, many of which replaced traditional corporal punishments with calls for incarceration. County or city-run jails (often called prisons), however, were ill-equipped for this influx of prisoners who would spend lengthier periods in confinement. Penal reformers, building on sentiment around the Atlantic world and especially England, focused their attentions on reforming their local jails and experimenting with other punishments like public labor.

In the 1780s and early 1790s, a handful of states – Massachusetts, Connecticut, and Pennsylvania – began authorizing the first-ever state prisons in the United States. These “proto-prisons” were significant for their time: they were the first facilities designed to confine convicted criminals for long-term incarceration as punishment. But they also had much in common with the jails reformers hoped they would replace. The prison at Massachusetts was housed on an island military fort and the

⁸ There is some contention among penal historians about the significance of the American Revolution. Adam Hirsch argues that the Revolution stalled reform that was underway, while other historians like Michael Meranze and Louis Masur have illustrated how Republican ideology helped propel the shift toward incarceration and the move away from capital punishment. I have also argued that the Revolution provided an opportunity for reform. Rothman, *The Discovery of the Asylum: Social Order and Disorder in the New Republic*. New York: AldineTransaction, 2002 [1971]; Adam J. Hirsch, *The Rise of the Penitentiary: Prisons and Punishment in Early America*. New Haven: Yale University Press, 1992; Michael Meranze, *Laboratories of Virtue: Punishment, Revolution, and Authority in Philadelphia, 1760–1835*. Chapel Hill: University of North Carolina Press, 1996; Louis P. Masur, *Rites of Execution: Capital Punishment and the Transformation of American Culture, 1776–1865*. New York: Oxford University Press, 1989; Ashley T. Rubin, “Penal Change as Penal Layering: A Case Study of Proto-prison Adoption and Capital Punishment Reduction, 1785–1822,” *Punishment & Society* 18:4 (2016), pp. 420–441. Ashley T. Rubin, “Early US Prison History beyond Rothman: Revisiting *The Discovery of the Asylum*,” *Annual Review of Law and Social Science* 15:1 (2019), pp. 137–154.

prison at Connecticut was built atop a coal mine.⁹ Of these early prisons, Philadelphia's Walnut Street Prison was the most advanced.

Walnut Street Prison

Walnut Street's design – perfected through a series of reforms between 1789 and 1794 – promised to solve all of the problems reformers had identified with jails. Jails in colonial America, England, and elsewhere were little more than overcrowded holding tanks for society's refuse – accused criminals awaiting trial, convicted criminals awaiting their (corporal or capital) punishment, witnesses held over for trial, vagrants, debtors, and sometimes their families as well. They were all housed together in large rooms with little to do except socialize, drink, sleep, or prey on each other.¹⁰ Of particular concern to reformers was the way in which seasoned criminals could tell impressionable youngsters of their exploits and thereby recruit new members into the criminal underworld. Another concern, however, was the jailer or “keeper” himself, who made his living off the room and board (and bribe) payments from the jailed. A keeper had few responsibilities and even less oversight, often enabling violence, disease, and other poor conditions to develop.

These poor conditions did not go unnoticed, especially in Philadelphia – the nation's one-time political, if not cultural, capital. The Philadelphia Society for Alleviating the Miseries of Public Prisons (PSAMPP) was formed in 1787 by “thirty-seven leading citizens of Philadelphia.”¹¹ Driven by “benevolence,” “humanity,” “compassion,” and “Christianity,” they sought to end prisoners' suffering “the miseries which penury, hunger, cold, unnecessary severity, unwholesome apartments, and guilt (the usual attendants of prisons) involve.” They would also pursue “such degrees and modes of punishment ... as may,

⁹ For more, see Hirsch, *The Rise of the Penitentiary*; Ashley T. Rubin, “The Prehistory of Innovation: A Longer View of Penal Change,” *Punishment & Society* 20:2 (2018), pp. 192–216.

¹⁰ John Langbein, “The Criminal Trial Before Lawyers,” *The University of Chicago Law Review* 45:2 (1978), pp. 263–316; Adam J. Hirsch, “From Pillory to Penitentiary: The Rise of Criminal Incarceration in Early Massachusetts,” *Michigan Law Review* 80:6 (1982), pp. 1179–1269; Hirsch, *The Rise of the Penitentiary*; Rothman, *The Discovery of the Asylum*, Michael Ignatieff, *A Just Measure of Pain: The Penitentiary in the Industrial Revolution, 1750–1850*. New York: Pantheon Books; Rubin, “The Prehistory of Innovation.”

¹¹ Negley K. Teeters, “The Pennsylvania Prison Society. A Century and a Half of Penal Reform.” *Journal of Criminal Law and Criminology* 28:3 (1937), pp. 374–379, p. 374.

instead of continuing habits of vice, become the means of restoring our fellow creatures to virtue and happiness.”¹² Membership grew quickly and added such notables as Founding Father Benjamin Franklin.¹³ The members paid an annual subscription – varying at different times from ten shillings to one dollar – to support the society (e.g., publishing its pamphlets, providing necessities to prisoners), supplemented with larger donations.¹⁴

As charged, PSAMPP members visited their local jails to provide aid and comfort to the prisoners. They also policed prisoners’ treatment at the hands of the keeper and actively agitated for reform. Following a series of “memorials” sent to the legislature,¹⁵ PSAMPP secured a series of statutes designed to reform Walnut Street Jail into a new vision of punishment.¹⁶ These laws helped to gradually transform Walnut Street from a typical colonial jail into a model state prison. First, the keeper became an employee of the state, answerable to local authorities and salaried – no longer permitted to accept bribes or sell alcohol to the prisoners. Additionally, a group of local elites – many of whom were PSAMPP members – were appointed as a Board of Inspectors to supervise the keeper and ensure the laws were obeyed. Second, prisoners would become increasingly separated from each other, first by gender and then by the reason for their confinement: importantly, convicted criminals would be held separately from other types of prisoners, including debtors and

¹² *Ibid.*, p. 374 (PSAMPP Constitution Preamble).

¹³ Peter P. Jonitis and Elizabeth W. Jonitis, *Members of the Prison Society: Biographical Vignettes, 1776–1830, of the Managers of the Philadelphia Society for Assisting Distressed Prisoners and the Members of the Philadelphia Society for Alleviating the Miseries of Public Prisons 1787–1830*. Haverford College Library, Collection No. 975 A. ND.

¹⁴ Roberts Vaux, *Notices of the Original, and Successive Efforts to Improve the Discipline of the Prison at Philadelphia and to Reform the Criminal Code of Pennsylvania*. Philadelphia: Kimber and Sharpless, 1826.

¹⁵ *Ibid.*, p. 23 (Memorial of January 29, 1788); *Ibid.*, pp. 26–30 (Memorial of December 15, 1788).

¹⁶ Pennsylvania, “An Act to amend an Act entitled ‘An Act for Amending the Penal Laws of this State,’” in *The Statutes at Large of Pennsylvania, 1682 to 1801, Vol. XIII 1787–1790*. Harrisburg: Harrisburg Publishing Co., 1908 [1789], pp. 243–251; Pennsylvania, “An Act to Reform the Penal Laws of the State,” in *The Statutes at Large of Pennsylvania, 1682 to 1801, Vol. XIII 1787–1790*. Harrisburg: Harrisburg Publishing Co., 1908 [1790], pp. 511–528; Pennsylvania, “An Act for the Better Preventing of Crime, and for Abolishing the Punishment of Death in Certain Cases,” in *The Statutes at Large of Pennsylvania, 1682 to 1801, Vol. XV 1794–1797*, ed. James T. Mitchell and Henry Flanders, Commissioners. Harrisburg: C. E. Aughinbaugh, 1911 [1794], pp. 174–181.

those awaiting their trial. Third, prisoners were given labor assignments intended both to reform them – and their perceived lazy tendencies – or train them to enter the workforce. Importantly, their labor was also expected to offset the costs of the prison – including the keepers' salary. Fourth, the prisoner population was expanded and the prison's penal character extended. In 1790 and 1794, Walnut Street was opened up as a receptacle for the state's population of convicted criminals sentenced to one year or more. These laws also changed the penalties in the penal code, slowly shifting the punishment for serious offenses – except first-degree murder – from death to long-term incarceration. Finally, for offenses previously deemed capital, these laws gradually introduced solitary confinement for at least some portion of an offender's prison sentence as a punishment.¹⁷

