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## ABSTRACT OF THE DISSERTATION

Women's Crime and Prison Reform in Early Pennsylvania, 1786-1829

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My dissertation examines the role that ideologies of gender, sexuality and race played in the penal reform movement in Pennsylvania. Women's presence in prison throughout this vital era in the development of the penitentiary shaped the system in countless and often unacknowledged ways. Efforts aimed to define appropriate gender roles, restrict sexual practices, and cultivate moral refinement were dynamic but inconsistent. Changes to the penal code did not designate sex-specific punishment, but women were punished differently from men through the enactment of a sexual division of labor. Moreover, reformers sought to instill order by segregating prisoners along lines of sex, crime, race, and age. Official institutional and organizational records regarding race as a category of distinction were relatively silent in the 1780s and 1790s. By the 1820s, however, the consolidation of the language of darkness into "black" also led to the formation of a new category, "white." The implementation of racial classification and segregation reveals the gendered nature of the racial ideology that shaped institutional practice, since segregation was most strictly enforced among male convicts. Sex-segregation was implemented earlier and more fully. Aimed at thwarting heterosexual liaisons among prisoners, such excessive regulation along with the absence of concern about alternative sexualities enabled reformers to reproduce the social structure of compulsory

heterosexuality, rooted in a heterosexual political economy, while simultaneously nurturing same-sex desire.

## PREFACE

Philadelphia, the nation's birthplace, was home to dozens of American "firsts" and two important penal institutions in the early republic. At the corner of Sixth and Walnut Streets, across from Independence Hall Park, thousands of tourists pass by the original location of Walnut Street Prison unknowingly every year. Across town, in the area once known as Cherry Hill and now famed for the Art Museum sits another prison. Eastern State Penitentiary stands in all its intimidating grandeur. Designated a national historical landmark in 1965, Eastern State hosts huge crowds from all over the region for its annual Halloween haunted house. A small but determined bunch of tourists regularly leave Philadelphia's prominent historical neighborhood around Independence Hall to tour this other treasure, in a remote neighborhood beyond the reach of the subway system.

Eastern State was the first penitentiary built to enable implementation of a new philosophy of punishment: moral reformation through isolation, strict diet, religious instruction, and hard labor. Though it is often upheld as the "beginning" of this system, in fact Eastern State more accurately marks an ending of the most dramatic and experimental era of prison reform history. By the time of its 1829 opening, reformers had already spent forty years trying to define and refine the best methods of punishment. By then, there was general agreement among keepers, inspectors, reformers, and legislators on the key components and necessities of the penal system. But from 1786 – when Philadelphia's elite men took up the cause of prison reform – until 1829 when Eastern State Penitentiary officially opened, everything about the new system was up for grabs, making it a far more significant chapter in the history of the penitentiary system in the United States than the one that followed.

Tours of Eastern State Penitentiary present the history of punishment “before” the opening of Eastern State as a minor back story.<sup>1</sup> A series of blown-up images in cellblock two that are designed to portray this history actually reduce the complexity of the prison reform movement of the early republic. One image portrays a hanging and someone held in the gallows. The guide explained that this was the nature of punishment “before” Eastern State, but neither he nor the caption note that Pennsylvania outlawed corporal punishment well before 1829. Another image depicts a rowdy scene of men and women drinking, laughing, fighting, wrestling and gambling in London’s Newgate Prison in 1818. The guide again claimed this was what prisons were like “before” Eastern State. While it may accurately depict conditions in Walnut Street Prison in 1787, it did not portray life in Philadelphia’s prisons in 1818.

By 1829, Pennsylvania’s leading Quakers, ministers, merchants, and politicians had spent forty years working on legislative initiatives to address the conditions of Walnut Street Prison and develop the model penitentiary on which Eastern State was based. They formed the Philadelphia Society for Alleviating the Miseries of Public Prisons, the work of which is presented on a display featuring Bishop William White and Benjamin Franklin. The caption describes them as founders of PSAMPP, the organization responsible for the construction of Eastern State. White was a founding member and first president of PSAMPP in 1787. He was reputedly the most dedicated, active charter member throughout his life and he served as president of the Society until his death in 1836.<sup>2</sup> The suggestion that Franklin and White were involved in the construction of Eastern State, however, is misleading for two reasons. First, though Franklin signed the

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<sup>1</sup> Descriptions noted on a visit to Eastern State Penitentiary in June, 2005.

<sup>2</sup> Negley K Teeters, *They Were in Prison: A History of the Pennsylvania Prison Society 1787-1937* (Philadelphia, 1937), 119.

membership list during the organization's first year, he was not an active member of the Society and he died in 1790, long before Eastern State was even imagined. Second, with few exceptions, White among them, charter members of PSAMPP worked to reform conditions at Walnut Street and were no longer active by the time Eastern State was built. PSAMPP members who oversaw the construction and administration of Eastern State comprised the second generation of leaders with a new agenda and vision.

This dissertation aims to put Eastern State Penitentiary in its proper historical place – as a marker of *the end* of the beginning of the first great enlightenment-inspired wave of institutional reform. It does so by documenting the efforts, debates, and issues which marked *the beginning* of the beginning.

## ACKNOWLEDGEMENTS

Since I cannot remember the beginning of this process, I will begin with the end. Thanks to my wonderful friends, students, and colleagues at Connecticut College who have supported and encouraged me through the final phases of writing. The History department has been a great home thanks to Cathy Stock, Lisa Wilson, and Jim Downs. The students in my History of Sexuality seminar in the spring of 2007 took me on a transformative ride as a teacher and human being. I am grateful for their enthusiasm, patience, impatience, and courage. Blanche Boyd, David Kim, Deb Eastman, Marty Grossel, and Mab Segrest have been friends and colleagues in all the most meaningful ways.

Only in retrospect do I appreciate the privilege attending a graduate program stacked with feminist faculty. Temma Kaplan, Phyllis Mack, and Drucilla Cornell each challenged and supported me in different ways. My suspicions that no one would support my attempt to fuse the social history of early America with queer and feminist theories of sexuality were unfounded; my committee has enthusiastically supported this project from the start. Despite forcing me to become literate in the traditional historical narrative of the nineteenth century, Jan Lewis and Ann Fabian have continually pushed me to be more analytical, bold, and creative in my writing. Jennifer Morgan modeled exciting scholarship integrating analysis of race, gender, and sexuality as I was formulating this project and continues to model fighting the good fight for more systemic analysis of the function of race in U.S. history. Nancy Hewitt has been the best advisor one could wish for, standing by me as I considered changing topics, changing centuries, and leaving graduate school all together. Her commitment to the field of women's history, to teaching

and mentoring, to the study of social movements, and to integrating analysis of race and gender in history all made her seem like an ideal match for me. Despite the many obstacles inherent in a project that tries to tell a story of women without any sources in which they speak for themselves, she has never “told me so.” She has edited and advised me with patience and compassion for many, many years.

My time at Rutgers was made more exciting and challenging through my relationships with the Department of Women’s and Gender Studies, the Institute for Research on Women, and the Office of Diverse Community Affairs and LGBT Concerns. Barbara Balliet, Beth Hutchinson, and Cheryl Clarke were friends and mentors and lots of fun. Teaching courses in Women’s Studies helped me to stay grounded in reality during the heady days of graduate coursework. Barbara Balliet and Mary Hawksworth guided me through the adventure of managing my first college classroom. Fellow grad students Michal Shapira, Brian Connolly, Alex Warner, and Carla MacDougall provided friendship, community, and counsel.

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My undergraduate history professors got me into this mess in the first place. Before life in the big city and the study of literature and history changed me forever,



geometry and statistics were my true loves. Drew Faust, Lynn Lees, Mary Frances Berry, Mike Zuckerman, and Kathleen Brown inspired me to love history. Drew's lectures captivated me, regardless of the subject. Lynn taught me to work with primary documents, cultivated my ability to write history, and kept me from falling through the cracks at Penn. Kathy's take on U.S. women's history made me want to read everything that she had read.

My parents taught me the value of education and never pressured me to become something practical or to make lots of money. My brother Jeff even admitted that he admired my dedication to such an obscure pursuit. Jodi lived with this for years and helped me to stay human during the research intensive stretches. Jim lived with this too, via a Sprint PCS to PCS calling plan. Our shared passion for making sense of the world and our lives through history, pop culture, politics, and dancing has inspired, enraged, and sustained me. From Wednesday nights at Woody's in 1994 to Wednesday nights at Mystic Pizza in 2007 and all of the graduations, deaths, divorces, dates, and drama in between, he has been my sister.

Finally, thanks to my friends from Ptown, San Francisco, Salerno, Fairmount, New London, Mystic, and Quiambaug for their love, support, and another day.

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## INTRODUCTION

The 1776 Declaration of Independence opened the door for Pennsylvania to revise its colonial criminal code. State Attorney General William Bradford summarized the situation, “During our connection with Great Britain no reform was attempted: but as soon as we separated from her, the public sentiment disclosed itself.”<sup>1</sup> The English criminal codes had been forcefully imposed on the colony and were at odds with the vision of Pennsylvania founder William Penn.<sup>2</sup> On December 7, 1682, under Penn’s leadership, the first assembly of the colony adopted a criminal code that was very mild for its time. Referred to as “The Great Law or Body of Laws,” this code set the Quaker system apart from its English and Puritan counterparts, most significantly by naming only one crime - murder - punishable by death.

Several disruptions in colonial government led to the enactment of gradually more severe penalties from 1682 to 1718. A major dispute between the Anglican Crown and the Quaker colonists ultimately resulted in the reestablishment of the English criminal code in 1718. The newly enforced British code added twelve offences to the list of capital crimes, including, “treason, murder, manslaughter by stabbing, serious maiming, highway robbery, burglary, arson, sodomy, buggery, rape, concealing the death of a bastard child, advising the killing of such a child and witchcraft.”<sup>3</sup> Physical punishments such as whipping, branding and mutilation were imposed with increasing frequency.<sup>4</sup>

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<sup>1</sup> William Bradford, *An Enquiry How Far the Punishment of Death Is Necessary in Pennsylvania with Notes and Illustrations, to Which is Added, an Account of the Goal and Penitentiary House of Philadelphia, and of the Interior Management Thereof By Caleb Lownes of Philadelphia* (Philadelphia, 1793), 20.

<sup>2</sup> Gary Nash, *Quakers and Politics: Pennsylvania, 1681-1726* (Princeton, 1968).

<sup>3</sup> Harry E. Barnes, *The Evolution of Penology in Pennsylvania* (Indianapolis, 1927), 38-39.

<sup>4</sup> Harry E. Barnes, *Evolution of Penology*, 31-39. Barnes notes that people often mistake Penn’s death as the cause of the re-institution of the British code in 1718, but the source of the dispute was the Quaker refusal to take oaths.

Bradford compared the legal code which governed the colony for nearly seventy years to a foreign plant, “The severity of our criminal law is an exotic plant and not the native growth of Pennsylvania. It has been endured, but I believe, has never been a favorite.”<sup>5</sup>

When Pennsylvania declared independence and drafted its own Constitution in 1776, it came as no surprise that reforming the penal code was a top priority of the new government. Pennsylvania Quakers rejoiced at the opportunity to draft laws more in accord with their values. Those values were shaped not only by their pacifist founder, William Penn, but increasingly by the circulation of enlightenment philosophies. Two philosophers had the most clear and direct impact on Pennsylvania reformers – Montesquieu and Cesare Beccaria.<sup>6</sup> In his 1748 essay *The Spirit of the Laws*, Montesquieu presented two concepts that would become central to penal reform movements.<sup>7</sup> The first was that “the spirit of the laws” could influence society by shaping the way people related to and interacted with each other. The impact of the laws thus spread far beyond the person accused of violating them. Second, he held that the administration of the laws could affect the incidence of crime; a clearly articulated and implemented vision of the law could actually reduce crime. Italian philosopher Cesare Beccaria’s *Essay on Crimes and Punishments* (1764) was widely reprinted in America and shaped Pennsylvania’s penal laws even more profoundly.<sup>8</sup> Beccaria, often

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<sup>5</sup> William Bradford, *An Enquiry How Far the Punishment of Death*, 20.

<sup>6</sup> Both were discussed by Rush and Bradford. See Benjamin Rush, *An Enquiry Into the Effects of Public Punishments Upon Criminals and Upon Society. Read in the Society for Promoting Political Enquiries, Convened at the House of His Excellency Benjamin Franklin, Esquire, in Philadelphia, March 9<sup>th</sup>, 1787* (Philadelphia, 1787); William Bradford, *An Enquiry How Far the Punishment of Death*.

<sup>7</sup> For elaboration on Montesquieu and his influence on Pennsylvania reformers, see Michael Meranze, “Penitential Ideal in Eighteenth-Century Philadelphia,” *Pennsylvania Magazine of History and Biography* 108 (1984): 422-423.

<sup>8</sup> First published in 1764 in Italian; Early English editions include: Cesare Marchese di Beccaria, *Essay On Crimes and Punishments* (London, 1767); *An Essay on Crimes and Punishments, Translated From the Italian; With a Commentary, Attributed to Mons. De Voltaire. Translated from the French* (Charlestown,

described as the father of criminal justice, argued that punishments should be proportional to crimes, established on a scale, and consistently applied. He also called for abolition of the death penalty, which was widely imposed across Europe and in the British colonies.

The Pennsylvania Constitution of 1776 did not officially alter the penal code. It did, however, briefly introduce this new philosophy of punishment. In section thirty-eight, it called for punishments to be “less sanguinary” and “more proportionate” to crimes committed.<sup>9</sup> Hard labor “for the benefit of the public or for reparation of injuries done to private persons” was suggested in place of more violent and extreme measures. The Constitution also offered a few suggestions on how to deter people from committing crimes through the enactment of punishments that were “visible” and of “long durations.” In the midst of the revolution, however, the legislature had no time to implement such changes. The British occupied the city of Philadelphia and took over the county jail on September 26, 1777, using it to hold patriot prisoners of war until they left the city the following June.<sup>10</sup> It took another decade for lawmakers, justices, and interested reformers to formally devise a new penal code for the state.

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This dissertation examines the introduction of these enlightenment-inspired penal laws and punishment schemes in Pennsylvania. The rise of the penitentiary as the premier

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1777); *An Essay on Crimes and Punishments. Written by the Marquis Beccaria; of Milan. With a Commentary Attributed To Monsieur de Voltaire* (Philadelphia, 1778); *An Essay on Crimes and Punishments. By the Marquis Beccaria, of Milan. With a Commentary by M De Voltaire* (Philadelphia, 1793).

<sup>9</sup> Pennsylvania, *The Constitution of the Common-wealth of Pennsylvania, As Established By The General Convention Elected for That Purpose, and Held at Philadelphia, July 15th, 1776, and Continued By Adjournments to September 28, 1776* (Philadelphia, 1776), 28.

<sup>10</sup> Negley K. Teeters, *The Cradle of the Penitentiary: The Walnut Street Jail at Philadelphia, 1773-1835* (Philadelphia, 1951), 21-23.

institution of punishment has long attracted historians. Early twentieth-century historians of the subject praised Pennsylvania's reformers and legislators for leading the way out of the dark ages of corporal punishment toward a more humanitarian penal system.<sup>11</sup>

Questions about the rise of the penitentiary as the centerpiece of the criminal justice system captivated a new generation of scholars in the 1970s. They approached the subject with greater skepticism than those before them, questioning not only the values and efficacy of this new form of punishment but also the motives of reformers themselves.<sup>12</sup>

Studies by Michel Foucault and David Rothman have shaped understandings of the significance of the penitentiary for succeeding generations. In his analysis of the rise of a wide range of state sponsored regulatory institutions, Rothman saw the penitentiary as one part of a grand attempt to instill order and maintain social control. Foucault's more sweeping work both exposed and made meaning of the ever more subtle mechanisms of control and punishment that came into fashion near the end of the eighteenth-century. Provocatively, he claimed that rather than reform a person who committed a crime, the new system of imprisonment created a hardened "criminal identity" for those imprisoned.<sup>13</sup>

The work of Foucault and Rothman inspired many others to re-interpret the function of the penitentiary in relation to political and economic systems, social power, and cultural representations.<sup>14</sup> Michael Meranze's analysis of punishment in

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<sup>11</sup> Harry E. Barnes, *Evolution of Penology*; Negley Teeters, *Cradle of the Penitentiary*; Teeters, *They Were in Prison: A History of the Pennsylvania Prison Society 1787-1937* (Philadelphia, 1937); LeRoy B. DePuy, "The Walnut Street Prison: Pennsylvania's First Penitentiary," *Pennsylvania History*, 18 (1951): 130-144.

<sup>12</sup> Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (New York: Vintage, 1977); Michael Ignatieff, *A Just Measure of Pain: The Penitentiary in the Industrial Revolution, 1750-1850* (New York, 1978); David Rothman, *Discovery of the Asylum: Social Order and Disorder in the New Republic* (Boston, 1971).

<sup>13</sup> Michel Foucault, *Discipline and Punish*.

<sup>14</sup> Thomas Dunn, *Democracy and Punishment: Disciplinary Origin of the United States* (Madison, 1987);

Pennsylvania shows how the process of transformation unfolded in one particular penal system during this exciting era.<sup>15</sup> Meranze uses detailed historical evidence to substantiate many of Foucault's claims. He argues that the rise of a liberal political ideology and the growth of institutional disciplinary regimes fueled each other and were rooted in the revolutionary era, not the 1820s and 1830s.<sup>16</sup>

This project departs from these earlier studies in several ways. The grand questions that have framed previous scholarship have led to sweeping answers. The first aim of this study is to pay particular attention to those who stand on the fringes of the dominant narratives, asking how experiences of individuals and groups were shaped by their race, gender, or sexuality. Second, the project unpacks the construction and deployment of categories of race, gender, and sexuality at every level of institutional, legal, and organizational decision-making.<sup>17</sup> The social and political chaos and uncertainty that marked the post-revolutionary era was in large part caused by the undoing of traditional hierarchies. Institution building offered a key way by which elites reasserted their authority and sought to reestablish social hierarchies.

The past ten years have seen an explosion in the literature on race, gender, and sexuality in early America, replacing the focus of an earlier generation of women's

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Louis P. Masur, *Rites of Execution: Capital Punishment and the Transformation of American Culture, 1776-1865* (New York, 1989); Robert Sullivan, "The Birth of the Prison: the Case of Benjamin Rush," *Eighteenth-Century Studies*, 31 (1998): 333-344; Karen Haltunen, "Humanitarianism and the Pornography of Pain in Anglo-American Culture," *American Historical Review*, 100 (1995): 303-334; Thomas L. Haskell, "Capitalism and the Origins of the Humanitarian Sensibility, Part I," *The American Historical Review*, 90 (1985): 339-361.

<sup>15</sup> Michael Meranze, *Laboratories of Virtue: Punishment, Revolution, and Authority in Philadelphia, 1760-1835* (Chapel Hill, 1996).

<sup>16</sup> Meranze's study challenges Rothman's periodization of the development; See Meranze, *Laboratories of Virtue*; Rothman, *Discovery of the Asylum*.

<sup>17</sup> See Carroll Smith-Rosenberg, "Dis-Covering the Subject of the "Great Constitutional Discussions," 1786-1789," *The Journal of American History*, 79 (1992): 841-873; Toby L. Ditz, "Shipwrecked; or, Masculinity Imperiled: Mercantile Representations of Failure and the Gendered Self in Eighteenth-Century Philadelphia," *The Journal of American History*, 81 (1994): 51-80.



historians to uncover the lives and experiences of women and write them back into history. These efforts unearthed massive amounts of information on women's lives in the colonial, early republic, and antebellum periods.<sup>18</sup> Studies disproportionately focused on the experiences of women who were likely to leave extensive records behind: white, middle and upper class, literate, educated, and well-stationed in relation to religious and political power structures. Historians rushed back to the archives in search of women on the margins and most of them incorporated analysis of at least some of the categories of race, class, and gender. Historians of the South led this charge.<sup>19</sup> Fewer studies of the Mid-Atlantic region incorporate an intersectional analysis of race, gender, and sexuality.<sup>20</sup> This study contributes to this relatively slim body of literature to better understand this crucial period in the history of the nation. The penitentiary which served as the social laboratory of its time now stands as a valuable laboratory for analyzing how race, gender, and sexuality were used in the construction, maintenance, and transformation of systems of power in the early republic.

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<sup>18</sup> Seminal works in the field include Jeanne Boydston, *Home and Work: Housework, Wages, and the Ideology of Labor in the Early Republic* (New York, 1990); Nancy Hewitt, *Women's Activism and Social Change: Rochester, NY, 1822-1872* (Ithaca, 1984); Carol Karlsen, *Devil in the Shape of a Woman* (New York, 1987); Linda Kerber, *Women of the Republic: Intellect and Ideology in Revolutionary America* (Chapel Hill, 1980); Suzanne Lebsock, *The Free Women of St. Petersburg: Status and Culture in a Southern Town, 1784-1860* (New York, 1984); Jan Ellen Lewis, *The Pursuit of Happiness: Families and Values in Jefferson's Virginia* (Cambridge, England, 1983); Mary Beth Norton, *Liberty's Daughters: The Revolutionary Experience of American Women, 1750-1800* (Ithaca, 1980); Christine Stansell, *City of Women: Sex and Class in New York, 1784-1860* (New York, 1986).

<sup>19</sup> Kathleen Brown, *Good Wives, Nasty Wenches, Anxious Patriarchs: Gender, Race, and Power in Colonial Virginia* (Chapel Hill, 1996); Catherine Clinton and Michele Gillespie, eds., *The Devil's Lane: Sex and Race in the Early South* (New York, 1997); Kirsten Fischer, *Suspect Relations: Sex Race, and Resistance in Colonial North Carolina* (Ithaca, 2002); Suzanne Lebsock, *A Murder in Virginia: Southern Justice on Trial* (New York, 2003); Jennifer L. Morgan, *Laboring Women: Reproduction and Gender in New World Slavery* (Philadelphia, 2004).

<sup>20</sup> For exceptions, see Bruce Dorsey, *Reforming Men and Women: Gender in the Antebellum City* (Ithaca, 2002); Clare Lyons, *Sex Among the Rabble: An Intimate History of Gender and Power in the Age of Revolution, Philadelphia, 1730-1830* (Chapel Hill, 2006); Several books cover much of British North America including Sharon Block, *Rape and Sexual Power in Early America* (Chapel Hill, 2006); Richard Godbeer, *Sexual Revolution in Early America* (Baltimore, 2002); Merril D. Smith, ed., *Sex and Sexuality in Early America*, (New York, 1998).

Women's presence in prisons throughout this vital era shaped the system in countless and often unacknowledged ways. Few studies of the prison population have focused their analysis on women.<sup>21</sup> Indeed, research that focuses on prisoners en masse sometimes elides the distinctions between the behaviors and experiences of women and men.<sup>22</sup> Studies of African-American crime and imprisonment raise another set of questions, but the data for such studies is also largely weighted toward men.<sup>23</sup> This study employs feminist theories of subjectivity that challenge historians to question the stability of our historical subjects, to see identities as both relational and continually contested.<sup>24</sup> This means that the category of woman itself is not a pre-existing entity whose meaning is *modified* by race, class, and sexuality, but rather that the dynamics of race, class, and sexuality in a given historical moment *constitute* the meaning of the category of woman at that moment.<sup>25</sup> This project, therefore, aims to study not only the experiences of a group readily identified as women but also how the parameters for the category of woman were constructed and re-constructed. Historians have long recognized that their sources are not objective windows into reality, yet Joan Scott advocates that historians

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<sup>21</sup> Some work on women's crime has been done; see Hoffer and Hull, *Murdering Mothers: Infanticide in England and New England, 1558-1803*, 1981; G.S. Rowe, "Women's Crime and Criminal Administration," *Pennsylvania Magazine of History and Biography*, 111 (1985): 335-368; Patricia Cline Cohen, *The Murder of Helen Jewett: the Life and Death of a Prostitute in Nineteenth-Century New York* (New York: 1998).

<sup>22</sup> Some excellent studies of poor and criminal populations in Philadelphia obscure differences between men and women by not examining them. See Billy Smith, *The "Lower Sort: Philadelphia's Laboring People, 1750-1800* (Ithaca, 1990); Simon Newman, *Embodied History: The Lives of the Poor in Early Philadelphia* (Philadelphia, 2003).

<sup>23</sup> Gary Nash, *Forging Freedom: The Formation of Philadelphia's Black Community, 1720-1840* (Cambridge, Mass, 1988); Leslie Patrick-Stamp, "Ideology and Punishment: The Crime of Being Black (Pennsylvania, 1639-1804)," (Ph.D. diss., University of California, Santa Cruz, 1989); G. S. Rowe. "Black Offenders, Criminal Courts, and Philadelphia Society in the Late Eighteenth-Century," *Journal of Social History*, 22 (1989): 685-711.

<sup>24</sup> Joan W. Scott, "Gender: A Useful Category of Historical Analysis," *American Historical Review*, 91 (1986); Evelyn Brooks Higginbotham, "African-American Women's History and the Metalanguage of Race," *Signs*, 17 (1992): 251-273.

<sup>25</sup> Denise Riley, *Am I That Name? Feminism and the Category of Women in History* (Minneapolis: University of Minnesota, 1988); Iris Marion Young, "Gender as Seriality: Thinking about Women as a Social Collective," *Signs*, 19 (1994): 713-738.

read them even more critically. She urges scholars to “Take as their project *not* the reproduction and transmission of knowledge said to be arrived at through experience, but the analysis of the production of that knowledge itself.”<sup>26</sup> This project aims to do both.

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<sup>26</sup> Joan W. Scott, "Experience," *Feminists Theorize the Political*, eds., Judith Butler and Joan W. Scott (New York, 1993), 37.

## Chapter One: Sexual Difference & Penal Reform, 1786-1790

The post-revolutionary period in Philadelphia was marked by a loosening of social hierarchies, a widening gap between rich and poor, an influx of immigrants and runaway slaves, and an increase in crime.<sup>1</sup> The population of Philadelphia skyrocketed, doubling from 33,000 in 1775 to 67,000 in 1800. By 1820, nearly 110,000 people called Philadelphia home. Those of French, Irish, and German ancestry whose families settled in the Pennsylvania countryside now fled to the city in search of new opportunities. Immigrants from England and Ireland continued to pour into the seaport, swelling the ranks of the unskilled labor force.<sup>2</sup> African Americans were drawn to Pennsylvania in the aftermath of the gradual abolition act of 1780. Philadelphia offered a sizable and stable free black community. From 1780 to 1789, in the city of Philadelphia alone, over 400 slaves either were manumitted or ran away.<sup>3</sup>

The booming economy did not always provide work, however. Even skilled seamen struggled to secure births throughout the 1780s. Unskilled workers, particularly Irish immigrants and African Americans, suffered disproportionately when work opportunities dried up. Even worse, the revolutionary war destroyed the infrastructure of public poor relief in the city.<sup>4</sup> The ability of the poorest workers to support themselves

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<sup>1</sup> For detailed analysis of Philadelphia's growth see Susan E. Klepp, *Philadelphia in Transition: A Demographic History of the City and Its Occupational Groups, 1720-1830* (New York, 1989) and *The Swift Progress of Population: A Documentary and Bibliographic Study of Philadelphia's Growth, 1642-1859* (Philadelphia, 1991).

<sup>2</sup> Billy Smith, *The "Lower Sort,"* 42, 206; Gary Nash, *First City: Philadelphia and the Forging of Historical Memory* (Philadelphia, 2002), 108.

<sup>3</sup> Gary B. Nash and Jean R. Soderlund, *Freedom by Degrees: Emancipation in Pennsylvania and its Aftermath* (New York, 1991), 140-141.

<sup>4</sup> Gary Nash, "Poverty and Poor Relief in Pre-Revolutionary Philadelphia," *The William and Mary Quarterly*, 33 (January, 1976): 3-30; John K. Alexander, *Render Them Submissive: Responses to Poverty in Philadelphia, 1760-1800* (Amherst, 1980), 104-105.

became even more tenuous as employers embraced wage-labor over terms of servitude.<sup>5</sup> Many people turned to stealing as a way to feed their families and to make ends meet. Indeed, in the decades following the revolution, crime was up all over the state. Larceny constituted 70 to 90 percent of the convictions in Philadelphia County from the 1790s through the 1820s.<sup>6</sup> While property crimes dominated, violence was also commonplace as the city teemed with newcomers of all stripes struggling to scrape by.<sup>7</sup>

Pennsylvania lawmakers and other prominent citizens sought to impose order on the social, political, and economic life of the state in the midst of the post-revolutionary upheavals. Pennsylvania adopted a radical democratic constitution in 1776 that granted nearly universal male suffrage, ensuring that Philadelphia's criminal, vagrant, and disorderly people were a constant threat to this fragile new order.<sup>8</sup> At the same time, the enlightenment ideal of "sensibility" called for men to feel the pain and suffering of others and move to lessen it whenever possible.<sup>9</sup> Leading politicians and reformers were influenced by this idea and sought to develop a system of reasonable yet effective social control. The first target of Pennsylvania elites was the outdated, ineffective penal code which they considered the source of the high crime rate. In reforming these laws, state leaders established public labor as a form of punishment. Although the plan ultimately

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<sup>5</sup> Sharon Salinger, *"To Serve Well and Faithfully": Labour and Indentured Servants in Pennsylvania, 1682-1800* (New York, 1987).

<sup>6</sup> Prison Sentence Docket, Inspectors of the Jail and Penitentiary House, Papers of the Philadelphia Prisons System, Philadelphia City Archives, Philadelphia.

<sup>7</sup> Violence was also rampant in the Pennsylvania countryside. See G. S. Rowe and Jack D. Marietta, "Personal Violence in a 'Peaceable Kingdom' Pennsylvania, 1682-1801," in *Over The Threshold: Intimate Violence in Early America*, ed., Christine Daniels, (New York, 1999), 22-44; Jack D. Marietta and G.S. Rowe, *Troubled Experiment: Crime and Justice in Pennsylvania, 1682-1800* (Philadelphia, 2006), 210; Thomas P. Slaughter, "Interpersonal Violence in a Rural Setting: Lancaster County in the Eighteenth Century," *Pennsylvania History* 58 (1991): 98-123.

<sup>8</sup> Eric Foner, *Tom Paine and Revolutionary America* (New York, 1976).

<sup>9</sup> G. J. Barker-Benfield, *The Culture of Sensibility: Sex and Society in Eighteenth-Century Britain* (Chicago, 1992); Dorsey, *Reforming Men and Women*; Karen Haltunen, "Humanitarianism and the Pornography;" Haskell, "Capitalism and the Origins."

failed, it had significant consequences for men and women caught in the criminal justice system as well as for the larger society. Examination of this law and its implementation reveals the ways it both presumed and perpetuated sexual difference.

This chapter examines the contradictory approaches to the issue of criminality and sexual difference that are revealed through the introduction and consequences of the new penal law. First, the language of the law reflects ambivalence regarding sexual difference. This speaks not to confusion over the handling of women criminals but rather a presumed set of shared assumptions among the male leaders concerning the treatment of women. Second, public debates concerning the implementation of public punishment and popular perceptions of the group of male convicts known as the “wheelbarrow men” were central to the discursive process through which the criminal subject came to be perceived as male. Finally, this chapter documents the simple fact that women *were* in prison during this period, a point that other historians have neglected. This is important not only because it serves as the basis for my analysis of the law, but also because it reveals the ambivalence of lawmakers, reformers, and scholars concerning the subject of the female criminal.

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The punishment that formed the basis of the new code, public labor, was first clearly laid out by the grand jury for Philadelphia, which issued its grievances before the Court of Oyer and Terminer on July 20, 1785. They argued that public labor would allow the convicts to cover the cost of their imprisonment while standing as a visible deterrent to anyone who saw them. The jury submitted to the court a recommendation that public labor serve as the mainstay of the penal system because it could “facilitate the discharge

of their fines and fees, rendering, at the same time, the penalties a benefit, and the punishment of crimes a public example.”<sup>10</sup> Though the grand jury report became the basis for the new code, it was driven as much by practical considerations as philosophical ones. In the very same report, jurors also criticized street commissioners for the degree of dirt and disrepair that marked the public streets and alleys. The list of problems -- lime and dirt gathered near buildings, insufficient grates over vaults, damaged foot pavements, and an uncovered sewer --could all be handled by the new class of imprisoned workers.<sup>11</sup>

A decade of complaints culminated in the drafting of legislation that addressed not only concerns that punishments be more reasonable, and therefore more likely to be imposed, but also that prisoners be put to work for the good of the commonwealth. On September 15, 1786, the Pennsylvania legislature approved a major revision to the penal code by passing “An Act Amending the Penal Laws of This State.” The act was a direct response to section thirty-eight of the Constitution, quoting the passage word for word before listing the tenants of the new law. The changes were significant, reducing the number of capital offences to four – murder, rape, arson, and treason - and replacing corporal punishments such as “burning in the hand, cutting off the ears, nailing the ear or ears to the pillory, placing in or upon the pillory, [and] whipping” with hard labor in public.<sup>12</sup> The law of 1786 had considerable merit to those in favor of reform. It officially replaced the code of 1718, reduced the number of capital offenses to four and ended corporal punishment. Lawmakers, elites, and the public alike were in general agreement that this was a positive change. Assemblymen agreed to the principal of more moderate

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<sup>10</sup> *Pennsylvania Gazette*, July 20, 1785.

<sup>11</sup> *Ibid.*

<sup>12</sup> J.T. Mitchell and Henry Flanders, eds., *The Statutes at Large of Pennsylvania from 1682 – 1801* (Harrisburg, 1896-1908), vol. XII, 283.

punishments, even as they debated less controversial aspects of the law, such as the power granted to the judiciary by the act.<sup>13</sup> Even Chief Justice Thomas McKean, accused of reserving excessive power for himself, was a vocal and prominent advocate of public punishment.<sup>14</sup>

The 1786 act is most noted for the introduction of hard labor in public as the punishment for crimes previously defined as capital or corporal. Lawmakers adopted the philosophy that the prevention of crime was “the sole end of punishment,” and the general acceptance of this principle under girded the belief that public labor could serve as an effective deterrent to crime.<sup>15</sup> Many people, including the state legislature, thought it was a good idea to put prisoners to work for the benefit of either the one whom they wronged or the public generally.<sup>16</sup> Rather than idling away their time, convicts could be forced to make a positive contribution to the community through public works. One citizen noted, “We have legal means, not only of making them public examples, but of coercing their abilities for the benefit of society, to which such scoundrels are a pest.”<sup>17</sup> In addition, their efforts could be compensated, thereby reducing the likelihood that the state would become financially responsible for their care and for any fines or fees that accumulated. Criminals laboring in public would also serve as a visible deterrent to others contemplating a life of crime. And the shame convicts would feel from such a public demonstration of their own guilt would surely make them less likely to repeat their

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<sup>13</sup> For a more extensive discussion of the debates over judicial authority, particularly concerning the role of Thomas McKean, see Michael Meranze, *Laboratories of Virtue*, 80-84.

<sup>14</sup> Negley Teeters, *They Were in Prison*, 26.

<sup>15</sup> William Bradford, *An Enquiry How Far the Punishment*, 3.

