

I

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. &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.

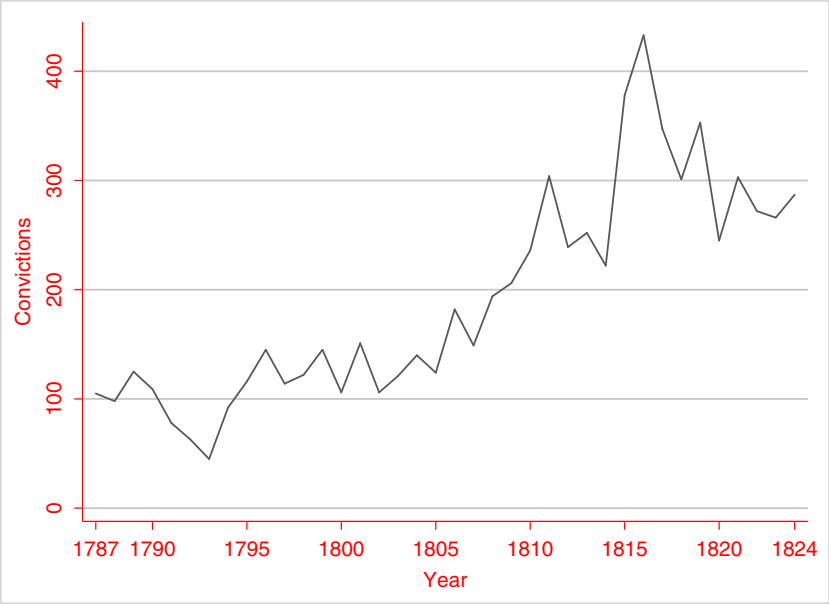


FIGURE 1.1 Annual number of convicted offenders brought to Walnut Street, 1787–1824

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.