

# THE RALEIGH STAR AND NORTH CAROLINA GAZETTE.

TEO. J. LEMAY, (Printer for the State,) Editor and Proprietor.

"NORTH CAROLINA:—POWERFUL IN MORAL, INTELLECTUAL AND PHYSICAL RESOURCES—THE LAND OF OUR SINES AND THE HOME OF OUR AFFECTIONS"

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## REPORT

### COMMITTEE ON THE PENITENTIARY.

In Senate, December 28, 1844.

Read and ordered, on motion by Mr. Waddell, to be printed—10 copies for each member.

The committee on so much of the Governor's Message as relates to a Penitentiary, respectfully submit the following Report:

The subject of the penitentiary system is not a new one in North Carolina. It has been frequently and earnestly agitated and discussed amongst the people, and in the Legislature. The current of public opinion has seemed to run in its favor; but your committee are not advised that it has ever been presented in so distinct and tangible a form, as to elicit a clear manifestation of the public will, either for or against its adoption. Nor have they the means of knowing what that will now is in relation to this subject. It is much to be regretted, that this most important question has never been presented, so disconnected from all subjects involving local and political excitement, and accompanied with such explanations touching its probable cost—its annual expense and production—its effects upon the progress of crime and the reformation of criminals, as might enable the public to arrive at a clear understanding of its merits, and a definite conclusion as to the expediency of its adoption in this State. It will be the purpose of your committee to furnish such details and statistics, gleaned from the scanty stock of materials within their reach, as may contribute in some degree to the general information. Without going into an elaborate argument, a few observations on the general question of expediency, may not be deemed inappropriate.

The experience of other States, both foreign and domestic, which have given the penitentiary system a thorough trial, furnish sufficient data for arriving at a safe conclusion as to its beneficial operation. Its history in our own country has been most favorable to the American penitentiary system. It is conclusively shown to have checked, if it has not materially diminished, the commission of crime—even amidst a population unparalleled for its rapid increase and heterogeneous character. By abrogating the barbarous punishments imposed by feudal times—which have not been touched by the meliorating influences of a more civilized age—we should conform to, and sanction those just and benevolent considerations which look more to the prevention than the punishment of crime—more to the reformation than the punishment of criminals—which seek to temper justice with humanity, and to compel even the hardened culprit to regard the dispenser of justice more as a merciful judge, than a ruthless and savage avenger. The punishments of whipping, cropping and branding, sanctioned by our laws, are considered as not only impolitic, in view of their effects upon the prevention of crime and the reformation of offenders, but as un-congenial to the spirit of the age, and revolting to humanity. What probability—what hope is there, that the man who has become the victim of such torturing punishment, publicly inflicted in the presence of crowds usually attracted by such revolting exhibitions, ever will or can, rise above that condition of deep and irretrievable degradation into which he is sunk by so infamous a punishment? He knows that the brand of Cain is upon him—he bears upon his person the indelible and damning proof of his infamy. He is forced out of the circle of the reclaiming influences of personal pride, and the hope of future respectability. An impassable barrier separates him from all respectable association, and feeling that all is lost, he either sinks into the loathsome imbecility of drunkenness or into a new career of crime. Whatever palliation or excuse he might find in the sudden impulses of a hasty temper—in the ungovernable ex-asperation for great personal injury or insult—or in the frightful sufferings of penury and want—no matter how much the better impulses of his nature, and the pride of a once honest name, might stimulate him to regain a respectable position in society, he is yet crushed beneath the consciousness, that there are no oblivious waters in public sentiment that can wash out the scars of his lacerated flesh—no panacea in public sympathy that can heal the wounds of his mutilated person. These unhappy consequences do not so frequently or so necessarily result from the milder—better graduated, and less infamous punishments of a penitentiary code. Solitary confinement induces a communion with conscience: active employment gives a healthy action and beneficial direction to the mind. The convict is cut off from the temptations and opportunities of evil associations: he acquires a habit of sober industry during a lengthened confinement: he finds in a profitable trade an additional security against the temptations which might otherwise assail him upon his discharge, to seek the means of living by his wits, by theft, robbery or murder; and not unfrequently, a conviction of the very practical truth, that "honesty is the best policy," is fastened upon his conscience and his judgment.