<sup>16</sup> Mitchell and Flanders, *Statutes at Large*, vol. XII, 280.

<sup>17</sup> *Pennsylvania Gazette*, August 23, 1786.



offenses. Finally, they could repair public property, thereby contributing to the public good, even if by force.

By examining the transition from corporal punishment to hard public labor, we can illuminate the central role that sexual difference and gendered ideologies played in the new penal system. The law mandating public labor was simply not applied to female convicts, though it did not explicitly designate an alternative for them. Instead, women were put to “hard labor” in a state controlled “public” institution, the prison, rather than in the “public” streets. Women convicts occupied a semi-public sphere, enclosed behind prison walls yet on display for anyone who wanted to view them. This semi-public position did create limited space for them to manipulate public perceptions of the female criminal, even if it was much less space than was granted to men.<sup>18</sup> The prison also marked an alternative economic sphere to the one primarily occupied by poor women and slaves, who labored in other people’s homes and publicly financed institutions rather than the private realm of their own homes. Women in prison were both overlooked by and hyper-visible to reformers, lawmakers, and visitors. General debates regarding prison life, criminal behavior, and reform efforts neglected to factor in female prisoners. At the same time, reports by inspectors, visitors, and reformers often had special sections devoted to the situation of women in prison.

Women were specifically overlooked by the 1786 law. While this may have had a short-term positive effect, as women convicts were spared the verbal abuse aimed at male convicts who worked in the streets as “wheelbarrow men,” their fate was tied to the

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<sup>18</sup> This semi-public position was still quite restricted. For discussion of another sphere neither public nor private that women occupied during this period, see Mary Kelley’s analysis of the role of civil society for educated and elite women, Mary Kelley, *Learning to Stand and Speak: Women, Education, and Public Life in America’s Republic* (Chapel Hill, 2006)

behavior of those same men. The failure of public punishments to reform male convicts inspired reforms that dramatically affected both male and female prisoners for decades to come. The four years during which the wheelbarrow laws were implemented were critical for marking the male body as the physical embodiment of criminality and for transforming the meaning and function of the prison as an institution.<sup>19</sup>

The law of 1786 alternated in its usage of sex-specific and sex-neutral language. Much of the statute refers to general “malefactors” or “offenders” though on occasion it distinguished between male and female convicts. Sometimes the law refers to those accused with the pronouns “he” or “she” and others times the law uses sex-neutral language such as “persons.”<sup>20</sup> In designating hard public labor as punishment, the law appears sex-neutral. Section I of the Statute states,

To correct and reform the offenders, and to provide such strong impression upon the minds of others as to deter them from committing the like offences, which is conceived may be better effected by continued hard labor, publicly and disgracefully imposed on persons convicted of them, not only the manner pointed out by the convention, but in streets of cities and towns, and upon the highways of the open country and other public works.<sup>21</sup>

The law does not single out men for public punishment. There is no reason to believe the statute did not apply to all criminals. The nature of the tasks assigned in the act called for

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<sup>19</sup> Historians of Philadelphia mark this era from the 1776 adoption of the Pennsylvania state constitution until the 1829 opening of Eastern State Penitentiary as the period of most dramatic transformation of the penal code and punishment scheme. See Michael Meranze, *Laboratories of Virtue* and Negley Teeters, *The Cradle of the Penitentiary and They Were in Prison*. Other more geographically diffuse studies, most notably David Rothman’s *Discovery of the Asylum* locate the Jacksonian period as the era of the penitentiary.

<sup>20</sup> For example, “Nor shall he or she be tried but in the supreme court...” and “Since which declaration it is not proper that persons accused of small or petty larcenies should be tried,” Mitchell and Flanders, *The Statutes at Large*, vol. XII, 281, 282.

<sup>21</sup> Mitchell and Flanders, *The Statutes at Large*, vol. XII, 280-281.

“malefactors” to repair and clean streets, public roads, and highways, in addition to “fortifications, mines, and such other hard and laborious works.”<sup>22</sup> Still, this does not rule out the possibility of the law’s application to women. Even within the norms established through the sexual division of labor, women could have engaged in some of this work. Certainly eighteenth-century women’s work expanded far beyond the four walls of her home into the agricultural, retail, craft, and service sectors. Some women worked at street cleaning as city employees throughout the eighteenth century. One woman, for example, was paid two shillings by the Philadelphia Common council for “sweeping ye Court House & Stalls twice a week.”<sup>23</sup>

In elaborating the circumstances of the work, however, a particular reference was made to male convicts, detailing sex-specific guidelines that do not appear earlier in the law. Section eight of the statute states that the convicts,

Be fed on such coarse wholesome food as may be sufficient for them and shall have such lodgings as defend them from the inclemencies of the weather (and the males shave their heads and beards close shaven at least once in every week) and be clothed in habits of coarse materials, uniform in color and make and distinguished from all others used by the good citizens of this commonwealth.<sup>24</sup>

The reference to male convicts having their heads and beards shaven is the only sex-specific component to the statute. While it signals an aspect of punishment that was not

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<sup>22</sup> Mitchell and Flanders, *The Statutes at Large*, vol. XII, 284.

<sup>23</sup> Karin Wulf, *Not All Wives: Women of Colonial Philadelphia* (Ithaca, 2000), 141.

<sup>24</sup> Mitchell and Flanders, *The Statutes at Large*, vol. XII, 284; Many later historical accounts of the period drop the adjective “male.” For example, “...Authorized the keeper of the jail to shave the heads of the prisoners...” Roberts Vaux, *Notices of the Original, and Successive Efforts, To Improve the Discipline of the Prison* (Philadelphia, 1826).

applied to women, it suggests that hard labor, “publicly and disgracefully” imposed, was aimed at both men and women.<sup>25</sup>

How then can we make sense of the discrepancies between the penal code and its implementation? It is possible that the justices ordering punishments imposed a distinction in labor practices against the intention of the law’s framers, though this is unlikely given the close-knit group of powerful men who comprised the legislature and the judiciary. Such a challenge surely would have incited a documented controversy of its own. It is more likely that the legislators wrote in gender neutral language because they shared an unarticulated belief about appropriate behavior and punishment for men and women, and thus there was no need for them to spell out the ways in which the law was meant to distinguish between the two. Legislators both assumed that convicts were male and made a conscious effort to treat female convicts differently, for example, by not shaving their heads.<sup>26</sup> A law written with predominantly gender-neutral language presumed that those enforcing it shared the same set of sex-role assumptions and would apply the law differently to men and women as appropriate.<sup>27</sup> In this case, the distinction involved knowing why women should not be sent to labor in the streets. Conscious awareness and unconscious assumptions together informed the practice of marking women as simultaneously different from and the same as men under the law.

Despite the compelling arguments for and wide support of the new law, judges and juries were slow to implement it. Chief Justice of the State Supreme Court Thomas

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<sup>25</sup> Historians have not picked up on the discrepancy between men and women in the application of this law. See Marietta and Rowe, *Troubled Experiment*, 212.

<sup>26</sup> This is also not a forgone decision, as shaving a woman’s head was a traditional punishment practiced in Europe for centuries. See Corran Laurens, “La Femme au Turban’: les Femmes tondues,” *The Liberation of France*, eds. H.R. Kedward and Nancy Wood (Washington D.C., 1995), 156.

<sup>27</sup> Assessing legal intention is challenging. Jan Lewis has argued that an absence of public debate over language adopted signals collective agreement. See Jan Lewis, “‘Of Every Age Sex & Condition’: The Representation of Women in the Constitution,” *Journal of the Early Republic*, 15 (1995): 359-387.

McKean moved to enforce the new regulation by contacting the street commissioners and reminding them that the act required them to employ convicts.<sup>28</sup> McKean, a strong proponent of penal reform, had by then had served nearly ten years as the state's Chief Justice.<sup>29</sup> The street commissioners welcomed the proposal, as their own attempt to keep the streets clean by encouraging people to gather manure for private use never caught on.<sup>30</sup> Hesitant at first, the street commission hired the prisoners at a rate of 1 shilling 9 pence per day, paying money from the city funds to the county on their behalf.<sup>31</sup> This was less than the 3 shillings 3 pence that male convict cooks earned in prison in 1795, but still more than the 1 shilling 6 pence that woman made for cooking.<sup>32</sup> This wage was also significantly less than the 5 shillings 5 pence that the Pennsylvania Hospital paid to employee John Baldwin to whitewash fences and walls during the same period and even less than the 2.5 shillings per day that his wife, Elizabeth, was paid to cook and clean for the patients<sup>33</sup>

Mandatory public labor was to serve three major functions: offset the expense of caring for convicts in prison, discourage criminals from resuming a life of crime through shame and embarrassment, and deter others from resorting to crime by example. The idea of having the prisoners earn money to provide restitution or cover fees was popular among the general public. With theft and burglaries rampant throughout the city, however, reformation and deterrence were the greatest priorities of lawmakers and reformers. The law itself stated that deterrence and reformation were the main purpose of

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<sup>28</sup> J. Thomas Sharf and Thompson Westcott, *History of Philadelphia* (Philadelphia, 1884), vol. 1, 443-4.

<sup>29</sup> G.S.Rowe, *Embattled Bench: The Pennsylvania Supreme Court and Forging of a Democratic Society* (Newark, 1994); "Thomas McKean," *American National Biography*, 15 (1999): 98-99.

<sup>30</sup> *Pennsylvania Gazette*, January 21, 1784.

<sup>31</sup> Sharf and Westcott, *History of Philadelphia*, 443-4.

<sup>32</sup> Minutes, March 11, 1795, Inspectors of the Jail and Penitentiary House, Philadelphia Prisons System, Philadelphia City Archives, Philadelphia.

<sup>33</sup> Smith, *The "Lower Sort,"* 92.

punishment and that this was to be more usefully achieved through working “in streets of cities and towns, and upon the highways of the open country.”<sup>34</sup> Lawmakers assumed that visibly humiliating labor served this purpose best for two reasons. First, it was a continuation of earlier shaming practices such as the stocks and pillory, but included a more productive component as well. Second, it was similar to the way poor people were punished for their idleness and poverty, but slightly more degrading.

To understand why lawmakers advocated visibly humiliating labor as the most powerful tool of the new penal code, we must turn to the city’s handling of another group of people who were a burden to the elite – the poor. Criteria for assessing the need and worthiness of the poor changed over the years. For much of the eighteenth-century, gender was the dividing line. Women were usually deemed “deserving” and men were usually not, unless they were physically disabled.<sup>35</sup> Later in the century, however, ideas shifted as elites began to view the poor -- women and men -- as more and more responsible for their plight. In the post-Revolution era, there was an increase in the distinction between “industrious” and “idle” poor, the latter considered too lazy to work.<sup>36</sup> Forced labor in institutions became a popular mechanism for controlling poor people in a time when fewer and fewer of them were beholden to masters as servants or slaves.<sup>37</sup> Poor relief thus came to center on labor. Working within the confines of an institution was seen as an opportunity for “industrious” types who were otherwise unemployed and as a moral imperative for others, “subjecting the indolent and supine to the necessity of laboring for their support.” The House of Employment functioned as a

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<sup>34</sup> Mitchell and Flanders, *The Statutes at Large*, vol. XII, 280-281.

<sup>35</sup> Wulf, *Not All Wives*, 155-161.

<sup>36</sup> Alexander, *Render Them Submissive*, 88-89.

<sup>37</sup> Salinger, “*To Serve Well and Faithfully*.”

place of punishment for this latter group of vagrants.<sup>38</sup> Also known as “The Bettering House,” it was established through a 1766 law that provided for the City’s poor by concentrating them in one place.<sup>39</sup> The House was divided into an almshouse, for those who were too ill to work, and a workhouse for those who were able to labor.<sup>40</sup>

The Bettering House was designed in part to deter people from seeking assistance. The prospect of labor in the work house was intended to discourage the itinerant poor from traveling to Philadelphia. The added inconvenience and control imposed by institutionalization was also aimed at encouraging those receiving out-relief to seek other sources of employment.<sup>41</sup> In this regard, then, institutional labor had been used as a form of punishment since 1767. Hard labor within the confines of a public institution was already socially sanctioned. But if forced institutional labor was already used in this manner, something more severe and punitive was required for convicts. This is where the emphasis on *public* “hard labor” became important, to distinguish convicted criminals from the poor who worked and lived in the House of Employment.

The rules, orders and regulations of the major institutions to serve and regulate the poor during this era – the jail, the house of employment, and the hospital – were more alike than different. All three institutions served the needs of the poor and regulated their lives in the process. Simon Newman characterizes these connections as part of an intentional effort on the part of elites to control poor people, “to render subordinate bodies passive and then to regulate and even remake these impoverished bodies.”<sup>42</sup>

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<sup>38</sup> Alexander, *Render Them Submissive*, 88-89; Gary Nash, “Poverty and Poor Relief in Pre-Revolutionary Philadelphia,” *The William and Mary Quarterly*, 33 (1976) 3-30.

<sup>39</sup> Wulf, *Not All Wives*, 56.

<sup>40</sup> Alexander, *Render Them Submissive*, 89.

<sup>41</sup> Gary Nash, “Poverty and Poor Relief,” 16.

<sup>42</sup> Simon Newman, *Embodied History*, 9.

Arguments for the support of one institution were used to advocate for another. Benjamin Rush argued that because the public “provided and supported” institutions aimed to assist people “afflicted with bodily disorders,” they should equally support a place that addressed mental disorders. When he made this argument, however, he was not referring to mental hospitals or people with psychiatric disorders, but rather criminals. To Rush and other reformers of his age, no one was beyond being “healed” of their malady, provided the right treatment was applied and sufficient resources were available.

Not all reformers agreed that the “public” aspect of punishment was necessary, however. In fact, disapproval of the law fueled the penal reform renaissance as much as independence itself. Dr. Benjamin Rush led the charge when he presented his ideas about the dangers of public punishments before a gathering of the Society of Promoting Political Inquiries at Benjamin Franklin’s house during March of 1787. Later published under the title *An Enquiry into the Effects of Public Punishments upon Criminals and upon Society*, Rush persuaded many men of means and influence, to consider the issue.<sup>43</sup> Leading politicians, merchants and doctors were present when Rush read his essay and many of them supported his agenda. With the publication of this widely-read pamphlet and his zealous advocacy of its ideas, Rush, a well-respected politician and physician, landed at the heart of the penal reform movement. Philadelphians were already engaged with ideas about penal justice, but public punishment sparked even wider public debates.

Rush asserted that punishment had three purposes: to reform the criminal, to deter others from committing crime, and to remove criminals from society.<sup>44</sup> If anything, Rush

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<sup>43</sup> Benjamin Rush, *An Enquiry Into the Effects of Public Punishments Upon Criminals and Upon Society. Read in the Society for Promoting Political Enquiries, Convened at the House of His Excellency Benjamin Franklin, Esquire, in Philadelphia, March 9<sup>th</sup>, 1787* (Philadelphia, 1787).

<sup>44</sup> Benjamin Rush, *An Enquiry Into the Effects*, 3.



argued, public labor stood in the way of all three aims. He argued that reform would never be achieved through punishment in public because it made the criminal more likely to commit crimes. Rather than deter others, public labor first evoked sympathy in observers and squashed their sympathies at the same time, which would only create a less feeling public that would be more likely to commit crimes. He argued anything that caused people to deny their sympathies for others was dangerous.<sup>45</sup> Rush writes, “An attachment to kindred and society is one of the strongest feelings in the human heart. A separating from them, therefore, has ever been considered as one of the severest punishments that can be inflicted upon man.”<sup>46</sup> Rather than remove those who “by their tempers and crimes” did not deserve to live in society, public punishment threw them right into the middle of it.

The final basis for Rush’s argument against public labor was the negative impact it would have on the value of manual labor. Rush argued, “The practice of employing criminals in public labor, will render labour of every kind disreputable, more especially that species of it which has for its objects the convenience or improvement of the state.”<sup>47</sup> While Rush and other reformers later argued in favor of convict labor, they argued against the visibility of the convict at work. As long as convicts were not visible to the general public, then the public could not develop a vision of the convict laboring that would lead to their own de-valuing of work. This is consistent with the central tenant of Rush’s philosophy, that the unpredictability of the reaction of innocent citizens was the

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<sup>45</sup> See Bruce Dorsey, *Reforming Men and Women*; Michael Meranze, *Laboratories of Virtue*.

<sup>46</sup> Benjamin Rush, *An Enquiry Into the Effects*, 10.

<sup>47</sup> Benjamin Rush, *An Enquiry Into the Effects*, 9.

primary reason to remove the punishment of convicts from their view.<sup>48</sup> Rather than elevate the criminal through productive labor, public punishment might lessen the value of labor.

Benjamin Rush's argument against public labor and capital punishment became the basis for the establishment of the Philadelphia Society for Alleviating the Miseries of Public Prisons (PSAMPP). PSAMPP was one of a dozen new reform societies that sprang up in post-revolutionary Philadelphia.<sup>49</sup> The existence of such an organization marked a new era in the plight of prisoners in Pennsylvania. Founding members included some of the city's most prominent residents, including Bishop William White, rector of Christ Church. White, the first president of PSAMPP, was the most active and dedicated charter member of the society. He rarely missed a meeting in forty-nine years.<sup>50</sup> Merchants dominated the early membership roster, which also included physicians, ministers, artisans, lawyers, printers, and those with "political positions," including Benjamin Franklin, then president of the Pennsylvania Assembly, House Speaker William Bingham, and Philadelphia Mayor Samuel Miles.<sup>51</sup> Though Quakers are largely credited as leaders of the prison reform movement in Pennsylvania, they constituted only about half of the membership of PSAMPP.<sup>52</sup> Given that only a small percentage of

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<sup>48</sup> Foucault cites Rush's essay when discussing the shift away from public spectacle towards private punishment, hidden from public view. See Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (New York, 1995), 128-131.

<sup>49</sup> See Negley Teeters, *They Were in Prison: A History of the Pennsylvania Prison Society 1787-1937* (Philadelphia, 1937). For more on other reform societies of antebellum Philadelphia, see Bruce Dorsey, *Reforming Men and Women*.

<sup>50</sup> Negley Teeters, *They Were in Prison*, 5.

<sup>51</sup> Negley Teeters, *They Were in Prison*, 95-6.

<sup>52</sup> Quaker involvement in PSAMPP marked a significant reconnection to state government in light of their withdrawal during the Revolution. For more on Quaker activists of this period, see Margaret Morris Haviland, "In the World, But Not of the World: The Humanitarian Activities of Philadelphia Quakers, 1790-1820," (Ph.D. diss., University of Pennsylvania, 1992); For more detailed biographies of PSAMPP's early members, see Negley Teeters, *They Were in Prison*.

Pennsylvanians were Quaker, however, their influence in this critical movement was disproportionate to their numbers and quite significant.

Rush actively solicited support for his campaign against public punishment from other notable citizens as well. Corresponding with lawyer and revolutionary pamphleteer John Dickinson, Rush sent a copy of his essay *An Enquiry into the Effects of Public Punishments Upon Criminals, and Upon Society* and boasted, “It has made many converts in our city from the assistance it has derived from the miserable spectacle which is daily before our eyes.”<sup>53</sup> In a letter to British reformer John Coakley Lettsom, Rush cited his own pamphlet in the same league as John Howard’s far more influential book, *The State of Prisons in England and Wales*.<sup>54</sup>

Public labor created a whole host of social disruptions that inspired action by the Society. In October of 1787, they organized a committee to study the impact of public labor on the reformation of criminals and on society more generally.<sup>55</sup> Although PSAMPP was formed in large part due to growing opposition to *public labor*, it strongly endorsed *convict labor* more generally. The Society held from the beginning that labor and confinement were the key elements of an effective penal system and that they should be substituted for corporal and capital punishment. Society members, like proponents of public labor before them, responded to critiques that the new system was too lenient by

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<sup>53</sup> “To John Dickinson, Philadelphia, April 5<sup>th</sup>, 1787,” *Letters of Benjamin Rush*, ed. L.H. Butterfield, (Princeton, 1951) vol. 1: 1761-1792, 416.

<sup>54</sup> “To John Coakley Lettsom, Philadelphia, May 18, 1787,” *Letters of Benjamin Rush*, ed. L.H. Butterfield, (Princeton, 1951) vol. 1: 1761-1792, 417; John Howard, *The State of the Prisons in England and Wales* (London, 1777).

<sup>55</sup> October 8, 1787, Adams and Wistar Letterbook, Papers of the Philadelphia Society for Alleviating the Miseries of Public Prisons (PSAMPP), Historical Society of Pennsylvania, Philadelphia.

arguing that “long solitary confinement, hard labour and very plain diet” was an even worse fate for the guilty than execution.<sup>56</sup>

While Rush’s pamphlet circulated and others debated his position, the law was enforced. Men sentenced to hard public labor seemed to fill the streets and quickly earned the nickname “wheelbarrow men.” Convicts, uncertain of the ramifications of the new law, sometimes requested to be sentenced under the old law. The severity of the previous penal code led to a record number of convictions being pardoned by the governor or overturned on appeal.<sup>57</sup> One hope for the more lenient system was that it would be consistently implemented by jurors and judges. Jacob Dryer, convicted shortly after the law was passed, requested that he be handled under the old law and hung rather than imprisoned and set to labor in the streets. Many believe that he was hedging his bets on a complete pardon. Charged in January 1787 and sentenced to the wheelbarrow, he refused this, preferring the “death sentence of which was accordingly pronounced against him.”<sup>58</sup> Proponents of public punishment sometimes used the sentiment that public labor was “even worse than death” to counter the critique that the punishment was too soft. Dryer’s request was frequently offered as evidence of the severity of the new punishment. One commentator agreed, stating that the “punishments directed by the new law are more terrifying to the idle vagabonds than all the horrors of an ignominious death.”<sup>59</sup>

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<sup>56</sup> Philadelphia Society for Alleviating the Miseries of Public Prisons, *Extracts and Remarks on the Subject of Punishment and Reformation of Criminals; Published by Order of the Society, Established in Philadelphia, for Alleviating the Miseries of Public Prisons* (Philadelphia, 1790), 4.

<sup>57</sup> Rulings were regularly overturned, particularly when people were found guilty of capital crimes; Prisoners also received pardons after serving only fractions of their sentences. See Prison Sentence Docket and Minutes, Inspectors of the Jail and Penitentiary House; Minutes of the General Body and the Acting Committee of the Philadelphia Society for Alleviating the Miseries of Public Prisons, Papers of PSAMPP; Also, Batsheva Spiegel Epstein, “Patterns of Sentencing and Their Implementation in Philadelphia City and County, 1795-182” (Ph.D. diss., University of Pennsylvania, Philadelphia, 1981).

<sup>58</sup> *Pennsylvania Packet*, January 26, 1787.

<sup>59</sup> *Pennsylvania Gazette*, October 18, 1786.

Wheelbarrow men were easily identified by their distinct clothing, shaved heads, iron accessories, and presence in the city streets. Those who posed less of a security risk were free to move the wheelbarrows around, hence the nickname “wheelbarrow” men. The convicts were outfitted with iron collars around their necks and waists. The collars were connected by a long chain to a heavy ball that they would lift and drop as they needed to move around. Their clothing was distinct and colored, described as “a mixture of dark blue and brown stuff,” and the hats they wore on their freshly shaven heads were also “parti colored.”<sup>60</sup>

Accounts of the escapades of wheelbarrow men illustrate the picture of criminality most widely available to the casual observer and the newspaper reading public during this period. A narrative of crime and punishment was written from their experiences, centering the shaven headed male vagabond and obscuring the women and less able-bodied men who worked indoors. The list of wrongs committed by wheelbarrow men is nearly endless. It turned out to be quite a challenge for supervisors to keep them in line, let alone working. They stole and harassed people who walked by, and some escaped.<sup>61</sup> They cursed, drank liquor to the point of intoxication, and murdered people. They soon came to represent disorder, lawlessness, and crime itself. Indeed, their distinct clothing and shaven heads led to a collective portrait composed of numerous individual descriptions of crimes and escapes.

Part of the rationale given for shaving the head and distinguishing the dress of a wheelbarrow man was to make him more readily identifiable should he escape, and

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<sup>60</sup> Sarah Cadbury, “Extracts from the Diary of Ann Warder,” *The Pennsylvania Magazine of History and Biography*, 18 (1894) 61.

<sup>61</sup> Francois Alexandre Frederic La Rochefoucault Liancourt, *On the Prisons of Philadelphia*, (Philadelphia, 1796).

wheelbarrow men escaped in record numbers during this period. Descriptions of the escapees generally included their names, place of origin, the offense they committed, clothing last seen wearing, and the fact that their heads were shaven – which often gave them away. The frequency and drama of such incidents only reinforces the significant absence of female convicts from these scenarios. When William Armstrong escaped from the Norristown jail, in Montgomery County, he was described as “A native of Ireland, and who was for his felonious practices sentenced five years to the wheelbarrow, to be kept at hard labour.” The description focused on the features that marked him as a wheelbarrow man – his hair – which was “short, about half grown, having been cut off.”<sup>62</sup> An Irishman, an Englishman and a “Tanner” broke out of the Montgomery County jail together one night in April of 1788. Both the Irishman, William Doren, and the Englishman, John Stanley, were described by their short hair, “hair not more than one inch long” and “hair about an inch long” while Thomas Purcell, the “Tanner,” reportedly has “dark hair but not cut as the above.”<sup>63</sup>

Wheelbarrow men from Philadelphia County also routinely escaped. In the summer of 1788, four men were picked up in Baltimore as vagrants and described as “wheelbarrow men from Pennsylvania.”<sup>64</sup> They were again put out to work “on the public roads” of Baltimore County. In January of 1789 “a number of the wheelbarrow men attempted to escape from the jail” in Philadelphia “by digging under the foundation of the building.” The jailor fired at them and “mortally wounded” two or three of them.<sup>65</sup> Noted for his hair, “cut remarkably short,” James Smith, also known as William Johnson,

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<sup>62</sup> *Pennsylvania Gazette*, February 29, 1792.

<sup>63</sup> *Pennsylvania Journal and Weekly Advertiser*, April 19, 1788.

<sup>64</sup> *Pennsylvania Gazette*, August 20, 1788.

<sup>65</sup> *Pennsylvania Mercury and Universal Advertiser*, January 13, 1789.

escaped the wheelbarrow in Philadelphia before being jailed in Cumberland County, New Jersey for horse stealing. Weeks before, two other men were caught and charged with a housebreaking in New York. These criminals were reportedly described as:

A part of the wheelbarrow gentry from Philadelphia, and which lately struck so much terror in the inhabitants of that city, as one of the above had his head shaved, to disguise which he had false hair completely made for that purpose.<sup>66</sup>

These reports were part of a larger story on the crime and havoc that wheelbarrow men created in the city.

Public criticism of the failed penal system and popular fear for public safety were well founded. The 1780s and 1790s were marked by an increase in both personal and property crimes.<sup>67</sup> Some of the city's poorest residents resorted to stealing to acquire essential provisions for themselves and their families.<sup>68</sup> Women were charged with stealing loaves of sugar, cheese, flour, and groceries.<sup>69</sup> Amey Carey was charged with the more serious crime of burglary when James Simmons found her in his house with "a quantity of flour stolen by her and tied in a check apron." In 1807, Mary Parsons was charged with milking someone else's cow.<sup>70</sup> But many of the more egregious crimes of the period were committed by convicted felons, for whom prison officials bore at least some responsibility. Prison security was flawed and its limitations contributed to the crime and chaos that punctuated Philadelphia's streets. In 1787, fifteen men escaped from

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<sup>66</sup> *Pennsylvania Gazette*, December 31, 1788.

<sup>67</sup> Jack D. Marietta and G. S. Rowe, "Violent Crime, Victims, and Society in Pennsylvania, 1682-1800," *Pennsylvania History*, 66 Supplement (1999), 24-54; Thomas P. Slaughter, "Interpersonal Violence in a Rural Setting: Lancaster County in the Eighteenth Century," *Pennsylvania History* 58 (1991): 98-123; Marietta and Rowe, *Troubled Experiment*, 210.

<sup>68</sup> Billy Smith, *The "Lower Sort,"* 185-6.

<sup>69</sup> Prisoners for Trail Docket, 1791-1823, Inspectors of the Jail and Penitentiary House, Philadelphia Prisons System, Philadelphia City Archives, Philadelphia

<sup>70</sup> Prisoners for Trail Docket, 1807, Inspectors of the Jail and Penitentiary House, Philadelphia Prisons System.

jail. On an October night in 1788, thirty-three wheelbarrow men escaped. Only 3 others successfully escaped the rest of the year, but in 1789, 25 more men proved successful.<sup>71</sup> While a few were re-captured, those running free around the city added an element of intrigue to their exploits by stealing the clothing off the backs of their victims to replace their own distinct attire. The newspaper report states, “Their custom is to change clothes with those they rob.”<sup>72</sup> Others reported nude people on the streets as a result of these tactics, “There have been two or three instances of their leaving the objects of their plunder quite naked.”<sup>73</sup> The terror caused by the wheelbarrow men only intensified over time. Less than a month after the massive jailbreak, a woman was reportedly raped by a wheelbarrow man in front of her husband. She was on the way to the market with her husband, a farmer, and their daughter when the family was held up by two men. The report stated they were stopped “by two fellows, one of whom putting a pistol to the farmer’s breast obliged him to be a quiet witness of the most brutal violation of his wife by the other villian.”<sup>74</sup>

There was no shortage of critics of the wheelbarrow law in Philadelphia, but some instances triggered more outrage than others. One of the more notorious events occurred in September, 1789, when a group of five men used their time out on the street working the wheelbarrow to plan their escape and the robbery of a local residence. Their plan was thwarted only when the occupants of the residence they sought to rob, two brothers named McFarland, refused them entry to the house. They then killed one of the

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<sup>71</sup> Pennsylvania General Assembly, *Report of the Committee Relative to the Jail and Penitentiary in Philadelphia*, (Lancaster, 1811).

<sup>72</sup> *Pennsylvania Journal and Weekly Advertiser*, October 15, 1788.

<sup>73</sup> J. P. M. “A Description with a Perspective View, of the Jail, in Philadelphia,” *The Universal Magazine*, July 1789.

<sup>74</sup> *Pennsylvania Journal and Weekly Advertiser*, October 15, 1788.



McFarlands as they raided the home. The five men were eventually captured, charged, and executed, but this was no consolation for those critical of the law. A reporter concluded, “The above robbery and murder were perpetrated by some wheelbarrow men who escaped from prison the same night.”<sup>75</sup>

Critics spoke out just as passionately against more mundane transgressions. Opponents of public labor argued that nothing good could possibly come from having criminals working in the streets where they could interact freely with innocent citizens. Quaker Caleb Lownes, an inspector of the prison, described the introduction of public labor as “productive of the greatest evils; and had a very opposite effect from what was contemplated by the framers of the law.”<sup>76</sup> Evidence of wheelbarrow men interacting with and hurting innocent civilians far outweighed any good works accomplished. They deliberately threw their iron balls at people walking by and were known to pull off “adroit street robberies.”<sup>77</sup> Not only did public punishment fail to reform the prisoners, but it also threatened to corrupt the moral sensibilities of the observing public. If enlightenment sentiments inspired reformers to benevolence, this particular “reform” threatened to corrupt or damage those same sentiments in the general public. James Mease described the pain one felt when witnessing such a scene, “While the sight of so many objects of public infamy was abhorrent to the feeling mind, the difficulty of watching them was great.”<sup>78</sup> Simply maintaining order among the prisoners was no easy

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<sup>75</sup> *Pennsylvania Mercury and Universal Advertiser*, September 24, 1789; Sharf and Westcott, *History of Philadelphia*, vol. 1, 457.

<sup>76</sup> 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* (Philadelphia, 1793), 76.

<sup>77</sup> Sharf and Westcott, *History of Philadelphia*, vol. 1, 443-4.

<sup>78</sup> James Mease, *Picture of Philadelphia* (Philadelphia, 1831), 160.

task, and the threat not only to public safety but also to the civility and orderliness of the city streets nearly undermined all penal reforms to date.

The law thus failed to create its intended outcome: reformed convicts and a safe community. To many, the law actually contributed to rampant theft and chaos. Some were appalled by how unsafe the streets had become for everyone, particularly because jail breaks of large numbers of prisoners had become so common. One critic noted, “The consequence of this is that no person, at such a time, can venture to walk the streets or road, out of reach of the watch, after eight in the evening.”<sup>79</sup> Wheelbarrow men displayed “the most shameful scenes of drunkenness, profanity, indelicacy, and other excesses in vice.”<sup>80</sup> They frustrated and angered even those committed to their well-being. An anonymous donor of potatoes to the prisoners stipulated that his gift not be extended to wheelbarrow men, at least until all other “uncondemned” prisoners were fed.<sup>81</sup>

Complaints about wheelbarrow men were not limited to those who witnessed their antics on the street. Even their fellow inmates singled them out as troublemakers, in the public streets as well as behind prison walls. An unnamed debtor wrote a letter to the “Gentlemen” of the Society complaining that “it is much better to be a wheelbarrow man than a debtor” because the keeper of the debtors apartment is so corrupt that he exploits the inmates by “charging high sums for alcohol.”<sup>82</sup> Presumably the keeper of the jail treated the wheelbarrow men better than he treated debtors. A few months later, the

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<sup>79</sup> J. P. M. “A Description with a Perspective View.”

<sup>80</sup> T Condie, “A historical view of the criminal law of Pennsylvania, with an account of the Jail and Penitentiary House of Philadelphia, and of the interior management thereof,” *The Philadelphia Monthly Magazine; or, Universal Repository of Knowledge and Entertainment*, 1 (1798): 94.

<sup>81</sup> “Address from an Unknown Person with a Cart Load Potatoes Dec. 3, 1787,” Box 1, Folder 2, Papers July to December 1787, PSAMPP Papers.

<sup>82</sup> “To the Gentlemen Present – Representation of the Prisoners in Jail. 15 August. 1787,” Box 1, Folder 2, Papers July to December 1787, PSAMPP Papers.

debtors complained again about the overcrowding of their quarters and laid the blame squarely on the wheelbarrow men. Reformers conceded that the debtors apartment was “crowded daily with the culprits condemned to the barrow & other criminals to the great annoyance of ourselves and friends.”<sup>83</sup> Even if jailers were not able to maintain physical separation between the various groups of prisoners, the prisoners maintained a psychological distinction among themselves. Viewing the wheelbarrow men as beneath them, some debtors proposed that the wheelbarrow men clean the “necessaries.”

Wheelbarrow men comprised only a small percentage of the total number of men in prison. Men charged with vagrancy or committed as apprentices, servants, or slaves by their masters worked in prison alongside women of all classes.<sup>84</sup> Convicted men who were not fully-able bodied might also work indoors.<sup>85</sup> Some male prisoners complained that wheelbarrow assignment was actually favorable to workhouse duty. In 1789, the prison keeper reported, “It was deemed a greater punishment to be detained in the prison than to work in the streets.”<sup>86</sup> If this is true, then female convicts were denied what was seen as an opportunity for male criminals. Sex may also have played a role in this sentiment, particularly if wheelbarrow duty was reserved for young, strong men while women and older or disabled men were relegated to the prison workhouse.