By 1794, Walnut Street Prison was the most advanced state prison in the country – a reputation its Board of Inspectors and other PSAMPP members made sure to advertise. According to Walnut Street Inspector and PSAMPP member Caleb Lownes, writing in 1793, Walnut Street had accomplished the impossible. The previously overcrowded, disease-ridden, violent, and disorderly jail was now a clean, orderly facility with virtually no disease. Prisoners labored productively and profitably, offsetting the prison's expenses. Moreover, he saw other proofs of the prison's deterrent and rehabilitative effects, most especially in the fact that crime rates had decreased substantially.¹⁸

With this initial report from Lownes, reformers, statesmen, and other interested parties toured Walnut Street to see for themselves. These

¹⁷ For a more detailed history of these changes, see Thorsten Sellin, "Philadelphia Prisons of the Eighteenth Century," *Transactions of the American Philosophical Society* 43:1 (1953), pp. 326–331; Paul Takagi, "The Walnut Street Jail: A Penal Reform To Centralize the Powers of the State," *Federal Probation* 39 (1975), pp. 18–26; Thomas Dumm, *Democracy and Punishment: Disciplinary Origins of the United States*. Madison: University of Wisconsin Press, 1987; Teeters, "The Pennsylvania Prison Society," Negley K. Teeters, *The Cradle of the Penitentiary: The Walnut Street Jail at Philadelphia, 1773–1835*. Philadelphia: Temple University Press, 1955. The best critical overview remains Meranze, *Laboratories of Virtue*. For a more recent synthetic account, see Jen Manion, *Liberty's Prisoners: Carceral Culture in Early America*. Philadelphia: University of Pennsylvania Press, 2015. See also Ashley T. Rubin, "Innovation and Diffusion: Theorizing Penal Change before and after the Ideal Type." *Unpublished manuscript* (ND); Rubin, "The Prehistory of Innovation."

¹⁸ Caleb Lownes, *An Account of the Alteration and Present State of the Penal Laws of Pennsylvania, Containing Also, an Account of the Gaol and Penitentiary House of Philadelphia – and the Interior Management Thereof*. Boston: Young & Minns, 1799 [1793].

visitors – including French social reformer François Alexandre Frédéric, Duc de la Rochefoucauld-Liancourt (in exile from the French Revolution), and Robert J. Turnbull, a politician and reformer from South Carolina – became proselytizers spreading word of Walnut Street’s potential and initial success.¹⁹ Soon, Walnut Street became the template for all other proto-prisons built in the United States. Between 1796 and 1822, a total of seventeen (out of twenty-four) states authorized their own proto-prisons. Many of these prisons were near-replicas of Walnut Street, borrowing everything from its architecture to its rules. From all appearances, Walnut Street was a total success, not only in achieving its desired goals but also in providing a replicable model that was well received across the country. But U.S. reformers had set their hopes too high on a small amount of evidence indicating the proto-prison’s early success. Over time, the template at Walnut Street quickly deteriorated and the limitations of its design became apparent.

Although a conceptually significant innovation, Walnut Street constantly failed to function as intended. As historian Rebecca McLennan explains, “a deep fissure divided the workaday reality of the penitentiary and the abstract theory of penitential penology.”²⁰ Despite the vaunted descriptions of Walnut Street’s success, the experiment never fully conformed to the plan. The “unremitted solitude” officials had imagined was never a primary feature of prison management. The prison ultimately had only sixteen solitary cells,²¹ while most prisoners remained in large rooms, albeit segregated by sex and criminality. Although partly a failure of architecture and motivation, the rare use of solitary was also the product of judicial sentencing: Only a small fraction of prisoners (4 of 117 in 1795; 7 of 139 in 1796) sent to Walnut Street were sentenced to spend any part of their term in solitary confinement.²² Ultimately,

¹⁹ François Alexandre Duc de la Rochefoucauld-Liancourt, *On the Prisons of Philadelphia: By an European*. Philadelphia: Moreau de Saint-Mery, 1796; Robert J. Turnbull, *A Visit to the Philadelphia Prison*. Philadelphia: Printed. London: Reprinted by James Phillips & Co Son, 1797.

²⁰ Rebecca M. McLennan, *The Crisis of Imprisonment: Protest, Politics, and the Making of the American Penal State, 1776–1941*. New York: Cambridge University Press, 2008, p. 49.

²¹ Teeters, *The Cradle of the Penitentiary*, p. 19.

²² Sellin, “Philadelphia Prisons of the Eighteenth Century,” p. 329. A later pamphlet explained that the statute had authorized thirty solitary cells, although neither the 1790 nor the 1794 statutes seem to confirm this claim. George Washington Smith, *A View and Description of the Eastern State Penitentiary of Pennsylvania*. Philadelphia: Philadelphia Society for Alleviating the Miseries of Public Prisons and C. G. Childs, 1830, p. 2.

only those criminals who misbehaved while incarcerated were sent to solitary cells and forced to remain silent, alone, without work or other distractions – for a few days – but even that was rare: Solitary was “the last, not the first, resort of discipline.” More commonly for rule violators, “Contact with and pressure from prison officers was the immediate response.”²³ As historian Michael Meranze explains, “Although solitary confinement had an important role in support of prison authority, it was not the linchpin of the prison order.”²⁴

New problems emerged in the prison’s early history, such that Walnut Street’s storied success was soon eroded by circumstance.²⁵ When Walnut Street was declared a state prison in 1794, overcrowding struck the young prison and its internal order began to fray. In June of 1798, despite efforts at fireproofing, arson destroyed one of the prison’s workshops. A few months later, a yellow fever epidemic broke out in Philadelphia, flooding the prison with more charges.²⁶ Occurring so closely together, these episodes “shattered the internal structure of the prison,” according to Meranze.²⁷ In addition to prisoners’ constant disobedience and rule violations, the prison’s guards were complicit in aiding or overlooking prisoners’ schemes; the number of successful and attempted escapes increased.²⁸ Meanwhile, rapid population growth in the city and state (and thus more criminal convictions) continued to expand the population inside Walnut Street. Without any alterations to expand the prison’s capacity, this population growth quickly yielded too many prisoners for the numbers of cells and precluded any degree of separation. Overcrowding also interfered with the ability to put prisoners to work, particularly after losing workshop space to fire.²⁹

By the early 1800s, the public depiction of Walnut Street was already shifting. These chronic problems, which destroyed the prison’s early success, generally manifested after the initial glowing reviews by Lownes in 1793, Rochefoucauld-Liancourt in 1796, and Turnbull in 1797. After a decade of innovations celebrated as improvements, old concerns returned.

A pamphlet produced half a century after the Walnut Street experiment had taken place likewise claimed that there were “thirty cells” and “an average of one hundred convicts.” PSAMPP, *Sketch of the Principal Transactions of the “Philadelphia Society for Alleviating the Miseries of Public Prisons,” from Its Origin to the Present Time*. Philadelphia: Merrihew & Thompson, Printers, 1859, p. 8.

²³ Meranze, *Laboratories of Virtue*, p. 196. ²⁴ *Ibid.*

²⁵ For a full account of Walnut Street’s multiple failures, see Meranze, *Laboratories of Virtue*.

²⁶ Meranze, *op. cit.*, pp. 193, 211. ²⁷ *Ibid.*, p. 211. ²⁸ *Ibid.*, pp. 220–223.

²⁹ *Ibid.*, pp. 220, 223.

According to PSAMPP, now that prisoners were once again “crowded together” (with little order and no regular work), “they are likely to come out intimately acquainted with the arts of villany [sic], and combined with an extensive association of persons of similar character to make depredations on the public.”³⁰

Predictably, the situation worsened in the 1810s as the country faced continued population growth, war, and economic depressions. As one commentator later explained, “The embargo deprived many reckless persons of employment, and above all, the termination of the war of 1812, 13, 14, and 15, inundated our community with hordes of corrupt, lawless, idle desperadoes.”³¹ Many citizens interpreted the increase in convictions as a crime wave. Overcrowding in the now-aging, inadequately sized prison was further exacerbated by an increase in convictions following the end of the War of 1812 (see Figure 1.1). A grand jury described “the present very crowded state of the penitentiary” as “an evil of considerable magnitude,” noting that “thirty to forty” people were “lodged in rooms of eighteen feet square.”³²

By 1817, commentators circulated descriptions of Walnut Street that could have been written in the 1780s. In that year, PSAMPP reported,

So many are thus crowded together in so small a space, and so much intermixed, the innocent with the guilty, the young offender, and often the disobedient servant or apprentice, with the most experienced and hardened culprit; that the institution already begins to assume, especially as respects untried prisoners, the character of a European prison, and a seminary for every vice, in which the unfortunate being, who commits a first offence, and knows none of the arts of methodised villainy, can scarcely avoid the contamination, which leads to extreme depravity, and with which from the insufficiency of the room to form separate accommodations, he must be associated in his confinement.³³

As historian Harry Elmer Barnes has noted, “by 1816 the Walnut Street Jail had returned to about the same level of disciplinary and administrative demoralization that had characterized it before 1790.”³⁴

³⁰ PSAMPP Memorial of 1803/4, cited in Vaux, *Notices*, p. 38.

