



"Ours are the Plans of fair, delightful Peace,
"Unwarp'd by Party Rage to livelike Brothers."

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DEBATES

ON THE
Penitentiary Bill,

In the House of Commons, December 7, 1801.

Continued from our last.

Mr. Walker's Conclusion.

Life is of more importance than any man is able to conceive: It is the gift of the Creator, and in strictness none but him has a right to take it away. All are willing to preserve it; we flee danger, and dread a change. The love of life is an inherent principle of our nature, from which we cannot depart: The God of Nature has implanted it as the great preservative principle of our existence; and whosoever takes it away, whether individually or collectively, violates the most sacred of rights, which ought never to be done, except in cases of necessity, which are well provided for in the present bill.

Mr. CULPEPPER. I am in favour of the passage of the bill. I differ in opinion very widely from the gentleman from Fayetteville, as to our present penal code. I consider our penal laws both cruel and unjust, and I am induced to believe that my opinion is that of a great majority of the citizens of this State. On this account, our laws are not enforced. Juries will seldom convict a man of horse-stealing; and if he be convicted, a reprieve is generally so powerfully applied for, that it is mostly granted. Men are seldom hung for this crime, and the consequence is, that they go unpunished altogether. If, then, it is so generally acknowledged that our system is too severe, and that our punishments are by no means proportionate to the crimes committed against society, it is surely time for some amendment to be made to it. The design of punishment is, the good of society; and no one will say, that when we hang a man, we mean to do him any good; the effect is intended to be produced on society. Would it not, then, be much better, if we can provide a mode of punishment for offences, which shall not only have a good effect on society, by deterring men from committing offences, but which shall also have the effect to produce a reformation of conduct in the criminals themselves? I have felt it my duty to make these few observations; and as I am fully persuaded the time will soon come when Governments generally will be too wise to take men's lives for small offences, I hope the General Assembly of North Carolina will not be the last Legislature of the United States who shall adopt this liberal policy, on the plea of poverty.

Mr. BLOODWORTH. I rise with great diffidence to advocate a measure that militates against the common practice of this country, from the earliest time to the present—a practice originally brought from the mother country. I know the prejudices incident to human nature. I know that customs become so natural by long usage, as almost to become innate principles. It is very difficult to alter the customs and practices of a country. There is always great reluctance in departing from them, and when I look around me, and see so many youths just come into the Legislature, whose minds are untripped by experience, and who push on with vigour, without considering consequences, I greatly despair of success in carrying the present measure.

The Gentleman first up has said, that no State, similarly circumstanced with North-Carolina, has adopted a measure of this kind. Surely that Gentleman cannot want to be informed that the State of Kentucky, a much younger State than this, has adopted this humane institution. That Gentleman also says, the expence of this measure will far exceed the advantages to be obtained from it. Grant the position. Is it on account of any pecuniary advantage that the General Assembly are about to amend their penal system? Certainly not. The Gentleman raises another formidable objection to the bill. He says no artificers will be confined in the Penitentiary. I wish this may be the case. But is it not possible to employ an artificer to instruct the convicts? There is no force in this argument whatever. There is not the least doubt but the wisdom of North-Carolina will be able to find employment for the persons confined in the Penitentiary, though not, perhaps, so as to raise any emolument to the State. That is not the object; the object is to make an improvement in our penal code; which is at present cruel and unjust, because our punishments are by no means proportioned to the crimes the commission of which they punish. It would be useless to expatiate on this particular, as I believe every person is convinced of the truth of it. Can it be just or right, to put a man to death for stealing a horse of five pounds value, and do no more to that man who not only steals the horse but kills his rider? Does not justice demand that this Assembly seriously reflect on the disparity and impropriety of these punishments? We are accountable creatures; and though we swell here in our characters as Legislators, we must hereafter individually account for our actions before the Judge of Heaven and Earth. The present moment is in our power; the next is in futurity, and we know not what a few moments may bring forth. Let each Member ask himself whether he can be justified in saying that the life of a criminal shall be forfeited equally for great and small offences?

I well know the difficulty there is in opposing ancient habits, and deep-rooted prejudices. Prejudice against a Speaker will always destroy the force of his argument. But I beg Gentlemen to consider the subject seriously; and not be like Rehoboam, who, taking the advice of his young men, lost the greater part of his kingdom. Your Yea or Nay will determine the fate of the lives of numbers of your unfortunate fellow-men.