Within two years of its implementation, there was little evidence that the wheelbarrow law worked. Even if some work on the public streets was successfully completed, the disturbances caused by the wheelbarrow men far outweighed such efforts.

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<sup>83</sup> “Representation of Prisoners in Jail Nov. 10, 1787,” Box 1, Folder 2, Papers July to December 1787, PSAMPP Papers.

<sup>84</sup> “Work House Calendar, December 16, 1789,” *Pennsylvania Archives*, (Philadelphia, 1855), vol. xi, 648.

<sup>85</sup> September 4, 1787, Minutes of the Acting Committee of the Pennsylvania Prison Society, 1798-1820, vol. 6, PSAMPP Papers; They reported “Visited the workhouse and found it in good order... The committee found the men kept separate from the women,” proving that men were in the workhouse as well.

<sup>86</sup> “Report for Supreme Executive Council,” January 12, 1789, Minutes of the Philadelphia Society for Alleviating the Miseries of Public Prisons, 1787-1809, vol. 1, PSAMPP Papers.

While many conceded that the law sounded good in theory, most agreed that it failed miserably in practice. The primary purpose of the law - reformation - was not achieved by the scheme. One critic observed,

The advantage which the County has derived from the labor of the criminals, has been to the last degree trifling – and there is no instance of a reformation having taken place in any individual, in such a manner as to admit him to return to the bosom of his fellow citizens.<sup>87</sup>

The antics of wheelbarrow men quickly became part of historical lore. One writer, referring to a rash of horse thefts in upper Chester County, condemned the effectiveness of the justice system and expressed doubt that even solitary confinement would protect their property from “the ravages of such a desperate banditti.”<sup>88</sup>

In addition, the state accrued no financial benefit from the law. Prisoners had no incentive to work, either in the streets or in the prison. Unlike the models developed in Britain in which prisoners kept the profits of their labor after their own expenses were covered, the Pennsylvania law did not allow this. Any surplus from the earnings of a given prisoner was directed to the “treasury for the use of the proper county.”<sup>89</sup> The idea that a “surplus” of earnings might occur quickly went out the window. Earnings from the work did not even cover the expenses of supporting the convicts and maintaining the prison. Critics focused not only on the cost of implementing the new system but also the failure to reform the prisoners. One critic complained,

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<sup>87</sup> *Pennsylvania Mercury and Universal Advertiser*, November 10, 1789.

<sup>88</sup> *Pennsylvania Gazette*, February 19, 1794.

<sup>89</sup> Mitchell and Flanders, *The Statutes at Large*, vol. XII, 288.

Is it just that the sober laborious part of the community, after paying burdensome taxes for the protection and support of their persons and properties, should also be subject to a heavy tax for the support of the convicts from the jails of Europe?<sup>90</sup>

Though this whole debate was a decidedly male affair – concerning men prisoners sent to work in chain gangs and men reformers – the consequences of the reforms dramatically affected women prisoners as well. Thus, the unpalatable actions of male convicts led to dramatic reforms that affected both sexes. For while men were working in chain gangs, plotting escapes, and harassing innocent civilians, women were holed up sewing clothes for male prisoners and making fine linen to sell for their keep. While the disaster of men's public labor was unfolding in the streets and newspapers, women convicts served their sentences behind prison walls and in the workhouse. By investigating the lives of women convicts during this period and juxtaposing them with those of men, we can see how sexual difference and gendered ideologies influenced the interpretation and application of the law.

Women were part of the criminal population from early in the nation's history. The grand jury of the court of Oyer and Terminer of Philadelphia in September 1786 reported the existence of women in prison. The workhouse had few people in it, but one was a woman sent to prison for giving birth to a baby girl illegitimately while she was still bound by a term of indentured servitude.<sup>91</sup> The writer cites the fact that she gave birth while indentured as the reason she was in prison, but this was not a chargeable

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<sup>90</sup> *Pennsylvania Mercury and Universal Advertiser*, November 10, 1789.

<sup>91</sup> "Utility of inspecting into the State of Jails," *The American Museum; or, Repository of Ancient and Modern Fugitive Pieces*, May, 1787.

offense and it is likely she was sent there by her master as punishment.<sup>92</sup> A year later, women in the workhouse were reportedly busy “spinning &c. and making shifts for the men.”<sup>93</sup> Spinning was a common task for most women and a staple of institutional work regimes. Women in the Bettering House were all kept busy spinning. During the revolutionary war, women were championed for their spinning, as a mundane domestic task became a shining sign of patriotism. The significance of spinning during the revolution, however, lay not in any increase in production, but rather in the attention and praise women received for the political symbolism of their work.<sup>94</sup>

After the war, spinning lost its symbolic cache, but it was still economically useful. As early as 1788, women in the workhouse were earning enough to cover “the cost of their food and clothes.” Even though this information was newsworthy, appearing in a popular weekly, reformers did not publicly embrace this fact as relevant to reform. The author of the report stated, “Hitherto the female criminals, condemned to labour, have been prudently placed in the work-house, where, it is said, their earnings have been equal to the cost of their food and clothes.”<sup>95</sup> Yet such information was not circulated as an antidote or complement to men’s public labor.

Not all women in prison were successful in earning their keep, however, and even those who did still had to pay fines. Though women’s labor was touted as economically useful, Elizabeth Donovan claimed it was not easy to earn sufficient wages, especially for

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<sup>92</sup> For more on the treatment of indentured servants who give birth to illegitimate children, see Clare Lyons, *Sex Among the Rabble: An Intimate History of Gender and Power in the Age of Revolution, Philadelphia, 1730-1830* (Chapel Hill, 2006), 90-92; 361-2.

<sup>93</sup> “Report of Visit to Jail Sept. 4. 1787,” Box 1, Folder 2, Papers July to December 1787, PSAMPP Papers.

<sup>94</sup> Jeanne Boydston, *Home and Work: Housework, Wages, and the Ideology of Labor in the Early Republic* (New York, 1990), 31.

<sup>95</sup> “Considerations on the Late Laws of Pennsylvania, for Mitigating the Severity of the Penal Code of That State – With Satisfactory Reasons Why Its Success Has Not Equaled Public Expectation – and Proofs That As Yet It Has Not Had a Fair Trial,” *American Museum*, June, 1788.

older or less able women. In a petition to members of PSAMPP dated February 13, 1788, Donovan begged them to relieve her of her fees. Because her petition is the fullest statement we have of the experience of women in the workhouse during this period, it is worth quoting in its entirety:

Sir, I humbly take leave to trouble you being in the greatest distress, hoping you will have the goodness to relieve me and forever receive my prayers – I been confined in this place of dreadfull distress, the workhouse, days for my fees which I shall never be able to pay while kept in here, being a poor old woman unable to earn even a subsistence for myself, notwithstanding the hard hearted keeper will not discharge me until I pay for any bread & his fees – I am therefore under the necessity of throwing myself upon your bounty and goodness and pray for relief. Your distressed serv.t Eliz.th Donnovan her X Mark Workhouse 13, Feb. 1788.<sup>96</sup>

Women prisoners such as Donovan offered their claims of vulnerability and submission to get the attention of reformers who might help them. That Elizabeth described the keeper as hard hearted might resonate with reformers who prided themselves on being men of feeling. Women who appealed to reformers for help claimed they were too old or infirm and thus not able to earn their keep. Others labored but never made enough to pay for their food, clothing, and fees. In November 1787, prisoner Catharine Usoons sent a letter to John Morrison, a coppersmith and charter member of the PSAMPP. Her petition deployed themes that would resonate with her middle-class male audience by deferring to Morrison as “your honour,” emphasizing her own

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<sup>96</sup> “Elizabeth Donovan to PSAMPP, Feb. 13, 1788,” Box 1, Folder 4, Papers July to December 1788, PSAMPP Papers.

vulnerability and dependency, and like any respectable woman in the early republic, centering the needs of her child. She wrote,

To your honour the dismal and deplorable situation I now labour under with my young infant at my breast, have not any cloaths to put on and am almost starved...I hope your honor will take it into your charitable consideration as it will never lay in my power to pay the restitution lay'd on me wile I lay in Jail and I have been here 18 months and suffer'd inconsiderable, I am afraid myself and child will starve this winter without your honour.<sup>97</sup>

Such direct appeals for assistance to members of PSAMPP were common during this period. The Society occasionally offered charity in the form of food, clothing, and payment of a small fine that might otherwise prevent the release of one who had served her time. Yet members of PSAMPP reported on several cases where they concluded that the women did not deserve their intervention. "Catharine Haas upon enquiry proves to be of a bad character and since last visit was convicted and sentenced to hard labour in the work house." Another woman in the workhouse at the time, Kate was deemed "an Idiot" who was said to be pregnant. Kate was later reported to have been "removed to the Bettering House."<sup>98</sup> Clearly, not all performances of feminine dependency were deemed worthy of reformers' intervention.

Sources documenting women in the workhouses during this period are critical because they show that female convicts existed, worked in prison and not at the wheelbarrow, and were largely ignored by legislators during this highly contentious

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<sup>97</sup> "Catharine Usoons Address to John Morrison Nov. 1787," Box 1, Folder 2, Papers July to December 1787, PSAMPP Papers.

<sup>98</sup> "At a Meeting & c. 2 Mo. 6. 1789 and 20<sup>th</sup> and 26<sup>th</sup>," Box 1, Folder 5, Papers 1789, PSAMPP Papers.



moment in Pennsylvania penal history.<sup>99</sup> Even more importantly, however, is the behavior of reformers – their simultaneous recognition and ignorance of women. Reformers conducted detailed character assessments of women prisoners and determined their worthiness for pardons or remissions. They saw the women, vividly. And yet women did not figure into their larger conceptualizations or discourses of criminality, punishment, and reform.

Public requests for clothing for prisoners highlighted the existence of women in prison. PSAMPP ran an ad in the *Pennsylvania Gazette* asking for “Any old blankets, shoes, stockings, mens and womens apparel.”<sup>100</sup> Such a reference drew attention to the fact that women were in prison, but it did not necessarily signal to the reader that women were convicts rather than vagrants or runaway servants and slaves. News of two women convicts made the paper in 1787 when Bridget Edgeworth and Elizabeth Emery were convicted of receiving stolen goods in the Court of Oyer and Terminer for Philadelphia and sentenced to one year each.<sup>101</sup> Still, these periodic reports of female prisoners did not transform debates on penal reform.

A more comprehensive list of women convicts was produced in later years but it did not circulate widely like newspapers. Printed in 1811, a quarter century after the adoption of the wheelbarrow law, the proceedings of the Pennsylvania General Assembly listed the numbers of women in prison in the 1780s and 1790s. The records for 1787-1790, while the wheelbarrow law was in effect, reveal that women made up

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<sup>99</sup> Two contemporary sources were September 4, 1787, Box 1, Folder 2, Papers July to December 1787, PSAMPP Papers and “Observations of the Management of the Female Convicts, In the Work-house, Philadelphia,” *American Museum*, June 1788.

<sup>100</sup> *Pennsylvania Gazette*, January 16, 1788.

<sup>101</sup> *Freeman’s Journal or, The North-American Intelligencer*, January 31, 1787.

approximately 10 to 20 percent of the convict population.<sup>102</sup>

Table 1: Convicts in Prison by Sex				
Year	Women	Men	Total	% Women
1787	13	63	76	17.1
1788	13	112	125	10.4
1789	25	115	140	17.8
1790	20	71	91	21.9

The clearest proof that women convicts were left to labor in prison while male convicts worked out on the street is a workhouse calendar from 1789 that categorizes inmates by criminal classification in addition to listing their names, the court in which they were tried, the date of trial, and the crime for which they were committed. While both men and women are listed as vagrants and slaves, only women are listed as convicts. Mary Coningham was charged with larceny by the City Court in July, 1788; Mary Williams, also found guilty of larceny, was charged by the Court of Quarter Sessions in June, 1789 and it was noted in the calendar of December 16<sup>th</sup> that her time expired. Of course this does not mean that she was discharged, and indeed her appearance on the calendar affirms that she was not. Isabel McKeever who received stolen goods and Elizabeth Mooney convicted of larceny were both tried in Mayor's Court on September 27, 1789. Of the four women, Coningham already served a year longer than the other women and far more time than any of the men or women on the calendar.<sup>103</sup> One of these women may have been the same woman accused of possessing stolen goods, including a "new beaver or raccoon hat, and ten or twelve yards of coarse Irish Linnen" in a

<sup>102</sup> Pennsylvania General Assembly, *Report of the Committee Relative to the Jail*.

<sup>103</sup> "Work House Calendar, December 16, 1789," *Pennsylvania Archives*, (Philadelphia, 1855), vol. xi, 648.

December 1788 advertisement listed by the squire to locate the owner of said goods.<sup>104</sup>

The absence of men from the “convict” column of the workhouse calendar affirms that men were not put to labor indoors but rather served on the “wheelbarrow” during this period. A number of male and female vagrants, servants, slaves, suspected runaways, and those detained “to work for their fees” fill out the twenty-two names on the calendar.

Clearly the work lives of men and women convicts between 1786 and 1790 were quite distinct. The transition from corporal punishment to hard labor was a dramatic experience for prisoners who were no longer subject to the stock, pillory, or whipping post, and men constituted the large majority of those who were subject to such punishments. Women criminals were much more likely to be confined as vagrants or runaways than convicts, meaning that even before the act of 1786, women were most likely to be sent to the prison workhouse instead of the stock and pillory, and only a small number were ever executed for committing a capital crime.<sup>105</sup> After 1786, even convict women were confined in the workhouse to labor while convict men labored in the street. Initially, then, the act of 1786 did not mean much to most women in prison, and therein lies its significance. Convict women, rather than being treated like convict men, had far more in common with poor women in the Bettering House. For them, the “new” penal system was largely insignificant.<sup>106</sup>

It is not surprising then that in eighteenth-century debates over the merits of the penal system, the criminal subject was often both explicitly and implicitly male. This is

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<sup>104</sup> *Pennsylvania Journal and Weekly Advertiser*, December 3, 1788.

<sup>105</sup> Only 37 women were sentenced to death between 1682 and 1786; Marietta and Rowe, *Troubled Experiment*, 75. For more detailed analysis of women’s crime between 1763 and 1790, see G.S. Rowe. “Women’s Crime and Criminal Administration,” *Pennsylvania Magazine of History and Biography*, 111 (1985): 335-368.

<sup>106</sup> The most significant difference during these years was that women in the Bettering-house came and went quite freely, even if to the consternation of the managers.

most starkly evident in the intense public discourse surrounding the effects of the penal labor laws of 1786 and wheelbarrow men specifically. The system of public punishment was eventually outlawed because of the wild behavior of male prisoners, but none of these discussions incorporated the experiences and behaviors of female prisoners. While *prisoners'* behavior is cited as a significant reason for the abolition of public labor in 1790, it was actually the behavior of *male prisoners* that necessitated the change. Reformers, observers, and lawmakers did not consider the different circumstances surrounding the activities of convict men and women and the impact of reforms on each. The actual presence of women in prison during this period made it impossible for them to neglect gender issues entirely, but lawmakers did not consciously factor women convicts into their penal philosophy.

To understand the development of a political process in a particular time and place, we must understand sex and gender roles as they exist in that moment. Joan Scott writes,

We can write the history of that process only if we recognize that ‘man’ and ‘woman’ are at once empty and overflowing categories. Empty because they have no ultimate, transcendent meaning. Overflowing because even when they appear to be fixed, they still contain within them alternative, denied, or suppressed definitions.<sup>107</sup>

It is easy to overlook the differential application of public punishments to men and women. It is valuable, however, to ask why the law did not apply evenly to both sexes and perhaps even more importantly, why not a single reformer, inspector, or chronicler of

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<sup>107</sup> Joan W. Scott, "Gender: A Useful Category of Historical Analysis," 1074.

the period found it worth mentioning. By interrogating instances in which sexual difference is clearly at play but not acknowledged as such, we can begin to unpack the functions of gender. Only then can we see the operation and effects of the ideology of sexual differences.

The law easily could have designated one punishment for men, another for women. While politicians, reformers, and the public debated the value and consequences of punishment by public labor, none mentioned the alternative that was being applied to and lived by *women criminals* – labor inside prison walls. The system by which women were put to work was never offered as a model, even though it appears to have served quite effectively while the disaster of men’s public labor was unfolding. Those writing later about the act and its impact further obscure women’s experiences by blending together the sex-specific and sex-neutral language of the law. In his 1793 essay on the Pennsylvania penal laws and the management of the prison under them, Inspector Caleb Lownes lumped together aspects that were sex-specific (regarding shavings) with those that failed to distinguish between male and female convicts. Of the 1786 law, he wrote that the convicts were to “be employed in cleaning the streets, repairing the roads, &c. have their *heads shaved*, and be distinguished by an *infamous habit*.”<sup>108</sup> T. Condie used the same exact language, perhaps even copying the phrase from Lownes.<sup>109</sup> They were not alone in this tendency to generalize about convicts based on the treatment of male prisoners. Even though the legislature specified that *men* would have their heads shaved, they did not order a particular hair style for women.

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<sup>108</sup> Caleb Lownes, *An Account of the Alteration and Present State*, 76.

<sup>109</sup> T Condie, “A Historical View of the Criminal Law.”

The invisibility of women's labor had significant effects on the debate over prison reform. Even those promoting labor and solitude within prison as the desired reform, such as Benjamin Rush, failed to mention the success demonstrated by the behavior of women workers. In a 1787 letter to fellow reformer John Coakly Lettsom, Rush wrote, "From the experience of our citizens of the bad effects of our wheelbarrow law (as 'tis called), it will probably be repealed. This I hope will pave the way for the adoption of solitude and labor as the means of not only punishing but reforming criminals."<sup>110</sup> Hard work continued to form the backbone of the prison system with private labor serving as the new model, but the meaning and value of the work of women prisoners was still not acknowledged.

Women's work behind prison walls was neither public nor private. It was subject to the observation and analysis of any number of viewers who visited the jail, including legislators, reformers, and out of town dignitaries and writers. In the era of public punishment, however, public *acknowledgment* of women's labor was rare. One early reference appeared in a 1788 essay in *American Museum*, a popular monthly magazine. The author claimed that women's labor in prison reforms them, pays for their keep, reinforces their sex role vis-à-vis men, and even provides for the public good by making materials available for sale.

These women, who entered that prison with dissolute dispositions, equally unwilling and incapable of engaging in any profitable employments, have, by a strict but not cruel superintendence, been gradually reconciled to labour and industry, and by a patient attention, have been instructed in several useful and

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<sup>110</sup> "Letter from Benjamin Rush to John Coakley Lettsom, Philadelphia, September 28<sup>th</sup>, 1787," *Letters of Benjamin Rush* ed., by L.H. Butterfield, (Princeton, 1951) vol. 1: 1761-1792, 443.

ingenious occupations... By such means, punishment is directed to its noblest end – the reformation of the offender; who having thus acquired a skill by which an honest livelihood may be obtained, will be under no temptation to return to the paths of vice; and may hereafter make atonement to society for those transgressions, which oftener proceed from the want of reputable resources, than from the mere depravity of the mind.<sup>111</sup>

The passage is unusual because it claims that the key to women's rehabilitation is the same as men's – development of a skill, working hard at it, and using it to make an "honest livelihood." Of course, limited economic opportunities and illegal attempts to provide for themselves and their families put many of the women in prison in the first place. If only there were profitable jobs for women outside the prison walls.

These women could easily have served as models for men since their success was defined by self-sufficiency, which leads to the public good. Though these women had "dissolute dispositions," they were not depraved or wild or loose – and reformation did not hinge on submission. Though "unhappy," their newfound skill and livelihood would prevent them from returning to "paths of vice." This essayist runs headlong into the dominant reform philosophy of the age articulated by Rush and embraced by many others, rejecting the idea that crime stems from "depravity of the mind." One of the main arguments for the penitentiary was to have a place to treat "sick" minds, comparable to the way hospitals treated "sick" bodies. Rather than locate the origin of criminality in the mind, however, the observer claims that it is structural economic problems that leave good people in "want of reputable resources." Had the author limited the scope of his

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<sup>111</sup> "Observations On the Management of the Female Convicts, in the Work-house, Philadelphia," *American Museum*, June 1788, 512.

essay to a celebration of women's work and dutifulness without philosophically undermining the reform project, perhaps reformers and lawmakers would have celebrated the successes of these women, too. Perhaps most surprising is that no one responded to the essay, despite the fact that *The American Museum*, was widely read by prominent statesmen at the time. Indeed, the following month's issue, July 1788, featured letters of praise to the magazine's publisher Matthew Carey from no less than George Washington, soon to be President, and Benjamin Rush, John Dickinson, William White, Tench Coxe, and Samuel Magaw, all members of PSAMPP.<sup>112</sup>

One final distinction between the treatment of men and women under the 1786 law deserves mention: the deployment of shame as a tool of punishment. Men were intentionally shamed, women were not. The Act explicitly called for labor to be "publicly and disgracefully imposed."<sup>113</sup> The dress of prisoners was to be "formed with every mark of disgrace." Indeed, they were to be "disgracefully treated" so as to experience self-shame, which would inspire personal reform.<sup>114</sup> Legislators, justices, and reformers hoped that shame would make convicts defer to authority in the absence of force or physical punishment.<sup>115</sup> The requisite submission and deference undermined male convicts claim to citizenship.<sup>116</sup>

Public shaming even during the colonial period in Pennsylvania was rare. A record of criminal sentences in Chester County, Pennsylvania from 1682-1800 shows that

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<sup>112</sup> "Extract of a letter from his Excellency General Washington, to the printer of the American Museum," "Extract of a letter from the honourable John Dickinson, esq. to the same," and "Letter from Benjamin Rush, M.D. to the same," and untitled letter from a group, *American Museum*, July 1788, 3.

<sup>113</sup> Mitchell and Flanders, *The Statutes at Large*, vol. XII, 280-281.

<sup>114</sup> Caleb Lowmes, *An Account of the Alteration and Present State*, 77.

<sup>115</sup> This effect of shame is discussed by Temma Kaplan, "Reversing the Shame and Gendering the Memory," *Signs*, 28 (2002).

<sup>116</sup> For analysis of the intersection between punishment and republicanism, see Michael Meranze, *Laboratories of Virtue*, 85.



punishments designed specifically to invoke shame such as the pillory or wearing of a sign, constituted only 2 percent of 2173 convictions.<sup>117</sup> Branding the skin of a convict with a letter that signified his or her violation served the dual purpose of inflicting physical pain while marking the person a criminal. Men and women were both subject to these punishments, but they were more likely to be fined or whipped. Other colonies used public shaming rituals with impunity and reserved “special treatment” for women. In North Carolina, outspoken women who were charged with being common “scolds” received a ride in a ducking stool. Unlike other public punishments, such as the pillory or the cart, ducking was reserved for women and became “a particular form of degradation” for them.<sup>118</sup> Pennsylvania’s distinction on this front can be attributed to the influence of Quakers, who were far less violent and punitive than their Puritan or Anglican counterparts. The fact that they did not embrace forms of corporal punishment which were embraced by other colonies and championed in the mother country has been attributed to their aversion to “unusual cruelty, suffering and the shedding of blood.”<sup>119</sup>

If the “female ideal” in the new republic defined women as absent from the public realm, women prisoners could have been doubly humiliated by laboring in public, demonstrating the extent to which they failed to fulfill a proper feminine role. Perhaps this was too threatening to the sexual order. Instead, reformers sought to teach convict and vagrant women to do what they were supposed to be doing *as women*: sewing, supporting men, and submitting to authority. Male prisoners were reminded of their criminal actions and moral failings in an effort to cultivate guilt, atonement, and in effect,

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<sup>117</sup> Marietta and Rowe, *Troubled Experiment*, 79.

<sup>118</sup> Kristen Fisher, *Suspect Relations*, 138-139.

<sup>119</sup> Harry E. Barnes, *Evolution of Penology*, 31-37.

submission. The submission of women to the social order was already built into the labor system; women merely needed to be forced into their proper work role.

Shaming male convicts did not work, however. For the most part, the convicts turned the shame back onto legislators, keepers, and reformers. They created a climate of fear in the city and undermined the entire system by inciting distrust of the law's effectiveness. Nor did shaming male convicts result in their deference, but rather led to a sweeping admission of failure by legislators and reformers who admitted that the citizens of Pennsylvania were increasingly terrorized and demoralized by the actions of the convicts. Though the public was genuinely threatened, such threats were exaggerated by the heightened sensitivity toward public displays of violence, suffering, and disorder. Those who witnessed wheelbarrow men were more likely to feel embarrassed, uncomfortable or guilty than the wheelbarrow men themselves. French visitor La Rochefoucault Liancourt wrote, "Criminals, loaded with irons, and feathered through the streets, and along the roads, presented to the public the spectacle of vice rather than of shame and misery."<sup>120</sup>

In the many descriptions of wheelbarrow men, it is hard to discern whether the observer sees shame in the "being" of the convict or in the spectacle itself. Wheelbarrow men turned this projected humiliation on its head by working together to plot escapes. The distinctive dress created a collective identity and furthered this mentality. It was reported that wheelbarrow men threatened a squire, further evidence that their own peculiar situation united and enraged rather than shamed them. According to other prisoners from the "west wing," such as vagrants and prisoners for trial, the wheelbarrow

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<sup>120</sup> Liancourt, *On the Prisons of Philadelphia*; Meranze uses the concept "mimetic corruption" to describe reformer's fears that citizens "identified with the condemned or with the infliction of suffering on the condemned" without understanding the greater context of the punishment; see *Laboratories of Virtue*, 8.

men frequently said, “That if they caught squire pollard there they would cut his hair off and disfigure him so that he should not be known.”<sup>121</sup>

In the end, the shame was clearly situated with the reformers, not the criminals. Public labor, once seen as a positive step by a forward thinking citizenry, became an obstacle to and source of shame for the city’s political ambitions. In the state’s General Assembly it was remarked that Philadelphia had better clean up its act if it hoped to have the Congress relocate there from New York. At present, the legislators claimed, Philadelphia is, “A place where lawless and wandering banditti of wheelbarrow men and the unwholesome effluvia of dirty streets, with many other nuisances, might endanger their health or lives, every hour of the day and night.”<sup>122</sup> Others warned that no one was safe to walk on the streets of Philadelphia in the evening unless within reach of the watch.<sup>123</sup> Despite these concerns, the federal government did make Philadelphia its home in December 1790. The move was made, however, a few months after public labor was outlawed.

Eventually, reformers came to view not only public labor but also shaming as a failed technique. It did not reform its subjects. It actually inspired them to greater violence. Inspector Lownes concluded,

Thus disgracefully treated, and heated with liquor, they meditated, and executed, plans of escape - and when at liberty, their distress, disgrace and fears, prompted them to violent acts, to satisfy the immediate demands of nature.<sup>124</sup>

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<sup>121</sup> August 6, 1788, Acting Committee of PSAMPP Notes, Adams and Wistar Letterbook, PSAMPP Papers.

<sup>122</sup> *Pennsylvania Gazette*, November 5, 1788.

<sup>123</sup> J. P. M. “A Description with a Perspective View.”

<sup>124</sup> Caleb Lownes, *An Account of the Alteration and Present State*, 77.

The practice of shaming became counterproductive to the restorative aims of the system. As Inspector Lownes argued, “*Disgraceful labour or treatment* of any kind, it has not had, nor can have, any valuable tendency towards restoring an offender to usefulness in society, and it is therefore discontinued.”<sup>125</sup> In his writings on discipline in schools, Rush also derides the practice of shaming. He writes, “Where there is *shame*, says Dr. Johnson, there may be *virtue*. But corporal punishments, inflicted at school, have a tendency to destroy the sense of shame, and thereby to destroy all moral sensibility.”<sup>126</sup> Such arguments suggest that punishment not tainted by shame and publicity could be more effective, as was the case for women convicts.

The commitment to shaming convict men as one aspect of their treatment and the rather rapid admission of its failure as a reform technique further highlights the significance of the gendered nature of punishment. Criminal women were not objects of public shaming rituals. While shaming was considered an appropriate and useful tool for men, women were spared such treatment and instead were put to work at traditional caretaking and homemaking tasks within the prison. Women were not excused from “hard labour,” but they were expected to undergo such a sentence within the prison workhouse rather than in the streets with men.<sup>127</sup>

Women’s labor in prison was invisible to the public and largely ignored by reformers and inspectors. Like the ideal for women of the early republic, prison women were kept out of the public sphere though not entirely shielded from the public’s gaze. One of the main functions of shame is to get people to defer to authority without force.

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<sup>125</sup> Caleb Lownes, *An Account of the Alteration and Present State*, 91.

<sup>126</sup> Benjamin Rush, “Thoughts Upon the Amusements and Punishments Which are Proper for Schools,” *The Universal Asylum and Columbian Magazine*, August 1790.

<sup>127</sup> “At a Meeting & c. 2 Mo. 6. 1789 and 20<sup>th</sup> and 26<sup>th</sup>,” Box 1, Folder 5 Papers 1789, PSAMPP Papers.

Most women in prison already did defer to male authority. Moreover, simply being women made it more likely that they would be perceived as submissive, even if they were not.<sup>128</sup> Though working women filled the streets of Philadelphia everyday, selling their wares and running errands for themselves, their families, and their masters, the state did not use public punishment to rehabilitate them, perhaps fearing it would undermine the cultural and economic trends that increasingly relegated women and their work to the private sphere.

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<sup>128</sup> For a related discussion of how sex roles contributed to perceptions of need and submission, see Karin Wulf's analysis of the Bettering House in Philadelphia, *Not All Wives*, 155.

## Chapter Two: Segregation: Sex, Crime, and Race

The controversy surrounding public punishment stirred public interest in the conditions of the Walnut Street Jail as well as the penal code itself. Early reports routinely condemned the lack of order and decency, focusing chiefly on the consumption of alcohol, the mixing of prisoners of various classes, and the intermingling of men and women. Reform efforts were marked by an intense evaluation of boundaries – first between criminal and law abiding, male and female, convicts and less dangerous offenders such as debtors, vagrants, and runaways; and later between white and black, young and old. Reformers, lawmakers, justices, and the public were especially passionate in their outrage at the mixing of men and women. When sex-segregation was successfully achieved, it was applauded with a sense of righteous vindication and relief. One early report on the success of PSAMPP stated, “Those indefatigable citizens accomplished the first measure upon which reformation depended, *a separation of the sexes*; next followed the employment of the prisoners, and the appointment of keepers upon whose integrity they could rely.”<sup>1</sup>

Though it was not the first group to point out the problem of men and women mingling together in prison, PSAMPP threw its considerable weight behind efforts to institute order in Walnut Street Jail and sex-segregation was one of its earliest priorities. Efforts of the Society resulted first in the separation of men and women and later in the increasingly distinctive treatment of the two groups. The ideological foundation for the new system of punishment and reformation was ordered along the lines of sexual difference. Sex-segregation then became the model for other segregations, including

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<sup>1</sup> “Penitentiary System of Pennsylvania,” *The Philadelphia Register and National Recorder*, February 13, 1819.

criminal classification and race. Still, despite their segregation and regardless of which other categories intersected their identities, women were always a disruption to the penal system.

The previous chapter showed how women disrupted the penal code itself, challenging the idea of who a “criminal” could be. Yet jailers, reformers, and inspectors could not avoid their presence in prison. Women brought children with them, gave birth while there, and nursed babies. Unlike the men, they were not shaven weekly; they required special sex-specific clothing (shifts, not shirts) and worked at different tasks. Women were less crowded in their rooms, were allowed to converse with each other, nursed each other when sick, and of course, provided the clothing for male prisoners.<sup>2</sup> All of these differences, and more, undermined the system of order reformers tried to instill and often forced a reconsideration and re-negotiation of rules. For example, one indignant reformer noted that women were not to receive any extra food in the event that they were nursing a baby, effectively punishing a helpless infant for the mother’s transgression. These moments of uncertainty weakened the authority of reformers.

Sex-segregation and the range of distinctions between the treatment of men and women in prison not only created specific experiences of imprisonment for criminals based on their sex, but defined gendered categories of crime, convict, and reformation. This in turn both reinforced and undermined the categories of man and woman in the early republic.

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<sup>2</sup> Caleb Lownes, *An Account of the Alteration and Present State*; Robert J. Turnbull, *A Visit to the Philadelphia Prison; Being an Accurate and Particular Account of the Wise and Humane Administration Adopted in Every Part of the Building; Containing also an Account of the Gradual Reformation and the Present Improved State, and the Penal Laws of Pennsylvania*, (Philadelphia, 1796), 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: With a Few Observations on the Penitentiary System* (Philadelphia, 1826).

This chapter examines the significance and consequences of segregation in the nation's first state penitentiary. The first section considers the range of calls for sex-segregation in prison along with the efforts of reformers to institute such a policy. Efforts aimed to restrict sexual contact and cultivate moral refinement were dynamic but inconsistent. The second part of the chapter unpacks the conscious and unconscious reasons for this reform, along with its consequences. While reformers appeared to be thwarting heterosexual liaisons at every turn, it was precisely this excessive regulation that produced and reproduced compulsory heterosexuality. By restricting the mixing of the sexes in the name of restricting sex, the possibility of sex between men or between women was theoretically negated. And though sex-segregation denied the possibility for heterosexual sex, heterosexuality was designated by far more than sex. Moreover, sex-segregation served as the model for and intersected with other efforts to instill order.

Prisons have not always been segregated or single-sex institutions, nor have they always enforced rigid control over their charges through an elaborate administrative hierarchy.<sup>3</sup> Those imprisoned in colonial days were likely to be kept in a room with others of both sexes. For much of the eighteenth century, the prison served a narrow function and only a small number of Pennsylvanians would have passed through its doors, usually those awaiting trial or those sentenced to jail terms.<sup>4</sup> Few convicted of criminal offenses were sent to jail. A large number of offenses were defined as capital and led to execution; and many lesser charges were punished with fines or whippings and other corporal punishments. It is likely that small numbers of men and women

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<sup>3</sup> On women's prisons, see Estelle Freedman, *Their Sisters' Keepers: Women's Prison Reform in America, 1830-1930*, (Ann Arbor, 1981); Freedman, *Maternal Justice: Miriam Van Waters and the Female Reform Tradition* (Chicago, 1996); *Feminist Studies: The Prison Issue*, 30 (Summer, 2004).

<sup>4</sup> LeRoy B. DePuy, "The Walnut Street Prison: Pennsylvania's First Penitentiary," *Pennsylvania History*, 18 (1951): 131.



intermingled in Pennsylvania's old county jails while awaiting the "gaol delivery" and trial.<sup>5</sup>

Walnut Street Jail, opened in 1776, served as Philadelphia's county jail until the British occupied the city in September 1777 and used the building to house prisoners of war until their departure in June of 1778. The revolutionary army then used the prison to house British prisoners of war until 1784, when they turned the jail back over to the city, and it was quickly filled with local vagrants, runaways, prisoners for trial and convicts.<sup>6</sup> Use of the jail changed again when the Pennsylvania Assembly officially designated it a state penitentiary in 1790.<sup>7</sup> Walnut Street became the first penitentiary in the country and the subject of endless intrigue to visiting lawmakers, reformers, and writers.