³¹ George W. Smith, *A Defence of the System of Solitary Confinement of Prisoners Adopted by the State of Pennsylvania*. Philadelphia: G. Dorsey, Printer, 1833 [1829], p. 17.

³² Quoted in PSAMPP, *A Statistical View of the Operation of the Penal Code of Pennsylvania. To Which Is Added a View of the Present State of the Penitentiary and Prison in the City of Philadelphia*. Philadelphia: Philadelphia Society for Alleviating the Miseries of Public Prisons, 1817, p. 5.

³³ *Ibid.*, pp. 5–6.

³⁴ Harry Elmer Barnes, *The Evolution of Penology in Pennsylvania*. Indianapolis: The Bobbs-Merrill Company, 1968 [1927], p. 154.

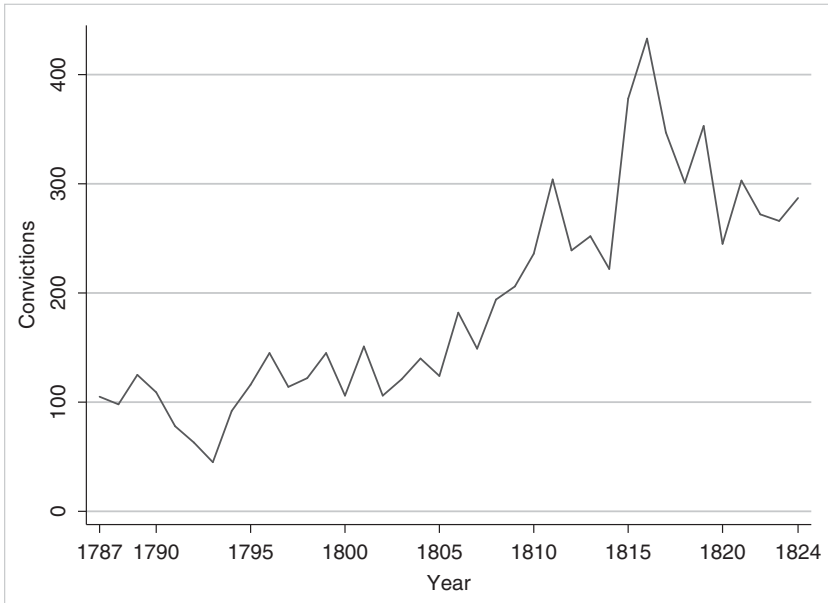


FIGURE 1.1 Annual number of convicted offenders brought to Walnut Street, 1787–1824

Source: Roberts Vaux, *Notices of the Original, and Successive Efforts to Improve the Discipline of the Prison at Philadelphia and to Reform the Criminal Code of Pennsylvania*. Philadelphia: Kimber and Sharpless, 1826, pp. 65–75

Widespread knowledge of the prison's internal disorder, combined with the apparent crime wave, increased dissatisfaction with the prison. Commentators and private citizens alike feared that the now-disordered prison was *causing* the increase in crime.³⁵ By late in the decade, the situation at Walnut Street appeared untenable as “four large-scale prison riots broke out again between 1817 and 1821.”³⁶ One of these riots, in 1820, “came dangerously close to resulting in the escape of the entire convict population.”³⁷

A National Crisis

The country's model prison was not alone in experiencing these problems. Similar governance failures, design flaws, and disorder were common

³⁵ Meranze, *Laboratories of Virtue*. ³⁶ McLennan, *The Crisis of Imprisonment*, p. 44.

³⁷ Barnes, *The Evolution of Penology*, p. 155.

throughout the country, as were the apparent increase in crime and popular fears that the prisons were to blame. As at Walnut Street, a large gap existed between the theory and practice of America's proto-prisons. Although solitary confinement had been adopted widely, its actual use was limited. Maryland's use of solitary confinement mirrored Pennsylvania's: "Because single cells were more expensive to build than congregate cells, only twenty-two existed at the Maryland Penitentiary, not nearly enough to carry out one of the original aims of the penitentiary system...." Like Walnut Street, Maryland's solitary cells were reserved for punishing refractory prisoners.³⁸ Similarly, at the new Massachusetts State Prison, solitary confinement was only used for the first few days or weeks of a prisoner's sentence; the solitary cellblock itself "was far too small to be put to any more extensive use."³⁹

Other gaps between theory and practice proved more scandalous. At Virginia's new proto-prison, "there was virtually no perimeter security ... Once a prisoner got out of his cell, there was nothing further to delay his departure. Another problem was that it was most difficult to prevent outsiders from approaching the building at night and passing contraband through the windows."⁴⁰ Georgia's proto-prison "became the object of severe criticism after only one year of operation" because of prisoners' disrespectful and unreformed behavior.⁴¹ As early as 1799, in New York, Newgate Prison's "guards were forced to open fire when fifty or sixty men revolted and seized their keepers ... In 1800, the assistance of the military was necessary to break up a riot."⁴² The prison soon became a forum for partisan squabbles and competition over patronage, leading Thomas Eddy (who had first lobbied for and then managed the prison) to resign in disgust in 1804, leaving behind an overcrowded and badly governed prison.⁴³ One commentator summarized the following years thus: "In 1804, there occurs a destructive fire; in 1805, the prisoners cost more and earned less; in 1806, the propensity to vice is much increased

³⁸ Wallace Shugg, *A Monument to Good Intentions: The Story of the Maryland Penitentiary, 1804-1995*. Baltimore, MD: Maryland Historical Society, 2000, p. 20.

³⁹ Hirsch, "From Pillory to Penitentiary," p. 1258.

⁴⁰ Paul W. Keve, *The History of Corrections in Virginia*. Charlottesville: University Press of Virginia, 1986, p. 26.

⁴¹ James C. Bonner, "The Georgia Penitentiary at Milledgeville 1817-1874," English. *The Georgia Historical Quarterly* 55:3 (1971), pp. 303-328, p. 308.

⁴² Lewis, *From Newgate to Dannemora*, p. 33. ⁴³ *Ibid.*, p. 34.

by indiscriminate confinement, *lessons of infamy* are inculcated, and little reformation is seen.”⁴⁴

Indeed, Walnut Street’s promoters had set expectations too high regarding not only the prison’s perfectly orderly environment, but also its economy. Around the country, in addition to facing problems of disorder and recidivism, penal reformers and prison administrators were disappointed to find that prisoner labor did not repay all the costs of their confinement. The prison at New York “not only failed” to provide the expected profits, but its costs were “too oppressive to be continued” according to an 1817 report.⁴⁵ The Massachusetts legislature commissioned a report on the proto-prisons in Connecticut, New York, New Jersey, Pennsylvania, and Maryland, as well as the prisons in their own state. Although the commission still believed the proto-prison was worth its costs, the commission concluded, “It is not to be expected that a penitentiary will support itself.” They recommended lengthening prison sentences because, they calculated, the prison would offset its costs if prisoners were retained for at least three years.⁴⁶

By the 1810s, the country’s proto-prisons were in crisis, with the oldest facilities suffering most spectacularly. Overcrowding had reached record levels. In New York, “in 1818, the governor was *compelled* to pardon and send out about 280 [prisoners], in order to make room for new comers,” and the situation was repeated in 1821. Over the years, “1,200 more” had been “prematurely discharged by pardon for want of room.”⁴⁷ Finally, “[p]risoners at Newgate staged serious insurrections in 1818, 1819, 1821, and 1822.” Similar upheavals were repeated to varying degrees in Massachusetts, Maryland, and Virginia, in addition to those already discussed in Pennsylvania.⁴⁸ American states’ first sustained experiments with long-term confinement as punishment for convicted offenders, drawing on Pennsylvania’s example, had failed – visibly and spectacularly.

⁴⁴ William Roscoe, *Additional Observations on Penal Jurisprudence, and the Reformation of Criminals*. London: T. Cadell, in the Strand; John, and Arthur Arch, Cornhill, 1823, p. 53.

⁴⁵ Cited in William Roscoe, *Observations on Penal Jurisprudence and the Reformation of Criminals; With an Appendix, Containing the Latest Reports of the State Prisons or Penitentiaries of Philadelphia, New York, and Massachusetts, and Other Documents*. London: T. Cadell and W. Davies, 1819, p. 97.