The House has long deliberated on this subject, and Gentlemen have doubtless come to a determination as to their votes. Supposing this to be the case, I have confined my-

self to few words. I shall only add a request that Gentlemen will remember the fate of those unhappy mortals, who being convicted of comparatively small offences, are sentenced to be hung by the neck till they are dead, dead, dead! and the Lord have mercy upon their souls. Merely these poor creatures stand in need of from Heaven; they get it very sparingly from mortals.

By the present system, the State, in all such cases, loses a citizen, and disgrace is riveted upon the family of the sufferer, so that it can scarcely ever be got clear of.

I shall forbear making any further observations on the subject, except it may be to reply to what may fall from other Gentlemen opposed to the bill.

Mr. LACEY. The eloquence of the Gentleman last up does honour to the goodness of his heart; but it appears to me that the arguments made use of, are more calculated to excite the passions of this House, than to convince their judgments of the utility of the measure contended for. When so great a change as is now proposed in our criminal laws as before the Legislature, it ought to be taken up on far different principles from those on which the Gentleman has chosen to discuss it. His representation of an unhappy criminal about to be executed, was to be sure affecting. It is lamentable that vice prevails in society; but it does exist, and it has been necessary to provide laws to punish it. The present criminal law I believe the people of this country live happy under.

In respect to the policy of this measure, whatever other Members may think, I am of opinion, that it will not be good policy for North-Carolina to pass this bill into a law. It is said, that crimes are at present unequally punished, and particular stress is laid on the punishment for horse-stealing. It is difficult to form a law to punish all crimes equally. The punishment of this crime may be altered, if thought too severe, without passing this bill. I do not think, that if an uniform rule of punishment could be adopted, that this crime ought to be punished with death, though horse-stealing is a crime of a very serious nature. I cannot believe this Penitentiary is calculated for humane purposes; since it proposes that an unfortunate criminal shall drag out, in some cases ten or twenty years, and in others the whole of his life, in prison; whereas if an offender was punished with death at once, he would be forgotten, and not be a living monument of misery and distress; but by the present bill, an offender who is now punished with death, would have to undergo a punishment in the Penitentiary, in my opinion, worse than death. Other States have been brought forward as examples, to shew the propriety of this measure. When the law passed in Virginia authorising an institution of this kind, commerce was flourishing, and money was plentiful in that State. She was rich in her revenue. But I believe she is now tired of it. It is well known that the citizens of this State have how to pay the United States direct tax, which will put them to great inconvenience. If the Treasury of the State was in a situation to furnish the money requisite to carry this institution into effect, I should have no objection to the measure; and I think the friends of it should consent to wait till this is the case, when the building might more easily be effected. The passing of this bill will not build the house of correction; it requires something more. Perhaps it will cost the State 100,000, and if the law is now passed for beginning the work, and a future Legislature should view the subject in a different light, all the money expended will be lost to the State. I hope, therefore, the bill will not pass.

Mr. BLOODWORTH. I wish to reply a few words to the Gentleman from Rockingham. The greatest objection urged by that Gentleman is, that a future Legislature may do away what is done by the present General Assembly, and that, in this case, the money expended will be lost. He also calculated that the expence will be great; and that Virginia alone that has adopted this institution; but also Pennsylvania, New-York, South-Carolina and Kentucky; and so far from repenting of what they had done, I believe they are altogether satisfied with the effects produced by them. It has been assured to me, that in Kentucky, offenders are more afraid of getting into the Penitentiary, than they were formerly of coming to the gallows.

Perhaps, when I was up before, I spoke too much to awaken the passions. I will now offer a few reasons on the subject. The intention of punishment is two-fold; the first is to punish the offender for his guilt; the second, to deter others from committing offences against society. To answer the first intention, the offender ought to be punished in proportion to his crime, and where this is exceeded, the Legislature is guilty of injustice; to have the second effect, it becomes a question, whether it will not be better to keep convicts at hard labour in a prison, than to hang them up at once. When a person is hung, he is soon forgotten; but when he is imprisoned, this is not the case. We know that death is the common lot of human nature, and though it be dreadful in the prospect, when a man is dead, he is soon put out of remembrance. For my own part, I think cruel punishments are impolitic, since the frequency of their repetition destroys their effect; and strange to relate, curiosity will even draw the fair sex to behold the execution of their fellow-creatures, by which means, the finer feelings of humanity are destroyed, and the sympathetic passions no longer exist.