While Pennsylvania lawmakers rushed to disentangle their legal code from the English common laws in which they were rooted, reformers embraced the ideas promoted by Englishman John Howard and upheld several reformed British prisons as a model. Benjamin Rush introduced the group to the work of Howard through a letter from his friend Dr. John Caokley Lettson of London. The letter, which contained a report of Howard's work, was inserted in the Society's Minute book.<sup>8</sup> Howard advocated humane treatment of prisoners, marking a dramatic departure from earlier attitudes towards prisoners.<sup>9</sup> In colonial jails, prisoners had to provide for themselves by begging passersby or bargaining with the jailer. Lucky inmates had family and friends to bring them food or

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<sup>5</sup> Harry E. Barnes, *The Evolution of Penology*, 53-68; The major exception to this was the practice of holding political and religious prisoners in jail for long periods of time. Negley Teeters, *Cradle of the Penitentiary*, 8-9.

<sup>6</sup> Negley Teeters, *Cradle of the Penitentiary*, 20-23 and Oct. 12, 1789, Society Minutes 1785-1793, Adams and Wistar Letterbook, PSAMPP Papers

<sup>7</sup> Pennsylvania, "An Act to Reform the Penal Laws of This State, April 5, 1790," Collection of the Penal Laws of the Commonwealth of Pennsylvania, (Philadelphia, 1794), 3-26.

<sup>8</sup> Negley K. Teeters, *They Were in Prison*, 38-40.

<sup>9</sup> George Meade, "Report of the Board of Inspectors of the Prison for the City and County of Philadelphia," *The Universal Asylum and Columbian Magazine*, December 1791.

clothing, though they may have had to pay off the jailer to get to their loved ones. Jailers had to earn their wages from the prisoners themselves.<sup>10</sup> Provision of basic necessities of food and clothing formed the basis for initial reform efforts, more systematic orderings followed.

The idea of segregating the sexes was inspired by the system imposed at the new prison at Wymondham in Norfolk, England. PSAMPP excerpted accounts of the “Penitentiary House” provided by Sir Thomas Beevor in 1784 in its own pamphlet, *Extracts and Remarks on the Subject of Punishment and Reformation of Criminals*.<sup>11</sup> Beevor claimed the separation of men and women was the most significant design feature of the prison. He writes, “I have been able to get erected a new bridewell and penitentiary house at Wymondham built upon such a plan as enables the governor to keep the sexes and degrees of offenders entirely separate from each other.” The physical separation of men and women was crucial to the successful moral reformation of inmates. He went on to explain his hope that prisoners would undergo a transformation that would enable them to “again become useful members of society.”<sup>12</sup> Affording the convict the opportunity to change and become a responsible, productive citizen lay at the heart of new penal systems on both sides of the Atlantic.

The problem of men and women intermingling in Philadelphia’s prison was first raised by the members of the Grand Jury of the Court of Oyer and Terminer after their visit. They described a scene of debauchery, not the least due to the “general intercourse

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<sup>10</sup> Teeters, *Cradle of the Penitentiary*, 9; Roberts Vaux, *Notices of the Original, and Successive Efforts*.

<sup>11</sup> Philadelphia Society for Alleviating the Miseries of Public Prisons, *Extracts and Remarks on the Subject of Punishment and Reformation of Criminals; Published by Order of the Society, Established in Philadelphia, for Alleviating the Miseries of Public Prisons* (Philadelphia, 1790), 5.

<sup>12</sup> Ibid.

between the criminals of the different sexes” and the distribution of alcohol.<sup>13</sup> They sent the report to the chief justice of the state supreme court, who promised to quickly address the matter. The report, published in the September 26, 1787 issue of the *Pennsylvania Gazette* continues, “There is not even the appearance of decency (from what they can learn) with respect to the scenes of debauchery that naturally result from such a situation.” The Grand Jury blamed both men and women for the problem. They complained that the jail had become “such a desirable place for the more wicked and polluted of both sexes” that people signed “fictitious notes” in order to be committed. It was especially common among people who had recently been released and sought to “return to prison before they have been out many hours.”<sup>14</sup> Disorder, debauchery and uncleanness marked the jail. Rather than a site of order and reformation, the jail was instead conducive to chaos and immoral conduct, so much so that people looking for trouble wanted to be there. In this first notice of concern, both men and women were condemned as the source of the problem.

PSAMPP members used less-descriptive language when they expressed concern about the sexes mingling in prison in a January 1788 draft of a memorial to the House of Representatives. They wrote of the “very great importance of a separation of the sexes in the public prisons and that some more effectual provisions be made for the prohibition of spirituous liquor amongst the criminals.”<sup>15</sup> The issue remained central to the Society for several years. In April, the acting committee decided to visit the prison as a group and “make enquiry relative to some abuses that have obviously originated in a too free open

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<sup>13</sup> *Pennsylvania Gazette*, September 26, 1787.

<sup>14</sup> *Ibid.*

<sup>15</sup> January 29, 1788, Minutes of PSAMPP, Adams and Wistar Letterbook, PSAMPP Papers.

and unrestricted intercourse with the sexes.”<sup>16</sup> In May, they reported more generally of the chaos at the jail, including the “dissipation and licentiousness diffused among all ranks in confinement, in consequence of an improper intercourse between the sexes.”<sup>17</sup> The problem of men and women intermingling was found among all groups of prisoners, including convicts, debtors, vagrants, and prisoners for trial.

The debtors’ apartment was a particular source of disorder that summer, marked by drunken women and regular attempts by convicts to harass debtors. Debtors complained to the visiting committee that a convict made his way among them causing trouble, which greatly bothered the committee. They were also moved by the state of the women, describing them as “drunk, fighting, and in general confusion.”<sup>18</sup> The memorial that PSAMPP submitted to the state legislature in December reveals the intersections between sex, criminal classification and segregation, “Many evils might be prevented by keeping the debtors from the necessity of associating with those who are committed for trial as well as by a constant separation of the sexes.” The committee also offered a specific argument about the motive for men and women intermingling along with a proposed solution to this perceived problem. Their memorial stated, “Men and women had general intercourse with each other. And it was afterwards discovered that they were locked up together in the rooms at night.” To fix this problem, PSAMPP suggested moving the women “into a different part of the prison.” After a brief experiment with such separation, they claimed that far fewer women were imprisoned – down to 4 or 5

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<sup>16</sup>April 11, 1788, Minutes of PSAMPP, Adams and Wistar Letterbook, PSAMPP Papers.

<sup>17</sup>May 16, 1788, Minutes of PSAMPP, Adams and Wistar Letterbook, PSAMPP Papers.

<sup>18</sup>August 1788, Minutes of PSAMPP, Adams and Wistar Letterbook, PSAMPP Papers.

from 30 or 40 – because women had previously had themselves arrested so they could “gain admission among the men.”<sup>19</sup>

The actual implementation of sex-segregation, however, was inconsistent and uneven like so many regulatory efforts during this period. Separation was achieved in some areas of the prison though not in others. While debtors successfully resisted the change for decades, convict women were quickly and easily fettered away from convict men. Separation of convict men and women was implemented first because convict women constituted the smallest segment of the population of any prisoner class and convicts were already designated a distinct area in the prison. They were also subject to the greatest amount of oversight. Walnut Street Jail was built with a separate workhouse along Prune Street that was quickly converted into apartments for debtors when the jail became overcrowded. In theory, the debtors were to be kept separate from convicts and prisoners for trial, but the physical layout of the area and sheer numbers of people sometimes prevented this from occurring.<sup>20</sup>

Despite the unevenness and at times ineffectiveness of segregation efforts, there was no shortage of public pronouncements of success. Caleb Lownes boasted of PSAMPP’s efforts in *An Account of the Gaol and Penitentiary House of Philadelphia and of the Interior Management Thereof*. Lownes left little doubt as to the efficacy of its efforts when he claimed, “The first care of the inspectors was to *remove the debtors* into another house, entirely distinct from the convicts prison; to put a stop to all improper *out-d or communications*; to separate the sexes.”<sup>21</sup> While his claims for sex-segregation

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<sup>19</sup> “Report for Supreme Executive Council,” January 12, 1789, Minutes of the Philadelphia Society for Alleviating the Miseries of Public Prisons, 1787-1809, vol. 1, PSAMPP Papers.

<sup>20</sup> Negley Teeters, *The Cradle of the Penitentiary*, 70.

<sup>21</sup> Caleb Lownes, *An Account of the Alteration and Present State*, 78.

accurately described convicts, chaos still reigned among the debtors, who resisted sex-segregation, mingled with other classes of inmates, and repeatedly complained about being bothered by convicts and vagrants alike.

Mixing in the debtors' apartment provided a great challenge to keepers and reformers. PSAMPP established a committee in 1790 to report on the possibility of making the keeper of the debtors' apartment a salaried officer and on the status of the separation of the sexes "in the day time as well as night."<sup>22</sup> A second committee was formed the following year to do the same thing. Their charge was to "effect a separation of the sexes, to correct any abuses in the regulation of its internal police, also to promote the objects of the late representation of this society to the legislature."<sup>23</sup> PSAMPP labored for greater accountability of the keeper and more oversight of the prison in general, but to little avail.

After ten years of trying to implement sex-segregation, reformers still found the debtors' apartment an integrated site of corruption. Not only were four young female debtors confined to the basement, but this space "exposed" them to "too much communication with the men which ought to be avoided."<sup>24</sup> In their 1799 report, committee members explicitly accused women of causing the trouble. They again described "idle loose" women who "contrived to be sent there" so they could have "communication" with the men prisoners. The committee suggested a separate room for the women and even proposed a bit of re-structuring to create a passage that would lead

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<sup>22</sup> October 18, 1790, Minutes of PSAMPP, 1787-1809, vol. 1, PSAMPP Papers.

<sup>23</sup> April 11, 1791, Minutes of PSAMPP, 1787-1809, vol. 1, PSAMPP Papers.

<sup>24</sup> April 5, 1798, Minutes of PSAMPP, 1787-1809, vol. 1, PSAMPP Papers.

them to a “private yard,” thereby removing any opportunity or need to mix with the men.<sup>25</sup>

The departing acting committee eventually oversaw the construction of a fence in the yard. Still, they recommended to their successors that the more effective resolution would be “removing the women to another room.” Women, not men, were removed to effect the desired separation. As was the case with the “idle loose” women mentioned in the 1787 memorials, women were marked as the source of the problem. Finally, in June of 1799 the committee succeeded in having “a partition put up at the foot of the stairway and a room allotted for the women prisoners up stairs with a passage to a private yard” that separated women from men.<sup>26</sup> Sex-segregation among debtors took ten years longer than sex segregation of the convicts.

Sex-segregation among vagrants, prisoners for trial, and runaways was of little concern. These groups were never subject to the degree of oversight and regulation that convicts were. It was not until 1802 that Inspectors emphasized the need for men and women vagrants to have rooms separate from each other as well as from the other classes of prisoners. The focus even then was on reorganization rather than the “problem” of intermingling. Still, separation among vagrants was eventually accomplished. The Inspectors reported, “Set up the two rooms in the northeast part of the front house for the accommodation of such men as may be such in as vagrants & c and that the two rooms in the northwest part of the said front be fitted up for the use of the women.”<sup>27</sup>

Lawmakers, justices, reformers, and inspectors had a range of reasons, both articulated and implied, to separate men and women from each other. The most explicit

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<sup>25</sup> January 12, 1799, Minutes of the Acting Committee of PSAMPP, 1798-1820, vol. 6, PSAMPP Papers.

<sup>26</sup> June 10, 1799, Minutes of the Acting Committee of PSAMPP, 1798-1820, vol. 6, PSAMPP Papers

<sup>27</sup> Minutes, February 1, 1802, Inspectors of the Jail and Penitentiary House, Philadelphia Prisons System.

argument claimed that women were voluntarily committing themselves to be with men and engage in prostitution. There also existed a range of other unarticulated sexual relations and circumstances that reformers may have been concerned with, including consensual sex, the possibility of pregnancy, and sexual assault. Others spoke of the general “moral contamination” that inevitably occurred when there was “intercourse between the sexes” and this may have lain at the root of all of the other concerns.<sup>28</sup>

Some women may have deliberately had themselves committed to prison to earn money in exchange for sex. Reformers had a range of reasons to banish prostitution from the prison.<sup>29</sup> Sexual activity was not a part of the strict daily life of hard labor, meager diet, and religious reflection that lawmakers had in mind when they instituted imprisonment as the primary punishment. Not only did it undermine the serious business of moral transformation, but it also was likely seen as a good time that prisoners did not deserve. Because prostitution and other sexual relations outside of marriage were widespread and largely unregulated in Philadelphia during this period, it is hard to believe that a generally negative judgment about sex informed such efforts. Women long ventured into areas populated with men, particularly seamen and soldiers. If some women did in fact have themselves sent to prison intentionally to “service” men for money, this was not a novel practice. Regulation of this practice signals a class division between male reformers and male prisoners. While middle class and elite men may have passively approved of each other’s dalliances into extramarital affairs, they still distinguished

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<sup>28</sup> James Mease, *Picture of Philadelphia* (Philadelphia, 1831), 183.

<sup>29</sup> For more on prostitution and reform in Philadelphia, see Marcia Roberta Carlisle, “Prostitutes and Their Reformers in Nineteenth-Century Philadelphia,” (Ph.D. diss. Rutgers University, 1982), Marcia Carlisle, “Disorderly City, Disorderly Women: Prostitution in Ante-Bellum Philadelphia,” *Pennsylvania Magazine of History and Biography* 110(1986): 549-568, Rodney Hessinger, “Victim of Seduction or Vicious Woman?: Conceptions of the Prostitute at the Philadelphia Magdalen Society, 1800-1850,” *Pennsylvania History* 66: Supplement (1999): 201-222, and Clare Lyons, *Sex Among the Rabble*.



themselves from the actions and customs of the lower sort. They marked such interactions as obstacles to moral reform, yet they almost never blamed the male prisoners. Another reason for the concern may have been triggered by the idea of women exploiting the system to earn a living for themselves.

Aside from prostitution, however, reformers may have worried about the moral corruption that could accompany even consensual sex. Observers were likely referring to sexual activity when the Grand Jury and PSAMPP complained of men and women having “intercourse” with each other. During the eighteenth century the term did not carry an explicitly sexual meaning and was commonly used to refer to social communication, or “frequent and habitual contact in conversation and action.” Examples of the term invoking a sexual connection, however, appear in 1798 and 1804, suggesting that reformers were trying to prohibit a spectrum of behaviors, some of which were sexual, between prisoners.<sup>30</sup> And the context in which the term “intercourse” was used suggests a more intimate exchange.

Although the safety or comfort of women prisoners was not cited as a reason for separating them from men, the division may have protected them from some acts of coercion or violence, such as sexual assault.<sup>31</sup> Women may also have been victims of “garnish” – the stripping of new inmates and the resale of their clothing for cash to purchase alcohol from the keeper. Alcohol was regularly cited as the source of several problems at the jail, not the least of which was the ends to which prisoners would go to

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<sup>30</sup> Oxford English Dictionary, “intercourse,” n., meaning “sexual connexion” sentence usages include, “An illicit intercourse between the sexes,” 1798 and “Propagated by promiscuous intercourse,” 1804.

<sup>31</sup> For more on sexual assault in early America, see Sharon Block, *Rape and Sexual Power*; Barbara S. Lindemann, “‘To Ravish and Carnally Know’: Rape in Eighteenth-Century Massachusetts,” *Signs*, 10 (1984): 63-82; Cornelia Hughes Dayton, *Women Before the Bar: Gender, Law, and Society in Connecticut, 1639-1789* (Chapel Hill, 1995), 231-284; Kathleen Brown, *Good Wives, Nasty Wenches, Anxious Patriarchs*, 193-4, 207-211; Kirsten Fischer, *Suspect Relations*, 181-190.

acquire enough money to buy it from the keeper at his steep prices. The problem among debtors was particularly bad, as they reportedly sold their own clothes in exchange for spirits. One report states, “To obtain money to purchase spirits great irregularities and even outrages are committed by the prisoners by not only selling their own clothes but forcibly stripping others on the first admission in Gaol.” The practice of garnish was a widespread custom, though it is unclear if it was practiced in all quarters of the jail or just the debtors’ apartment. Even the Society seemed unable to prevent this, despite noting that, “Garnish is often productive of great subsequent sufferings.”<sup>32</sup> There was no mention of the sex of prisoners here or the significance of who was stripping whom for their clothing.

If women were stripped by men, they may have internalized the experience as a sexual or physical assault. Some women may have had the physical or emotional strength to actually strip men. In a sex-segregated prison environment, the practice of garnish would have a different meaning to both its perpetrators and victims. If the practice was most common between men, then garnishing may have set the stage for sex acts among men, both voluntary and forced.

The unarticulated reasons for sex-segregation are critical because of the pervasiveness of the ideology of sexual difference. In the face of such overwhelming numbers of prisoners and limited resources and space, sex-segregation was deemed vital because it served as the basis for the social and economic structures of heterosexuality that ordered the prison. Such structures were not unique to the prison, of course, but reformers sought to promote dominant sexual norms and gender roles in order to ensure the future stability and tranquility of the new nation. The effects of these efforts both

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<sup>32</sup> January 12, 1789, Minutes of PSAMPP, 1787-1809, vol. 1, PSAMPP Papers.

benefited and penalized women. Sex-segregation created situations where men were crowded in far greater numbers into cells than women were. One report noted that twenty-six men filled one room on an average night, while only twelve women occupied the same 18 by 20 foot space.<sup>33</sup> Sex-segregated cells may have ensured that women prisoners would not be negatively – or positively - influenced by male prisoners, but this did not ensure their protection from the keepers, inspectors, or reformers themselves. Historians have documented a thriving public sexual culture and rampant prostitution. Who is to say keepers, visitors, or even reformers did not seek sexual relations with women inmates? Those known to be prostitutes, like Martha Patterson who was picked up on July 31, 1790 and held for one month's labor on the charge of "being an idle desolute person and common street walker," or Ealoner Robison, brought in on vagrancy charges for "being a common prostitute and keeping a bawdy house in Welch's Alley" on February 9, 1792, would have been obvious targets.<sup>34</sup>

One former inmate described the sexual abuse of women by a keeper, "I suppose those advocates cannot deny that a keeper cannot at pleasure take the unfortunate women out of the west-wing, and keep them in the cells – for what purpose I suppose may be easily guessed at."<sup>35</sup> For every woman who may have voluntarily had herself condemned to debtors' prison, we can imagine a woman taken against her will, perhaps by the same debtors, as other men turned away or joined. For every truly benevolent and sensitive keeper, we can imagine one whose feelings fell short of sympathy for those debased and

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<sup>33</sup> George Rugan, "Documents Accompanying the Commissioners' Report on Punishments and Prison Discipline," *The Register of Pennsylvania*, April 19, 1828.

<sup>34</sup> Prisoners for Trial Docket, 1792 and Vagrancy Docket, 1790, Inspectors of the Jail and Penitentiary House, Papers of the Philadelphia Prisons System.

<sup>35</sup> Patrick Lyons, *Narrative of Patrick Lyon, Who Suffered Three Months Severe Imprisonment in Philadelphia Gaol; on Merely a Vague Suspicion of Being Concerned in the Robbery of the Bank of Pennsylvania: With His Remarks Thereon* (Philadelphia, 1799), 72.

disregarded prisoners. Abuse on the part of turnkeys for minor infractions were common, as one prisoner recalled a woman being dragged “but half dressed, down a flight of stairs and through a hall, just wet from scrubbing, to the cells, for a frivolous offence.”<sup>36</sup>

The issue of sex-segregation raises the question of the role of sexual difference in the treatment of prisoners. While the circumstances of women in prison were regularly mentioned by visitors, inspectors, and others, they were not integrated into the philosophical analysis of the plight of the prisoner and the state of punishment. Just as the law of 1786 was largely gender neutral in its language, so too was much discussion of prisoners in published sources, making it challenging to discern if authors were consciously referring to both male and female prisoners or only male. Some wrote explicitly of the similar treatment received by men and women, only to follow up such assertions with multiple examples of the *differences*. For example, visitor Duke de Liancourt reported, “The treatment of the women is the same with that of the men....Silence is less rigidly required of them, nor are they so exactly superintended as the men.”<sup>37</sup> Though women were treated the same as the men, they were also treated differently. Such claims illustrate the “sex-specific” character of imprisonment that ideologically excluded women from the category of “convict.” Women prisoners were both less in need of reform than men and, at times, the chief obstacle to the reformation of men.

By the 1800s, the separation of men and women was no longer a topic of concern in the minutes of the Board of Inspectors or PSAMPP. There were no more printed

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<sup>36</sup> Ann Carson, *The History of the Celebrated Mrs. Ann Carson, Widow of the Late Unfortunate Lieutenant Richard Smyth; With a circumstantial account of her conspiracy against the late Governor of Pennsylvania, Simon Snyder; and of her sufferings in the several prisons in that state* (Philadelphia, 1822), 305.

<sup>37</sup> Liancourt, *On the Prisons of Philadelphia*, 20.

explanations for the need to prevent the intermingling of the sexes, and sex-segregation simply became the way things were done, the “natural order” of prison discipline. The practice of sex-segregation then served as the model for other separations. Though sex-segregation formed the basis for a whole host of other classifications, its implementation was always tied to and complemented by efforts of criminal classification and separation. Some classes of prisoners were more easily separated by sex than others, and the challenges of criminal classification and divisions affected women differently. The majority of women in prison were vagrants, debtors, prisoners for trial, and runaways – groups that were harder to regulate than convicts. The need for certain groups of women prisoners to be sheltered from other groups of women prisoners thus complicated and sometimes disrupted the simple separation of women from men.

The introduction of a wide range of classifications and divisions followed the early and largely successful effort to separate men and women: a separate building for debtors, a four-part criminal classification code for prisoners and designated work and sleep spaces based on it, separate cells for black men, and separate cells for young people. Yet the formal classification system issued by the inspectors in 1797 was not well-suited to address the actual conditions within Walnut Street Prison. It designated four different classes of prisoners, but lumped everyone who was not a convict into one class. So half of the prison population was designated class number one, “those prisoners who are sentenced to confinement only.” The other three classes were reserved for convicts of varying degrees of offence and repute. Number four was reserved for “old offenders” who were known to be dangerous, disorderly, and depraved. The distinctions between the second and third classes were minor. While the second designated young

criminals, those of minor offences, or with recommendations of good character, the third applied to those who neither offended or impressed by their behavior and who did not have reputations, good or bad.<sup>38</sup> Unfortunately, the Inspectors did not document their efforts to enforce these categories. Most of their energy to classify and separate prisoners was focused on keeping the various groups combined into number one from mingling with and hurting each other.

Reformers were not the only ones who advocated for segregation. Though they may have suffered through quite similar conditions in the state's first penitentiary, vagrants, convicts, prisoners for trial, runaways, and debtors distinguished themselves from each other whenever possible. Debtors, convicts, and prisoners for trial each criticized other groups. Vagrants and runaways, including slaves and indentured servants, may have also sought to differentiate themselves, but their voices are absent from the few documents that preserve such testimony. Debtors were known for demanding that the wheelbarrow men clean up after them, petitioning to have their keeper replaced, and whining that the convicts regularly entered their rooms and stole from them. Prisoners awaiting trial also complained about being confined with "undesirables."

Though few sources illuminate the attitudes of prisoners towards each other, an abundance of evidence documents the efforts of reformers to institute a formal system of classification and segregation. Arguments in favor of separation of the various classes of prisoners, like those for the separation of men and women, began with the penal law of 1786 and the actions of PSAMPP in 1787 and were rarely questioned thereafter. The only question up for debate was which population of prisoners was most dangerous to the

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<sup>38</sup> Minutes, June 16, 1797, Inspectors of the Jail and Penitentiary House, Philadelphia Prisons System.

others. In this period, however, discussion of classification focused more on the failure to achieve it than the good affected by instituting it. Efforts by reformers and inspectors to separate the various groups reveal that social norms and communal values were in a state of flux during this time. Which “class” of inmate was most innocent or most corrupt or the greatest threat to order and decency was regularly contested. Official reports, personal letters, and public debate all shaped this shifting moral discourse.

Even the penal reforms enacted in 1786 outlined the need to separate certain groups of prisoners from others. The keepers were charged to enforce these distinctions, recommending “that the old and hardened offenders be prevented from mixing with and thereby contaminating and eradicating the remaining seeds of virtue and goodness in the young and unwary, and the men from an improper intercourse with the women.”<sup>39</sup> Again, Pennsylvania’s reformers turned to English prisons for inspiration. Writing on Norfolk’s House of Correction in 1785, it was reported that “the governor shall prevent all communication between the persons committed upon charges of felony, or convicted of any theft or larceny, and the other prisoners.”<sup>40</sup> This distinction became paramount as offences that previously were designated as capital were reduced to less severe punishments. That “old offender” who would have earlier been executed for his crimes was now maintained in a jail.

Philosophies concerning the regulation of convicts varied by their sex. The penal code spoke not only of sex segregation but also of the importance of separating the men felons from each other.<sup>41</sup> There is no similar reference concerning the separation of

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<sup>39</sup> “An Act Amending the Penal Laws of this State, Passed September 15, 1786,” *Statutes at Large of Pennsylvania*, vol. XII, 286-7.

<sup>40</sup> PSAMPP, *Extracts and Remarks*, 8.

<sup>41</sup> Mitchell and Flanders, *The Statutes at Large*, vol. XIII, 516.

female convicts from each other. In fact, it was common practice for the women to cook and care for each other.<sup>42</sup> Women were generally subject to less oversight. One explanation for this is that women were less of a flight risk than men – far fewer of them escaped or attempted to escape. An absence of concern by lawmakers that women be separated from each other reveals the belief that women would not undermine each other's rehabilitation. This idea stems in part from the failure to acknowledge women as criminals in the first place, which underlies the ideological exclusion of women from the reformation project and the material inclusion of women in prison.

Though lawmakers and inspectors were not concerned with the effect convict women had on each other, their influence on other women in prison was an entirely different matter. Convict women were still occasionally mixed with women who were not charged formally with any crimes. PSAMPP's 1788 report alludes to the importance of protecting innocent women from hardened female criminals. This report acknowledges the various ways that women, all grouped together, might influence each other. In addition, women convicts were temporarily kept in the workhouse with other women who were not charged with any crimes, illustrating the conflict between the function of a county jail and a state penitentiary. Reformers describe the mixing of convicts with other women as a "dangerous intercourse" that seduces "from their original innocence" women who are at the mercy of their owners. That masters used the jail as a way to punish their servants and slaves, even if they did not violate a law, highlights the freedom given to the upper classes to regulate and control the lives of the poor.<sup>43</sup> Reformers expressed concern about the practice, "Girls and Young women [were] confined there by their masters and

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<sup>42</sup> Liancourt, *On the Prisons of Philadelphia*, 20.

<sup>43</sup> See John Alexander, *Render them Submissive* and Simon Newman, *Embodied History*.



mistresses for sale or temporary punishment.” Yet this report offers one of the only references to the danger posed by female convicts.

In the company of men of all classes, the convict women are negligible. But in the company of other women, particularly young women, or innocent women, these female convicts became dangerous and powerful. Through “dangerous intercourse” with convict women, innocent girls might be “gradually seduced from their original innocence.”<sup>44</sup> Just as convict women might seduce innocent girls charged with no crimes, the “idle loose” debtor women also threatened to seduce men, if not from innocence, then at least towards vice and away from reform. Such language offers both sexual and racial innuendo. The term “dangerous” is often deployed as a racialized code word. Just as black men seduced white women away from innocence to sexual licentiousness, so too could these “dangerous” women seduce other women.<sup>45</sup> The term intercourse during this period had both social and increasingly sexual connotations. While “innocence” may be understood broadly as “the state of being untainted with, or unacquainted with evil,” the term also referred specifically to virginity.<sup>46</sup> Whether PSAMPP members were concerned explicitly about sexual interactions among the women, we do not know. It is possible, however, that this was one of the many kinds of sinful “intercourses” that passed between “dangerous” women and “innocent” ones.

This early concern was addressed by the new ordering of inmates. In the layout of the penitentiary, the west wing was designated for convict women and the east wing and

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<sup>44</sup> January 12, 1789, Minutes of PSAMPP, 1787-1809, vol. 1, PSAMPP Papers.

<sup>45</sup> For discussion in specific historical contexts, see Jennifer Morgan, *Laboring Women*, 12-49; Martha Hodes, *White Women, Black Men: Illicit Sex in the 19th-Century South* (New Haven, 1997), Diane Miller Sommerville, “Rape, Race, and Castration in Slave Law in the Colonial and Early South,” in *The Devil’s Lane: Sex and Race in the Early South*, ed. Catherine Clinton and Michele Gillespie, 74-89.

<sup>46</sup> William Bradford described rape as “the violation of ‘female innocence’” in William Bradford, *An Enquiry How Far the Punishment of Death*.

main building for men. Women convicts occupied the first floor of the west wing while the second floor was used for “vagrants, women for trial, and women of bad character.”<sup>47</sup> “Loose” women, locked away on the second floor, could no longer interfere with male convicts’ reformation. Division of the women convicts from other female inmates highlighted the predominance of prostitutes among the “vagrants.” Women described as prostitutes were reportedly “turbulent” and held “without process of law” for up to thirty days.<sup>48</sup> This reference to women being held for up to a month reflects the city’s unusual approach to dealing with prostitution. Formal charges and convictions were rare in Philadelphia despite the visible sexual culture and Quaker efforts to promote stricter enforcement of gaming and vice laws. Women in the trade, however, were picked up by watchmen under vagrancy statutes that empowered the city to hold someone without trial for up to thirty days. Many of them were not held that long. On July 29, 1790, five women were picked up in one night on the charge of “being an idle dissolute and notorious prostitute to labour one month.” However, only one of them served the entire thirty days; two were released the same day, one the following, the other four days later.<sup>49</sup>

The situation of convicts mixing with other classes of prisoners occurred among men as well as women. Early complaints by PSAMPP expressed concern for debtors who were victimized not only by convicts but also by laws that made no provisions for their sustenance while in prison. Unlike other classes of criminals who came largely from the lower sorts, debtors were more likely to be respected men in the community who

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<sup>47</sup> T. Condie, “Plan, construction etc. of the jail, and penitentiary house of Philadelphia. Accompanied with a handsome copperplate, representing an elevation and ground plan of the whole building, taken from accurate measurements.” *The Philadelphia Monthly Magazine; or, Universal Repository of Knowledge and Entertainment* 1, no. 2 (1798): 97.

<sup>48</sup> Robert C. Smith, “A Portuguese Naturalist in Philadelphia, 1799: Excerpts from the Diary of Hipolito Jose da Costa,” *Pennsylvania Magazine of History and Biography*, January (1954), 100.

<sup>49</sup> Vagrancy Docket, July 1790; Simon Newman, *Embodied History*, 40-60; Clare Lyons, *Sex Among the Rabble*, 339-340.

experienced misfortune. Members of PSAMPP identified with and were even friends of more wealthy debtors, which played no small role in shaping their efforts to improve the circumstances of such individuals. The most famous debtor of the era, Robert Morris, financier of the revolution, received exceptional privileges and freedoms during his stay in prison.<sup>50</sup>

Though well-known stories of debtor's prison were written by once wealthy men who lived quite lavishly by prison standards, many people confined were so poor that they could scarcely feed and clothe themselves. A report of the 1787 Grand Jury visit to the jail and workhouse found seven debtors, including five men and two women. Their debts were described as insignificant and totaling less than seven pounds and the cause of their plight was blamed on "the cruelty of hard-hearted creditors."<sup>51</sup> Many expressed sympathy for the debtors and some held creditors responsible for unfairly charging those who owed them money. PSAMPP began to intervene on behalf of those held for small sums of money and tried to help debtors negotiate terms of release with their creditors. Reports of debtors often portray creditors – not debtors – as wrongdoers. It was the "unfeeling" and "hard-hearted" creditor who needed a lesson in compassion.<sup>52</sup> Those tricked into risky business ventures were held to be victims, not criminals. Visitors continued to express dismay about the mixing in prison with "no distinction being made by the unfeeling creditor between the deceived and the deceiver."<sup>53</sup>

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<sup>50</sup> Bruce Mann, *Republic of Debtors: Bankruptcy in the Age of American Independence* (Cambridge, 2002).

<sup>51</sup> "Utility of inspecting into the State of Jails," *The American Museum; or, Repository of Ancient and Modern Fugitive Pieces*, May 1787.

<sup>52</sup> "Observations Recommendatory of the Philadelphia Society for Alleviating the Miseries of Public Prisons," *Repository of Ancient and Modern Fugitive Pieces*, May 1787.

<sup>53</sup> "Prisons," *Weekly Visitor, or Ladies' Miscellany*, June 7, 1806.

Given the fact that jurors and reformers viewed debtors as innocent, men with bad luck, it is not surprising that they worried about the mixing of debtors and convicts in prison. The 1787 Grand Jury reported their concern that criminals began to gather in the common hall, though it was “originally intended for the accommodation of debtors only.” It was unacceptable for debtors who were “worthy characters” simply “reduced by misfortune” to have to come into contact with and live in such close proximity with criminals, who the Grand Jury described as “wretches who are a disgrace to human nature.” Debtors, like reformers, were men of feeling whose delicate senses were easily disturbed. Even “the horrid noise of chains” offended them.<sup>54</sup>

Debtors eventually found some relief when *An Act for the Relief and Support of Poor Confined Debtors* was passed in 1792.<sup>55</sup> The amendment authorized the Inspectors to oversee the debtors’ apartment, not just the jail, and charged them with providing fuel, clothing, and bedding when necessary at the expense of the county.<sup>56</sup> This was a dramatic change, as previously debtors had not been entitled to any provisions from the state and were expected to support themselves while in prison.<sup>57</sup> The law also mandated a food allowance of seven cents a day to be paid by the plaintiff on behalf of the debtor. If the plaintiff refused or failed to make the payment, it was grounds for discharge of the debtor.<sup>58</sup> It was hard to enforce this, however, and many plaintiffs did not respect the law.

Before the revolution, those who could not pay their bills were subject to moral censure. The social judgment of debt changed, however, in the post-revolutionary period

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<sup>54</sup> *Pennsylvania Gazette*, September 26, 1787.

<sup>55</sup> Pennsylvania, “An Act for the Relief and Support of Poor Confined Debtors, April 4, 1792,” *Collection of the Penal Laws of the Commonwealth of Pennsylvania*, (Philadelphia, 1794), 43-46.

<sup>56</sup> *Ibid.*

<sup>57</sup> S. Laurence Shaiman, “The History of Imprisonment for Debt and Insolvency Laws in Pennsylvania as They Evolved from the Common Law,” *The American Journal of Legal History*, 4 (July, 1960): 215-216.