⁴⁶ *Ibid.*, appendix, 92, 99–100 (Massachusetts Report in 1817). ⁴⁷ *Ibid.*, p. 56.

⁴⁸ McLennan, *The Crisis of Imprisonment*; For an analysis on the importance of these insurrections, as well as later riots, see McLennan, *The Crisis of Imprisonment*.

SOLITARY CONFINEMENT AS THE SOLUTION

In the late 1810s, American penal reform had stalled and its prospects were bleak. Penal reformers and state legislators around the country were searching for new solutions to their inability to reform criminals or generally stop the large-scale riots, fires, mass escapes, general chaos within the facilities, and a perceived crime wave.⁴⁹ Some reformers' ideas about punishment had taken on a more punitive tone. A few commentators suggested abandoning the whole prison project.⁵⁰ The Massachusetts Senate criticized the attempt to reform criminals through incarceration as "vain and illusory."⁵¹ Frustrated by the proto-prisons' failure, many penal reformers were anxious to institute harsher punishments. Despite a long-term decrease in the number of capital offenses remaining in states' penal codes in this period, some states began to reauthorize capital punishment. The New York legislature made prison arson a capital offense in 1817 after one of the large riots at Newgate Prison.⁵² In 1821, Connecticut authorized a new penal code that expanded its range of capital crimes.⁵³ Corporal punishments also started to make a comeback: in 1819, New York authorized whipping disruptive prisoners.⁵⁴ While some commentators advocated a return to capital and corporal punishments, however, other commentators remained committed to the prison. Nowhere was this commitment stronger than in Philadelphia.

Philadelphia's Continued Commitment to Solitary Confinement

At the root of the problem, as many saw it, was that the original plan of the prison had never been implemented. Walnut Street had never conformed to the original plan – solitary confinement was only a marginal component as authorized by the 1790 and 1794 laws and, given the limited number of cells, in practice as well. Constructing new penitentiaries

⁴⁹ Meranze, *Laboratories of Virtue*.

⁵⁰ McLennan, *The Crisis of Imprisonment*, p. 51; Rothman, *The Discovery of the Asylum*, p. 93.

⁵¹ Hirsch, "From Pillory to Penitentiary," p. 1255.

⁵² Stuart Banner, *The Death Penalty: An American History*. Cambridge, MA: Harvard University Press, 2002, p. 131.

⁵³ Connecticut, "An Act concerning Crimes and Punishments," in *Statute Laws of the State of Connecticut, as Revised and Enacted by the General Assembly*. Hartford: S. G. Goodrich, & Huntington & Hopkins, 1821, pp. 151–177; Rubin, "Penal Change as Penal Layering," p. 12.

⁵⁴ Roscoe, *Additional Observations on Penal Jurisprudence*, p. 53.

designed to contain all prisoners in solitary confinement, with no distractions from their personal introspection, was simply to be true to the original goals of the reform movement that had begun decades earlier. Moreover, under this design, the problems of the 1800s and 1810s would be prevented: Confined to solitary cells, prisoners could not conspire with one another to embark on mass escapes, or fight, or talk and thereby pollute each other further into criminality or distract themselves from wholesome reflection. Disease would not spread as easily. Order would be restored.

This image of what a prison should look like had been a long-term goal in Pennsylvania. Even before problems at Walnut Street had reached crisis proportions, PSAMPP members were pointing out the gap between the theory of “penitentiary” punishment and the practice at Walnut Street. As early as 1801, PSAMPP was adamant a “fair experiment” of their system had not yet been tried.⁵⁵ Their tone contrasted with the early celebratory reports PSAMPP member and Walnut Street Inspector Caleb Lownes had offered nearly a decade earlier.⁵⁶ True, they were cautious to avoid criticizing the fruits of their reforms too harshly: Even though the “experiment” was initially “imperfectly made,” it nevertheless “has not only increased our internal security, but has been so far approved of as to be adopted in several of our sister states.” But the reforms had not gone far enough, they argued. PSAMPP’s members wanted to make a “fair experiment of solitude and labour,” but “in the present state of the Prison, such an attempt, however desirable, is impracticable.”⁵⁷ Increasingly, they emphasized that it was the prison’s architecture (not the system’s impracticality) that was to blame for their mounting woes. The only solution was for the legislature to authorize a new prison. Indeed, by 1803, PSAMPP was ready to abandon the Walnut Street facility in order to build a better, stronger, larger prison that would be more amenable to “solitary confinement at hard labour,” as they explained in another memorial in 1803.⁵⁸ In response to this memorial, the legislature authorized another, albeit old-style jail to be built on Arch Street in Philadelphia to alleviate the overcrowding at Walnut Street. However, it would be more than a decade before the new facility would open.⁵⁹ Consequently, Arch

⁵⁵ PSAMPP Memorial of December 14, 1801, reprinted in Vaux, *Notices*, p. 37.

⁵⁶ See especially Lownes, *An Account*. ⁵⁷ Reprinted in Vaux, *Notices*.

⁵⁸ PSAMPP Memorial of 1803, reprinted in Vaux, *Notices*, p. 37.

⁵⁹ Barnes, *The Evolution of Penology in Pennsylvania*, p. 97.

Street's authorization did not stem the tide of overcrowding, and Walnut Street's conditions deteriorated.

By the late 1810s – in the midst of the “crime wave,” riots, and record overcrowding at Walnut Street – PSAMPP reformers and Walnut Street's inspectors were even more convinced that overcrowding lay at the heart of their prison's failures. Their “penitentiary system” was flawless – it was their inability to implement it that prevented their prison from flourishing. In 1818, PSAMPP responded to an inquiry from the British Parliament and the London Society for the Improvement of Prison Discipline about the efficacy of their system. Mortified by the growing level of chaos at Walnut Street, PSAMPP President William White explained, “the penitentiary system ... has not, from divers causes, been so effectually carried into operation as to produce all the results which reason and benevolence had fondly anticipated.” He went on to clarify that failure was not the fault of “the system itself, but to the difficulties which have occurred in reducing it to practice,” especially “the impracticability of confining the convicts to solitary labour.”⁶⁰

As the conditions at Walnut Street deteriorated, the reformers' perennially hoped-for solution – a larger prison (to prevent problems of overcrowding) and faithfulness to the original design with its emphasis on solitary confinement (for the reformation of prisoners as well as their control) – had become an urgent necessity. In 1817, the new Arch Street Prison opened, fourteen years after authorization. Unfortunately for Walnut Street's supporters, Arch Street only absorbed the city's debtors, thus having little impact on Walnut Street's overcrowding.⁶¹ In 1818, cognizant that their long-desired solution had failed, Walnut Street's inspectors sent a memorial to the legislature asking them to build yet another prison because Walnut Street “at times is so crowded to a degree alarming to the health of the prisoners, and the space occupied to be altogether insufficient to class them according to their merits, and to admit solitary confinement.”⁶²

A grand jury echoed these sentiments in December 1818. They began respectfully, with Walnut Street's inspectors in mind, noting “the greatest order and decorum” at Walnut Street, despite its well-known poor conditions and disorder. They continued, the “institution reflects the highest

⁶⁰ Cited in Vaux, *Notices*, p. 42.

⁶¹ The ultimately disappointing Arch Street Prison would close in 1823 (Barnes, *The Evolution of Penology*, p. 97).

⁶² *Ibid.*, p. 156.

honour on the *inspectors*, and the keepers of the prison.” With these necessary accolades out of the way, the grand jury placed the blame for the prison’s shortcomings on its insufficient physical plant. The grand jury called for the construction of “a place more extensive, and more remote from the populous part of the city ... constructed on a more enlarged plan, better proportioned to the growing population” in the state.⁶³

While a better, stronger, larger prison was apparently necessary, the prospect of a single state prison for a state as large as Pennsylvania seemed inefficient and dangerous. Western counties had long complained about the expense of sending their prisoners to Walnut Street.⁶⁴ PSAMPP had also grown critical of the practice of concentrating prisoners from all over the state in one prison: as the reformers explained it, once released into the city, friendless and with few resources to make the expensive journey home, former prisoners predictably turned to crime, disproportionately preying on Philadelphians’ homes and businesses, rather than those in the criminals’ hometowns.⁶⁵ In its 1818 memorial, PSAMPP requested the legislature to build not one prison, but several “penitentiaries in suitable parts of the state.”⁶⁶ By suitable parts, they meant another prison in Philadelphia and one in the western half of the state, although there was also talk of building a prison in the middle of the state.⁶⁷ Larger, sturdier prisons, designed to uphold the penitentiary’s original principles faithfully, and in more convenient locations, was the answer to their problems.