On the score of economy, your committee believe the argument is in favor of a penitentiary. In the States of New Hampshire, Massachusetts, Vermont, and New Jersey, where penitentiaries are established, the earnings of the convicts exceed the expenses. In Connecticut, the aggregate profits for twelve years, up to 1839, were \$63,920 12. In Kentucky, to the same period, they amounted to \$96,847 32. In Ohio, for the years 1837, 1838, 1839, to \$39,252 65. In Louisiana, for the years 1837 '38, to \$16,714 94. The profits of the Auburn penitentiary for the years 1838 '39, were \$3,450 25; and of the Sing Sing State Prison, N. Y., for the years 1837, '38, '39, were \$39,007 90. In Tennessee, for 1836 '37, the profits were \$14,420 41. It is to be regretted that we have no statistical reports from the Georgia penitentiary, from which, as from those of Tennessee and Kentucky, we might hazard some safe analogical deductions. But whilst the penitentiaries above enumerated have been profitable, those at Philadelphia, Pittsburg, Baltimore, Washington City, and in Michigan, have not paid expenses—the deficiencies ranging from \$3,700 to \$15,378, annually. Viewing this subject in its most unfavorable aspect, as to the question of economy, and granting that a penitentiary would be an annual charge to the State of \$10,000 (which sum is much above the average annual charge of the five penitentiaries above enumerated) we will now enquire whether this would not be the cheaper plan of punishment, to say nothing of its reformatory tendencies.

From the few and imperfect returns made to the Executive department, under the Act of 1838 '39, the committee have been able to collate some facts which may be useful in this connexion, as enabling them to arrive at conclusions, not altogether conjectural. Returns from thirty-five counties show that the number of prosecutions for the year prior to June 1st, 1840, for crimes and misdemeanors, was one thousand three hundred and fifty eight. Of this number, seventy nine were crimes of various grades from petit larceny to murder, of which there were thirty-two convictions, twenty-one acquittals, and twenty-two not tried. (We will here remark, *in passing*, that these returns also show, that in these thirty-five counties, there were two hundred and forty-nine Junatics and idiots.) Taking it for granted that the remaining thirty-five counties would have furnished an equal calendar of crime, we have for that year, two thousand seven hundred and sixteen State prosecutions—one hun-

dred and fifty-eight of which would be included in a penitentiary code. Of this number, sixty-four were convictions, forty-two were acquittals, and forty-four not tried. From our own observations of criminal trials, may we not conclude that of these forty-four acquittals, many escaped conviction on account of the severity of the punishment and the humanity of the jury? These returns further show that in ten counties, the sums paid for the prosecution of insolvent criminals and their maintenance in jail, for the year 1839, amounted to the sum of \$4,110 97, which is an average for each county, of \$411 10. We may assume that half of this sum was incurred in the prosecution of State prison offences, and that is a fair average for each county. From these data then we have the sum of \$15,000 00 annually expended in the State of North Carolina, for the prosecution and maintenance, in jail, of insolvent criminals, charged with the commission of penitentiary offences. Assuming, then, that a penitentiary would be a public charge of \$10,000 00 annually (which it probably would not be,) it would be a saving of expense in the administration of the criminal law.

As to the cost of construction, the committee do not possess sufficient information to enable them to make any estimate which they can confidently recommend as being correct. It necessarily depends upon the extent of the work, and is usually estimated by the cell. Penitentiaries built upon the Auburn system are generally preferred for their cheapness, as well as their internal arrangement and superior discipline. The buildings and ground of the Maine Penitentiary cost \$30,000 00, while the Auburn cost over \$600,000 00—the number of cells not known.

