

and was not considered "cruel and unusual punishment" when the amendment was added to the Constitution in 1791, modern-day abolitionists have claimed that "evolving standards of decency" have rendered the death penalty unconstitutional.

A. THE FIFTH AMENDMENT

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor shall private property be taken for public use, without due process of law, nor shall private property be taken for public use, without just compensation.

B. THE SIXTH AMENDMENT

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

C. THE EIGHTH AMENDMENT

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Source: Constitution of the United States.

DOCUMENT 10: *An Enquiry How Far the Punishment of Death Is Necessary in Pennsylvania* (William Bradford, 1793)

By 1793, the abolition and penal reform movement instigated by Benjamin Rush and his followers had gained considerable momentum in Pennsylvania.

The movement progressed even further when William Bradford, attorney general of Pennsylvania who later would become attorney general for the United States, investigated the possibility of reducing the number of capital crimes in the state. In his report, Bradford became one of the first to define the distinction between first- and second-degree murder and to argue for the abolition of capital punishment for all crimes except first-degree murder and treason. He also strongly supported early childhood education as a means of preventing later criminal behavior, and spoke favorably of the state's new prison system.

In 1794, due in large part to the continuous efforts of Bradford and Rush, the Pennsylvania legislature abolished the death penalty for all crimes except first-degree murder. New York in 1796 was the first state to follow Pennsylvania's example, retaining the death penalty only for murder and treason. Virginia, which in 1785 had rejected Thomas Jefferson's proposal to reduce its number of capital crimes, was among a number of other states that adopted similar reforms during the next two decades. And as they did so, each state—with the lofty goals of reforming criminals—began constructing its own prisons and penitentiaries (Mackey 1976:xvi–xvii; Masur 1989:86–87; Schwed 1983:11–12).

On Capital Punishments

IT being established, That the only object of human punishments is the prevention of crimes, it necessarily follows, that when a criminal is put to death, it is not to revenge the wrongs of society, or of any individual—"it is not to recall past time and to undo what is already done;" but merely to prevent the offender from repeating the crime, and to deter others from its commission, by the terror of the punishment. If, therefore, these two objects can be obtained by any penalty short of death, to take away life, in such case, seems to be an authorised act of power. . . .

Murder

Murder, in its highest degree, has generally been punished with death, and it is for deliberate assassination, if in any case, that this punishment will be justifiable and useful. Existence is the first blessing of Heaven, because all others depend upon it. Its protection is the great object of civil society and governments are bound to adopt every measure which is, in any degree, essential to its preservation. The life of the deliberate assassin can be of little worth to society, and it were better that ten such atrocious criminals should suffer the penalty of the present system, than that one worthy citizen should perish by its abolition. The crime imports extreme depravity and it admits of no reparation. . . .

But while I speak thus of deliberate assassination, there are other kinds of murder to which these observations do not apply: and in which, as the killing is in a great measure the result of *accident*, it is impossible the

severity of the punishment can have any effect. The laws seem, in cases, to punish the act more than the intention: and, because society unfortunately lost one citizen, the executioner is suffered to deprive another.

In common understanding the crime of murder includes the circumstance of premeditation. In the laws of William Penn, the technical phrase *malice aforethought*, was avoided; and "wilful and premeditated murder" is the crime which was declared to be capital. Yet murder, in its judicial construction, is a term so broad and comprehensive in its meaning as to embrace many acts of homicide, where the killing is neither wilful nor premeditated. "A. shooteth at the poultry of B. and, by accident, killeth a man; if his intention was to steal the poultry it will be murder: but if done wantonly it will be barely man-slaughter." Again, a parker found a boy stealing wood in his masters ground: he bound him to his horse's tail and beat him. The horse took fright, run away and killed the boy. This was held to be murder." In the latter case there was no design to kill; in the former not the least intention to do any bodily harm.

I am sensible how delicate a step it is to break in upon the definition of crimes formed by the accumulated care of ages; but, when we consider how different, in their degree of guilt, these offences are from the horrid crime of deliberate assassination, it is difficult to suppress a wish, that some distinctions were made in favor of homicides which do not announce extreme depravity. . . .

Conclusion

IT is from the ignorance, wretchedness or corrupted manners of a people that crimes proceed. In a country where these do not prevail moderate punishments, strictly enforced, will be a curb as effectual as the greatest severity.

A mitigation of punishment ought, therefore, to be accompanied, as far as possible, by a *diffusion of knowledge* and a *strict execution of the laws*. The former not only contributes to enlighten, but to meliorate the manners and improve the happiness of a people.

The celebrated *Beccaria* is of opinion, that no government has a right to punish its subjects unless it has previously taken care to instruct them in the knowledge of the laws and the duties of public and private life. The strong mind of *William Penn* grasped at both these objects, and provisions to secure them were interwoven with his system of punishments. The laws enjoined all parents and guardians to instruct the children under their care so as to enable them to write and read the scriptures by the time they attained to twelve years of age: and directed, that a copy of the laws (at that time few, simple and concise) should be used as a school book. Similar provisions were introduced into the laws of Con-

necticut, and the Select Men are directed to see that "none suffer so much barbarism in their families as to want such learning and instruction." The children were to be "taught the laws against capital offences," as those at Rome were accustomed to commit the twelve tables to memory. These were regulations in the pure spirit of a republic, which, considering the youth as the property of the state, does not permit a parent to bring up his children in ignorance and vice.

The policy of the Eastern states, in the establishment of public schools, aided by the convenient size and *incorporation* of their townships, deserves attention and imitation. It is, doubtless, in a great measure, owing to the diffusion of knowledge which these produce, that executions have been so rare in New England; and, for the same reason, they are comparatively few in Scotland. Early education prevents more crimes than the severity of the criminal code.