Shortly after receiving these new requests for action – in the midst of repeated riots at Walnut Street – the state legislature finally complied. In 1818, the legislature authorized funds and a five-man commission to build a “State Penitentiary” in Allegheny (near Pittsburgh). The new penitentiary, later called Western State Penitentiary, would follow “the principle of solitary confinement of convicts,” or more specifically “on the plan exhibited to the legislature by the [Walnut Street] inspectors.”⁶⁸

⁶³ Reproduced in Roscoe, *Observations on Penal Jurisprudence*, appendix, p. 143. This formulaic approach was not atypical. For similar grand jury investigations in Canada, see Peter Oliver, “*Terror to Evil-Doers*”: *Prisons and Punishments in Nineteenth-Century Ontario*. University of Toronto Press, 1998.

⁶⁴ e.g., Eugene E. Doll, “Trial and Error at Allegheny: The Western State Penitentiary, 1818–1838,” *The Pennsylvania Magazine of History and Biography* 81:1 (1957), pp. 3–27, p. 5.

⁶⁵ Vaux, *Notices*, pp. 42–43 (PSAMPP 1818 response to British Inquiry).

⁶⁶ *Ibid.*, 41 (PSAMPP Memorial of 1818).

⁶⁷ *Ibid.*, p. 55.

⁶⁸ Pennsylvania, “No. 74: An Act to provide for the erection of a State Penitentiary on the public land adjoining the town of Allegheny opposite Pittsburg, in the county of

The earlier requests for the construction of a second new prison – specifically, one in Philadelphia to replace Walnut Street – were answered more slowly. The 1818 law that authorized Western also authorized Walnut Street’s inspectors to sell the prison and disperse its prisoners to another prison facility in Philadelphia on Mulberry Street until a new “penitentiary” could be built in Philadelphia that would also follow the principle of solitary confinement.⁶⁹ However, nothing came of this effort for several years.

The Initial Authorization

In the winter of 1820–1821, growing frustrated with the lack of progress, several commentators renewed their calls to construct another state prison in Philadelphia with great effect. In December 1820, Governor William Findley included a reminder in his Annual Message to the legislature that “part of the law has not been carried into effect,” and suggested the legislature proceed with authorizing a state prison in Philadelphia.⁷⁰ In response to the governor’s message, the Senate formed a committee.

When that committee reported on January 27, 1821, they echoed the governor’s sentiments and recommended that the legislature authorize appropriations to construct a state prison in Philadelphia. The committee explained, “these measures are absolutely necessary, to be adopted, *during the present session of the legislature.*”⁷¹ After briefly recounting the history of Pennsylvania’s penal reform efforts – which illustrated, they argued, the legislature’s preference for “temporary expedients” over long-term planning⁷² – the committee noted the inadequacy of the current facility on Arch Street, the most recent attempt at reducing Walnut Street’s overcrowding. Western State Penitentiary, moreover, would not be a sufficient solution because sending prisoners from Eastern Pennsylvania to the Western Penitentiary once it opened would be too expensive: “in

Allegheny, and for other purposes,” in *Acts of the General Assembly of the Commonwealth of Pennsylvania*. Harrisburg: C. Gleim, 1818, pp. 138–140, pp. 138, 139.

⁶⁹ *Ibid.*, pp. 139–140.

⁷⁰ William Findley, “Annual Message to the Assembly–1820,” in *Pennsylvania Archives. Fourth Series. Papers of the Governors, Vol. V. 1817–1832*, ed. George Edward Reed. Harrisburg: Wm. Stanley Ray, 1901 [1820], pp. 224–233, pp. 227–228.

⁷¹ Pennsylvania, *Journal of the Senate of the Commonwealth of Pennsylvania*. Harrisburg: William F. Buyers, 1821, p. 331.

⁷² *Ibid.*, p. 333.

some cases” it might cost the same amount as “the whole expense of supporting a convict for two or three years” in prison.⁷³ This expense led them to argue that a prison must be built in Philadelphia, and soon. Walnut Street’s “actual condition ... is such a nature, as to demand the immediate attention of the legislature, and to excite the regret of all who are actuated by a regard for the temporal as well as eternal welfare of those who are immured within its walls.” The committee punctuated this point by describing the “insurrection” in early 1820,

which threatened the destruction of the lives of the jailors and the escape of all who were confined, and was only quelled by the efforts of a large body of armed citizens, who assembled at the ringing of the alarm bell, after the discharge of a number of muskets, by which one man was killed, and several were wounded.⁷⁴

Their “once celebrated penitentiary” now offered a “distressing portrait.”⁷⁵

To buoy their case, the committee included a letter, dated January 8, submitted by the inspectors of the Walnut Street Prison. Walnut Street’s inspectors did not mince their words: their prison “was intended to be a school of reformation, but it is now a school of vice.”⁷⁶ Overcrowding, they wrote, had made separation impossible; now, “the petty thief becomes the pupil of the highway robber; the beardless boy listens with delight to the well-told tale of daring exploits and hair-breadth escapes of hoary headed villainy, and from the experience of age derives instruction which fits him to be a pest and terror to society.”⁷⁷ Walnut Street, they reminded the legislature, was once well-regarded: “Pennsylvania obtained a name among her sister states as well as in Europe for her mild penal code and her well regulated Penitentiary. But this fame was short lived.”⁷⁸ They bemoaned an increase in crime – and a worse “character” of prisoners – combined with the growing use of mechanization in the local economy that frustrated their ability to continue prisoner labor at cost. But, ultimately, it was the lack of solitary confinement they most despised. “The great penitentiary system of Pennsylvania is not now in operation, and cannot be, without the erection of a new prison in this part of the state.”⁷⁹ Solitary confinement promised to be the solution to all their problems.⁸⁰ They closed by requesting a new penitentiary with

⁷³ *Ibid.*, pp. 333–334. ⁷⁴ *Ibid.*, p. 334. ⁷⁵ *Ibid.*, p. 334. ⁷⁶ *Ibid.*, p. 334.

⁷⁷ *Ibid.*, p. 335. ⁷⁸ *Ibid.*, p. 336. ⁷⁹ *Ibid.*, p. 336. ⁸⁰ *Ibid.*, pp. 336–337.

the capacity to hold “two hundred and fifty prisoners on the principle of solitary confinement” built in Philadelphia.⁸¹

The legislative committee went on to describe how the state should replace its current system, “now fully proved to be inadequate to the end proposed.”⁸² Specifically, they argued, the state should replace “imprisonment at *hard labour*” with “*solitary confinement*,” or “an entire seclusion of convicts from society and from one another.” As the committee imagined it, “no one shall see or hear, or be seen or heard by any human being except the jailor, the inspectors, or such other persons, as for highly urgent reasons may be permitted to enter the walls of the prison.” One of the “most beneficial effects” of this new punishment would be that prisoners could reenter society unimpeded – they will be free from mutual recognition because they “will never be able after their discharge to recognize each other”; they will be free from stigma because no one will “have witnessed their degradation.”⁸³ The new punishment would make gubernatorial pardons less necessary and bring certainty back to the law.⁸⁴ The punishment would be more efficient, moreover, because it would require less time and expense: “*one* year of solitary confinement will be more efficacious than *three* years at labor in the society of others.” They also noted that the inspectors would “serve without any compensation, as those of Philadelphia do,” referring to the voluntary capacity of Walnut Street’s inspectors. They concluded, “[regarding] the *economy* of this measure, there can be no diversity of opinion.”⁸⁵

Importantly, the committee emphasized that solitary confinement would be a replacement of the old system, which relied on prisoner labor. Contradicting the glowing reports of Walnut Street in the 1790s, the committee explained, “The revenue derived from the labor of convicts has never, even during the most prosperous times, been adequate to their support.”⁸⁶ Moreover, labor “diminishes in a very great degree the tediousness of confinement.”⁸⁷ Instead, they suggested that labor should be “abandoned altogether” and employed only “as an *indulgence* to penitent convicts, and as a relaxation from the *much more painful task of being compelled to be idle*.”⁸⁸ The new system, then, was to privilege solitary confinement above all else.

⁸¹ *Ibid.*, 337. They also referenced, but did not quote, pamphlets forwarded by Dr. James Mease to support their claims (*Ibid.*, p. 338).

⁸² *Ibid.*, p. 338. ⁸³ *Ibid.*, p. 339. ⁸⁴ *Ibid.*, p. 340. ⁸⁵ *Ibid.*, p. 339.

⁸⁶ *Ibid.*, p. 339. ⁸⁷ *Ibid.*, pp. 339–340. ⁸⁸ *Ibid.*, p. 340.