The cost of the Cherry Hill Penitentiary, at Philadelphia, was \$1,648 00 per cell.

" Pittsburg, do	978 00 "
" Charlestown, Mass. do	286 00 "
" Sing Sing, N. Y., do	200 00 "
" Weathersfield, Conn., do	150 00 "
" Baltimore, Maryland, do	146 00 "

From these facts we may conclude with some certainty that the cost of such a building in this State would not exceed \$500 per cell, and would probably fall much short of it. But we will put it down at five hundred dollars. We have shown above, the probable average number of convictions for State Prison offences, annually, to be about sixty-four. The number of prisoners, in the year 1839, in the Ohio penitentiary, was 485—in Baltimore, 325—in Kentucky, 157—in Washington City, 62—in Tennessee, in 1837, it was 122. No statistical information on the various matters considered in this report, of a later date than 1839, are within the reach of this committee. May we not assume, then, as a basis of calculation, that a building with two hundred cells would be sufficiently extensive for this State. Two hundred cells at \$500 per cell, fixes the cost of this work at \$100,000.

The question now comes up, of the ways and means. How shall the funds be raised? We answer, by direct taxation. This is the source, and the only source from which they can come, without interfering with the arrangement of, and diverting from its great and patriotic purposes, our Common School Fund. Your Committee would most earnestly protest against such appropriation of that fund. Can this sum of one hundred thousand dollars be raised by taxation without distressing the people? We think so. The time necessary for arranging the plan and constructing all necessary buildings, would probably be four years. This sum, therefore, could be collected in four annual instalments, that is to say, \$25,000 per year. By the Comptroller's & Treasurer's Reports, made to the present session of the General Assembly, the land and town property tax for the year 1843, amounted to \$31,722 30, raised by a tax of six cents on the hundred dollars valuation; and the poll tax amounted to \$31,886 65, raised by a tax of twenty cents on the poll—making the aggregate sum of \$63,609 95. The calculation, then, is a very simple one, that an additional tax of three cents on land and eight cents on the poll for four years would produce a sum sufficient to build a Penitentiary at the cost estimated above. And it should be borne in mind that after the building is in a state of forwardness, the convicts themselves can be made to do the work and make such additions from time to time as may be needed. Let it not be forgotten, that this additional tax of three and eight cents, is less than is annually paid by our citizens to defray State prosecutions, &c., under the existing laws, as shown by a preceding part of this report.

There are various subjects involved in the consideration of the Penitentiary system not now necessary to be adverted to, and which will more appropriately become questions of discussion, inquiry and adjustment, when it shall be decided that we will build a penitentiary. The question now arises, how and by whom is this decision to be made? We answer by the People themselves, by a direct vote. Your committee do not feel themselves warranted, under the present and prospective embarrassments in the finances of the State, in recommending that a tax be laid by the present General Assembly for the erection of a penitentiary, in the absence of an unequivocal and decisive expression of the public will on the subject. Your committee are not insensible of the claims which propositions for other public institutions of perhaps equal importance, have upon the favorable consideration of the people and of the Legislature. The deaf and dumb—the blind and the insane, have claims upon the public sympathy and the legislative bounty. Their misfortunes, their sufferings, and their helpless condition appeal to us through urgent impulses of humanity, and the sternest teachings of public duty. Almost every civilized community has responded to these appeals in the establishment of suitable institutions and asylums. The happy results of these State charities have more than realized public expectation. Hundreds have been rescued from the sufferings and horrors of insanity, and restored to reason and to society. Deaf and dumb mutes have been elevated from the mere animal existence of the brute to the sentient and moral condition of intelligent man. To the blind—those whose organs of sight are closed against the ordinary modes of instruction—has been given that intellectual vision, that light of the mind, which enables them to be freed from continual dependence—to be useful in society—and to find sources of enjoyment and happiness in the stores of intellectual acquirements. The committee, therefore, would not invoke exclusive attention to the special subject, committed to their inquiry, excluding or postponing all others, alike entitled to public consideration, but are still deeply impressed with its great importance, and the propriety and necessity of some expression of public opinion.