The constitution of Pennsylvania contemplates this great object and directs, That "Schools shall be established, by law, throughout this state." Although there are real difficulties which oppose themselves to the *perfect* execution of the plan, yet, the advantages of it are so manifest that an enlightened Legislator will, no doubt, cheerfully encounter, and, in the end, be able to surmount them.

Secondly—Laws which prescribe hard labor as a punishment should be strictly executed. The criminals ought, as far as possible, to be collected in one place, easily accessible to those who have the inspection of it. When they are together their management will be less expensive, more systematic and beneficial—Their treatment ought to be such as to make their confinement an *actual* punishment, and the remembrance of it a terror in future. The labor, in most cases, should be real *hard* labor—the food, though wholesome, should be *coarse*—the confinement sufficiently *long* to break down a disposition to vice—and the salutary rigor of *perfect solitude*, *invariably* inflicted on the greater offenders. Escapes should be industriously guarded against—pardons should be rarely, *very rarely*, granted, and the punishment of those who are guilty of a second offence should be sufficiently severe.

The reformation of offenders is declared to be one of the objects of the Legislature in reducing the punishment—But time, and, in some cases, *much time*, must be allowed for this. It is easy to counterfeit contrition; but it is impossible to have faith in the sudden conversion of an old offender.

On these hints I mean not to enlarge—but they point to objects of great importance, which may deserve attention whenever a further reform is attempted.

The conclusion to which we are led, by this enquiry, seems to be, that in all cases (except those of high treason and murder) the punishment of death may be safely abolished, and milder penalties advantageously

introduced—Such a system of punishments, aided and enforced in the manner I have mentioned, will not only have an auspicious influence on the character, morals, and happiness of the people, but may hasten the period, when, in the progress of civilization, the punishment of death shall cease to be necessary; and the Legislature of Pennsylvania, putting the key-stone to the arch, may triumph in the completion of their benevolent work.

Source: William Bradford, *An Enquiry How Far the Punishment of Death Is Necessary in Pennsylvania* (Philadelphia: Dobson, 1793). [Early American Imprints (New York: Readex Microprint, 1985), 6-7, 35, 37-38, 43-46 (footnotes omitted).]

DOCUMENT 11: *An Account of the Alteration and Present State of the Penal Laws of Pennsylvania* (Caleb Lowmes, 1794)

Four years after the establishment of the first penitentiary at the Walnut Street Jail in Philadelphia (see Document 8), Caleb Lowmes, one of the penitentiary's inspectors, wrote a progress report on the reformed prison titled *An Account of the Alteration and Present State of the Penal Laws in Pennsylvania*.

Lowmes was a Quaker merchant who long had worked toward prison reform and the abolition of capital punishment. Like his contemporary Benjamin Rush, he believed that solitary confinement was the key to reforming the criminal mind. The theory was that removal of the often negative stimulation of the outside world would make the criminal better able to contemplate his actions and thus see the error of his ways (Masur 1989:81-82, 86).

In his report, Lowmes appeared confident that the newly reformed prison was a great success—beneficial both to the prisoner and to the community. He reported that recidivism was low among pardoned offenders, crime was down on the city streets and highways outside of town, and when crimes were committed, juries no longer were reluctant to convict, as they often had been when punishments were considered too harsh. Hence, at least in Lowmes' opinion, it seemed that Philadelphia was on the right track toward penal reform.

How little effect the former system of punishments had in preventing crimes, is too well known to need any explanation at present. We are to examine, whether any beneficial consequences have followed the alteration that has taken place in the treatment of the convicts.

It is not more than two years that the new regulations have had their

full operation, although the law which authorised them, was passed some time before. But in that short time, the effects which have flowed from them, have been remarked with much satisfaction by the citizens at large, as well as by those whose situation offered superior opportunities for observing them. These effects proceed, either from a real reformation taking place in the minds of the prisoners, or from a terror of the consequences which they know will attend a second confinement.

During their continuance in prison, they learn many things which operate as a check upon the commission of new crimes. They learn the difficulty of evading justice; and that, as the laws are now mild, they will be strictly put in execution. They now see that juries are not unwilling to convict, and that pardons are not granted till they discover some appearances of amendment. The penalty, though not severe, is attended with many unpleasant circumstances, and many of them deem the constant return of the same labour and of coarse fare, as more intolerable, than a sharp, but momentary punishment. They know that a second conviction would consign them to the solitary cells and deprive them of the most distant hopes of pardon. These cells are an object of real terror to them all, and those who have experienced confinement in them, discover by their subsequent conduct, how strong an impression it has made on their minds. They know that mercy abused, will not be repeated, and neither change of name nor disguise, will enable them to escape the vigilant attention with which they are examined. These reflections, or reflections like these, have had their weight: for out of near 200 persons who at different times have been recommended to, and pardoned by the governor, only four have been returned: three from Philadelphia, re-convicted of larceny, and one from a neighbouring county. As several of those, thus discharged, were old offenders, there was some reason to fear, that they would not long behave as honest citizens. But, if they have returned to their old courses, they have chosen to run the risk of being hanged in other states, rather than encounter the certainty of being confined in the penitentiary cells of this. We may therefore conclude, that the plan adopted has had a good effect on these; for it is a fact well known, that many of them were heretofore frequently at the bar of public justice, and had often received the punishment of their crimes under the former laws.

Our streets now meet with no interruption from those characters that formerly rendered it dangerous to walk out of an evening. Our roads in the vicinity of the city, so constantly infested with robbers, are seldom disturbed by those dangerous characters. The few instances that have occurred of the latter, last fall, were soon stopped. The perpetrators proved to be strangers, quartered near the city, on their way to the westward.

Our houses, stores, and vessels, so perpetually disturbed and robbed