In the end, the committee's report was tabled, although copies of the report were ordered to be printed,⁸⁹ and the Senate moved on to other business. Over the next two months, progress moved slowly. Senator Condy Raguet, one of the committee members, twice introduced bills to effect the requested changes, but with little success.⁹⁰ After still no progress had been made, PSAMPP sent another memorial to the legislature. They praised the efforts to construct the Pittsburgh penitentiary, but requested "the establishment of a similar one in the eastern part of the state ... in which the benefits of solitude and hard labour may be fairly and effectively proved."⁹¹ Their "petition" was "read and laid on the table" on February 5, 1821.⁹² On February 10, 1821, the Senate as a whole reviewed Raguet's earlier proposed bill to create a new state penitentiary in Philadelphia.⁹³ Several weeks later (February 28), Raguet introduced a resolution to determine "the number of convicts and the expense of their transportation to the penitentiary of Philadelphia for the last ten years."⁹⁴ Once a report fulfilling this resolution was presented on March 6, the Senate, and then the House, moved relatively quickly discussing, amending, and passing a bill to erect a state penitentiary in Philadelphia. By March 20, the bill was submitted to the governor for his signature, and it was signed the same day.⁹⁵

The law authorized a group of eleven men, primarily PSAMPP members and inspectors from Walnut Street,⁹⁶ to select a site and supervise the construction of a "state penitentiary capable of holding two hundred and fifty prisoners, on the principle of solitary confinement of the convicts ... for the eastern district" of the state.⁹⁷ The commission ultimately

⁸⁹ *Ibid.*, p. 340. ⁹⁰ *Ibid.*, pp. 370, 379. ⁹¹ Cited in Vaux, *Notices*, pp. 43–45.

⁹² Pennsylvania, *Journal of the Senate*, p. 384.

⁹³ *Ibid.*, p. 423. Moved by PSAMPP's latest memorial, the legislature also appointed PSAMPP's Vice President, Dr. William Rogers, and member Samuel R. Wood, as a committee to provide more information (Vaux, *Notices*, p. 46). However, this is not mentioned in the *Journal*. Thomas Bradford, a PSAMPP member and WSJ inspector, is also said to have "drafted the penitentiary bill, which was passed with only 'a slight amendment.'" Doll, "Trial and Error at Allegheny," p. 6. See also PSAMPP, Committee for Eastern, *Minute Books*. Vol. 1–3; Pennsylvania Prison Society Records (Collection 1946), Series I, Vol. 27–29. Historical Society of Pennsylvania, and Teeters, *The Cradle of the Penitentiary*, pp. 110–111.

⁹⁴ Pennsylvania, *Journal of the Senate*, p. 525. ⁹⁵ *Ibid.*, pp. 655, 675.

⁹⁶ Barnes, *The Evolution of Penology*, p. 100; Richard Vaux, *Brief Sketch of the Origin and History of the State Penitentiary for the Eastern District of Pennsylvania at Philadelphia*. Philadelphia: McLaughlin Brothers, Printers, 1872, p. 56.

⁹⁷ Pennsylvania, "No. 64: An Act to Provide for the Creation of a State Penitentiary within the City and County of Philadelphia," in *Acts of the General Assembly of the Commonwealth of Pennsylvania*. Harrisburg: C. Gleim, 1821, pp. 94–97, p. 94.

consisted of Roberts Vaux, Coleman Sellers, Peter Mierecken, John Bacon, George A. Baker, Samuel R. Wood, Daniel H. Miller, James Thackera, Caleb Carmault, Thomas Sparks, and Thomas Bradford, Jr.⁹⁸ In something of a geographic reversal of power, the legislature ordered that the new penitentiary should copy Western's design, "subject to such alterations and improvements as the commissioners or a majority of them ... with the approbation of the Governor, approve and direct. *Provided always*, That the principle of the solitary confinement of the prisoners be preserved and maintained."⁹⁹ Planning for the prison and its construction proceeded soon thereafter. Even so, it would be a full eight years before Eastern, still incomplete, received its first prisoner.

Solitary's Widespread Appeal

The sentiment in Pennsylvania between 1817 and 1821 – favoring solitary confinement within better, stronger, larger prisons – was paralleled elsewhere. Despite some opposition, most commentators believed, like the Philadelphia reformers, the prison was a wonderful development that had done much good, but it had failed to achieve its objectives thus far. The leading problem, again echoing Philadelphians, was that proto-prisons – those first iterations of prison – had not adhered to the original plan, largely because of overcrowding. The superintendent of Virginia's prison noted a significant decline in capital crimes between 1800 (when the prison opened) and 1815, which he (like many others) attributed to "the certainty of punishment, because of its mildness." Even so, he noted, "The penitentiary system has measurably failed to answer the ends of its institution" for many of the reasons enumerated by others, including that "too many are lodged in a room – the confinement not sufficiently solitary."¹⁰⁰ As in Pennsylvania, the perceived solution was not to jettison the prison but to improve it.¹⁰¹ A British jurist and reformer, William Roscoe, surveying American opinions, concluded

that although a general sentiment prevails in the different states of America, that the penitentiaries have not fully answered the intended purpose, or fulfilled the expectations of their promoters, yet that the causes of their failure are so evident, and so capable of being removed, that the expediency of supporting them is almost unanimously recommended and insisted on.¹⁰²

⁹⁸ Vaux, *Brief Sketch*, pp. 53–55.

⁹⁹ Pennsylvania, "An Act to Provide for the Creation of a State Penitentiary," p. 95.

¹⁰⁰ Cited in SPPNY, *Report on the Penitentiary System*, appendix, p. 70.

¹⁰¹ *Ibid.*, appendix, p. 71.

¹⁰² Roscoe, *Additional Observations on Penal Jurisprudence*, p. 106.

It was overcrowding, he found, that was “the chief, if not the sole and entire occasion, of all the inconveniences and disappointments complained of, and that almost *all other disadvantages are resolvable into this cause.*”¹⁰³ Somewhat mistakenly, Roscoe noted that PSAMPP alone had explicitly recognized overcrowding as the root cause. He argued that the general failure to realize the easy solution at hand (reduce overcrowding) was leading many states “to resort to measures of so severe and repulsive a nature as cannot fail to terrify the most hardened offender from the perpetration of crimes,” including solitary confinement.¹⁰⁴

Although Roscoe was somewhat mistaken on the contours of American sentiment, he was correct that solitary confinement had gained widespread appeal by the early 1820s. Around the country, penal reformers had come to the conclusion that solitary confinement – not just alleviating overcrowding, but forbidding crowding of any kind – would solve their many problems. For some commentators, solitary confinement would restore the deterrent power that prison had lost. A Massachusetts legislative committee reported in early 1818 “that it is become necessary to render the state prison, in future, a place of terror and punishment” and called for “a more strict and severe system of discipline.”¹⁰⁵ A follow-up report called for punishing all crimes with solitary confinement and hard labor, but in local jails to save money.¹⁰⁶

Indeed, the vision emerging from some commentators was quite punitive, with solitary confinement representing a uniquely effective punishment. One commentator from Maryland recommended a detailed plan for a stratified system. For petty larcenists, and the like, he recommended “rebuild[ing] the whipping post and the pillory.” For the “incorrigible offenders, for whose reformation there is no hope,” he recommended a continuation of the present system, what he called a “perpetual workhouse,” where they would stay for the duration of their lives.¹⁰⁷ But for a middle class of criminals – those “violators of public trust, housebreakers, cheats, swindlers, counterfeiters, horse-thieves, &c.” who “have some regard to character, and are susceptible to punishment by disgrace,” the penitentiary was the answer, but

a penitentiary in the true sense of the word; not a workshop, but a real penitentiary. In it the cheerful sound of the hammer of industry should never be heard.

¹⁰³ *Ibid.*, p. 106. ¹⁰⁴ *Ibid.*, p. 107. ¹⁰⁵ *Ibid.*, appendix, pp. 61, 63.

¹⁰⁶ *Ibid.*, appendix, pp. 59, 64.

¹⁰⁷ Cited in SPPNY, *Report on the Penitentiary System*, appendix, pp. 48–49.