<sup>58</sup> Pennsylvania, “An Act for the Relief and Support of Poor Confined Debtors,” 46.

which was marked by growing investment, wild speculation, and expanding trade operations.<sup>59</sup> Perhaps pre-revolutionary values influenced the critique Mary Weed aimed at debtors. Weed served as jail keeper after her husband Elijah died of yellow fever in 1793. Given the fact that women reformers were not yet allowed into the jail and there was no matron on staff, such as there was in the Bettering House, Weed's position was quite unusual. A visitor asked her if she found her charge of keeping the prison challenging. She responded that her greatest concern was that debtors would corrupt the morals of the other inmates. "You may think it strange," she said, "that debtors should corrupt criminals; but the case is really so, for there is certainly as much if not more morality among the latter than the former."<sup>60</sup> Weed's comment challenges assumptions about why certain classes of prisoners were to be protected from others. She suggests the changing assessment of debtors at this time by which one who fell into debt was judged morally depraved.

General worries about convicts mixing with prisoners for trial, vagrants, debtors, servants, and apprentices persisted over the years. In 1798, inspectors still struggled to separate the debtors from convicts. A plan for the jail described twenty foot high stone walls that when joined, would divide "the criminal jail from the debtors' apartments."<sup>61</sup> Even that did not work, in part because the commitment to criminal classification and segregation efforts were often at odds with the goals of the manufactories. In 1800, despite overcrowding and a lack of available space for manufactures, PSAMPP insisted that labor concerns not be put ahead of the commitment to segregation, writing, "It is improper to mix with convicts confined to labor any other prisoners not sentenced to the

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<sup>59</sup> Bruce Mann, *Republic of Debtors*.

<sup>60</sup> Robert J. Turnbull, *A Visit to the Philadelphia Prison*, 61.

<sup>61</sup> T Condie, "Plan, construction, etc. of the jail, and penitentiary house."

like punishment.”<sup>62</sup> A few years later, the legislature accepted their appeal to keep convicts from other prisoners by agreeing to build a separate building.<sup>63</sup> But even by 1820, Inspectors still struggled to institute order and a new committee of both Inspectors and PSAMPP members formed to work “on the more complete classification and employment of the untried prisoners and convicts.”<sup>64</sup>

As was the case concerning women, reformers were most worried about the influence of convicts and vagrants on apprentices and servants who were sent to the jail as punishment by their masters. This concern highlights the role that age came to play in later reform efforts, as the descriptions of “young” apprentices and “old” hardened offenders suggests. In their 1795 report, the Inspectors described themselves as pained by the experience of witnessing the “young apprentice and servant” in the company of not only the “worthless vagrant” but also the “most hard and abandoned villain.” They “earnestly” recommended that some action be taken immediately to separate these groups from each other. Inspectors again invoked the notion of sensibility, that any feeling person would be outraged by such a scene, and that the “impolicy” and “inhumanity” of the situation is “so strikingly obvious” that it should never have occurred in the first place.<sup>65</sup>

Punishing rebellious servants by incarceration was a controversial issue for many years. Grievances related to this practice foreshadow the obsession with classification and division that soon became a major priority of prison reformers. One person described “the indiscriminate confinement” of young apprentices to the workhouse as an abuse that led

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<sup>62</sup> November 24, 1800, Minutes of PSAMPP, 1787-1809, vol. 1, PSAMPP Papers.

<sup>63</sup> April 9, 1804, Minutes of PSAMPP, 1787-1809, vol. 1, PSAMPP Papers.

<sup>64</sup> January 10, 1820, Minutes of PSAMPP, 1810-1832, vol. 2, PSAMPP Papers.

<sup>65</sup> Minutes, May 19, 1795, Inspectors of the Jail and Penitentiary House, Philadelphia Prisons System.

not only to “private hardship” for the apprentice but also to general “public injury” because of the potential for moral contamination of one “whose irregularities might otherwise be reclaimed.”<sup>66</sup> On the one hand, state lawmakers and reformers developed a system in which imprisonment was the solution to a wide range of social problems and criminal offenses. And yet all of those sent to prison were not alike, not equal, and not even of the same species. Discerning which people belonged to which categories and deserved what type of treatment was always being re-defined and re-negotiated, undermining the certainty of institutional punishment.

Vagrants were also a subject of concern, particularly for their influence on the “prisoners who are detained for trial, runaway servants & apprentices.” While vagrants were not hardened criminals and did not threaten to teach the other groups how to plot escapes or pull off armed robberies, they did have the potential morally to corrupt the others.<sup>67</sup> Vagrants were also a bad influence on convicts, if for no other reason than they took up space – and space was at a premium in the jail, particularly since separation was defined as so central to reformation. The arrangement was destined to fail from the beginning, as separation of classes of prisoners was deemed critical to moral reform but at the same time forced large numbers of people into small crowded spaces, undermining moral rehabilitation. The visiting committee of PSAMPP complained about this in 1803, stating,

The great number of vagrants, untried prisoners, &c produces hurtful effects on the convicts as the latter are for want of room obliged to be kept in too large

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<sup>66</sup> *Pennsylvania Gazette*, July 20, 1785.

<sup>67</sup> January 25, 1803, Minutes of PSAMPP, 1787-1809, vol. 1, PSAMPP Papers.

numbers in one apartment by which the amelioration of their morals is either prevented or greatly impeded<sup>68</sup>

The connections between groups of prisoners that plagued reformers reveal the chaos of the prison. But keeping prisoners in their designated areas was complicated by the fact that individual classifications could change. One could go from being a prisoner for trial to a convict, for example, or one might be discharged and re-admitted at a later date for a different reason, under a different classification. This connection between and overlap among prisoners for trial, vagrants, and sentenced convicts was common, especially for those charged in Philadelphia County. According to the rules imposed by the Inspectors on the jail in 1792, however, once you were admitted to Walnut Street as a convict, you could never again reside among the vagrants, even if you served your time, were released, and were later picked up on vagrancy charges.

This policy ran counter to the whole point of imprisonment - the transformation and rehabilitation of the character of the person.<sup>69</sup> “Without reformation,” one advocate for establishing a Presbyterian chaplain in the prison wrote, “the design of the law is frustrated.”<sup>70</sup> This was exactly what happened at Walnut Street. Personal transformations were more likely to involve corruption than reformation. Many critics said that this was inevitable and plagued the penitentiary system from the very beginning, though to varying degrees. This view was most cynically portrayed in an 1828 report, whose author stated,

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<sup>68</sup> Ibid.

<sup>69</sup> Board of Inspectors, *Rules, Orders, and Regulations for the Gaol of the City and County of Philadelphia* (Philadelphia, 1792).

<sup>70</sup> *A Plan for Establishing a Chaplain, of the Presbyterian Denomination in the Jail* (Philadelphia, 1802).



Older criminals serve as teachers to the younger sinners, and prepare them for the commission of greater crimes than those for which they had been convicted. The seeds of infamy are thus matured in the young offender, the more wicked are confirmed in their evil ways; and the prison, instead of answering the object for which the convicts are confined, viz. their reformation, becomes the nurse and seminary of vice.<sup>71</sup>

Lawmakers underestimated the impact that prisoners could have on each other, assuming that through heightened supervision and a regimented day, jailers and turnkeys would be able to exert more authority and that the inmates would listen. Part of the problem was spatial. There was never enough room to impose the degree of division and order that the scheme called for. And part of the problem involved the inmates themselves, who never submitted to the authority of the keepers, inspectors, or reformers the way they were expected to.

It was always far easier to call for separation than to enforce it in the ever-crowded spaces of the prison. In 1811, Inspectors still struggled to protect apprentices and servants from vagrants and untried prisoners by preparing a separate room for them.<sup>72</sup> Though members of PSAMPP were successful in their effort to separate men and women, concern over mixing of the different categories of prisoners still plagued them in the 1820s and played no small role in their eventual embrace of complete solitary confinement as the only means of reformatory incarceration. A committee composed of Thomas Wistar, Roberts Vaux and Joseph Paul was to work with the Board of Inspectors “on the more complete classification and employment of the untried prisoners and

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<sup>71</sup> James Mease, *Observations on the Penitentiary System* (Philadelphia, 1828).

<sup>72</sup> October 31, 1811, Minutes of PSAMPP, 1810-1832, vol. 2, PSAMPP Papers.

convicts,” in 1820, twenty-three years after they first developed a classification scheme.<sup>73</sup> Most believed the effort was futile and that such separation could never be successfully implemented at Walnut Street. They instead embraced the idea that the only way reform had a chance was in a larger, specially designed space that would allow for complete isolation of prisoners. In a November letter to New York reformers, they argued exactly that, stating “So long as the prisoners could be kept separate from each other and classed and managed according to the plan proposed by the friends of the system,” reform was possible.<sup>74</sup> But by this point, only a large prison could enable such success.

Distinctions between sex and criminal segregation were many. At the very least, sex segregation was successfully implemented, criminal classification was not. Women were fewer in number and easier to control than men, and commitment to sex segregation was stronger. The purpose of highlighting the chaos and struggle in this discussion of criminal classification is to further illuminate the uniqueness of the rapid success of sex segregation and to demonstrate that despite all of the rhetoric concerning criminal classification, it was never deemed as important.

Racial segregation differed from both sex-segregation and criminal classification in that it was practiced, though unevenly, long before inspectors or reformers demanded it. African Americans in prison may have voluntarily convened with each other. Irish, English, and other European Americans may have refused to intermingle with them. One early visitor pointed out the separation of black and white women in the dining area, “In the women’s dining room two prisoners serve the meals, one white, the other Negroe.” He also pointed to this divide as hypocritical on the part of the reformers, “Note that this

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<sup>73</sup> January 10, 1820, Minutes of PSAMPP, 1810-1832, vol. 2, PSAMPP Papers.

<sup>74</sup> November 8, 1820, Minutes of PSAMPP, 1810-1832, vol. 2, PSAMPP Papers.

difference between black and white is maintained by the Quakers who are the advocates of liberty and equality for Negroes.”<sup>75</sup>

At the same time, there is evidence from the early decades of integration and interracial alliances among prisoners. Another chronicler of Walnut Street, writing a few years earlier, noted the absence of racial segregation, stating, “At supper, I observed, they were all seated at the same table, a prospect that afforded, as you might well conceive, no small gratification.”<sup>76</sup> This is consistent with the larger pattern of disregard for racial mingling among the lower classes in Philadelphia throughout this period.<sup>77</sup> It is possible that cross-racial friendships and alliances existed in prison. A group of three women who escaped on May 26, 1796 by “Getting into the dungeon through the arch and undermining the wall into sixth street” included Phoebe Mines, a “negress,” and Margaret McGill from Ireland.<sup>78</sup> In this regard, life in prison reflected life outside of prison. Like most orderings, classifications, and separations in Walnut Street, racial segregation existed sporadically and unevenly among different groups of prisoners at different times.

In the first years of prison reform, racial classification and segregation were not important to inspectors or reformers. Race only became a significant category of classification and description in the penal system in the early 1800s, over fifteen years after reformers first demanded sex-segregation. Records documenting the racial backgrounds of prisoners or organizing them along racial lines prior to this period are

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<sup>75</sup> Robert C. Smith, “A Portuguese Naturalist in Philadelphia, 1799,” 101.

<sup>76</sup> Robert J. Turnbull, *A Visit to the Philadelphia Prison*, 39.

<sup>77</sup> See Simon Newman, *Embodied History*, 58; Clare Lyons, *Sex Among the Rabble*. For info on mid-eighteenth century, see David Waldstreicher, *Runaway America: Benjamin Franklin, Slavery, and the American Revolution* (New York, 2004), 94; Billy Smith notes that even by the end of the eighteenth-century, most blacks lived in white households as servants, boarders, or domestics. See Billy Smith, *The “Lower Sort,”* 195.

<sup>78</sup> Prison Sentence Docket, 1796, Inspectors of the Jail and Penitentiary House, Papers of the Philadelphia Prisons System; The third woman, Catherine Lynch, had no physical description recorded.

also rare. This is apparent both in the way the records clerk documented the physical descriptions of prisoners upon their admission and in the categories prison inspectors used in their periodic counting of prisoners. Both sets of records show little attention to race in the 1780s and 1790s.<sup>79</sup>

By the turn of the century, racial designation increased slightly but was by no means either complete or uniform. In the 1810s, however, the use of racial categories to count, describe, and classify prisoners had become widespread, elaborate, and consistent. Still, racial segregation never became the marquee reform that sex-segregation did. Reformers did not write to the legislature about its importance and official institutional records do not explicitly document the change in policy or practice when racial segregation was instituted. Still, many expressed relief upon learning that racial segregation in the prison cafeteria was instituted by 1810. Racial segregation, like sex-segregation earlier, was cited as a sign of successful administration of the jail.<sup>80</sup>

Just as earlier efforts to segregate men and women were complicated by their criminal classifications, racial identities intersected other categories as well. Moreover, the implementation of racial segregation reveals the gendered nature of the racial ideology that shaped institutional practice.<sup>81</sup> Race as a category of distinction that formed

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<sup>79</sup> Study of women convicts records shows that race is recorded less than fifty percent of the time until 1815. Leslie Patrick-Stamp claims that the clerk "almost always did" record an individual's race or place of birth. This discrepancy is due to the fact that clerks were more likely to designate the race of men, revealing a heightened attention to regulate men along lines of race. Leslie Patrick-Stamp, "Numbers That Are Not New: African Americans in the Country's First Prison, 1790-1835," *Pennsylvania Magazine of History and Biography*, January/April (1995).

<sup>80</sup> James Mease, *Picture of Philadelphia*, 167; Scharf and Westcott, *History of Philadelphia*, vol. 3, 1829-30.

<sup>81</sup> Several historians of the colonial period have shown how racial and sexual ideologies fundamentally constitute each other. Kathleen M. Brown, *Good Wives, Nasty Wenches, Anxious Patriarchs*, 42-74, 107-136; Carroll Smith-Rosenberg, "Captured Subjects/ Savage Others: Violently Engendering the New American," *Gender and History*, 5 (1993): 177-195 and "Dis-Covering the Subject of the "Great Constitutional Discussions;" Jennifer L. Morgan, "'Some Could Suckle over Their Shoulder,'" *Laboring Women*; Kristen Fischer, *Suspect Relations*.

the basis for segregation was most important in the ordering of male convicts. Just as women convicts were encouraged to work together and help each other, women prisoners worked, ate, and roomed together regardless of race. As late as the 1820s, convict women still worked and dined together across racial lines in Walnut Street.<sup>82</sup> This gendered racism was also mediated by age. Racial segregation among young boys was considered more important than among women but less important than among men. It was occasionally compromised, however, when other priorities pressed, such as making room for another workshop for the manufactory or providing less crowded rooms for men.

The relationship between racial identity formation and sex, gender, and age can be documented through the classification processes used throughout the judicial and prison system. The increase in the practice of recording race and the hardening of racial categories, along with the implementation of racial segregation, all reflect more widespread attitudes in Philadelphia at the time. The gradual change in attitudes toward racial identification coincides quite significantly with emancipation in Pennsylvania. In 1780 the Pennsylvania legislature passed the Gradual Abolition Act. The first of its kind in the country, the law required the registration of slaves and granted freedom to those not registered in the state by a given deadline. The gradual aspect of the law cannot be underestimated, as Pennsylvania's slaves could wait many years before being granted their freedom. The state did, however, become a popular destination for runaways. While some fugitive slaves from other states were returned to their owners, others blended into the city's sizable free black community and lived in freedom.

The establishment of the penitentiary just a decade after the introduction of emancipation was no coincidence. Along with freedom came a new legal and social

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<sup>82</sup> Carson, *The History of the Celebrated Mrs. Ann Carson*, 301.

apparatus to deny freedom.<sup>83</sup> Though the number of actual slaves in the city by 1785 was a negligible 420, between 1790 and 1800, the black population of Philadelphia tripled from 2,078 to 6,381.<sup>84</sup> By 1820 that number nearly doubled again. The increase of blacks in the overall population was reflected in the prison records. While the incarceration rate for black women at Walnut Street Jail almost always exceeded that of white women, between 1819 and 1833, the total number of black women in prison actually outnumbered white women.<sup>85</sup> With this growth came an increasing effort on the part of whites to police, regulate, and confine blacks both inside and outside of prison.

African Americans were treated more harshly by the courts of Pennsylvania than whites “by almost every measurement available.”<sup>86</sup> Not only were blacks more likely to end up in prison because of a racist court system, but once they were there, they continued to be treated badly. French aristocrat La Rochefoucault Liancourt pointed out that blacks were treated worse than whites, even when committed for the same crime. He critiqued this arrangement and called the inspectors hypocrites for allowing such discrimination in light of fact that “almost all the inspectors belong to a society which pleads for the freedom of the blacks.”<sup>87</sup>

African Americans figured largely in the story of penal developments. The public representation of criminality created a strong association between slavery and criminality.

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<sup>83</sup> This argument is elaborated by Leslie Patrick-Stamp, “Ideology and Punishment: The Crime of Being Black (Pennsylvania, 1639-1804),” (Ph.D. diss., University of California, Santa Cruz, 1989). For a similar consideration of the connection between liberalism and the rise of the penitentiary, see Thomas Dunn, “Friendly Persuasion: Quakers, Liberal Toleration, and the Birth of the Prison,” *Political Theory*, 13 (1985): 387-407 and *Democracy and Punishment: Disciplinary Origin of the United States* (Madison, 1987).

<sup>84</sup> Gary Nash and Jean Soderlund, *Freedom By Degrees*, 140; Gary Nash, *Forging Freedom*, 137.

<sup>85</sup> Leslie Patrick-Stamp, “Numbers That Are Not New: African Americans in the Country's First Prison, 1790-1835,” *Pennsylvania Magazine of History and Biography*, January/April (1995) 103.

<sup>86</sup> G. S. Rowe. “Black Offenders, Criminal Courts.”

<sup>87</sup> Liancourt, *On the Prisons of Philadelphia*, 44.

Advertisements for runaway servants and slaves and escaped convicts used nearly identical language and formats.<sup>88</sup> When a slave woman named Dina ran away in search of freedom, she had not committed any crime. Regardless, the ad her master published listed all of the pertinent information to assist in her recapture. For innocent slaves and convicted felons in search of freedom, the ads usually ended with a line similar to this one concerning Dina: “Whoever takes up said Negroe Woman and secures her in any gaol, so that her master may have her again, shall have THREE POUNDS reward, and reasonable charges, if brought home, paid by David Carson.”<sup>89</sup> Moreover, readers were encouraged to identify, capture, and transport runaway servants and slaves to the prison for holding. Those who occupied the lowest social positions – indentured servants and slaves – were “imprisoned” by their status, not for the charge of a legitimate crime. Slaves were required to break the law in order to obtain what other Americans championed as their birthright – freedom.

Despite broadly deployed cultural associations between African Americans and criminality and prevailing ideologies that marked African Americans as inferior, official institutional and organizational records are relatively quiet regarding race as a category of distinction or division during the 1780s and 1790s. In this regard, Philadelphia was unusual because New York recorded not only the race but also the intersection of race and sex from its earliest years.<sup>90</sup> Though the act of 1790 called for prison keepers to maintain a record or “calendar” of all those committed to their care, including a record of “the names of their crimes, the term of their servitude, in what court condemned, the ages

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<sup>88</sup> See Billy G. Smith and Richard Wojtowicz, *Blacks Who Stole Themselves: Advertisements for Runaways in the Pennsylvania Gazette, 1728-1790* (Philadelphia, 1989).

<sup>89</sup> *Pennsylvania Gazette*, July 28, 1784.

<sup>90</sup> *New York Inspectors of the State-Prison, Report of the Inspectors of the State-Prison* (Albany, 1797).

and the description of the persons of such as shall appear to be too old and infirm, or otherwise incapable to undergo hard labor,” the law did not ask for a record of the race or sex of the convict.<sup>91</sup>

For the first twenty-years of record-keeping, 1787-1807, the PSAMPP acting committee did not refer to groupings of prisoners by race. References to individual prisoners did occasionally include racial designations, but only for those of African or Native American descent. Wanton Mingo was “a Black Man deranged and sick” held in the vagrants’ ward that they requested be moved to the Bettering House.<sup>92</sup> They noted the plight of “Ruth Moore an Indian woman with her child committed” who petitioned the mayor for release.<sup>93</sup> They paid the fees of “a black man unjustly confined” and provided “a black boy” with a shirt.<sup>94</sup> This practice of inconsistent and individual characterizations of race was also reflected in the records of the Board of Inspectors. Inspectors regularly reviewed the cases of prisoners who served their time and were pending release. A list of the prisoners and the action recommended by the board was featured regularly in their meeting minutes. Often people of African descent were listed by their race and without last names while other prisoners had surnames and no racial designation. For example, on January 1<sup>st</sup>, 1795, the Inspectors “Resolved that Mary Davis, Robert Gale, William McFait and three Blacks namely Lyndia, Fabice and Pierra be recommended to the Governor for a remission of their fines.”<sup>95</sup> On March 11, 1795, they recorded, “It appears that the time of Sentence of Hugh McGargle, John Conly, Ann Winters and Thomas a

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<sup>91</sup> Pennsylvania, “An Act to Reform the Penal Laws of This State,” 22-23.

<sup>92</sup> July 10, 1800, Minutes of the Acting Committee of PSAMPP, 1798-1820, vol. 6, PSAMPP Papers.

<sup>93</sup> July 10, 1800, Minutes of the Acting Committee of PSAMPP, 1798-1820, vol. 6, PSAMPP Papers.

<sup>94</sup> October 9, 1800 and April 9, 1805, Minutes of the Acting Committee of PSAMPP, 1798-1820, vol. 6, PSAMPP Papers.

<sup>95</sup> Minutes, January 1, 1795, Inspectors of the Jail and Penitentiary House, Philadelphia Prisons System.



Negro has expired.”<sup>96</sup> Not having “negro” or “black” listed after your name did not necessarily mean that you were not of African descent. It appears that “Negro” or “Negress” often stood for a surname. “Ellen a Negress” was recommended for pardon and remission along with three men with surnames and no racial designation.<sup>97</sup> African Americans without surnames were more likely to be slaves and fewer slave women than slave men had surnames.<sup>98</sup>

The practice of official racial classification in the record keeping of prisoners began in 1808, when the PSAMPP acting committee reported, “In the east wing 96 untried prisoners, of whom 41 are negroes, many of these unfortunate creatures are in want of shirts and blankets – In the west wing are confined 46 females, some of whom stand in need of shifts and blankets.”<sup>99</sup> This report highlights the gendered racial ideology that reformers embraced – the race of men was significant, the race of women was not. In 1809, Roberts Vaux and Thomas Wistar, on behalf of the acting committee, found “confined in the east wing 74 persons about 40 of whom are negroes and 37 female prisoners in the vagrant ward of the west wing- the men are many of them without shirts and otherwise poorly clad. Most of the women have no shifts.”<sup>100</sup> Again, the race of the women was not worth mentioning. The absence of concern regarding the race of women persisted for years.

In 1814, the first count of prisoners that designated both the race and sex of those held was reported in the PSAMPP January minutes: “A visit was made to the prison on

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<sup>96</sup> Minutes, March 11, 1795, Inspectors of the Jail and Penitentiary House, Philadelphia Prisons System.

<sup>97</sup> Minutes, February 23, 1796, Inspectors of the Jail and Penitentiary House, Philadelphia Prisons System.

<sup>98</sup> Jean R. Soderlund, “Black Women in Colonial Pennsylvania,” *Pennsylvania Magazine of History and Biography*, 107 (1983) 49-68.

<sup>99</sup> November 9, 1808, Minutes of the Acting Committee of PSAMPP, 1798-1820, vol. 6, PSAMPP Papers

<sup>100</sup> January 4, 1809, Minutes of the Acting Committee of PSAMPP, 1798-1820, vol. 6, PSAMPP Papers

the 31<sup>st</sup> ult. mo. - 73 men are confined in the east wing 47 of whom are negroes – in the West wing are 54 female prisoners, 30 of whom are black women.”<sup>101</sup> This marked the beginning of a new era of record keeping and an ever refined, controlled classification of inmates who would now be regularly tracked by sex, criminal classification, race, and in a few years, age. It was not yet perfected, however. From 1814 to 1819, records inconsistently documented the intersection of race and sex. Statistical analysis by PSAMPP of convicts in the penitentiary as of July 19, 1816, still ignored racial differences among women, reporting “Whites 231, Negroes and mulattoes 176” for a total of 407 and “Males 344, Females 63” for a total of 407.”<sup>102</sup> These figures also did not include the untried prisoners, vagrants, or those sentenced to less than one year, who numbered 308 total. The fact that this group made up nearly fifty percent of the prison population but was not subject to the same classification and ordering reveals not only an underlying philosophy of which inmates needed exact superintending and which ones did not, but also the limitations of the classification system – and the failure that the limitation signals.

In 1817, PSAMPP records began to list criminals by race, sex, and crime, though still inconsistently. The 1817 record listed two different charts of men and women by race, along with an accounting of the total numbers of crimes. In 1818 and 1819, the record distinguished between white women and black women and detailed their crimes, but did not provide the same detail for the men. Men were classified by race and the total number of crimes committed, but without a specific record of crimes. In 1820, however,

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<sup>101</sup> January 10, 1814, Minutes of PSAMPP, 1810-1832, vol. 2, PSAMPP Papers

<sup>102</sup> PSAMPP, *A Statistical View of the Operations of the Penal code of Pennsylvania; to Which is Added, a View of the Present State of the Penitentiary and Prison of the City of Philadelphia*, (Philadelphia, 1817), 14.

PSAMPP refined its record keeping and provided a detail listing of criminals by race and sex and crime.<sup>103</sup>

This penchant for greater distinction and identification of prisoners, by race, sex, crime, and now age, became a consistent practice by 1820. In the January 1820 report, convicts were categorized in by sex, race, and age. The total number, 454, was broken down as follows, “Of these 251 were white men, 12 white Boys (under 18 yrs of age) 127 Coloured men, 10 Coloured boys, 22 white women, 2 white girls, 28 Coloured women, & 2 Coloured girls.”<sup>104</sup> Reformers were interested in dividing up groups of prisoners into ever more atomized subgroups. This came at a time when more general efforts to segregate prisoners by criminal classification were failing, leading most inspectors and reformers to believe that reform would never succeed at Walnut Street and that solitary confinement was the only way to prevent contamination among prisoners. The same report reveals attention to racial segregation in the solitary cells, “In one cell 6 Blackmen, in 2 Cells 3 blackmen each, and in one 4 white men,” as well as sex and age segregation in the vagrant wards which contained “158 males & 61 females; of these 12 were boys & 6 girls.”<sup>105</sup> Still, detailed record keeping did not signify segregation. Even though sex-segregation of vagrants was achieved by 1820, vagrants were still a “motley crew” who lived and worked together with “very little distinction made as to colour or crime.”<sup>106</sup>

Once vagrants were moved to Arch Street Prison in 1823, more detailed record keeping was finally possible. Arch Street Prison records from 1823 until 1826 designated a clear breakdown of inmates by crime, race and sex – in that order: “1823 Vagrants:

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<sup>103</sup> Roberts Vaux, *Notices of the Original, and Successive Efforts*.

<sup>104</sup> January 10, 1820, Minutes of PSAMPP, 1810-1832, vol. 2, PSAMPP Papers

<sup>105</sup> Ibid.

<sup>106</sup> D.M’Kenzie, “*A Just and True Account,*” by Person Who Has Been An Eye Witness (Philadelphia, 1820).

male whites 256, female whites 200, male blacks 250, female blacks 200. Disorderly male whites 151, female whites 160, male blacks 134, female blacks, 140.”<sup>107</sup>

Despite the heightened attention to race, the issue of racial segregation was not a focal point of discussion by keepers or inspectors. PSAMPP and the Board of Inspectors did not advocate racial segregation explicitly or petition the state legislature for help to implement such a separation the way they did for sex-segregation. They never cited racial segregation as central to providing an optimal environment for character development. Racial segregation was never officially sanctioned in the law of the state or rules governing the prison. It was twenty years of record keeping before PSAMPP even noted the race of inmates in its regular count of the prison population.

Still, records kept by the acting committee of PSAMPP reveal the development of the practice of racial classification, a requisite step to the institution of racial segregation. By following the development of racial classification in recordkeeping, we see the development of identity categories based on race, sex, and age that became increasingly hardened in the 1820s. Moreover, increased attention to racial classification coincided with an ideological commitment to racial segregation. Concern over racial segregation in Philadelphia increased in the first decade of the nineteenth century for several reasons. Most discussion of prisoners with specific reference to race begins in the early years of the nineteenth century, a time when racial tensions in the city were increasing due to news of the rebellion at Saint Domingue, the arrival of refugees from Le Cap Francais, and the migration of free blacks as well as fugitive slaves.<sup>108</sup> Black Philadelphians learned of and annually celebrated the revolution that ended slavery in Saint Domingue,

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<sup>107</sup> George Rugan, “Documents Accompanying the Commissioners’ Report.”

<sup>108</sup> Gary Nash, *Forging Freedom*, 173; Gary Nash, *First City*, 125.

inspiring their own efforts to abolish slavery in Pennsylvania.<sup>109</sup> Only with significantly greater numbers of blacks in the city – and in the prison – did inspectors demonstrate concern about racial segregation. Then the inspectors decided to use one of the rooms designated for boys to ease the overcrowding of “The Black Convicts Men’s lodging rooms.” To do this, however, they had to sacrifice racial segregation among the boys, noting, “This will be an encroachment on the well directed intention of the Board, in the separation of the black from the white boys.”<sup>110</sup> Racial segregation probably existed informally in some sections of the prison, but not in others. Records describing the “black men’s cell” reveals segregated sleeping arrangements for the men even as they continued to work and dine together. In the end, however, there was never enough space and racial differences were never considered a top priority.

Racial segregation was implemented as a part of the broader agenda to instill order in the prison by categorizing people and separating them from each other. Heightened attention towards racial segregation of the men points to the unique value assigned to the punishment of men in the new system. The monitoring and regulation of the daily routine and work habits of men regardless of race was more important than that of women. The implementation of racial segregation just as the numbers of African Americans swelled is no surprise. The increase in size of the African American community in Philadelphia at this time contributed to heightened racism on the part of whites and a renewed commitment to racial segregation in a variety of social realms.

Together, race and sex segregation efforts in prison formalized the groupings and hierarchies which ordered society. Racial segregation served to enforce and perpetuate a

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<sup>109</sup> Gary Nash, *First City*, 127.

<sup>110</sup> Minutes, June 9, 1812, Inspectors of the Jail and Penitentiary House, Philadelphia Prisons System.

racial hierarchy which the abolition of slavery threatened to weaken. It served no practical institutional function. While sex segregation formed the basis of the sexual division of labor in the prison, racial segregation efforts had a more significant impact outside of prison by formalizing and institutionalizing the process of racial classification, which was no easy task at the turn of the nineteenth-century.

### **Chapter Three: Prison Manufacturing & the Sexual Division of Labor**

Many reformers feared that efforts to refine the penal system had been undermined by the fiasco of public labor and that the state might revert back to the use of corporal punishment and harsh penalties. They were relieved and rejuvenated by the passage of the Act of 1790, which again transformed the penal system and was even more progressive than the 1786 law. Influenced in large part by the advocacy of PSAMPP, the state legislature drafted the new law to assign punishments for crimes previously capital, outline a clear system of management and oversight of the prison, and introduce solitary confinement as a component of sentences that were now centered on hard labor as the primary means of reformative punishment.<sup>1</sup> All of these changes distinguished Pennsylvania's penal code from other states and became the basis for the world wide model known as the "Pennsylvania System."<sup>2</sup>

The shift to semi-private institutional labor was inspired by the failure of public labor. Legislators began the act of 1790 with a critique of the previous policy:

The laws heretofore made for the purpose of carrying the said provisions of the constitution into effect, have in some degree failed of success, from the exposure of the offenders employed at hard labor to public view, and from the communication with each other not being sufficiently restrained within the places of confinement.<sup>3</sup>

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<sup>1</sup> Pennsylvania, "An Act to Reform the Penal Laws of This State," 3-26.

<sup>2</sup> Negley K. Teeters, *They Were in Prison*, 41.

<sup>3</sup> Pennsylvania, "An Act to Reform the Penal Laws of This State," 4.

Public punishment failed because of the public's exposure to the criminal and their exposure to each other. The new law called for all convicts to labor behind the prison walls and considered manufacturing central to the new punishment scheme. It also marked the beginning of the era of the state penitentiary, requiring all counties in Pennsylvania that convicted someone to hard labor for a year or more to send that person to Walnut Street Prison to serve out their time.<sup>4</sup> This act, like the one before it, had distinctive implications for men and women and revealed how sex roles and gender norms influenced perceptions of prisoner obedience, submission, and reformation.

A 1791 amendment to the law added layers of oversight and structure to prison administration. It charged the mayor, two city aldermen, and two justices of the peace with the duty of appointing the keeper of the jail and a board of inspectors that would oversee the prison and the keeper.<sup>5</sup> Early jailers were reputedly as corrupt as their charges and resisted oversight. Keeper John Reynolds was held responsible for much of the disorder found at Walnut Street and reformers spent years trying to get rid of him. Reynolds helped to organize a revolt of prisoners on the eve of the implementation of the new law which resulted in the escape of fifteen prisoners and his ouster.<sup>6</sup> The jailer, who was previously answerable to no one, now had to report to the Board of Inspectors, in addition to having members of PSAMPP poking around the prison regularly.

The newly appointed jailor Elijah Weed embraced the new system, welcomed collaboration with judges, assemblymen, and inspectors, and was generally held in high esteem. Inspectors took the unusual action of running a notice in the paper praising his

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<sup>4</sup> Ibid, 25.

<sup>5</sup> Pennsylvania, "A Supplement to the Penal Laws of This State, September 23, 1791," *Collection of the Penal Laws*, 41-2.

<sup>6</sup> Michael Meranze, *Laboratories of Virtue*, 189.



work, stating they were “happy to inform their fellow-citizens, that his general attention to the various duties of his important trust, merit their approbation.”<sup>7</sup> Prisoners initially welcomed the inspectors and regarded them as “their friends and benefactors” while inspectors focused on providing prisoners with food and clothing.<sup>8</sup> When they began instituting tighter regulations, however, and turned their attention to oversight of the manufactories, some prisoners turned on them and “looked upon them as enemies.” Inspectors made both friends and enemies among the wide range of inmates over the years. Supporters of penal reform were relieved that Pennsylvania was still moving ahead and they were optimistic about the new systems put in place to manage the prison and oversee the work of the jailer.

The newly designated board of inspectors cited three goals for their work: public security, reformation of the prisoners, and humanity towards them.<sup>9</sup> Such an explicit concern with the treatment and well-being of prisoners reflected an entirely new attitude toward those condemned. The belief that those convicted of serious offenses against society could or even should be attended to rather than cast away was also radical.<sup>10</sup> Pennsylvanians were not the only ones experimenting with humane punishment. Increasing identification with the humanity and suffering of other people, inspired by enlightenment philosophies, moved reformers in France and England as well as Connecticut, Massachusetts, New York, New Jersey, and Virginia to limit the use of capital punishment and utilize solitude as a tool of punishment and reformation.<sup>11</sup>

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<sup>7</sup> *Pennsylvania Gazette*, November 2, 1791.

<sup>8</sup> Liancourt, *On the Prisons of Philadelphia*, 28.