But it is said, we are not in a situation to carry this measure into effect; that North-Carolina is not able to do what her younger sister Kentucky has done. We are not able, because we are not willing. Is there any humane man in this State, who considers the present disproportion of punishments to crimes, who would begrudge paying something extraordinary for the establishment of this institution? I believe not. For my own part, I feel conscientiously on the subject. I believe society has no right to put a man to death but for murder of the first degree. We join in society for

our mutual advantage. We give up to society all that we have to give. But do we give up our private religious privileges to government? Happy for us, we have declared to the contrary in our Constitution. If this, then, is not subject to the ruling powers, the life, which is the gift of the Deity, cannot be subject to their disposal. A man cannot, (and ought not to) destroy his own life, without trespassing on the laws of God. Therefore, no man ought to forfeit his life to society, but for murder of the first degree, or crimes approaching to it.

Though the present bill may not pass at present, I am confident that the time is not far distant, when this country will say, they will not put men to death contrary to the laws of God and Man—not indeed contrary to the existing laws but contrary to real justice. Let I tire the House, however, I shall sit down.

The question was called for.
Mr. W. W. JONES. I am sorry the House appears so tired of this subject. I must beg leave however to occupy its attention for a few minutes longer. From any thing which appears from the observations of the friends of the bill, I have found no reason to change my mind with respect to it. But I suppose the strong reasons in favour of this measure are kept back, in order to decoy me within gunshot, and that by and by I shall receive a broadside.

I shall endeavour to answer the observations of the gentlemen who support this bill. It is said, the argument of expence ought to have no weight, because our taxes are at present very low; but, because we have not heretofore been oppressed with taxes, is that any reason why we should now burthen our constituents? The gentleman from New-Hanover has spoken of the imperfect judgment of Young Men, and cautioned the House against taking their advice. I am willing to allow my judgment may be imperfect; and I do not wish it to be relied upon any farther than I adduce reasons in support of it.

To shew my want of information on this subject, the gentleman has adduced Kentucky as a State that has adopted this Institution; but that establishment has not been long enough in existence to experience any good effects from it. With respect to the other places mentioned, the state of Society there is very different from what it is here.

The gentleman from New-Hanover does not contemplate any pecuniary advantages to the State, from the labour of the convicts; but I know this has been held out as one of the inducements to vote for this bill. If no profit is to be derived from this Institution, is there any reason for plunging the State into a heavy expence to build a Penitentiary, when the common goals of our respective counties are sufficient for the safe-keeping of these criminals?

It has been observed, that we are accountable creatures. Truly: but when our conduct is founded on the strict rules of law and morality, we have nothing to fear. It has been said to be inhuman to take away the life of a man for a small offence, when no more could be done with him who committed the greatest; but there is a distinction to be made with respect to offences. Beccaria, in his Treatise on Crimes and Punishments, says, "that the means made use of by the law to punish crimes, should be more powerful in proportion as they are destructive of society;" he also says, "when property can be taken with great ease and facility, the punishment should be the greater." Let us enquire whether these principles will not support the objections made to this bill.

It is extremely difficult to prevent the stealing of horses, and being a kind of property easily conveyed away, it is not easy to detect the thief; the punishment for this offence ought then to be, as it is by our laws, severely punished.

There is another crime, stated in this bill, which is committed in open violation of the laws, against those whom we are bound by every feeling of honour to protect. I allude to the crime of Rape. I will not ask any Gentleman of this House to say, whether any punishment short of death can atone for this crime? Whilst I have the power of speech, I will always raise my voice against lessening the punishment of this offence. If this crime were not punished with death, what man is there whose near connections had been thus brutally treated, who would not himself take vengeance of the offender?

It is said to be high time to do away our present criminal system, as being too sanguinary. On the contrary, I believe experience will warrant the belief that less punishments for crimes will not be effectual. Paley, in his Philosophy, says, "If there be any thing which can deter men from committing crimes, it must be the expectation of approaching death." In answer to this it may be said, that frequent executions render the feelings callous. But our country is not in this situation. We are situated in a young country, and such scenes do not often occur. Where the population is great, crimes are multiplied; but with us this is not the case.

I see no reason, therefore, why this bill should pass. Indeed I hold it to be my duty to oppose the passage of any bill which would be attended with so many evil consequences as this would be, and hope to strangle, in its infancy, this darling child of the Gentleman from Hillsborough.

The usual hour of adjournment being arrived, and the question being loudly called for,

Mr. FISHER moved to adjourn.
Mr. WRIGHT. I hope the House will adjourn. This bill is perhaps as important a one as ever came before the Legislature of North-Carolina; it is a bill the principles of which materially affect the citizens of this country, and which therefore deserves serious examination. It contemplates a radical change in the criminal code of our country. And there is not a Member in this House who does not wish for information on the subject, who does not wish to give his vote understandingly. It is a subject which has been introduced for and against the measure, and we have had it on the minds of Members, for on the 15th of December