The committee have annexed to this report, and ask that they may be taken as part of it, two tables, which may serve for reference and comparison: One marked A, exhibiting the number of convictions for the crimes annexed, in each year, during 14 years as taken from the Register of the Auburn Prison, N. Y. The other, marked B, exhibiting the "Progress of Crime" in the various States included therein. That the views of the committee, as set forth in this Report, may be carried out, I am instructed to report the accompanying bill and recommend its passage, and ask to be discharged from the further consideration of the subject.

Respectfully submitted,  
H. B. ELLIOTT,  
Ch'n Pen'y Committee.

December 22, 1844.

The following table exhibits the number of Convictions for the crimes annexed in each year, during fourteen years as taken from the Register of the Prison.

Year	Grand Larceny	Petit Larceny	Forgery	Burglary	Making or passing Counterfeit Money	Assault & Battery to kill	Assault & Battery to rape	Manslaughter	Arson	Bigamy	Rape	No. of convictions
1829	71	69	67	61	79	46	68	62	56	110	82	980
1830	8	6	8	28	27	27	27	21	20	20	20	306
1831	10	18	20	16	14	16	12	15	10	21	31	227
1832	6	8	6	4	6	11	8	11	23	23	25	229
1833	18	31	17	6	20	12	3	12	10	10	6	27
1834	7	6	6	4	11	5	5	5	7	7	4	64
1835	2	2	3	3	4	2	2	2	3	3	3	54
1836	4	2	2	1	5	2	2	2	4	4	2	44
1837	2	1	1	1	1	1	1	1	1	1	1	37
1838	1	1	1	1	1	1	1	1	1	1	1	27
1839	1	1	1	1	1	1	1	1	1	1	1	29
Total	138	149	146	139	175	102	105	107	170	215	170	2243

PROGRESS OF CRIME

State	Number committed in 1827	Number committed in 1828	Number committed in 1829	Number committed in 1830	Number committed in 1831	Number committed in 1832	Number committed in 1833	Number committed in 1834	Number committed in 1835	Number committed in 1836	Number committed in 1837	Number committed in 1838	Number committed in 1839
Massachusetts	99	61	187	227	118	128	30	51	145	145	145	145	145
Connecticut	99	61	187	227	118	128	30	51	145	145	145	145	145
Auburn, N. Y.	99	61	187	227	118	128	30	51	145	145	145	145	145
Sing Sing, N. Y.	99	61	187	227	118	128	30	51	145	145	145	145	145
New Jersey	99	61	187	227	118	128	30	51	145	145	145	145	145
Philadelphia	99	61	187	227	118	128	30	51	145	145	145	145	145
Pittsburg, Pa.	99	61	187	227	118	128	30	51	145	145	145	145	145
Baltimore, Md.	99	61	187	227	118	128	30	51	145	145	145	145	145
Washington, D. C.	99	61	187	227	118	128	30	51	145	145	145	145	145
Kentucky	99	61	187	227	118	128	30	51	145	145	145	145	145
Ohio	99	61	187	227	118	128	30	51	145	145	145	145	145

MESSAGE.  
From Governor Morehead in relation to the compensation of the Governor as President ex officio of the Literary and Internal Improvement Board:  
To the Honorable,  
The General Assembly  
of North Carolina.