<sup>9</sup> George Meade, "Report of the Board of Inspectors of the Prison for the City and County of Philadelphia," *The Universal Asylum and Columbian Magazine*, (1791), 398.

<sup>10</sup> Bruce Dorsey, *Reforming Men and Women*, 11-49; Michael Meranze, *Laboratories of Virtue*, 131-172.

<sup>11</sup> Louis P. Masur, *Rites of Execution*, 71-92; Michel Foucault, *Discipline and Punish*, 104-131.

Efforts to reach the soul of an individual and to alter fundamentally their moral disposition were still bound by the physical plane. In fact, inspectors paid close attention to their work with the bodies of prisoners. Strict regulation of the prisoners' daily schedule including working, cleaning, eating, and sleeping marked the new penitentiary as distinct from the old county jail. The list of conditions necessary for reformation, according to the inspectors, focused largely on physical ordering: "By promoting habits of industry, by a separation of the sexes, by the prohibition of spirituous liquors, by exclusion of improper connexions from without, and by confining the refractory to solitude, low diet, and hard labour."<sup>12</sup> Only one item on the list, "moral and religious instruction," did not concern the regulation of bodies.

Of all new regulations, labor became the nearly singular focus of the inspectors over the next twenty years. The establishment of manufactories in prison was part of the push for greater industrial capacity in the new nation. The same month that the penal code was amended to establish manufacturing in state prisons, Americanus argued in *The Columbian Magazine* that for a nation to be independent and prosperous, it must have both natural resources and production capabilities to turn raw materials into usable goods. Americanus wrote, "A whole people depending on agriculture, without the aid of manufactures, cannot be wealthy or powerful as a nation."<sup>13</sup> The development of a penal system with labor at its core must be examined as intimately linked to the regional economic and political culture.

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<sup>12</sup> George Meade, "Report of the Board of Inspectors."

<sup>13</sup> Americanus, "On American Manufactures," *The Columbian Magazine*, September 1786.

Philadelphia's post-revolutionary economy was dynamic, diverse, and expanding, with the greatest profits to be had by large scale merchants.<sup>14</sup> It was generally thriving and prosperous for much of the second half of the eighteenth century, though this expansion did not translate into stability or prosperity for everyone.<sup>15</sup> Most jobs were tied to the maritime economy in one way or another. The success of merchants, retailers, shipbuilders, and mariners was often shaped by natural and international forces out of their control.<sup>16</sup> Women were most likely to work at domestic service or in retailing, which ranged from "huckstering" on the lower end, re-selling slightly used or damaged goods on the street, to specialized and sizable retail establishments on the higher end.<sup>17</sup> Though trade with the West Indies was the lifeblood of the city's economy for much of the eighteenth century, the percentage of America's foreign commerce that entered the port of Philadelphia dropped from twenty to ten percent by 1810.<sup>18</sup> During this period, New York replaced Philadelphia as the most popular port for foreign commerce, and Philadelphia's exports became miniscule. At the same time, American manufactories received a boost from embargos on British goods between 1807 and 1809 and again between 1812 and 1815. Americans began to produce the goods they previously purchased from the British, but the embargos also damaged foreign commerce and maritime trades.<sup>19</sup> The role of manufacturing was thus hotly contested in debates over the nation's economic future. Some proposed that commerce, especially in agricultural

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<sup>14</sup> Thomas M. Doerflinger, *A Vigorous Spirit of Enterprise: Merchants and Economic Development in Revolutionary Philadelphia* (Chapel Hill, 1986); Karin Wulf, *Not All Wives*.

<sup>15</sup> Billy Smith, *The "Lower Sort"*, 91.

<sup>16</sup> Billy Smith, *The "Lower Sort"*; For analysis of the impact of this instability on merchants, see Toby L. Ditz, "Shipwrecked; or, Masculinity Imperiled."

<sup>17</sup> Wulf, *Not All Wives*, 142-146.

<sup>18</sup> Ronald Shultz, *The Republic of Labor: Philadelphia Artisans and the Politics of Class, 1720-1830* (New York, 1993), 75 and 165.

<sup>19</sup> Shultz, *The Republic of Labor* 166.

goods, was the key to national prosperity, while others believed the future lay in industrialization.<sup>20</sup>

Advocates for manufacturing claimed the long-term financial viability of a sovereign state hinged on an increase in production which would ensure independence from other nations for basic supplies.<sup>21</sup> Manufacturing innovations were regularly featured in local magazines and newspapers and all sorts of political and economic significance was attributed to them. In rural Pennsylvania, the spinning-wheel was increasingly popular and became known as a “fashionable piece of family furniture.” The popularity of spinning, along with the establishment of looms, cultivation of flax, and efforts to increase the quantity of wool available would enable the United States to become “respectable and independent.”<sup>22</sup> Groups of manufacturers, merchants, and capitalists organized to promote their views, including the Pennsylvania Society for the Encouragement of Manufactures and the Useful Arts which formed in 1787.<sup>23</sup> Artisans and manufacturers regularly complained about the waste of the nation’s wealth on the purchase of imported goods that were either unnecessary or could just as easily be produced in the colonies.<sup>24</sup>

Supporters of expanding manufacturing in America were explicit about the role that idle, vagrant, and criminal people could play in the process. While reformers advocating manufactories in prison focused narrowly on the importance of hard work and discipline in affecting a reformation, manufacturing advocates often put the success of

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<sup>20</sup> Shultz, *The Republic of Labor*, 113.

<sup>21</sup> Robert Strettel Jones, “An Oration, Delivered in the College of Philadelphia, Before the United Company of Philadelphia for Promoting American Manufactures. March 17<sup>th</sup>, 1777,” *The American Museum, or, Universal Magazine*, March 1789.

<sup>22</sup> *The Pennsylvania Journal and Weekly Advertiser*, April 12, 1788.

<sup>23</sup> Shultz, *The Republic of Labor*, 166.

<sup>24</sup> *Subscribers, Artisans, and Manufacturers of Philadelphia, To the Honorable the Senate and House of Representatives of the United States* (Washington, 1803).

the national economy on the shoulders of those deemed less worthy. Arguments for putting poor and criminal people to work, however, were circular. For criminals, hard work would provide the discipline and structure they needed to allow for the re-ordering of their minds. For poor people not formally charged with any crime, such labor would keep them from the state of idleness, which was conducive to producing a criminal mind. Tench Coxe, a leading advocate of manufacturing, also connected the stability of the nation to the labor of poor people in manufactories. Coxe argued that a free government would inevitably “produce vicious habits and disobedience to the laws” among citizens who were impoverished or idle. If people could not find other types of employment, then it was of “utmost consequence” to put them to work in the manufactures.<sup>25</sup>

Expanding the manufacture of goods within the states would solve two problems at once – the over-dependence on England for most goods and the growing numbers of poor and idle people in cities. The perceived abundance of young people who spent their days “begging” and “huckstering” and the many “indigent women” who were supported by taxes were an obvious and open target to those who sought to expand the production of goods and establish a less import-dependent economy.<sup>26</sup>

Like so many of their plans for the new penitentiary, Pennsylvanians got their idea for self-sustaining, lucrative manufacturing systems from the British. Pennsylvania lawmakers and reformers exchanged frequent letters with their British counterparts and in 1790 published a sampling in pamphlet form to gain local support for their plans by

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<sup>25</sup> Tench Coxe, “Address to an Assembly of the Friends of American Manufactures,” *The American Museum*, September, 1787.

<sup>26</sup> Americanus, “On American Manufactures,” *The Columbian Magazine*, September 1786.

presenting the successes achieved across the pond.<sup>27</sup> The manufactory of Norfolk, prison specialized in the cutting of logwood and “beating, heckling, and spinning hemp,” and both of these practices were adopted in Walnut Street.<sup>28</sup> In Norfolk, the approximate pay-rate of the men prisoners in “the labour of heckling” was from “eight shillings to ten shillings per week.” Women’s work was not given a value, but was described as highly efficient. “The women and girls spin it by a wheel so contrived as to draw a thread with each hand; by which means, *two* of them can earn at least equal wages with *three* women spinning with one hand only.” This practice of not placing specific monetary value on women’s labor but praising their work ethic or accomplishments carried over to Pennsylvania institutions as well.

Just as labor in prison became the law of Pennsylvania for men and women, PSAMPP sought to assure the public of its utility. By citing the productivity of manufactories and the general order achieved in British prisons, people could rest assured that such an outcome was inevitable for Pennsylvania. Yet the successes outlined – such as prisoners earning so much money that they paid for their keep and were released with pockets full of cash – were rarely achieved in Pennsylvania. The few prisoners who did manage to earn some extra money were always men. One inspector reported, “There are now men in the house who appropriate a part of their earnings to the support of their families.”<sup>29</sup> Reformers, largely though not exclusively merchants and artisans, understood that more workers could sustain an expanded manufacturing enterprise. None explicitly claimed to want an increase in criminals. Still, the prison did require a minimum number

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<sup>27</sup> PSAMPP, *Extracts and Remarks*; Negley Teeters described the pamphlet as “modest propaganda on penal reform in order to acquaint the general public with current methods of penal discipline, especially those in practice in England. See Teeters, *They Were in Prison*, 31.

<sup>28</sup> PSAMPP, *Extracts and Remarks*, 11.

<sup>29</sup> Caleb Lownes, *An Account of the Alteration and Present State*, 90.

of inmates to run its manufactories and cover its operational costs. An English jailer warned them of the need for a large labor pool to ensure the profitability of prisons, suggesting that the range of manufacturing shops could be expanded “If the number of prisoners increase.”<sup>30</sup> Even in the halcyon decade of the 1790s, one inspector worried that if the number of prisoners “becomes too few,” they might have trouble subsidizing “the salaries of the officers of the house.”<sup>31</sup>

As concerns about profitability suggest, articulation of the purpose of labor and the ideal type of labor varied and at times contradicted each other. Was work to make the penitentiary self-sufficient or to reform the inmates? Benjamin Rush insisted that hard labor was one part of a punishment scheme that should also incorporate bodily pain, solitude, watchfulness, silence, cleanliness, and a simple diet.<sup>32</sup> Rush was obsessed with regulating individual prisoners and transforming them into independent liberal subjects.<sup>33</sup> The ambiguous role for convict women makes sense when we consider that the reformed criminal subject was modeled on the liberal subject – active, free thinking, and independent. Women were thus already excluded. Reform called for individuation at a time when women were grouped together and understood en masse. Women did not figure into Rush’s philosophy of work as their labor could never fill his desired goal that it be “profitable to the state.” The profits of inmate labor could offset the cost of their keep somewhat, but anyone who read the annual reports of the city’s Bettering House

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<sup>30</sup> PSAMPP, *Extracts and Remarks*, 11-12.

<sup>31</sup> Caleb Lownes, *An Account of the Alteration and Present State*.

<sup>32</sup> Benjamin Rush, *An Enquiry into the Effects*, 13.

<sup>33</sup> This value put Rush at odds with his own republicanism and was one of many internal contradictions that doomed the reform movement. See Robert Sullivan, “The Birth of the Prison: the Case of Benjamin Rush,” *Eighteenth-Century Studies*, 31 (1998): 333-344.

knew that popular forms of institution-based work such as picking oakum and spinning linen were not profitable.<sup>34</sup>

In 1792, the inspectors formally instituted a set of “Rules, Orders, and Regulations, for the Gaol, of the City and County of Philadelphia” and made guidelines concerning labor a clear priority.<sup>35</sup> One labor-specific rule designated that sex-segregation be maintained during work, meals, and sleeping. The other dealt more directly with work itself, stating,

The prisoners shall be constantly employed in such labour as the keeper (with the concurrence of the inspectors) may consider best adapted to their age, sex, and circumstances; regard being had to that employment which is most profitable.<sup>36</sup>

As the board became obsessed with production among prisoners, it learned to adapt work to the skills and abilities of the prison population. Men and women had different tasks, but distinctions influenced by age, circumstances, or skills were only formally made among the men, not women. Old and infirm men were assigned to certain jobs, while men with particular skills or trades were encouraged to practice them. Among women, however, everyone was required to sew, spin, or wash. Though establishing profitable manufactories was important in theory, maintaining the sexual division of labor was always more important. Keeping women at work in less profitable realms, despite their repeated demonstrations of discipline and hard work, reveals that training men and women for their appropriate role in the heterosexual economic system was actually a

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<sup>34</sup> Reports were published annually in the *Pennsylvania Gazette* after 1770; see Gary Nash, “Poverty and Poor Relief,” Newman, *Embodied History*, 16-39.

<sup>35</sup> *Board of Inspectors, Rules, Orders, and Regulations, for the Gaol of the City and County of Philadelphia*, (Philadelphia, 1792).

<sup>36</sup> *Ibid.*



greater priority than the financial stability of the prison labor scheme. In practice, then, the unarticulated value of the sexual division of labor was more important than the articulated value of production profits.

The financial imperative of labor as a means for convicts to pay their own keep dominated the efforts of the newly incorporated board of inspectors. This reflects a slight but significant departure from the approach to labor that was laid out in the 1790 law, which calls for labor “of the hardest and most servile kind.”<sup>37</sup> The most profitable labor was often not the most servile. When profit motives and reform motives contradicted each other, which one should be more highly prized? Was the path to moral reformation better achieved by cultivation of a sense of accomplishment and self-worth derived from engaging in profitable labor or a sense of worthlessness and shame resulting from the most menial work? There was no clear answer. Balancing the budget, managing labor, and regulating manufacturing units occupied a large amount of the time and attention of the board. Critics later claimed this focus on profit resulted in less concern with moral reform and was directly responsible for the institution’s failure by the 1820s. But at its inception in 1791, the board of inspectors was enthusiastically backed by legislators, judges, and reformers.

Prison life changed under the supervision of the inspectors, but it did not change as quickly as they hoped – or boasted. In the board’s first published report in 1791, George Meade wrote, “The prison is no longer a scene of debauchery, idleness, and prophanity, an epitome of human wretchedness, a seminary of crimes destructive to

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<sup>37</sup> Pennsylvania, “An Act to Reform the Penal Laws of this State,” 11.

society, but a school of reformation, and a place of public labour.”<sup>38</sup> To Meade’s credit, some of the more egregious practices noted five years earlier no longer occurred. However, the extent to which the jail would become a “school of reformation” and a “place of public labour” was yet to be determined.

A focus on women best demonstrated the potential of the program. When it came to prison labor, women in the state penitentiary were model inmates. Report after report states how hard they worked and how seldom they were idle. Women in Pennsylvania worked separately from the men, primarily at spinning flax, heckling, sewing, washing, mending, and knitting gloves and stockings.<sup>39</sup> Prison women put to work in the manufacturing of flax and hemp was just what Americanus had in mind when he advocated the long list of benefits to be derived from such manufactories. Not only would farmers and mechanics profit, but “otherwise useless hands” and “the poor” could be employed in such work.<sup>40</sup>

Though most women were fully employed, inspectors planned to increase the *range* of women’s employment in the late 1790s. In 1798, the visiting committee of inspectors reported that women were “employed at knitting gloves & stockings” and the “hope is entertained of them being occupied in other useful employments.”<sup>41</sup> But the range of women’s work was never significantly extended. Reports of women’s work were usually much less detailed than those of men’s. The most extensive discussion of women’s work occurred in 1800, when the inspectors reported that women’s work

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<sup>38</sup> George Meade, “Report of the board of inspectors of the prison for the city and county of Philadelphia,” *The Universal Asylum and Columbian Magazine* (1791): 398.

<sup>39</sup> Minutes, February 27, 1798 and June 19, 1809, Inspectors of the Jail and Penitentiary House, Philadelphia Prisons System; Meade, “Report of the Board of Inspectors,” 91; Liancourt, *On the Prisons of Philadelphia*, 13.

<sup>40</sup> Americanus, “On American Manufactures,” *The Columbian Magazine*, September 1786.

<sup>41</sup> Minutes, February 27, 1798, Inspectors of the Jail and Penitentiary House, Philadelphia Prisons System.

consisted of “washing and cleaning their apartments spinning, knitting mending and making their own cloaths and for the men convicts all their shirts.” As they did for the men, inspectors kept track of the materials used and work done. The keeper reported that it took the women “their whole time nearly” to get their work done.<sup>42</sup> The only report that described women as idle was made in 1799, when the prison was beset by illness and arson. Many of the women were described as “extremely ill” and in desperate need of medical attention. Others were simply idle, as many of the spinning wheels were destroyed when some convicts set fire to the workhouse.<sup>43</sup>

Vagrant, slave, and servant women were also to be kept at work, conducting a similar range of tasks as the convict women. In 1799, PSAMPP visitors noted an “improvement” in the vagrant women’s ward since spinning wheels were provided and the women were kept busy “at spinning and picking Hair.”<sup>44</sup> Picking hair was a “disgusting” assignment that reportedly could “create distemper.” A former inmate complained that the smell was so awful as “to cause many of them to vomit, and set all hands to coughing.”<sup>45</sup>

Women’s work in the prison was quite similar to that of women in other Philadelphia institutions at the time, particularly in the House of Employment. In 1796, women there were reportedly employed at “carding, spinning, knitting, swing, & c.”<sup>46</sup> Efforts were also made by the managers of the Alms House to keep poor people busy and employed even if they were not inmates of the House. This policy was seen as a generous opportunity, to be extended to “industrious women and heads of families” and included

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<sup>42</sup> Minutes, August 17, 1807, Inspectors of the Jail and Penitentiary House, Philadelphia Prisons System.

<sup>43</sup> January 12, 1799, Minutes of the Acting Committee of PSAMPP, 1798-1820, vol. 6, PSAMPP Papers

<sup>44</sup> June 10, 1799, Minutes of the Acting Committee of PSAMPP, 1798-1820, vol. 6, PSAMPP Papers

<sup>45</sup> D.M’Kenzie, “*A just and true account*” by a Person who has been an eye witness,” (Philadelphia, 1820).

<sup>46</sup> *Ordinances, Rules and Bye-Laws for the Alms-House and House of Employment*, (Philadelphia, 1796), 7.

the supply of “flax, hemp, cotton, [or] wool” to be manufactured in their own homes.<sup>47</sup>

Though the poor were no longer eligible for out-relief, this small bridge between out-relief and institutionalization was made available to those deemed worthy. Even those promoting what appears to be a kind and benevolent plan, however, embraced the attitude that the poor “owed” their labor, if not to the nation, then at least to the community that helped sustain them. The committee argued that the poor “have nothing but their labour to bestow, on this labour the public has a right to insist.”<sup>48</sup> Many believed the same thing about criminals.

Despite the apparent ubiquity of women’s labor, their work had much greater immediate significance to the well-being of prisoners than men’s work did. By the 1790s and perhaps sooner, women made the clothing for both themselves and male prisoners. Inspector Lownes reported, “Most of the clothing, at present, is spun, wove, and made up in the house, and is designed to be so altogether in future.”<sup>49</sup> Women were charged with making clothes for the inmates, and the number of references to naked prisoners or those “said to have no cloathing” highlights the urgency of the task. The visiting committee of PSAMPP reported in 1804 on “a young woman of the name of Sarah Keys who is said to have no cloathing but a shift, Sarah Hopple in near the same situation.”<sup>50</sup> Some clothing was better than none, but the material used to make the clothing was “tow-linen,” the grade of material often used for “wagon-covers and house-cloths, not even bleached.”<sup>51</sup>

Some men did assist women with clothing production, as men were reported to do the

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<sup>47</sup> *Committee to Digest a Plan for the More Effectual Relief of the Poor, A Plan for the Government of the Alms-House, and for Ordering the Affairs of the Poor in the City of Philadelphia, Township of Northern Liberties, and District of Southwark* (Philadelphia, 1805), 8.

<sup>48</sup> *Ibid.*, 15.

<sup>49</sup> Caleb Lownes, *An Account of the Alteration and Present State*, 84.

<sup>50</sup> March 8, 1804, Minutes of the Acting Committee of PSAMPP, 1798-1820, vol. 6, PSAMPP Papers

<sup>51</sup> Carson, *The Celebrated History*, 300.

weaving while women “made up” the article itself.<sup>52</sup> This was consistent with artisan work practices during the period. Women and children spun, men weaved, and women sewed the clothing.

A typical board of inspectors report might include pages breaking down the different manufactories, costs of the goods, price of the sale of the goods, and pay rate of the male prisoners. The practice of lumping women and their work together while providing ever more detailed categories of male workers was customary. When the board put Francis Higgins in charge of overseeing and documenting all of the labor in prison, they asked him “To keep in a book for that purpose an account of all the work done by the women convicts, shoemakers, woolcarders, weavers, carpenters, logwood chippers and generally an account of all work done by the convicts in doors.”<sup>53</sup> Women were grouped by sex, not by type of work performed.

Valuation of women’s work was also rare but generally half of that given to men. An early committee valued the work of women cooks and washers at 1 shilling 6 pence. The male cook, simply designated “the first cook,” was allotted 3 shilling 3 pence.<sup>54</sup> One inspector’s report in 1809 set the value of women’s work at twenty-five cents per day. Under the heading “Women,” the inspectors wrote, “Spinners, washers, and other able bodied whose employment is irregular 25 cents per day.”<sup>55</sup> The same report assesses thirty cents a day to “able bodied men whose employment is irregular.” The value of women’s work actually declined over time. In 1812, women’s work was valued at twenty cents a day, down five cents from just three years earlier. The inspectors reported

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<sup>52</sup> Robert J. Turnbull, *A Visit to the Philadelphia Prison*, 25.

<sup>53</sup> Minutes, August 18, 1795, Inspectors of the Jail and Penitentiary House, Philadelphia Prisons System.

<sup>54</sup> Minutes, March 11, 1795, Inspectors of the Jail and Penitentiary House, Philadelphia Prisons System.

<sup>55</sup> Minutes, June 19, 1809, Inspectors of the Jail and Penitentiary House, Philadelphia Prisons System.

that “no more than 20 cents per day be allowed to such of the Convicts Woman as are engaged in work for which no particular price is fixed.”<sup>56</sup> By 1816, one week of work in prison earned women one-third to one-half of what men earned.<sup>57</sup>

The inspectors often recorded their notes in passive terms, making it hard to identify individual motives and attitudes. In considering the resolution that the payment for women’s labor be lowered, it is interesting to consider the function of such passivity, both of voice and action. The effect of their action became the cause of their action. Because “no particular price is fixed” to women’s work, it is less valued than work that has a fixed price; yet the inspectors themselves made the decision not to designate the worth of women’s work in the detailed way they did men’s. Just as men’s wages were determined by the number of pairs of shoes produced or the number of nails headed, women’s work *could* have been valued by the number of shifts made or the yards of flax spun. Work that did not have a price fixed was inherently worth less than work that did. Women’s work was also used as an explanation for serving female prisoners smaller quantities of food than the men. Because their tasks were “less laborious” than the men’s, they received the “same quality” of mush, potatoes, and bread but in smaller portions than the men received.<sup>58</sup> Had they been given more food, perhaps the women would have been able to bear a more demanding workload.

It was a good thing that sex-roles relieved women from the burden of supporting their families because on 20 cents a day, they could barely feed themselves. Men prisoners, however, were offered the possibility of earning enough from their labor to

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<sup>56</sup> Minutes, April 27, 1812, Inspectors of the Jail and Penitentiary House, Philadelphia Prisons System.

<sup>57</sup> “Letter to William Allen in London,” October 18, 1816, Minutes of PSAMPP, 1810-1832, vol. 2, PSAMPP Papers.

<sup>58</sup> Robert J. Turnbull, *A Visit to the Philadelphia Prison*, 36.

give the surplus to their families. Several reformers noted this as a positive aspect of the new system. The inspectors reported paying the wife of an inmate from his wages “to assist her in her present embarrassments.”<sup>59</sup> None appeared to worry about the plight of the families of women prisoners, though some surely had children, parents, and perhaps even husbands who needed their earnings. Working poor families relied on the contribution of women’s wages to meet the basic necessities of food, fuel, shelter, and clothing; those slightly better off may have used the income women earned to cover “the extra expenses of taxes, medical bills, candles, soap.”<sup>60</sup> The prison-based economic system exploited convicts’ labor for the gain of the institution and in the process denied inmates, especially women, the ability to protect or pay for their own assets.<sup>61</sup>

The fact that women’s work, including such conventionally domestic tasks as washing, cooking, cleaning, and sewing, was not evaluated as highly as men’s is revealing. Historians have demonstrated the process through which women’s household labor became less visible and less valued during the early republic as a market-based economy developed.<sup>62</sup> Women’s labor in prison at the end of the eighteenth century forecasts what happened to free women’s labor over the next thirty years. The fruits of her work sustained the community yet never had an articulated market value. Women’s work was considered effortless and the women themselves required minimal supervision or discipline. At the same time, the products of their labor had obvious uses and

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<sup>59</sup> Minutes, November 7, 1796, Inspectors of the Jail and Penitentiary House, Philadelphia Prisons System.

<sup>60</sup> Billy Smith, *The “Lower Sort,”* 111-112; 118-119.

<sup>61</sup> Ann Carson complained about losing her assets while in prison. See Ann Carson, *The Memoirs of the Celebrated and Beautiful Mrs. Ann Carson, Daughter of an Officer of the US Navy and Wife of Another, Whose Life Terminated in the Philadelphia Prison*, (Philadelphia, 1838).

<sup>62</sup> Boydston, *Home and Work* and “The Woman Who Wasn’t There: Women’s Market Labor and the Transition to Capitalism in the United States,” *Journal of the Early Republic*, 16 (1996): 202; Susan Branson, “Women and the Family Economy in the Early Republic: The Case of Elizabeth Meredith,” *Journal of the Early Republic*, 16 (1996) 47-71.

distribution was easy, unlike men's work which was constantly plagued by troubles with supplies, discipline, and distribution. By the late eighteenth century, women not only performed different kinds of work with different values but did so in increasingly sex-segregated arenas. The fulfillment of the domestic tasks of prison life necessitated a steady female population within the prison. Indeed, the large numbers of women in prison enabled the prison management to ensure sufficient coverage of caretaking chores. While one consequence of this was to domesticate a group of disorderly women, this was not the primary focus of reformers. Instead, reformers were concerned with character transformation of male prisoners – real criminals – and relied on women in prison to support the system.

Just as compulsory heterosexuality functions to domesticate women and all but necessitate their dependence on men, the sex-segregated labor practices of the nation's first penitentiary also domesticated women.<sup>63</sup> Women's labor in prison was invisible to the public and largely ignored by reformers and inspectors. Like the ideal for women of the early republic, prison women were kept out of the public sphere and away from the public's gaze. At the same time, however, the system of sex-segregated labor, in which women produced much of the clothing and bedding used by the prisoners, cultivated a culture of men's dependence on women. Yet prisons did not thereby enhance women's status. As a free citizen, a woman might labor for wages, keep house, take care of the children, and still benefit from her husband's earnings. With the decline of slavery and indentured servitude in the North after the revolution, the practice of women traveling to

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<sup>63</sup> For elaboration on this concept, see Adrienne Rich, "Compulsory Heterosexuality and Lesbian Existence," *Signs*, 5 (1980): 631-660.



other people's homes to provide a wide range of domestic services for wages increased.<sup>64</sup>

As a prisoner, a woman sustained male prisoners for almost nothing in return.

Men worked at a far wider range of tasks than women did. Those men who were skilled artisans were encouraged to labor at their trade while in prison. Supplies were provided for shoemakers, tailors, and other craftsmen. In the first year of record keeping, men were busy preparing flax, pounding hemp, picking oakum, grounding plaster of paris for manure, and chipping logwood.<sup>65</sup> In June 1794, when Caleb Lownes and Benjamin Rush visited the prison several tasks -- sawing marble, weaving, shoemaking, tailoring, and turning -- had been added to the list. Rush also proudly reported, "Constant work, familiarity with garden, a beautiful one, 1200 heads of cabbage, supplies the jail with vegetables, kept by prisoners."<sup>66</sup> Garden work was reserved for men.

Early reports from visitors indicate that fair labor and reimbursement practices prevailed in the prisons. As long as this practice persisted, prisoners were treated to more transparent work arrangements than many free laborers. The prisoners were able to witness the negotiation between the jailer and the employer over the price being set for the prisoners' work. This was done four times a year and enabled the prisoners to know if the payment set for their work was fair.<sup>67</sup>

Other types of work for men were added as they became viable. A subcommittee of the board of inspectors, for instance, researched the viability of manufacturing cut nails in prison. In 1794, the board approved the recommendation and moved to establish

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<sup>64</sup> Ibid.

<sup>65</sup> George Meade, "Report of the Board of Inspectors," 398.

<sup>66</sup> Benjamin Rush, *The Autobiography of Benjamin Rush: His "Travels Through Life" Together With His Commonplace Book for 1789-1813*, ed. George W. Corner, (Princeton, 1948), 230.

<sup>67</sup> Liancourt, *On the Prisons of Philadelphia*, 13.

this industry.<sup>68</sup> While sawing marble was still an important and lucrative niche, nail-heading quickly became the other most profitable industry.<sup>69</sup> In 1796, the nail factory committee reported, “the factory is now conducted orderly, the nails well made, and the men perform the days work allotted them.”<sup>70</sup> A few years prior to the establishment of the Nail Factory in Walnut Street prison, a “new Nail Factory” built in Harrisburg, Pennsylvania was heralded as vital to future industry in the United States, “a striking instance of our being able to furnish ourselves with those valuable articles at a much cheaper rate than they can be imported.”<sup>71</sup> By 1810, Philadelphia alone had twenty naileries.<sup>72</sup> The nail manufactures are one example of the way economic developments inside prison reflected those in local and regional economies.

While women were put to work doing tasks considered “unskilled” which they presumably already knew how to do, men were offered the opportunity to learn a trade in the prison workhouse that they could then use to “maintain themselves and become useful members of society.”<sup>73</sup> Inspectors boasted of the large number of apprentices who worked in the shoemaking division. Unlike women’s work, however, men’s work was divided into categories – one for able-bodied men and the other for those men who were too old or weak or infirm to do “men’s” work. Such a distinction created a class of prisoners who did not fit neatly into the prison labor system based on sexual difference. While these men were too old or weak or infirm to work in the many manufactories, this did not lead to an explicit critique of these men. Not only were they not able to do the

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<sup>68</sup> Minutes, November 24, 1794, Inspectors of the Jail and Penitentiary House, Philadelphia Prisons System.

<sup>69</sup> Robert J. Turnbull, *A Visit to the Philadelphia Prison*, 25.

<sup>70</sup> Minutes, April 12, 1796, Inspectors of the Jail and Penitentiary House, Philadelphia Prisons System.

<sup>71</sup> *Pennsylvania Mercury and Universal Advertiser*, March 19, 1789

<sup>72</sup> Shultz, *The Republic of Labor*, 167.

<sup>73</sup> Minutes, June 5, 1798, Inspectors of the Jail and Penitentiary House, Philadelphia Prisons System.

work set aside for men, but they were actually assigned some of the same tasks as the women. This was accepted and not seen as a threat to the sexual division of labor.

While able-bodied men were busy “Shoe-making, tailoring, weaving, chipping logwood, beating hemp, grinding plaster of Paris, grinding and polishing marble,” the “weakly and infirm” could occupy themselves with “other employments” that, while not as lucrative as the aforementioned, “may occasionally be profitably used.” Such employments included “Spinning, heckling, picking oakum, wool, flax, and cotton, carding wool for hatters.”<sup>74</sup> Though some categorized weaving as men’s work, others spoke of it as work for old and ill prisoners. The inspectors noted in their 1798 report that weaving was an important industry in the prison, mostly because it enabled those who were “much advanced in years or invalid unfit for more severe kinds of labour” to still be productive and contribute to their support.<sup>75</sup> Weak and infirm men were thus put to work at tasks that were otherwise reserved for women.<sup>76</sup> Another observer reported similarly, “The weaker and less skillful are busied in picking wool, hair, or oakum.”<sup>77</sup> Like vagrant women, vagrant men were also made to work. While the women picked hair, men were “kept occasionally at picking Oakum.”<sup>78</sup>

The inspectors sought to keep these “convalescents” and less-able bodied men from interfering with other men’s work. In February 1806, they “Resolved that no Idle prisoner shall in future be permitted to be amongst those at work and that the visiting inspectors provide some place for them to remain in order that they may be kept

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<sup>74</sup> Caleb Lownes, *An Account of the Alteration and Present State*, 91.

<sup>75</sup> Minutes, June 5, 1798, Inspectors of the Jail and Penitentiary House, Philadelphia Prisons System.

<sup>76</sup> This might not have been seen as too remarkable. In the 1820s when women and children constituted the majority of manufactory workers in Philadelphia, men still worked in the industries dominated by them, mainly textile production. See Shultz, *The Republic of Labor*, 168-171.

<sup>77</sup> Liancourt, *On the Prisons of Philadelphia*, 13.

<sup>78</sup> June 10, 1799, Minutes of the Acting Committee of PSAMPP, 1798-1820, vol. 6, PSAMPP Papers

separate.”<sup>79</sup> A month later the visiting inspector reported that the jailor did as requested, designating a place for “the convalescents to remain in order” while other men transformed “the former cutting shop next to the shoemakers” for the said purpose.<sup>80</sup> It is just as important that the men not be idle as it is that they labor productively. At times, the committee was stern when reminding the keeper that everyone, even the “not able-bodied-men,” were to be kept busy. In the summer of 1807, the inspectors advocated yard-work for such men, among other things. “That those men that are denominated ordinary or not able-bodied-men should be employed to unload and [?] & other materials and do the common labour of the yard.”<sup>81</sup> Such resolutions appear to be a less severe way of handling idlers than was practiced a decade earlier, signaling both a more humane approach and a loss of authority. In 1796, a visitor noted that the punishment for idleness was solitary confinement, which was thought to be harsher than physical violence, at least in part because the idler would have to “make up by his future exertions” the work expected of him.<sup>82</sup>

Unlike men, women were never distinguished by age or ability in relation to their work tasks. That men who were not physically able to conduct heavy manual labor were relegated to tasks commonly done by women could not have gone without notice among the prisoners. Men in prison could be generally categorized by their labor in one of two ways: as a man who worked or as a less-than able bodied person who engaged in the less lucrative tasks reserved for women. Similarly, the pay rate for the less able men was determined on the same scale as women’s, generalized for a days work, not itemized by

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<sup>79</sup> Minutes, February 17, 1806, Inspectors of the Jail and Penitentiary House, Philadelphia Prisons System.

<sup>80</sup> Minutes, March 3, 1806, Inspectors of the Jail and Penitentiary House, Philadelphia Prisons System.

<sup>81</sup> Minutes, August 17, 1807, Inspectors of the Jail and Penitentiary House, Philadelphia Prisons System.

<sup>82</sup> Liancourt, *On the Prisons of Philadelphia*, 20.

task. Yet the fact that some men engaged in women's work did not serve to enhance the value of that work.