The tenants of it should remain in perfect idleness and solitude. They should see no human being but their keeper; unless indeed it might be well occasionally to expose them to public view for the purpose of humiliation. They should be clothed in the garments of humiliation and disgrace. They should wear chains, not only for their safety, but as a badge of their character. It would be well to keep them in darkness as much as possible...¹⁰⁸

There would be some limitations on this draconian punishment. He continued,

I am told a man cannot endure total darkness more than about twenty days at a time before he becomes deranged, &c. Confinement in this penitentiary should never be long enough to destroy those habits which are necessary to enable a man to procure a livelihood by his own industry; nor long enough for him to acquire other habits incompatible with his freedom and voluntary industry. I would therefore never have a person confined in this penitentiary more than six months, and in most cases not so long.¹⁰⁹

Pennsylvania was thus not alone in imagining in solitary confinement an adequate punishment, nor was its vision the most extreme. But around the country, Pennsylvania was viewed as the exemplar for reform.

In 1820, the Society for the Prevention of Pauperism in the City of New York (SPPNY), investigating methods for penal reform and solitary confinement in particular, wrote to PSAMPP for advice. Roberts Vaux, one of PSAMPP's more active members and member of the commission to build Eastern, responded by supporting New York's inclination to institute strict solitary confinement. Although Vaux endorsed labor as an important part of the "Penitentiary System of the United States," he believed solitary confinement was the crucial component. Conveniently forgetting that solitary confinement was only a small part of Walnut Street's practice, Vaux concluded his brief letter, "solitary confinement appears to be the only rational, and efficient mode of punishment – its beneficial influence was strikingly illustrated in the prison of this city, some years ago."¹¹⁰ When the SPPNY published their report reviewing the penitentiary system throughout the country in 1822, they concluded that a "radical and fundamental" change was needed: "They are fully persuaded that nothing less than solitary confinement will ever enable us to give [the penitentiary system] a fair and full trial in the United States."¹¹¹

¹⁰⁸ *Ibid.*, appendix, p. 48.

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*, appendix, pp. 22, 23.

¹¹¹ *Ibid.*, p. 51.

Indeed, by this time, the early years at Walnut Street – and its use of solitary confinement – had taken on mythic status. Nearly every report circulated mentioned the well-known statistics that only one convict had returned within the first year and four within a few years – and solitary confinement was deemed the main reason for this success.¹¹² The SPPNY noted,

Wherever solitary confinement has been tried, it has produced the most powerful consequences. In the state prison of Philadelphia, offenders of the most hardened and obdurate description – men who entered the cells assigned them with every oath and imprecation that the fertility of the English language affords – beings who scoffed at every idea of repentance and humility – have in a few weeks, been reduced by solitary confinement and low diet to a state of the deepest penitence. This may be set down as a general result of this kind of punishment in that prison.¹¹³

The report concluded “[t]hat solitary confinement by night and day, combined with other regulations suggested in this report, will remedy all existing evils.”¹¹⁴

More and more reformers were echoing and extending the sentiments found in Pennsylvania by supporting the use of continuous solitary confinement without labor. Ultimately, the SPPNY endorsed a system of solitary confinement with labor as the modal approach for average criminals, while the most hardened offenders would be so confined without labor, which could be provided as a reward if the prisoner earned it.¹¹⁵ In fact, this was the direction New York had already enacted, albeit quietly, at its new Auburn State Prison.

THE FAILURE OF EARLY EXPERIMENTS WITH SOLITARY CONFINEMENT

Driven by the failure of Newgate, its proto-prison located in New York City, the New York legislature had authorized a new prison in the upstate town of Auburn in 1816. As Newgate erupted near the end of the decade, however, reformers and the legislature sought additional modifications that would enhance control and prevent similar disruptions at their new facility. In 1819, anxious that the new Auburn State Prison – which had recently started receiving prisoners – would suffer upheavals similar to

¹¹² e.g., Roscoe, *Observations on Penal Jurisprudence*, p. 89.

¹¹³ SPPNY, *Report on the Penitentiary System*, pp. 51–52. ¹¹⁴ *Ibid.*, p. 96.

¹¹⁵ *Ibid.*, p. 52.

those at Newgate, the New York legislature authorized the prison's agent (a kind of contractor in charge rather than a state-employed warden) to construct a cellblock for solitary cells. Further strengthening New Yorkers' resolve, prisoners set fire to the new cellblock, which was "pretty much destroyed" in the conflagration and the block had to be rebuilt.¹¹⁶ By 1821, the legislature "had become so dissatisfied and discouraged with the existing mode and effects of penitentiary punishments."¹¹⁷ They were apparently convinced that a "severer system" was necessary or else they must restore "the old sanguinary criminal code."¹¹⁸ To this end, the legislature authorized a new, hybrid system of prison discipline at Auburn.¹¹⁹ All prisoners would be kept in solitary cells at night, as soon as there was sufficient capacity.¹²⁰ Some prisoners would be kept in solitary cells around the clock.¹²¹ With this system, Auburn would become the first prison to rely on long-term solitary confinement for some portion of its prisoner population.

As we have seen, the New York experiment proved dangerous almost immediately. Even after the first signs of problems, however, Auburn's administrators did not give up on their experiment. As Auburn's agent later reflected, "For a considerable time, we had the most entire confidence in the success of this experiment."¹²² An early report from Auburn's inspectors – echoing the optimism of Walnut Street's inspectors in the early 1790s – noted that the prisoners in solitary "are yet as healthy as the laboring class" and that "experience thus far fully confirms" the utility of solitary confinement.¹²³ Their report the following year again confirmed their confidence in the system.¹²⁴ Indeed, a separate report presented by a Select Committee to the New York Senate in 1822 called for extending the use and severity of solitary confinement at Auburn and elsewhere, diminishing the use of the pardon power, the complete removal of labor from Auburn, and a firm prohibition on visitors to Auburn. In place of labor, the report argued, the state should institute "severe but short confinement in cells, with solitude, silence, darkness, and stinted food of coarse quality."¹²⁵ The legislative committee prefaced

¹¹⁶ Powers, *A Brief Account*, p. 30. ¹¹⁷ *Ibid.*, p. 32. ¹¹⁸ *Ibid.*, p. 32.

¹¹⁹ New York, "An Act Concerning State Prisons, Passed April 2, 1821," in *Laws of the State of New-York*. Albany: Cantine and Leake, 1821, pp. 215–218.

¹²⁰ *Ibid.*, p. 217. ¹²¹ *Ibid.*, p. 216. ¹²² Powers, *A Brief Account*, p. 32.

¹²³ *Ibid.*, p. 33. ¹²⁴ *Ibid.*, pp. 34–35.

¹²⁵ Report laid before the New York Senate, cited in Roscoe, *Additional Observations on Penal Jurisprudence*, p. 41.

their recommendations by explaining that, for punishment to deter, “there must be *suffering ... such suffering* as will excite feelings of terror.”¹²⁶ As we have seen, the SPPNY made similar recommendations the following year.¹²⁷ As far as most penal reformers knew, the experiment was going well.

In 1823, however, the prison came under local scrutiny. The prison’s staff physician reported a sufficiently high number of deaths, particularly among the solitary prisoners, and other physical problems like difficulty breathing and chest pains. The physician located these problems in the “sedentary life” which brings on “melancholy, grief, &c.,” while “confinement” generally “operates upon the existing germ of diseases, and hastens the progress of all those that must have otherwise terminated in death.”¹²⁸ Following another report from the inspectors, the Governor “visited the prison, personally, examined the solitary convicts, and ... determined to pardon them all.”¹²⁹ Although a law passed around the same time still “authorised Courts, at their discretion” to sentence repeat offenders to solitary, by 1826 the prison’s agent could claim that “there is not a convict now in the Prison thus sentenced.”¹³⁰ All prisoners now spent only part of their days in solitary confinement (at night) and worked together, silently, in factorylike rooms. Even still, prisoners who had previously spent time in solitary continued to crowd the Physician’s report of death and disease, illustrating the long-term effects of the earlier experiment.¹³¹

While New York was altering its mode of confinement to a partial reliance on solitary, its earlier experience was repeated elsewhere. Other states, responding to the chaos in their own proto-prisons, embraced solitary confinement as the answer to their problems of disorder and chaos. Copying New York’s early example, Maine instituted a hybrid system at its new state prison in 1823. Some prisoners worked during the day and spent the night in solitary, while others were held continuously in solitary confinement with similar results. As at Auburn, Maine’s cells were wholly inadequate. They resembled “pits” rather than cells: they were dark, cold, and partially subterranean – prisoners “entered *from the top* through an aperture two feet square, secured by an iron grating” and then descended by a removable ladder.¹³² Prisoners sentenced to two

¹²⁶ *Ibid.*, 48; italics in original.

¹²⁷ SPPNY, *Report on the Penitentiary System*. ¹²⁸ Powers, *A Brief Account*, p. 35.

¹²⁹ *Ibid.*, p. 35. ¹³⁰ *Ibid.*, p. 36. ¹³¹ *Ibid.*, p. 36.

