

IN SENATE OF THE UNITED STATES,

FEBRUARY 9, 1821.

Mr. SMITH, from the Committee on the Judiciary, to which was referred the resolution, "to inquire into the propriety of so modifying the law punishing piracy, as to authorize the President of the United States, in such cases as he may deem expedient, to commute capital punishments for confinement in penitentiary houses," made the following

REPORT :

The object of the resolution is to alter the criminal code of the United States so far as to place within the power of the President of the United States the complete control over the punishment now affixed by law to the crime of piracy, and to soften it down from death to the less rigorous punishment of confinement in penitentiary houses.

As we have drawn most of our impressions of the utility and efficacy of penitentiaries, from the practical operations of this system in the several states where it has been adopted, it may not be thought improper to give the result of certain official inquiries into the condition, usefulness, and advantages, of some of these institutions, in states where much zeal and diligence had been displayed to cherish them.

Some time in the year of 1817, the grand jury, of Philadelphia, visited the penitentiary in that city, upon which they made the following presentment:

"That, while they notice, with pleasure, the high degree of order and cleanliness, they are compelled by a sense of duty to present, as an evil of considerable magnitude, the present very crowded state of the penitentiary; the number of prisoners, of all classes, continues to increase, so that from twenty to forty are lodged in rooms eighteen feet square; so many are thus crowded together, that the institution already begins to assume the character of an 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 methodized villany, can scarcely avoid the contamination which leads to extreme depravity." The same grand jury further stated—"that of four hundred and fifty-one convicts, now in the penitentiary of Pennsylvania, one hundred and sixty-one have been confined there before." It is believed that no institution, of this character, ever received more attention, as respects its comforts and means for promoting reformation of offenders.

The commissioners appointed to examine into the state of the New York prison, not long since, in their report say—"It has, for some time past, not only failed of effecting the object chiefly in view, but has subjected the Treasury to a series of disbursements, too oppressive to be continued, if they can in any way be prevented."

The commissioners of the prison of Massachusetts, in a report, complain—"that the prison is so crowded, as to defeat the object for which the institution was created." These commissioners, after enumerating what they consider to be the advantages arising to the commonwealth, say—"but there appears great reason to suppose that the advantage, first mentioned, is more than counterbalanced by the greater hardihood, and more settled corruption, which a promiscuous association among the convicts must produce, particularly the young."

These appear to be fair and impartial representations made by men whose duty it was to represent things as they were, in order to bring to the public view their true character. And if this is the state and effect of those prisons, after twenty years of experience, and prudent management, upon convicts whose offences are not of the most atrocious class, but little hope can be entertained that pirates can be reformed by such means.

In the catalogue of human offences, if there is any one supremely distinguished for its enormity over others, it is piracy. It can only be committed by those whose hearts have become base by habitual depravity. It is called by jurists an offence against the universal laws of society. A pirate is *hostis humani generis*. He is at war with his species; and has renounced the protection of all civilized governments, and abandoned himself again to the savage state of nature. His flag consists of "a black field, with a death's head, a battle axe, and an hour glass." These are the ensigns of his profession. He does not select the enemies of his native country as the only objects of his conquest, but attacks, indiscriminately, the defenceless of every nation; prowls every ocean in quest of plunder, and murders, or jeopardizes the lives of all who fall within his power, without regard to nation, to age, or to sex. With such a blood-stained front, a pirate can have no claim to the clemency of a government, the protection of which he has voluntarily renounced, and against which he has so highly offended.

Our general policy and political institutions are administered so mildly that we seem to have forgotten the protection due to the public; and call that punishment which the law prescribes for offences, however enormous they may be against the public safety and public morals, cruel, and degrading to our national character. The laws punishing piracy with death have had from the legislative department all the consideration due to so important a subject, at a time when no undue influence could interpose.

The executive clemency has more than sufficient range for its exercise without the aid sought for by this resolution. Whatever may be the public feeling against a pirate previous to his trial and conviction, as soon as that takes place that feeling subsides and becomes

enlisted on the part of the criminal. There is not a favorable trait in his case but what is brought up and mingled with as many circumstances of pity and compassion, as his counsel can condense in a petition, which every body subscribes without any knowledge of the facts; and this is presented to the executive, upon which alone he is to judge the case. All the atrocious circumstances are kept out of view. There is no one hardy enough to tell that this criminal and his associates had boarded a defenceless ship, and after plundering all that was valuable, had, with the most unrelenting cruelty, butchered the whole crew and passengers; or crowded them into a small boat, in the midst of the sea, without provisions or clothing, and set them adrift, where their destruction was inevitable; or, the better to secure their purpose, had shut all, both male and female, under deck, and sunk the ship, to elude detection, or to indulge an insatiable thirst for cruelty.

The object of capital punishment is, to prevent the offender from committing further offences, or to deter others from doing so by the example. If it is commuted for temporary confinement, it can effect neither to any valuable purpose. The temptation is so strong, and detection so difficult and so rare, that but few, it is feared, can be deterred. The punishment of death is inflicted upon pirates by all civilized nations; notwithstanding which, it is a growing evil. Every sea is now crowded with them; and, instead of diminishing, ought to increase the reasons for inflicting capital punishment.

The committee are of opinion that capital punishment is the appropriate punishment for piracy; and that it would be inexpedient to commute it for confinement in penitentiary houses.