Old and infirm men were not the only ones who disrupted the work schedule. After the disaster of the wheelbarrow men, legislators knew that not all prisoners would accept labor as a valuable or necessary practice. The law was written with the likelihood of resistance in mind, stating that the type of work chosen for prisoners should be "least liable to be spoiled by ignorance, neglect or obstinacy, and where the materials are not easily embezzled or destroyed."<sup>83</sup> Inmates resisted work in three different ways: by remaining idle and refusing to work, by escaping from the prison altogether, and by destroying tools, supplies, and even the workhouse itself. Such resistance was most dramatically evident when inmates set fire to the workhouse. Others simply refused to work, sometimes by declaring themselves sick or unable to do the task at hand. Men were far more likely than women to attempt to escape or to damage the work areas. It was the men, frequently charged as idle, who persistently and repeatedly challenged the system by refusing to work.

Though women's work was less regulated, leaving more room for an individual woman to remain idle or refuse to work her share, such behavior was rarely observed. Instead, women were usually reported to be working hard. The rare comments on their idleness were not framed as acts of resistance, but rather credited to a lack of the tools necessary to work. In their January 1799 report, inspectors noted "many idle" women convicts and described women vagrants and prisoners for trial as "many idle some dirty and some ragged."<sup>84</sup> They did not blame the women for their behavior, however, noting

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<sup>83</sup> Pennsylvania, "An Act to Reform the Penal Laws of This State," 11.

<sup>84</sup> Jan 12, 1799, Minutes of the Acting Committee of PSAMPP, 1798-1820, vol. 6, PSAMPP Papers.

instead that they were “unable to procure a sufficient number of spinning wheels to employ all the women,” particularly since many of the wheels were destroyed in the fire. Two years later, they noted an increase in productivity among the women despite the fact that “idleness remains among men.”<sup>85</sup> Of the women vagrants, they reported “generally if not all employed.” As years went by, the visiting committee seemed to note that women were either working in similar numbers to their last visit, or at an even higher rate. In 1804 they described the women’s wing “in a better situation generally than sometimes heretofore there being more of them employed.”<sup>86</sup> In 1805 they found many prisoners needed clothing and upon purchasing linen, reported that one piece of it was “made into 11 shifts and 13 shirts” by female inmates.<sup>87</sup> A few years later, the committee actually attributed the active process of production to the women, “Flannell was made into shirts and shifts by the vagrant female prisoners.”<sup>88</sup> Two of the women who received the shifts, Kitty Spencer and Mary Ford, were being held in the dungeon. Kitty, described as “almost naked,” really needed a shift.<sup>89</sup> Kitty was a nineteen year-old African American woman sentenced to nine months at hard labor for stealing, of all things, clothing. The long list of items she stole from Harriet Newton included Moroccan shoes, cottons stockings, a frock, a gown, and a shift.<sup>90</sup>

Although inspectors and jailers generally failed to value women’s labor, they often juxtaposed reports of female productivity with those of male idleness. In October

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<sup>85</sup> Jan 18, 1801, Minutes of the Acting Committee of PSAMPP, 1798-1820, vol. 6, PSAMPP Papers.

<sup>86</sup> March 8, 1804, Minutes of the Acting Committee of PSAMPP, 1798-1820, vol. 6, PSAMPP Papers.

<sup>87</sup> Jan 11, 1805, Minutes of the Acting Committee of PSAMPP, 1798-1820, vol. 6, PSAMPP Papers.

<sup>88</sup> Feb 20, 1809, Minutes of the Acting Committee of PSAMPP, 1798-1820, vol. 6, PSAMPP Papers.

<sup>89</sup> This practice was not unique to Philadelphia. In The New York State Penitentiary, women prisoners were employed at “sewing, washing, ironing,” and all of the clothes for inmates were made by the prisoners. See Inspectors of the State-Prison, *Report of the Inspectors of the State-Prison- Albany* (Albany, 1799), 3.

<sup>90</sup> June 12, 1807, Prisoners for Trial Docket and September 27, 1807, Prison Sentence Docket, Inspectors of the Jail and Penitentiary House, Philadelphia Prisons System.

1820, the visiting committee noted, “About 20 females were spinning and knitting for the convicts the males have not employment.”<sup>91</sup> Problems of male idleness date back to the earliest records of prison employment. In 1795, the Board of Inspectors noted that “the stone cutters do not cut the quantity of stone they are capable of.”<sup>92</sup> The following year, a detailed scheme of punishment through food deprivation was established for those in the nail factory who did not work to their potential. The inspectors reported that prisoners who failed to complete a “reasonable days work” would be denied breakfast for the first day and both breakfast and dinner should they under produce for two consecutive days. Continued failure to meet the requirements resulted in solitary confinement.<sup>93</sup>

These were no idle threats. Prisoners who refused to work were sent to the solitary cells. Isolation was often reverted to as a disciplinary measure, signaling in part the potential strength of collective resistance that may have been sparked by individual acts of disobedience. One man, after refusing to work, was separated “from the orderly prisoners” and confined “in the solitary cells” as a punishment for weeks “without labour, bed, or furniture, of any kind.”<sup>94</sup> Refusing to work was one of many reasons that keepers resorted to separating prisoners. Fear of an uprising among the prisoners during a public execution was so great that the board decided not to allow the prisoners out of their cells to work that day, instead they “had the convicts locked up in their respective rooms for better security and detained there until the crowd had dispersed.” They preferred to lose a

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<sup>91</sup> Oct 9, 1820, Minutes of the Acting Committee of PSAMPP, 1798-1820, vol. 6, PSAMPP Papers.

<sup>92</sup> Minutes, January 7, 1795, Inspectors of the Jail and Penitentiary House, Philadelphia Prisons System.

<sup>93</sup> Minutes, January 12, 1796, Inspectors of the Jail and Penitentiary House, Philadelphia Prisons System.

<sup>94</sup> Caleb Lowmes, *An Account of the Alteration and the Present State*, 88.

day's productivity and ensure order, using the mayor and "many members of the board" to walk around the grounds "until the keeper & cc returned from the execution."<sup>95</sup>

Idleness posed a double threat: one to prison management, the other to prison reform. Not only were the men not producing goods and earning money to offset their keep, but they were existing in a state of *idleness*. This was thought to be the source of their criminal behavior in the first place, described as a "fruitful source of mischief and insubordination it is our duty to look with increasing watchfulness."<sup>96</sup> Idleness itself could serve to undermine the penitentiary system. Despite the fact that women were more regularly working and their efforts sustained what was arguably the second most essential need after food – clothing - their work was still spoken of derisively. Men's work always had the *potential* to be more financially lucrative for the institution, if men actually worked to their full abilities, if the heads of the manufactories in the prison were competent in their jobs, if the board was able to move the goods from the prison to market, if demand for the products remained high. The tendency to over-articulate the importance of men's work during the period stemmed largely from the social value attached to the illusion of men's economic self-sufficiency.

Inspectors did not worry about the women for several reasons. Women were viewed as easily reformable. They worked hard and demonstrated the expected deference to male authority figures.<sup>97</sup> Inspectors had less to prove in overseeing the women. They did not seek or need to make independent, self-sustaining citizens of the women, as they hoped to do with the men. This is not to say that women's behavior was not important.

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<sup>95</sup> Minutes, March 14, 1808, Inspectors of the Jail and Penitentiary House, Philadelphia Prisons System.

<sup>96</sup> Minutes, January 9, 1815, Inspectors of the Jail and Penitentiary House, Philadelphia Prisons System.

<sup>97</sup> This is evident in accounts by most visitors and inspectors. See Turnbull, *A Visit to the Philadelphia Prison*; Liancourt, *On Prisons of Philadelphia*; Lownes, *An Account of the Alteration and Present State*.



Women were expected to assume their proper role in the heterosexual political economy. By demanding deference and submission of the female convicts – two traits already central to women’s proper roles in society – reformers ensured they would have a greater likelihood of reformation than the men. Imprisonment put men in an impossible position: it demanded they practice deference and obedience while aspiring to achieve the markers of citizenship – independence, agency, and strength.

Women who served to highlight the effectiveness and reasonableness of prison reform. Indeed, after Robert Turnbull’s visit to the jail, he recorded thoughts on the deportment of two women prisoners, one of whom he described as “a negress.” On this particular visit Turnbull notes that several prisoners “accosted him” as they entered the women’s ward, but he was most fascinated by “a young negress” who requested a discharge, though serving less than half of her two-year sentence. Upon rejection, Turnbull writes, “She declared herself satisfied with his reasoning, and resumed her employment at the spinning-wheel with cheerfulness and activity.”<sup>98</sup> His remark about her cheerful spirit echoed the common trope among slaveholders who described slaves as “happy” and taking pleasure in their work. Though her request was unreasonable, her conduct “had been regularly pleasing” and her work ethic admirable. Thus even black women prisoners, largely invisible in political, legislative, and popular discussions, served a critical political and discursive function as emblems of model prisoners.

Even “difficult” women were no match for the power of a sensible man. One woman characterized as “an old offender” tried to burn the prison down in the early 1790s. Though she was “ungovernable” and “of an extreme bad character,” reformers

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<sup>98</sup> Robert J. Turnbull, *A Visit to the Philadelphia Prison*, 48.

used her story to highlight how easy reforming women really was. Even an arson attempt by a woman did not faze them. In his 1793 report, Caleb Lownes claimed that the key to handling her was to cultivate her submission. He wrote that once she realized the keeper “was easy” and did not provoke her “to keep up her passions” that she was left with no reason to resent him and thereby “at length submitted.”<sup>99</sup> *Submission* was the necessary state for this particular woman, or any woman, to achieve before she was able to see the light – and see the light she did. This woman not only obeyed all of the rules of the house after this incident, but she promised that she would “perform two days work, each day” for the duration of her stay. Submitting to men in authority and working hard was the path to reformation for women. It was not the path to citizenship, however, for there was no such path for women in the prison system.

Women, however, were not always model prisoners. They did attempt to escape, though not as often as the men. Incidents of prison breaks were more frequent in the early years than the later. Some dug under the foundation while others scaled walls.<sup>100</sup> Most women were quickly recaptured. One official count provided by the inspectors shows two women and 158 men escaping between 1787 and 1807.<sup>101</sup> At least five women escaped in 1796 alone, but they were all quickly recaptured.<sup>102</sup> One of the few women to escape was described in a paid advertisement for stolen goods which listed the items that were believed to have been stolen by the “convict woman who escaped from the workhouse.” The nameless woman was thought to have stolen a “New beaver or raccoon Hat, and ten

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<sup>99</sup> Caleb Lownes, *Account of the Alteration and Present State*, 89.

<sup>100</sup> *Pennsylvania Mercury and Universal Advertiser*, January 13, 1789

<sup>101</sup> Pennsylvania General Assembly, *Report of the Committee Relative to the Jail*.

<sup>102</sup> May 27, 1796 and August 2, 1797, Prison Sentence Docket, Inspectors of the Jail and Penitentiary House; For more on these women, see Susan Branson, "Beyond Respectability: The Female World of Love and Crime in late Eighteenth and Early Nineteenth Century Philadelphia." *Studies in Eighteenth-Century Culture* 25 (1996): 245-264.

or twelve yards of coarse Irish Linnen.”<sup>103</sup> A few years later, on May 27, 1796, three women escaped together “by getting into the dungeon through the arch and undermining the wall into Sixth Street.” Catherine Lynch and Phebe Mines were quickly found, and Margaret McGill was retaken on September 22<sup>nd</sup> of that same year. Lynch managed to escape again with Leah Amonde in August of the following year.<sup>104</sup>

An arson attempt by a group of male prisoners a few years later succeeded where the “ungovernable” woman’s efforts failed. In 1798 all things came to a halt when much of the main workhouse was destroyed by a fire started by a group of male prisoners. Inspectors debated how to find employment for the prisoners and to rebuild the workshop, but that should have been the least of their worries.<sup>105</sup> The arson signaled a flagrant rejection not only of work, but also of order, submission, and authority.<sup>106</sup> It is also significant that it occurred nearly a decade into the new system of more rigid oversight and structuring of the prison. Eventually, the inspectors found a group of seven prisoners guilty of arson and sentenced them to the solitary cells.<sup>107</sup>

Disruptions to the manufacturing schemes threatened to undermine not only order and discipline but the financial feasibility of the entire punishment scheme. Each act of resistance, idleness, escape, and destruction threatened to destroy the penitentiary system. Inspectors were charged with overseeing both the production and sale of goods. As if monitoring production was not hard enough, selling the goods turned out to be a huge

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<sup>103</sup> *Pennsylvania Journal and Weekly Advertiser*, December 3, 1788.

<sup>104</sup> May 27, 1796 and August 2, 1797, Prison Sentence Docket, Inspectors of the Jail and Penitentiary House; LeRoy B. DePuy, “The Walnut Street Prison: Pennsylvania’s First Penitentiary,” *Pennsylvania History*, 18 (1951): 141-142.

<sup>105</sup> Minutes, June 11, 1798, Inspectors of the Jail and Penitentiary House, Philadelphia Prisons System.

<sup>106</sup> For more on the use of arson as a means of resistance by slaves, see Gary Nash, *Forging Freedom*, 174-5.

<sup>107</sup> Minutes, July 27, 1798, Inspectors of the Jail and Penitentiary House, Philadelphia Prisons System; Negley Teeters, *Cradle of the Penitentiary*.

challenge. Inspectors tried to sell civic virtue along with their product. Advertising the availability of “Ground Plaster of Paris” for use as manure, they boasted not only the “great advantages arising from this important manure are now pretty generally understood by the farmers in the neighbourhood of the city” but also that by purchasing it from the jail, consumers “will contribute to the benefit of the community” by supporting the “useful employment” of criminals. Inspectors also relied on their position as selfless helpers, disinterested businessmen, and guardians of the community to ensure the buying public that “none but the very best sort” of Plaster was ground at the jail.<sup>108</sup> Still, selling goods from the prison factories was never easy.

Realizing they had a surplus of nails on hand, the board ran an advertisement in two local papers offering “A large quantity of nails and brads... for sale at very reduced prices.”<sup>109</sup> Sale of linen was less common and was a slightly more involved process. In 1807 the board ordered the visiting inspectors “to send the linen cloths now on hand to the domestic manufactory warehouse to be disposed of to the best advantage.”<sup>110</sup> A few years later they decided to sell “the surplus linen” at an auction.<sup>111</sup> Efforts to sell goods from the prison were important, and the inspectors at one point authorized an expansion of the building in front of the prison to provide more “exhibition” space for the goods produced by the prisoners and for sale to the public.<sup>112</sup>

Despite all of the attention given to the manufactories, the business side of the prison was failing and led to large debts from which the institution never fully recovered.

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<sup>108</sup> *Pennsylvania Gazette*, July 7, 1790.

<sup>109</sup> Minutes, May 24, 1803, Inspectors of the Jail and Penitentiary House, Philadelphia Prisons System.

<sup>110</sup> Minutes, July 20, 1807, Inspectors of the Jail and Penitentiary House, Philadelphia Prisons System.

<sup>111</sup> Minutes, May 7, 1810, Inspectors of the Jail and Penitentiary House, Philadelphia Prisons System.

<sup>112</sup> Minutes, November 25, 1809, Inspectors of the Jail and Penitentiary House, Philadelphia Prisons System.

As early as 1798, the committee realized the institution was deeply in debt from the “extensive credit” that was extended towards the prison manufactories.<sup>113</sup> The prison’s financial problems only grew with time. The committee struggled for years to adapt their manufactories and store to the conditions of the ever-changing market. This is evident in many situations where they were forced to change the goods they produced as the demand increased for some and decreased for others. They had to ensure available stock to keep their customers, as was evident from this board decision, “Resolved that the keeper be instructed to employ some men to the making of nails and brads so as to furnish the store with an assortment.”<sup>114</sup> Sometimes they over-estimated the demand or realized that goods produced by prisoners did not have as high a value on the open market as anticipated. In 1820, the committee on manufactures “reported that they find the prices charged by the prison generally too high.”<sup>115</sup>

After years of struggling to make the manufactures profitable, inspectors reconfigured the process. No longer would the prison purchase raw materials for the prisoners to craft into goods for sale. They closed down the store where goods produced in the prison had been sold for years, citing two reasons for doing so: decreased production and the financial burden of purchasing raw materials. Inspectors reported that it was better to have convicts work “for individuals who furnish the materials” as was first proposed in 1815.<sup>116</sup> This saved them the trouble of purchasing supplies and assuming debt. The prison thus resorted to contracting out the prisoners’ labor to the

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<sup>113</sup> Minutes, June 5, 1798, Inspectors of the Jail and Penitentiary House, Philadelphia Prisons System.

<sup>114</sup> Minutes, February 17, 1812, Inspectors of the Jail and Penitentiary House, Philadelphia Prisons System

<sup>115</sup> Minutes, January 31, 1820, Inspectors of the Jail and Penitentiary House, Philadelphia Prisons System

<sup>116</sup> Minutes, March 2, 1818, Inspectors of the Jail and Penitentiary House, Philadelphia Prisons System.

highest bidder.<sup>117</sup> As a result, the convicts worked for “customers” who paid a set price to the keeper for labor while providing the convicts with the necessary materials.<sup>118</sup>

A conflict over institutional priorities simmered throughout the 1800s and 1810s between those determined to make the manufactories profitable and others concerned that the primary purpose of the penitentiary – personal penitence – was being lost. Reformers claimed that not only were convicts not reflecting and reforming, but they were further corrupting each other. While members of PSAMPP and the board of inspectors worked hand in hand – even some of their membership overlapped – the regular activities and responsibilities of the two groups were quite different. PSAMPP focused on the needs of individual prisoners, checking for people who were ill-treated, in need of clothing, medical attention, or relief from fees. They discussed these individuals in their meetings and lobbied on their behalf. They visited prison regularly and made suggestions and appeals to the legislature. With no formal institutional responsibility, they spent more time criticizing prison practices and occasionally undermined the inspectors’ efforts. The board of inspectors, on the other hand, was responsible for oversight of every aspect of prison life and focused largely on the manufactories. Yet the two groups still lobbied for penal reform at the legislative level and collaborated on a range of projects. The point is not to overstate their differences but to highlight the contradictory values and competing discourses at play.

Inspectors functioned more like the managers of a business enterprise than as guardians of morality and virtue. All of this simply fueled widespread criticism of the prison system. Some reformers argued that successful manufactories represented

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<sup>117</sup> Minutes, January 25, 1815, Inspectors of the Jail and Penitentiary House, Philadelphia Prisons System.

<sup>118</sup> George Rugan, “Documents Accompanying the Commissioners’ Report.”

successful punishment: prisoners working efficiently signaled their ability and willingness to re-enter society as productive laborer-citizens. Others, however, claimed the demands of the manufactures to group convicts together for work contradicted the philosophy of solitary confinement. In 1812, Justice Jacob Rush offered a damning critique of the practice of keeping criminals together “in order that certain manufactures may be carried on with greater profit to the institution.” While Benjamin Rush long argued that hard labor was one of the central tenants to reformative incarceration, Jacob Rush claimed that the practice of making “money out of the bodies of convicts” could actually “destroy their souls.”<sup>119</sup> Jacob was not condemning work in general, but rather the way that labor came to dominate the institution at the expense of other concerns. Nearly a decade before the inspectors and PSAMPP came to the same conclusion; Jacob argued that the prison had effectively become a school of vice where inmates “corrupt each other.” He condemned the law as a “public fraud,” claiming to reform criminals while nurturing them in a “school for vice.”

With the escalation of financial problems, critics of the inspectors grew louder. Whether the character of the criminal was to be transformed through quiet reflection or disciplined productivity, neither one of those was taking place. Prison did not reform those who spent time there – it may in fact have further corrupted them. In 1821, even the inspectors admitted the failure of their prison manufactory. In a letter to the chairman of the House of Representatives outlining their failures, the inspectors agreed that the prison in fact did not reform inmates and would never be any different “without the means of

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<sup>119</sup> Jared Ingersoll, “Letter from Jacob Rush, Philadelphia, September 17, 1812 to Jared Ingersoll,” *Report Relative to the Penal Code 1813* (Harrisburg, 1813).

classification or of adequate employment.”<sup>120</sup> The lack of perceivable character change and the absence of profitable labor together fueled the complaints.

Those most closely involved with inmates saw little evidence of reformation. Many wrote of the limits and failures of the current system and advocated complete solitary confinement as the only way that the main principle of the penitentiary system – moral reformation – could occur.<sup>121</sup> To make this point and convince others of its truth, reformers took the unusual position that the penitentiary system which they oversaw for nearly thirty years had an unintended consequence: it made more hardened criminals out of those who passed through its doors. Of their own efforts, one former inspector wrote, “It is not possible for the Legislature to devise a system where men will be more completely contaminated, hardened and depraved, than in that college of vice, the Walnut-street Prison.”<sup>122</sup>

Second generation PSAMPP activist and reformer Roberts Vaux echoed the argument that attention to profit over punishment led to doom. In his history of the prison, published in 1826, Vaux wrote,

At various times also, within the last seventeen years, the labour of the prisoners was directed to such branches of industry as were intended to yield the highest profit to the penitentiary; and whenever such schemes were in vogue, all other considerations were postponed....The grand object was not so much the

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<sup>120</sup> Minutes, January 15, 1821, Inspectors of the Jail and Penitentiary House, Philadelphia Prisons System.

<sup>121</sup> James Mease, *Observations on the Penitentiary System, and Penal Code of Pennsylvania: With Suggestions for Their Improvement* (Philadelphia, 1828), 12.

<sup>122</sup> Samuel R. Wood, *Letter from Samuel R. Wood to Thomas Kittera, Esq. Chairman of the Committee of Councils, on the Subject of the Walnut-Street Prison* (Philadelphia, 1831).



punishment and reform of the criminals, as a pecuniary balance, at the year's end.<sup>123</sup>

While some reformatory goals may have taken a back seat, Vaux's claim that "all other considerations were postponed" was inaccurate. Prison authorities still maintained the sexual division of labor, despite the fact that it was not the most profitable way to employ the inmates.

Rather than reflect on the failure of prison labor to bring about character reform, inspectors focused their criticism on other factors which distracted men from their work, such as crowded conditions and frequent socializing. But men's work itself was actually a failure on all counts: it was not profitable, it did not discipline them, and it did not contribute to the administration of the prison. By 1825, the system of forced labor and imprisonment was widely condemned as a failure. The great "accomplishment" of this period, however, was the largely invisible process by which the sexual division of labor had been formalized. Women were treated both similarly to and differently than men, in ways that were not always articulated. Indeed, women's work in prison was not formally evaluated or even referenced in the various essays critiquing the manufactories.

Inspectors, reformers, and lawmakers relied on a set of shared assumptions and social norms to guide their decision-making regarding the treatment of women prisoners. There were no great debates in the meeting minutes or newspapers about women's work in prison; no discussion about the fact that women's production of clothing greatly contributed to prison life. Perhaps even more importantly, it kept them busy at hard labor. While much has been written about the failures of the men's manufactories and the failure of reform as a result, women were successfully used to support the institution. The

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<sup>123</sup> Roberts Vaux, *Notices of the Original, and Successive Efforts*, 53.

process of women's labor in prison was successful on two fronts. First, the fact that they embraced their tasks and dutifully complied with the work order, failing only when they were without the means to work, demonstrated their submission to the punishment system. In addition, the fact that women's work was so easily folded into the institutional framework effectively rendered the *laboring* aspect of women's contribution invisible.

## Chapter Four: The Sexual Division of Crime

Notions of colonial goodwives and female passivity challenge contemporary readers to fathom the existence of women criminals in eighteenth century America. And yet women were consistently present among the ranks of those brought before the courts on criminal charges. It may come as no surprise that women were rarely charged with violent crimes against other people. Crimes against persons always comprised a very low percentage of female convictions, and women were far less likely than men to commit manslaughter or murder. Less serious incidents of assault or assault and battery were adjudicated in lower courts, and guilty convictions there did not often result in imprisonment. Instead, women convicted of assault and battery were likely to pay fines or to offer security for their future good behavior. Philadelphians in the early national period were also relatively lax about sexual mores. Citizens engaging in pre-marital sex, parenting bastard children, visiting disorderly and bawdy houses, and committing adultery may well have outnumbered their chaste, faithful, and married neighbors.<sup>1</sup> Yet charges for such offenses represented only a small fraction of actual occurrences. Although women were more likely than men to be convicted of crimes against morals or order, these constituted a small percentage of crimes for both groups. Women were most frequently brought before the court for minor property crimes. A few of them did engage in high-stakes activities such as forgery, counterfeiting, and burglary, but most simply stole items from neighbors and local shops, stored items stolen by friends and relatives, or knowingly purchased such stolen goods. Crimes against property peaked at 90 percent

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<sup>1</sup> Marcia Robertta Carlisle, "Prostitutes and Their Reformers;" Carlisle, "Disorderly City, Disorderly Women;" Hessinger, "Victim of Seduction or Vicious Woman;" Clare Lyons, *Sex Among the Rabble*.

of all women's crimes in 1799, and still dominated other categories of crime throughout the early years of the nineteenth century.

A portrait of two female criminals during the early national period illuminates the typical experiences of unruly women brought before the courts. On November 20, 1794, Isabella Word accused Sarah Roach and Sylvia Gardner of stealing or receiving two yards each of stolen red and yellow flannel.<sup>2</sup> One month later, the 26 year-old Sarah and 25 year-old Sylvia were found guilty of two counts of larceny in the Mayor's Court of Philadelphia and were sentenced to one year in the Walnut Street Prison. Sylvia was a local African-American woman, born in Philadelphia and bound to Captain Henderson. Sarah, also African-American, was born in Maryland and gave birth to a girl while in prison. Both women were pardoned by the governor upon recommendation of the prison's visiting inspectors "for their late good conduct and orderly behavior" and discharged eight months into their sentences on August 4, 1794.<sup>3</sup> Pardons were commonly granted in those days. The pardon was not without conditions, however, and Sylvia and Sarah were expected to leave the state upon release.<sup>4</sup>

Sarah and Sylvia can be regarded as typical for several reasons. They were convicted of petty theft, received quite harsh sentences, served some time in Walnut Street, and were released before completing the full duration of their sentence. They were expected to leave the state as a condition of their release, but probably did not. Many ignored this condition, for lack of means or knowledge regarding relocation or simply a desire to stay near friends, family, and work opportunities. What little information we

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<sup>2</sup> November 20, 1794, Prisoners for Trial Docket, Inspectors of the Jail and Penitentiary House, Philadelphia Prisons System.

<sup>3</sup> December 17, 1794, Prison Sentence Docket, Inspectors of the Jail and Penitentiary House, Philadelphia Prisons System

<sup>4</sup> Minutes, July 7, 1795, Inspectors of the Jail and Penitentiary House, Philadelphia Prisons System.

have about the two women can be found in several institutional records from Walnut Street Prison – the Prison Sentence Docket, the Prisoners for Trial Docket, and the Board of Inspectors Minutes.<sup>5</sup> Their crimes were not significant or notorious enough to make one of the many local newspapers. Sylvia worked as a bound servant, which was a common work arrangement in the 1790s, especially for African Americans. There is no reference to the kind of work that Sarah may have done, and this is common in the records of female criminals as well. Men were much more likely to have their occupations recorded in the prison docket. Sarah and Sylvia, like most American-born women convicted in the state of Pennsylvania, were likely to be from the mid-Atlantic states. During the early and mid 1790s, however, women in Walnut Street were just as likely to be born in Europe, particularly Ireland, as in the United States. The fact that Sarah and Sylvia were of African descent is of no surprise. Though documentation of racial identity in the 1790s was inconsistent at best, a significant percentage of women sentenced to Walnut Street were of African descent, particularly if they were born in the United States. Finally, although the fact that Sarah gave birth in prison was not common, it does highlight one aspect of life that distinguished women's imprisonment from men's. Not only did some women occasionally give birth in prison, but those who had young children to care for brought them to prison with them.

Sarah and Sylvia were two of the 1,820 women sentenced to Walnut Street Prison between 1794 and 1835.<sup>6</sup> Women's presence in the prison throughout this vital era in the development of the penitentiary shaped the system in countless and often

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<sup>5</sup> For a complete description of the records and research methods which serve as the basis of this chapter, see Appendix.

<sup>6</sup> The first book of the Prison Sentence Dockets is missing. The second book begins in 1794 and 1835 marks the closing of the institution. Leslie Patrick-Stamp, "Numbers That Are Not New."

unacknowledged ways. In the minds of reformers, women's presence necessitated sex-segregation, which was one of the earliest and most successful reforms instituted, and served as the basis for other classification and segregation efforts in later years. Sex-segregation also led to the development of a homo-social prison culture that enabled same-sex sexual activity. Though without any legal basis in the penal code, a sexual division of labor was enacted that promoted a hetero-normative economic structure. Indeed, it is hard to imagine how the contours of the penitentiary would have developed in the absence of women within its walls. And yet generations of historians have reported on the subject without particular acknowledgment of either women's presence or their influence on policy.

While the larger study examines penal reform through the lens of gender and sexuality, this chapter aims to reveal something about how women ended up in prison. Thousands of women charged with a range of offenses spent anywhere from 24 hours to 6 years in Walnut Street.<sup>7</sup> After 1790, the penitentiary was to house all of those convicted of offences which were capital prior to 1786. This group of women and men were referred to as convicts and were the central subject of reform efforts. But they were far from alone in Walnut Street, and they were actually outnumbered by three other groups: vagrants, prisoners for trial, and debtors. A motley crew of beggars, prostitutes, and idlers were collected from the streets nightly under the loosely defined and frequently enforced vagrancy law in the city. Those charged with a crime but unable to post bail or surety for their future court appearance were forced to wait in prison. Debtors, including some men of means who had fallen on hard times, were the least accustomed to the physical

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<sup>7</sup> The maximum sentence given was 7 years but not one of the 5 women who received it served out the complete time. In 1823, Rosanna Overns served all 6 years of her sentence on a counterfeiting charge, 1823, Prison Sentence Docket, Inspectors of the Jail and Penitentiary House, Philadelphia Prisons System.

hardships of prison life and complained the most.<sup>8</sup> Scholars of the state penitentiary often overlook the presence of these other classes of prisoners who lived, ate, and worked side-by-side with convicts. The establishment and enforcement of rules and categories was central to the development of the penitentiary, and an examination of the relationships between groups of prisoners illuminates the challenge of instituting a system of classification and division.

In addition to court dockets and prison records, popular pamphlets illuminate the lives of female criminals and their experiences in prison. Accounts of women's more sensational crimes were captured on broadsides and pamphlets that circulated widely, particularly in the urban centers of the early republic. They provide us with another view into the characteristics, motives, and actions of the somewhat elusive criminal women of early Pennsylvania, but they are far from representative. These narratives focus predominantly on two categories of fallen women: the vilified figure of a mother charged with infanticide or the cover-up of the death of an unwanted bastard child and the vengeful woman who cheated on her husband and plotted his death with her new lover.<sup>9</sup> Such publications long served as both entertainment and morality tales on both sides of the Atlantic.<sup>10</sup> As "true crime" narratives, however, they simultaneously highlighted and

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<sup>8</sup> Box 1, Folders 1-6, Papers 1787-1799, PSAMPP Papers.

<sup>9</sup> Those based on real Pennsylvania trials include *A Faithful Narrative of Elizabeth Wilson, who was executed at Chester, January 3d 1786 Charged with the Murder of her Twin Infants* (Philadelphia, 1786); *The Trial of Alice Clifton, for the murder of her bastard-child, at the Court of Oyer and Terminer and General Goal Delivery, held at Philadelphia, on Wednesday the 18<sup>th</sup> day of April, 1787* (Philadelphia, 1787); Ann Carson, *The Memoirs of the Celebrated and Beautiful Mrs. Ann Carson, Daughter of an Officer of the US Navy and Wife of Another, Whose Life Terminated in the Philadelphia Prison*, (Philadelphia, 1838).

<sup>10</sup> For more on the role of these cultural productions, see Daniel Cohen, *Pillars of Salt, Monuments of Grace: New England Crime Literature and the Origins of American Popular Culture, 1674-1860* (New York, 1993), and Ann Fabian, *The Unvarnished Truth: Personal Narratives in Nineteenth-Century America* (Berkeley, 2000).

obscured the reality of crime and punishment by drawing heightened attention to crimes and criminals that were uncommon.

A simple advertisement in the January 1787 edition of *The Pennsylvania Packet* captures a more realistic picture of women's crime in the early republic:

Was stolen out of the yard of the subscriber, a Thermometer, made by John Donegan & Co. supposed to be taken by a Woman who asked for charity, as it was missing soon after she was gone, and as it is likely she will offer it for sale, it is desired it may be stopped; and any person whose hand it may fall into, on returning it to me safe, shall receive Twenty Shillings, and no questions asked. ISAAC BARTRAM N.B. It may be observed, that every degree on the scale is made to answer two degrees.<sup>11</sup>

This account of petty theft by an unremarkable woman most closely illustrates the regular occurrences of female crime in the early republic.

### **Prisoners for Trial Charges**

While reformers focused most of their attention on those formally convicted of crimes, a larger percentage of those who passed through the doors of Walnut Street were prisoners for trial, not convicts. The chart below demonstrates the significant presence of other classes of prisoners and suggests that an important aspect of prison life is lost when studies fail to incorporate these groups into their analysis. Prisoners for trial constituted over 80 percent of those who served time in a given year (see table 2). The chart is misleading in one regard, however. At a glance, it suggests that prisoners for trial outnumber convicts at any given time by a margin of anywhere from 5:1 to 10:1. But the

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<sup>11</sup> *Pennsylvania Packet*, January 24, 1787.



Table 2: Women in Walnut Street by Year and Classification

	1795	1799	1807	1815	1823
Prisoners for Trial	94	187	458	928	968
% Prisoners for Trial	82%	82%	95%	91%	91%
Convicts	21	41	22	92	92
% Convicts	18%	18%	5%	9%	9%
Totals	115	228	480	1020	1060

duration of a stay of a prisoner for trial was usually considerably shorter than that of a convict. While the total number of prisoners for trial in a given year, say 1807, was 458, it is likely that one-fourth of that number were in prison at any given time, as most courts adjudicated quarterly. Still, prisoners for trial usually outnumbered convicts.

By grouping women's convictions into the analytical categories used by other historians of crime, we can easily compare the data and determine the points where women's criminality both overlaps and diverges from men's.<sup>12</sup> The three categories of offenses include crimes against property, crimes against persons, and crimes against morals/order. The prisoners for trial records offer a different view than conviction records of the types of crimes women were likely to commit. This record reveals a significantly higher percentage of charges against women for crimes against property than actual convictions. A low percentage of charges of crimes against persons and morals led to convictions, while a high percentage of charges of crimes against property led to convictions. For example, in 1799, women charged with crimes against property

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<sup>12</sup> In his study of women's crime in Pennsylvania for an earlier period, G.S. Rowe outlines the three types of offenses. See, Rowe, "Women's Crime and Criminal Administration in Pennsylvania, 1763-1790" *Pennsylvania Magazine of History and Biography*, 111 (1985): 335-368. In a later study of Prisoners for Trial Records, Billy G. Smith and G.S. Rowe create a more detailed classification system. This chapter uses both of these systems, for ease of comparison. See G.S. Rowe and Billy G. Smith, "Prisoners: The Prisoners for Trial Docket and the Vagrancy Docket," in *Life in Early Philadelphia: Documents from the Revolutionary and Early National Periods* ed. Billy G. Smith (University Park, PA, 1995), 57-86.

constituted only 36 percent of those charged for any crime. In the same year, however, women convicted of crimes against property constituted a whopping 90 percent of those convicted (see tables 3 & 4).