GENTLEMEN,  
I found upon my table, on Friday last, a printed document No. 49, herewith transmitted, purporting to be a "correspondence relative to the legal right of the Governor to receive pay as President ex officio of the Literary and Internal Improvement Boards," which is accompanied by copies of a resolution of the Senate, calling upon the public Treasurer "to report to the Senate the correspondence between the Treasurer and his excellency the Governor, relative to the legal right of the Governor to receive per diem compensation, as President ex officio &c., for services rendered upon the Literary and Internal Improvement Boards; and also the opinion of the Attorney General thereupon, together with the amount which his excellency the Governor has received for said service;" and of a letter from the Treasurer to the Speaker of the Senate, in response to that resolution; and of a letter from the Treasurer to myself, and my reply; and of a letter from the Treasurer to the Attorney General, and his reply—altogether with a statement made by the Treasurer, relative to the sums I have received for my services on these Boards—which statement he professes to make "from the report of the Comptroller to the House of Commons, Dec'r 20, 1842."

As to the question of the Governor's right to compensation, I desire to draw the attention of your honorable body to the law, the practice under the law ever since its passage, and the action of the Legislature on the subject.  
I had not heard the question raised, or the matter of the Governor's right to compensation for his services upon either of the Boards, doubted, until the receipt of the Treasurer's letter of 27th January, 1843, declining to pay a warrant drawn by me in pursuance of an order of the Board of Internal Improvement. This letter, proposing to submit the matter to the Legislature then in session, was received on the evening after the House had adjourned to meet at 7 o'clock

at night—and the House again adjourned to meet at half after five the next morning, when the Legislature adjourned sine die—and before my reply of 28th to the Treasurer.  
Upon this subject I looked into the law, and the practice under it, and found no room to doubt. The acts of 1836, Revised Statutes, chap. 61 and 67, making the Governor ex officio President of the Literary and Internal Improvement Boards, assign duties to the Governor as a member of those Boards, which are wholly disconnected with his executive duties and which he cannot be required to perform, if he choose not to do so. The executive is a separate and independent branch of the government, and the duties of that branch are fixed by the constitution, and the legislative department can no more assign duties to the executive department, which are not executive duties, than the executive department can assign du-

ties to the legislative department; and all duties assigned to the executive by the Legislature which are not executive duties, may or may not be performed by him at his option, without any dereliction of official duty, however discountenanced it might be on his part to decline any reasonable request made by the Legislature.  
The superintendent, in person, of works of Internal Improvement, the drainage of swamp lands, the banking operations of a loan office, and the various duties assigned to the Board of Internal Improvements and the Literary Board, will not be considered, by any person, as executive duties. For if so, there are then as many executive functions to discharge these executive duties, as there are members of these Boards.  
The duties assigned to the executive as president ex officio of these Boards, I have found very onerous, and responsible. I hesitate not to say, that the duties which I have found it necessary to perform

in the faithful discharge of the trust confided to me, as president ex officio of the Literary Board alone—in superintending the loans of the Board, the drainage of the swamp lands, and the great quantity of duties, and correspondence connected with the common schools, have imposed upon me more time and attention, than all the duties which properly pertain to the executive office.  
The salary of the executive was fixed at the present sum in 1817—the Legislature of 1836 passed the acts by which he became president ex officio of these Boards, and assigned to him the duties which he had to perform. Was it reasonable, was it just in the Legislature to assign to the executive new duties, which were not executive duties, and allow him no compensation for their performance—while it allowed those associated with him pay for discharging similar duties? Was it just to assign him these duties which

might require, and have required a considerable expenditure for travelling expenses, to be paid out of his own private purse for less he is entitled to per diem pay, he is not entitled to his travelling expenses while engaged in the service of the State.  
Such injustice on the part of the Legislature, was not to be expected, and therefore that body very justly said "the said Board (Internal Improvement) may hold its sessions wherever and when over the Governor may direct; and the said commissioners shall receive for their services the sum of three dollars each per day, and their travelling expenses for the time they may be employed in the public service;" and who from these commissioners of Internal Improvement is very evident from the construction of the provision in the 61st section of the 51st chapter, for unless the Governor be one of the commissioners, then the other commissioners of this Board have powers which the president of this Board does not possess.

(See Second Page.)