¹³² Lewis, *The Development of American Prisons and Prison Customs*, p. 147.

or two and a half months of continuous solitary confinement committed suicide days after beginning their confinement. “Many prisoners had to be repeatedly taken from solitary confinement to the hospital in order to be restored to a condition that would permit them again to be returned to the same torture!” Maine finally abandoned the system in 1827.¹³³

Just as Maine was about to end its use of solitary confinement, opinion at the national level began to shift as well. Two events allowed stories of New York’s – and soon, Maine’s – disaster to circulate widely, prompting a staunch condemnation of solitary confinement. The first was the founding in 1825 of a penal reform society in Boston, which would document and extend the case against solitary confinement (see Chapter 4). The second was the publication in 1826 of a report recollecting Auburn’s brief history written by its agent, Gershom Powers. Although the most shocking results of solitary confinement had occurred years earlier, these two developments publicized their occurrence, with great effect on public opinion.

Ultimately, the early experiments with solitary confinement convinced reformers and administrators that solitary confinement was wholly inappropriate for a civilized society. As Powers noted, proponents of continuous solitary confinement without labor experienced “an entire change of opinion.”¹³⁴ Powers himself sought “frankly to acknowledge and fully expose a dangerous error ... in carrying the doctrine of solitary confinement entirely too far” and urged his audience to avoid endorsing “exclusive solitary confinement without labor, on the ground of *health, expense, reformation and unnecessary severity*.”¹³⁵ The experience with solitary confinement at Auburn left a lingering impression that sowed the seeds of opposition against the Pennsylvania System even before it was born.

Western’s Architectural Challenges

In the same year that penal reformers around the Atlantic world learned of the deadly experiments with solitary at Auburn and Maine, Pennsylvania’s Western State Penitentiary received its first prisoners. The law mandated that they be kept in solitary confinement. Instead, Western – with its construction finally nearing completion eight years after authorization – was plagued with architectural problems, its novel design preventing its planned reliance on solitary confinement.

¹³³ *Ibid.*, pp. 147–148.

¹³⁴ Powers, *A Brief Account*, p. 37.

¹³⁵ *Ibid.*, p. 38.

Unlike almost every American prison to follow, Western was loosely modeled on Brit Jeremy Bentham's Panopticon, an unrealized plan for a model prison that could also be used for a school, hospital, or any other setting that required supervision, but could be run more efficiently with limited personnel. The Panopticon consisted of an outer, ringlike building with cells facing a central observation tower. Through a strategic use of light, glass, and mirrors, a single guard could occupy the central tower and observe, unseen, the prisoners of the surrounding cells; as they would never know when they were being watched, they must always behave.¹³⁶ Bentham had limited impact on prison design in England and Europe, and many commentators dismissed him as something of an entrepreneurial crackpot. Nevertheless, Bentham's plan influenced Western's design; however, its implementation fell short.¹³⁷

In practice, Western was no Panopticon. It contained the "single large ring-shaped cell building" but it "consisted of a double row of cells, back to back, each cell fronting on an open vestibule in such a way that the adjacent vestibules formed a continuous covered passageway around both the inner and outer sides of the ring."¹³⁸ The original plan for Western had also specified a central observation tower, which was not built, nor would the prisoners' cells be visible from a central location: the plan prevented adequate light from entering the cells and view of the cells was blocked by thick doors.¹³⁹ As the prison's warden later complained, "the keeper cannot inspect the convicts without being himself inspected."¹⁴⁰ In the end, the prison bore only "a general resemblance to Bentham's plan."¹⁴¹ Indeed, although some commentators would lavish praise on the prison, calling it "a beautiful specimen of architecture" and "the finest piece of masonry in the United States," significant design flaws would plague Western's early years.¹⁴²

These and other design flaws routinely frustrated administrators' attempts to preserve the principle of solitary confinement. The cells had inadequate plumbing, heating, and ventilation; they were "too dark

¹³⁶ Jeremy Bentham, *Panopticon: Or the Inspection House*. Dublin: Thomas Byrne, 1791; Michel Foucault, *Discipline and Punish: The Birth of the Prison*. New York: Vintage Books, 1977.

¹³⁷ Barnes, *The Evolution of Penology*, p. 139; Doll, "Trial and Error at Allegheny," p. 8.

¹³⁸ Doll, "Trial and Error at Allegheny," p. 8.

¹³⁹ *Ibid.*, pp. 9–10; Barnes, *The Evolution of Penology*, p. 139.

¹⁴⁰ Cited in Doll, "Trial and Error at Allegheny," p. 19.

¹⁴¹ Barnes, *The Evolution of Penology*, p. 139.

¹⁴² Cited in Doll, "Trial and Error at Allegheny," p. 11.

and unhealthy” for long-term solitary confinement.¹⁴³ Prisoners needed exercise and fresh air, which they could not get while inside their cells. The legislature, however, refused the administrators’ requests to build exercise yards for each cell to allow prisoners exercise while respecting the principle of solitary confinement. Consequently, administrators released prisoners together into the common yard.¹⁴⁴ However, letting prisoners walk about the prison, especially while construction workers were laboring on the still-incomplete structure, also proved problematic. Not a full year into Western’s operation, a prisoner escaped; by January 1828, another five had escaped. These escapes were frequently blamed on the presence of work tools and workmen, which enabled prisoners to walk out the front gate.¹⁴⁵

Complicating the situation was the question of putting prisoners to hard labor. Both the 1818 and 1821 statutes had authorized the construction of Pennsylvania’s state penitentiaries on the principle of solitary confinement, but they had said nothing of hard labor. Thus, Western was constructed with only the principle of solitary confinement in mind. However, the penal code, written decades earlier and coinciding with the reforms at Walnut Street, still specified sentences to confinement at hard labor.¹⁴⁶ When Western opened, its cells (seven feet by nine) were too small for prisoner labor.¹⁴⁷ Western’s Board of Inspectors lobbied the legislature for permission to institute something more similar to the practices at Walnut Street (solitary confinement only as necessary – i.e., to punish rule-breakers – and congregate labor in workshops for the rest) or to the current (post-disaster) regime at Auburn State Prison in New York (solitary confinement only at night and congregate labor in workshops during the day).¹⁴⁸ Limited by a tightfisted legislature, the prison’s administrators also complained frequently of their lack of funds – another problem that, they believed, would be resolved by instituting

¹⁴³ Barnes, *The Evolution of Penology*, p. 140; Doll, “Trial and Error at Allegheny,” pp. 12–14.

¹⁴⁴ Barnes, *The Evolution of Penology*, p. 157; Doll, “Trial and Error at Allegheny,” pp. 14, 19.

¹⁴⁵ Doll, “Trial and Error at Allegheny,” p. 14.

¹⁴⁶ Attempts to revise the penal code in the early 1820s, concomitant with the efforts to authorize new state prisons, were unsuccessful. “In 1821, a [legislative] committee on the penitentiary system had brought in a strong recommendation for punishment by solitary confinement without labor, but the resultant bills had failed of passage. Again, in 1822 and in 1823, other attempts to bring the penal code into line with the plan for solitary confinement died on the floor of the House.” *Ibid.*, p. 12.

¹⁴⁷ *Ibid.*, p. 8.

¹⁴⁸ *Ibid.*, p. 13.

prisoner labor. It would be years before the legislature answered these requests, forcing Western's administrators to muddle through their legal contradiction with less-than-ideal architectural conditions.

* * *

The path to the modern prison of the 1820s – nowhere more than in Philadelphia – was riddled with false starts, stumbling blocks, and circuitous detours. In one sense, penal reform was exceedingly fragile, as so many failures could have ended the reform effort. In another sense, however, penal reform was exceedingly robust. Reformers and statesmen were guided by a strange faith that the prison would eventually work, despite all of its previous failures. Part of this strange faith was an ongoing belief that solitary confinement of some kind – just not the totalizing, fatal kind used initially at Auburn – was a necessary ingredient for American prisons. In the coming decades, the biggest battle would be held over just what kind of solitary confinement was desirable. This question would be of central importance at Eastern State Penitentiary: Eastern's design, as well as its entire history, would be shaped by the debate over what type of solitary confinement was best. This debate itself would be endlessly haunted by the legacy of failure cast by the proto-prisons and the early experiments with solitary confinement in the new modern prisons. Indeed, penal reformers, prison administrators, and statesmen would work to prevent further failures, constantly tweaking the new prisons until they got it right. Even then, however, the memory of repeated, spectacular failures of the past lingered, making penal innovation a difficult, risky endeavor riddled with uncertainty and anxiety. In this context, the Pennsylvania System was the riskiest of all.