Table 3: Women Prisoners for Trial by Categories of Charges					
	1795	1799	1807	1815	1823
Crimes Against Persons	18%	20%	30%	19%	23%
Crimes Against Morals	37%	43%	37%	57%	36%
Crimes Against Property	43%	36%	31%	24%	40%
Total Charges	103	210	458	928	968

Table 4: Women Convicts by Categories of Criminal Charges					
	1795	1799	1807	1815	1823
Persons	5%	0%	5%	8%	16%
Order/Morals	19%	10%	5%	11%	8%
Property	76%	90%	86%	82%	76%
Total Charges	21	41	22	92	92

Women were far more likely to be charged with crimes against persons (in 1807, 30 percent of all charges) than they were likely to be convicted of said charge (in 1807, only 5 percent of all convictions.) The significant gap between the number of charges and convictions signals both a lower conviction rate as well as distinctions according to the type of punishment attached to the crime. A woman convicted of simple assault and battery, the most common charge in this category, was likely to be ordered to pay a fine and put down a certain amount of money as security for future good behavior. Though significant numbers of women were charged with crimes against persons and held as prisoners for trial on those charges, a correspondingly tiny number were actually sent to prison upon conviction (see table 5).

Table 5: Women in Prison Charged or Convicted of Crimes Against Persons					
	1795	1799	1807	1815	1823
Convicts	1	0	1	7	15
Charged	19	43	136	174	224
Percentage	5%	0%	1%	4%	7%

Among crimes against persons, assault and battery and threatening predominated. Of the nineteen assaults or threats charged against women in 1795, most women attacked other women, but they did assault men and couples as well. Eleven of the charges were by other women, two were by a male and female couple, five by individual men, and one was brought on behalf of an unidentified child. When the assaults were committed against family members, such as the case of Catharine Carr beating “her own mother,” the relationship is designated. Otherwise, it is hard to know if the people entangled are friends, neighbors, co-workers, or strangers. Still, the percentages remain remarkably constant over the next two decades. In 1807, 56 percent of those charges against women for assault or threatening were brought by or on behalf of female victims compared to 58 percent in 1795. The number only rose slightly in 1823, as women brought 66 percent of the charges. The percentage of male victims was remarkably constant as well. Men were victims in 26 percent of the cases in 1795, 30 percent in 1807, and 24 percent in 1823. Incidents of assaults against women and men together, children, or unidentifiable persons constitute the remainder of the charges. Of three women charged with assault and threatening others in 1795, only Ann Young, a woman accused of assaulting, beating, and threatening to take the life of her own husband stayed in prison longer than one week. She was released after three weeks. Elizabeth Williams was released after one week,

having posted security in the aftermath of being charged by James Wilson and his wife “with violent assaults and threatenings against their persons”; and Mary Hines, though accused of being disorderly, keeping a house “for admitting street walking woman” and assaulting and threatening a man, was released in a mere five days.<sup>13</sup>

Other crimes against persons included abduction, kidnapping, manslaughter, murder, and committing the death of a bastard child. Women committed a very small percentage of these crimes. In the sample years 1795, 1799, 1807, 1815, and 1823, only two women were charged with abduction, in 1807 and in 1823.<sup>14</sup> In 1807 Mary Fenny was accused by John Lea with “taking or helping to take them” out of his house for which she was held overnight. It does not say who “them” was. In 1823, Mary Downes was charged with “seducing” an African-American woman named Dorcas Sharp away from the city for purposes of being used as a slave.

Ten women were charged with murder, one in 1799, three in 1807, two in 1815, and four in 1823. In 1799, for example, Elenor Miller was charged with “laying her infant about 6 days old under the wall at the alms house and leaving it there to perish unless by accident it should be found.”<sup>15</sup> She served 5 weeks and was released. In 1807, two women, Mary Schrenk and Uraniah Sheppard were accused of killing their children. Mary stayed in prison for approximately three weeks. Uraniah’s case is recorded in the Prison Sentence Docket, one of the most reliable institutional books of the period, signaling that she was found guilty, but no record is made of her exit. Mary Ann Copinter

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<sup>13</sup> 1795, Prisoners for Trial Docket, Inspectors of the Jail and Penitentiary House, Philadelphia Prisons System.

<sup>14</sup> Sample years for this chapter are spread over the period of time that Walnut Street Jail served as the only state prison (1789-1826) and for which records were available. The first volume of the prison sentence docket is missing; 1795 is the first complete year available. In 1826, Western State Penitentiary opened in Allegheny County and in 1829 the far more infamous Eastern State Penitentiary opened in Philadelphia.

<sup>15</sup> 1799, Prisoners for Trial Docket, Inspectors of the Jail and Penitentiary House.

concealed the birth of her child and was accused of murdering it upon discovery that the child's skull was broken. Julie Ann Remon took a different approach to ending the life of another woman's three month old infant, putting "some buttons and an iron screw" down his throat. Sarah Wilson brought the charges against Julie Ann on behalf of her son James George Wilson, whose life was "in imminent danger."<sup>16</sup> None of these women was convicted or sentenced to serve time in prison for their alleged crimes.

Women attempted to murder adults even less frequently. Nancy Johnston was accused by Thomas White of "attempting to poison Frances Green."<sup>17</sup> Nancy was released after only one week. Two women accused in 1815 were also quickly released. Though Susan Dickson was accused of assaulting Elizabeth Vesey "with a billet of wood and with an intention it is believed her the said Elizabeth to kill" she was released after one week. Lydia Syferhett was among a group of people accused by a seven year old witness of murdering a man, but they were all discharged on the count.<sup>18</sup> While two women attempted to kill children, another woman attacked her husband and another man with a hatchet.

The discrepancy between charges and convictions in the order/morals category stems from the failure of prosecutors to secure convictions. Most notably, the high percentage of morals charges and the quite low percentage of convictions reveal the fact that witnesses, often busily engaging in immoral or disorderly conduct themselves, declined to testify against those charged. None of the prisoners for trial charged with adultery, for instance, resulted in convictions. A high percentage of such charges were

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<sup>16</sup> 1823, Prisoners for Trial Docket, Inspectors of the Jail and Penitentiary House.

<sup>17</sup> 1807, Prisoners for Trial Docket, Inspectors of the Jail and Penitentiary House.

<sup>18</sup> 1815, Prisoners for Trial Docket, Inspectors of the Jail and Penitentiary House.

thrown out for lack of evidence. Women were charged by their own husbands, the wives of men they were accused of being with and third parties. Most often the wife of the man who the woman was accused of having an affair with placed the charges, though sometimes the husband pressed charges as well (see table 6).

Table 6: Women Prisoners for Trial Charged with Adultery					
Prosecutors	1795	1799	1807	1815	1823
Their Own Husbands	0	1	1	1	0
Wives of Men	1	1	2	0	2
Unknown Relations	0	2	2	4	3

Women held on such charges were often dismissed without conviction or even trials. In 1823, however, this changed, as most women held for trial were sent to Mayors Courts or the Court of Quarter Sessions for a full hearing. In the 1790s, none of these women stayed in prison for longer than one week. By 1807, however, the duration of their stay increased to one month or longer. Women were released when charges were dropped or small fines and securities were paid. The laxity of enforcement on adultery charges is also representative of the belief that individual moral indiscretions did not belong in court.

Table 7: Women Prisoners for Trial charged with Disorderly Conduct					
	1795	1799	1807	1815	1823
Disorderly Conduct	9	37	99	381	253
Total Order/ Morals	38	90	170	525	348
% of Disorderly Conduct	24%	41%	58%	73%	73%

By far, the most frequent charge in crimes against morals and order was for disorderly behavior. As percentages of all crimes against order and morals, disorderly

conduct charges increased dramatically and steadily between 1795 and 1823 (see table 7).

Larceny convictions outweighed all other convictions, including disorderly conduct.

Larceny charges also usually outnumbered other charges, but charges of disorderly conduct gradually caught up to larceny over the years. By 1807, they were nearly the same and in 1815, numbers of disorderly conduct charges spiked far ahead (see table 8).

Table 8: Women Prisoners for Trial Charged with Larceny vs. Disorderly Conduct				
	1799	1807	1815	1823
Disorderly Conduct	37	99	381	253
Larceny	73	127	199	292

Keeping a disorderly house was a separate crime that attracted legal attention, but the number of women charged remained low, and a low percentage of such charges resulted in convictions. The prosecution rate did not change over time in a consistent pattern, but rather jumped around from year to year (see table 9). One notable occurrence, however, is the high rate of conviction in 1815, which corresponds to a high prosecution rate for disorderly conduct as well. This signals a clear effort on the part of the judiciary to enforce morals charges in ways that it previously did not. However, the lower rate in 1823 suggests that such efforts did not result in a permanent change in judicial action.

Table 9: Women Prisoners for Trial Charged or Convicted with Running Disorderly Houses					
	1795	1799	1807	1815	1823
Charged	10	17	16	12	14
Convicted	3	3	0	5	0

Runaways constituted the other significant category of prisoners for trial in the morals/order category. This is no surprise, as servants and slaves were less likely to make bail and may have been restricted from posting surety due to the nature of the charge. Most ran away from masters and were held for brief periods of time. A common accusation is that a woman “absconded from her master.” There was a marked increase in this particular charge in the early nineteenth century, particularly after the international slave trade was abolished and slavery was effectively outlawed in Pennsylvania. While in 1799 and 1807 only two and five people, respectively, were charged as runaways, by 1815 the number jumped to twenty.<sup>19</sup> Those held as runaways generally consisted of slaves, servants, and apprentices, and some were charged as runaway slaves from other states. Release time for runaways varied from a few days to two weeks to one month. In 1795, the longest stay of any of the ten runaways was three months. In 1807, Rachel Lyons, the servant of prison inspector and lawyer Thomas Bradford, Jr. ran away and was held overnight. Lyons was held on the charge that she “behaved disorderly and deserted his service.” Other runaways were captured and held in the midst of family domestic disputes. Rebecca Carney reported that her runaway daughter Rebecca was her “refractory and disobedient child.”<sup>20</sup>

Many women who could have been charged with offenses against morals and social order were instead brought to the prison under the vagrancy law and held for thirty days without trial. Most women were accused of being idle and vagrant, being a “vagrant lewd drunken disorderly person” or an “idle vagrant having no possible means of getting

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<sup>19</sup> Prisoners for Trial Docket, Inspectors of the Jail and Penitentiary House.

<sup>20</sup> May 20, 1823, Prisoners for Trial Docket, Inspectors of the Jail and Penitentiary House.



a livelihood.”<sup>21</sup> Others were accused of participating in riots, disturbing the peace, running disorderly houses, or running away from their masters. Not all women brought in as vagrants were actually wild or disorderly. Women constituted a far greater proportion of the vagrancy population than they did other categories of prisoners, namely convicts and prisoners for trial. The vagrancy statute was so vague that simply being poor nearly put one in violation of it. Appearing “idle” on a street corner or begging were two benign things women did that caused them to be picked up.<sup>22</sup>

Thirty-day sentences were common for women who were not only drunk or disorderly, but were unemployed or homeless. Ironically, women working as prostitutes were also held for thirty days, though it was one form of employment that enabled many women to avoid homelessness! Simple drunkenness earned a woman thirty-six hours of hard labor while “uttering profane oaths” came with a seventy-two hour sentence. The large majority of women held on a vagrancy charge – regardless of the cause - were detained for the maximum length of time allowed by law - thirty days (see table 10).

Table 10: Women Held in Prison on Vagrancy Charges			
	1795	1807	1823
# Held for 30 Day Maximum	106	182	405
# of Women Total	134	213	482
% Held for 30 Day Maximum	78%	85%	84%

Vagrancy statutes were also freely used by owners and masters to punish slaves and servants for not working hard enough, disobeying them, and/or running away.

Runaway slave ads usually called for someone to take their slave, if found and captured,

<sup>21</sup> 1790-91, 1795, 1807, 1823, Vagrancy Docket, Inspectors of the Jail and Penitentiary House.

<sup>22</sup> Newman, *Embodied History*, 45-47.

to the nearest jail. Slaves (and servants) would be held there as vagrants until released. Other times the master or mistress would charge and commit a servant or slave themselves, to punish them or teach them a lesson. In this unusual arrangement, the state deferred to the “owner” as to length of time and occasionally treatment of the inmate. Given the situation, it is not surprising that a high percentage of women charged as vagrants for behaving disorderly towards their masters or running away were of African descent (see table 11).

Table 11: Women Vagrants Charged by Masters or Mistresses			
	1790/91*	1795	1807
Disorderly towards Master	13	5	3
Runaway	3	22	13
# of African Descent	11	12	6
% of African Descent	69%	44%	38%

\* Record Year from June 1790 to May 1791; Earlier records for 1790 do not exist

The use – or abuse – of detaining vagrants without trial was subject to criticism by the Board of Inspectors in 1822. They argued that the practice itself was illegal, but their main concern was the cost to the county of providing food and supervision for so many extra prisoners. The visiting committee complained,

Some of the magistrates are in the habit of committing persons as disorderly persons and discharging them at pleasure thereby causing great expense to the county for their support this is believed to be illegal the visiting inspectors suggest that the legality of these commitments be submitted to the chief justice or the supreme court for decision.<sup>23</sup>

This did not deter the magistrates from the practice, however.

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<sup>23</sup> Minutes, July 1, 1822, Inspectors of the Jail and Penitentiary House.

The final category of charges, crimes against property, constituted the majority of charges against women. The most striking fact is that the prosecution rate for crimes against property was much higher than for other criminal charges. While personal safety and social order were valued in the new nation, no right was as prized as that of an individual's right to own property. Women charged with crimes against property and awaiting trial were always less than fifty percent of the total number of women charged; in 1815, they only made up 15 percent of the number of women charged for all crimes. Women convicted of crimes against property, however, constitute a whopping 90 percent of all convictions in 1799 and never less than 75 percent. This reveals the high prosecution rate for crimes against property in relation to other classifications of crimes (see table 12).

Table 12: Women's Property Crimes as Percentage of All Crimes					
	1795	1799	1807	1815	1823
% of PFT Charges	43	36	31	24	40
% of Convict Charges	76	90	86	82	76

Conviction rates for larceny were higher than conviction rates for all other crimes against property and all other categories of crime. Still, larceny constituted the majority of charges until 1823 (see table 13). While sixty-two women were charged with burglary in the sample years, only two were convicted and sentenced during the same period. Similarly, counterfeiting and forgery make up forty-three of the charges and only four women were sentenced and convicted for those offenses. Analysis of convictions of various degrees of larceny is a challenge because convictions are recorded simply as larceny, while charges are often described in greater detail regarding whether the accused

stole an item, possessed stolen goods, received stolen goods, or sold stolen goods. But even charge records occasionally listed “larceny” without explanation.

Table 13: Women Prisoners for Trial Charged with Property Crimes by Charge					
	1795	1799	1807	1815	1823
Assault on Property	3	4	5	5	7
Arson	0	0	0	0	3
Burglary	4	0	6	7	45
Counterfeiting	1	0	3	5	34
Forgery	0	0	0	0	0
Larceny*	36	73	127	199	292

\* Larceny in this tally includes crimes listed as: larceny, possessing stolen goods, receiving stolen goods, selling stolen goods, stealing.

### Mayors Court Charges

Since Walnut Street Prison continued to function as Philadelphia’s county jail as well as Pennsylvania’s state penitentiary throughout this period, a disproportionate number of women who were in the prison were charged and sentenced through the Mayor’s Court of Philadelphia. A brief look at Mayor’s Court charges offers another view into the patterns of women’s crimes in Philadelphia during this period. The Mayor’s Court was made up of the mayor, a recorder, and two aldermen and played a similar role for the city of Philadelphia as the Quarter Sessions Courts did for the rest of the state. Women before the Mayor’s Court were most likely to be charged with larceny, including theft, receiving stolen goods, and possessing goods known to be stolen. From 1795 to 1823, there was a steady increase in the number of larceny charges brought before the court. Assault and battery charges constituted roughly half the number of larceny charges and were the second most common charge heard by the court. Assault and battery charges increased less evenly but were clearly more prevalent in 1815 and 1823.

Operation of a disorderly or tippling house constituted another common charge against women, and such charges occurred at a consistent rate over a thirty year period with the exception of a spike in 1815. This spike in charges, however, also coincided with a dramatic decrease in convictions.

The percentages of women charged in the Mayors Court who were found guilty varied widely by charge and year. Three different offenses – assault and battery, keeping a disorderly house, and keeping a tippling house - reached a conviction rate greater than 75 percent in three different years. Assault and battery convictions spiked at 88 percent in 1799 and then dropped to around 30 percent for the next twenty years. Only the rate of larceny convictions held steady throughout the period, hovering at around 50 percent (see table 14.)

Table 14: Charges Against Women Before Mayors Court					
	1795	1799	1807	1815	1823
Adultery	-	-	1	-	1
Assault/Battery	10	8	16	30	28
Bawdy House	-	-	-	-	2
Conspiracy	-	-	1	-	-
Counterfeit	3	-	-	-	6
Disorderly House	3	3	8	17	3
Entering	0	1	2	-	1
Fornication	1	-	-	-	-
Larceny	19	36	40	68	79
Misc*	1	1	5	-	1
Nuisance	-	-	1	-	-
Receiving Stolen Goods	-	-	-	-	10
Riot	-	-	-	-	7
Tippling House	4	9	-	36	13

\* Conspiracy, Entering, Fornication, Misdemeanor, and Nuisance

Despite the range of prosecution rates by offense, the overall percentage of women found guilty in the Mayor's Court remained relatively consistent over the thirty

year period, never dropping below 38 percent or rising above 54 percent. There was, however, a slight overall decrease in conviction rates during the nineteenth century (see table 15).

Table 15: Percentage of Women Before Mayors Court Found Guilty					
	1795	1799	1807	1815	1823
# Convictions	21	31	29	58	68
# Total Charges	40	57	70	153	164
% Convictions	53%	54%	41%	38%	41%

\* Not including those who forfeited surety or recognizance; other outcomes include not guilty, ignoramus, nolle prosequi, and continued.

Mayor's Court records provide a broader view of women's experience in courts and allows for comparison between charges before the court and charges that led to convictions of women.

### **Prison Sentence Docket: Convicts**

While prisoners for trial and mayor's court records offer a broader view of women in prison and more details of the range of offenses, the prison sentence docket contains records of the women convicted and sentenced to a period of jail time. Their numbers are far fewer, but these women serve a particularly important role in this study, as they were the intended subject of the entire penitentiary system. The pattern of women's criminal activity from 1763-1790 was quite different from that of men in the same period.<sup>24</sup> Women committed far fewer crimes overall, and the crimes they did commit were less violent. This pattern continued throughout the period from 1795 until 1823. As a percentage of all convictions, however, women committed a higher rate of

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<sup>24</sup> G.S. Rowe, "Women's Crime and Criminal Administration."

crimes involving morals and persons whereas men's convictions were more highly concentrated against property (see table 16). The various categories also changed over time in terms of the number of convictions. For instance, prosecution of crimes of morality related to fornication and bastardy underwent a steady decline throughout the last quarter of the eighteenth-century. When a woman's child died during childbirth or infancy, she was no longer presumed guilty of killing it, as was assumed by the application of the bastardy laws for much of the eighteenth century. In this regard, Attorney General William Bradford, Jr. was instrumental in laying out the wide range of events that could cause the death of an infant, and advocating the law be changed to shift the burden of proof from the mother to the prosecutor.<sup>25</sup>

Table 16: Convicts by Categories of Criminal Charges						
	1795		1807		1823	
	Women	Men	Women	Men	Women	Men
Persons	5%	1%	5%	5%	16%	12%
Order/Morals	19%	4%	5%	2%	8%	5%
Property	76%	91%	86%	91%	76%	82%
Total Charges	21	92	22	127	92	316

Crimes against property, including burglary, counterfeiting, forgery, stealing, receiving stolen goods, or possessing stolen goods, made up the overwhelming majority of convictions against women. Yet women were unlikely to commit the more serious crimes with the harshest sentences as reflected in the sentencing patterns. Men were significantly more likely to receive longer sentences.<sup>26</sup>

<sup>25</sup> William Bradford, *An Enquiry How Far the Punishment*, 38-39.

<sup>26</sup> For analysis of this based on a random sample of 1068 charges against both men and women in prison during this period, see Batsheva Spiegel Epstein, "Patterns of Sentencing and Their Implementation in Philadelphia City and County, 1795-1829" (Ph.D. diss., University of Pennsylvania, Philadelphia, 1981), 101-110.

This pattern reveals not only the frequency of theft but even more importantly the vigorous prosecution and conviction rate such charges received in the court. In the post-Revolutionary era, an individual's right to property was highly valued. In sample years from 1795 through 1823, an overwhelming majority of the women in prison were convicted of larceny, which included stealing, receiving stolen goods, or possessing stolen goods. Studies of economic trends in Philadelphia during this period show how financially vulnerable semi-skilled workers were; unskilled workers and newly arrived immigrants, who typically constitute the "lower sort," were even more likely to fall on hard times. That many turned to petty theft of basic necessities to sustain themselves and support other family members was unavoidable. For some it was a daily struggle to stay alive.<sup>27</sup> Prosecuting such crimes at a higher rate than any other category of offense and with relatively severe sentencing reveals the values of community leaders. It also offers another explanation for the drive to strengthen the entire penal system. Attitudes toward property and ownership had a different meaning in the African-American community, particularly among those who were formerly slaves. As Leslie Patrick-Stamp notes in her study of African-American crime and punishment, "They knew about property since most had been subjected to slavery, and as slaves they had been forced to accept their fate as a possession of another."<sup>28</sup> In stealing to support themselves in freedom, blacks may well have felt entitled to the goods acquired by whites who profited from their labor. The definition of "property" and "ownership" were thus challenged by those who knew it was not right for one person to own another.

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<sup>27</sup> Billy Smith, *The "Lower Sort"*, 165-166; Simon Newman, *Embodied History*, 45; Gary Nash, *Forging Freedom*.

<sup>28</sup> Patrick-Stamp, "Ideology and Punishment," 257.



Larceny convictions constituted from 70 to 86 percent of all convictions against women from 1795 to 1823 (see table 17). Women most frequently stole objects fashioned

Table 17: Women Convicts by Categories of Criminal Charges					
	1795	1799	1807	1815	1823
Persons	5%	0%	5%	8%	16%
Order/Morals	19%	10%	5%	11%	8%
Property	76%	90%	86%	82%	76%
Total Charges	21	41	22	92	92

from fabric, such as clothing or household linens. Reports of stolen clothes made from calico, linen, muslin, silk, cotton, and flannel reveal the wide range of materials available in the bustling marketplace to those who could afford them. Stockings made of silk or cotton, muslin gowns, caps, and frocks, linen shifts, check aprons, tablecloths, and handkerchiefs were all stolen for personal use, trade, or re-sale by those who likely could not afford them. Had she not been caught, Kitty Spencer would have secured herself cotton stockings, a muslin frock, a gown, a toilet cover, a linen shift, three curtain valances, two petticoats, and one handkerchief that she allegedly stole in June 1807.<sup>29</sup> A 19 year-old black woman from Delaware, Kitty served her nine month sentence, paid the \$39.50 fine and was released.<sup>30</sup> Although clothing remained the most frequent object of larceny throughout the period, more valuable objects made from precious metals such as gold, silver, bronze, brass, and copper were also stolen, earning women significantly longer sentences. Thirty-three year old Ealoner Higgins was sentenced to three years for stealing five silver forks and one silver spoon in 1794, which were valued at 10 pounds.<sup>31</sup>

<sup>29</sup> June 12, 1807, Prisoners for Trial Docket, Inspectors of the Jail and Penitentiary House.

<sup>30</sup> September 27, 1807, Prisoners for Trial Docket, Inspectors of the Jail and Penitentiary House.

<sup>31</sup> December 2, 1794, Prison Sentence Docket and October 22, 1794, Prisoners for Trial Docket, Inspectors of the Jail and Penitentiary House.

Women were convicted of stealing house-wares such as spoons, kettles, and candlesticks, as well as jewelry including cuff links, watches, locketts, and chains.

The more widespread use of paper currency in the early decades of the nineteenth century offered thieves a new and attractive target.<sup>32</sup> Women were convicted of stealing bank notes worth as little as \$4 and as much as \$480, though most amounts were within the \$10 to \$50 range. Mary Hamilton and Ann Williams were accused of stealing \$480, a far larger amount than other women dared or had the opportunity to grab.<sup>33</sup> Hamilton, a black woman born in Africa, served two years and six months of her three-year sentence. Upon release, she resumed working as a house servant in Philadelphia. Williams was found guilty of the lesser charge of receiving stolen goods, serving a much shorter sentence of six months. Also black, she was from Virginia but did not declare her plans upon release.<sup>34</sup> As this duo suggests, the connection between women and larceny is best understood collectively rather than individually. An underground economy of stealing, storing, and re-selling stolen goods involved networks of men and women and provided a crucial source of income for many poor women.

As larceny constitutes the largest percentage of convictions, it is worth taking a closer look at sentencing patterns for that charge. Both sentences and actual time served for larceny convictions were remarkably consistent from 1795 until 1823. A one year sentence was most commonly served and sat at the median of all other terms from 1795 until 1815. In other words, of the sentences that were not for one year, half of them were greater than one year and half were less than one year. Only in 1823 did both of these

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<sup>32</sup> See William Bradford, *An Enquiry How Far the Punishment of Death*, 26-29.

<sup>33</sup> April 18, 1815, Prisoners for Trial Docket, Inspectors of the Jail and Penitentiary House.

<sup>34</sup> June 8, 1815, Prison Sentence Docket, Inspectors of the Jail and Penitentiary House.

periods drop, as the most common sentence for a larceny charge was reduced to six months, with eight months as the median.

Table 18: Length of Sentence for Larceny Convictions Against Women in Years (yr) or Months (m)					
	1795	1799	1807	1815	1823
Median	1yr	1yr	1yr	1yr	8m
Mode	1yr	1yr	1yr	1yr	6m
Mean	15.3 m	15.4m	10.8m	13.2m	13m

The average (or mean) length of both sentences and actual time served is a less reliable gauge with this particular data set, as a few extreme cases skew the average sentence toward the higher end.

For most of the state's history, African Americans were consigned to special courts, special laws, and special sanctions.<sup>35</sup> Pennsylvania did not admit African Americans to trial before the sitting courts until 1780. For the period of this study, however, blacks and whites in Pennsylvania had equal access to the law, at least in theory.<sup>36</sup> Analysis of sentences by race for the early years of this study is difficult, however, as racial designation of convicts was inconsistent. Given the growing interest in racial classification and segregation on the part of the inspectors, records for 1815 and 1823 are more complete. Analysis of these records show that women of color were convicted in greater numbers than their white counterparts. They received shorter

<sup>35</sup> G. S. Rowe, "Black Offenders, Criminal Courts, and Philadelphia Society in the Late Eighteenth-Century," *Journal of Social History*, 22 (1989), 686-687.

<sup>36</sup> For analysis of the relationship between racism and liberalism in the rise of the penitentiary system, see Leslie Patrick-Stamp, "Ideology and Punishment: The Crime of Being Black."

sentences more frequently than white women convicted for larceny, but they were also more likely to receive the longest sentences.

Table 19: Length of Sentence for Larceny Convictions by Race in 1815			
Sentence	<1year	=1yr to <2yrs	2years+
White	5	10	6
Others*	17	11	11

\*All those designated by the following categories: Mulatto, Black, Coloured, or Yellow; Negroe, Negress, and Mulatress were not used after 1807.

Evidence of racial discrimination emerges more clearly in 1823, when fewer African-American women were beneficiaries of the general decreases in sentences given. Nearly 60 percent of white women convicted of larceny in 1823 received sentences of less than one year, while one half of the women of color convicted on the same charge served a sentence of one year or more. Since more women of color were convicted of larceny, they comprised nearly three quarters of all women convicted of larceny serving sentences of a year or more.

Table 20: Length of Sentence for Larceny Convictions Against Women by Race in 1823			
Sentence	<1year	=1yr to <2yrs	2years+
White	15	3	5
Others*	17	12	9

\*All those designated by the following categories: Mulatto, Black, or Yellow; Coloured is not used after 1815.

Research on the role of race and racism in sentencing patterns and conviction rates is somewhat contradictory. One sociological study of the length of sentences and time served by men and women in Walnut Street Prison shows no evidence that race was

a factor in setting sentences or in actual time spent in jail.<sup>37</sup> Moreover, in this 1981 study, Bathsheva Epstein shows that white men did not receive lighter sentences than men of African descent. My research reveals that white women were more likely to receive shorter sentences, suggesting that at the very least, whiteness functioned as a buffer for women, perhaps inspired by a belief in white female innocence on the part of paternalistic white male justices. Sentence length was not the only factor, however. Epstein found that people of African descent were more likely to be sentenced to solitary confinement than whites and slightly less likely to receive pardons.<sup>38</sup> My study of women, however, finds no discrepancy among women of different races concerning pardons, suggesting that black men were those least likely to receive pardons. While the studies are not directly comparable, the discrepancy in findings suggest that race was a more significant factor in the sentencing of women and in the pardoning of men. While race was a significant marker of power and privilege, its role in shaping a person's experience in the court and prison system was not always discernable.

Property crimes that netted more valuable assets, including burglary and counterfeiting, were more commonly committed by men. After simple larceny, burglary constituted the largest number of convictions against men. For women, the second most frequent conviction was for running a disorderly house. Thus, while men shifted their attention to more serious crimes with greater potential gains, women turned to marginal and/or illegal economies to make ends meet and supplement their incomes.

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<sup>37</sup> Epstein, "Patterns of Sentencing," 112.

<sup>38</sup> Epstein, "Patterns of Sentencing," 123.

Table 21: Number of Convictions for Burglary, Counterfeiting, and Forgery as Percentage of All Crimes Against Property by Sex						
	1795		1807		1823	
Men	9	11%	26	22%	42	16%
Women	1	6%	0	0%	4	6%

One of the few women convicted of burglary disguised herself as a man throughout her capture, trial, and prosecution.<sup>39</sup> Two other women were convicted knowingly as women, Mary Lane in 1803 and Mary Haines in 1823. Haines was charged with breaking into the house of Luke Neal and stealing items belonging to him and another man, Peter Combes. The list of goods stolen reveals not only the monetary value of each item but also shows the desperation of women who risked prosecution for so little gain and their continued focus on clothing as a valuable commodity.<sup>40</sup>

Table 22: Items and Values Stolen by Mary Lane and Mary Haines	
ITEM	VALUE
one pair pantaloons	50 cents
one bed tick	25 cents
one piece of pork	50 cents
one cloth coat	40 cents
three waistcoats	\$1.50
one pair pantaloons	\$1.50
one pair suspenders	6 cents
one towel	6 cents

Haines, a 31 year-old black woman from Delaware, was found guilty and sentenced to four years hard labor.<sup>41</sup> Crimes against property garnered women the most severe

<sup>39</sup> December 4, 1799, Prison Sentence Docket, Inspectors of the Jail and Penitentiary House; For further discussion of the case of Samuel/Sarah Johnson, see conclusion.

<sup>40</sup> February 18, 1823, Prisoners for Trial Records, Inspectors of the Jail and Penitentiary House.

<sup>41</sup> May 5, 1823, Prison Sentence Docket, Inspectors of the Jail and Penitentiary House.

sentences and Mary, serving every day of her four years, spent more time in the penitentiary than most who were sent there. Had she been convicted of the same crime twenty or thirty years earlier, she might have received a pardon from the governor after serving only a portion of her sentence. Efforts to render the penal system more effective and consistent, however, led to more uniform sentences and fewer pardons. Upon release, Mary planned to stay in the city and resume her work as a servant, assuming she could find an employer willing to hire a convicted burglar.

Like Mary Haines, thirty-six year old Margaret Price of Derby, England stands out from other women convicts for the length of the sentence she received. She was also unusual for the category of crime of which she stood accused. Charged with counterfeiting a five dollar note of the bank of the United States, Price was tried and convicted in the Court of Oyer and Terminer of Lancaster County. She was sentenced to four years in prison, four months to be spent in a solitary cell. Margaret, however, was pardoned and discharged on April 26, 1796, only two months into her sentence. Proving that the woman in possession of counterfeit money actually knew it to be forged was much harder than simply identifying the false currency. Thus charges of counterfeiting whether against women or men far out-number convictions. The most famous convict woman of this era was at the center of a robbery and counterfeiting ring. Ann Carson served several prison sentences for a range of crimes and eventually died in prison.<sup>42</sup>

Arson also stands out as it was long viewed more as an attempt at social and political resistance than a crime against property. Attorney General William Bradford, Jr described arson as a crime of revenge, most commonly committed by “slaves and children,” and he was right in that arson was often a desperate attempt by those with no

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<sup>42</sup> See Susan Branson, "Beyond Respectability."

recourse to demand their personal or social rights and dignity. But he critiqued the effectiveness of the act, arguing, “Its motive is revenge, and, to a free mind, the pleasure of revenge is lost when its object is ignorant of the hand that inflicts the blow.”<sup>43</sup> Women charged with arson were younger than those charged with other classes of crime. Perhaps it should be more appropriately classified as a crime against morals and order because in the eyes of slave holders whose property was often the object, it amounted to insurrection. Very few of those charged with arson were convicted, however. Arson was the rarest of crimes against property for which women were accused or convicted. Moreover, most of those convicted and sentenced to prison were from outside the Philadelphia region since arson was predominantly a rural crime.

Arson convictions earned women the longest sentences, though the women never served them to completion. Of three convictions, only one woman served even half of her sentence. Nineteen year-old Hanna Carson served six years and six months of a twelve year sentence for a 1799 fire. Hanna was an African-American girl from Philadelphia, reportedly raised in the family of William Ross and likely his servant. At nineteen, she was among the youngest of convicts and the eldest of arsonists. Martha Daily was fourteen when she was sentenced to five years for arson in 1815. She was tried and convicted in the Quarter Sessions Court of Washington County and served a mere seven months of her sentence before being pardoned. This white girl from Pennsylvania received a generous pardon of four years and four months, second only in length to that granted Hanna Carson. Hannah, however, served six years of her sentence, while Martha served only seven months. Eighteen year-old African-American Matilda Scott of York

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<sup>43</sup> William Bradford, *An Enquiry How Far the Punishment*, 31.



County did not fair as well as either Hanna or Martha. Also convicted of arson, she died in prison in 1823, three years into her ten year sentence.

Analyzing the convictions of women for crimes against property reveals several important things about the place of women in the early republic. Women were most likely to break the law while stealing goods of little worth, in a last ditch effort to sustain themselves and their families. Though social, political, and economic rules and norms put them in this position in the first place, the legal system took these crimes seriously and held them accountable. This also reveals the extent to which women were not “provided for” by male family members, including fathers, husbands, brothers, and sons. Further, it speaks to the dire conditions of the entire working and lower class; had the men or women been provided greater economic opportunities, perhaps fewer people would have turned to extralegal economies.

Low convictions rates for crimes against morals and social order reveal that upholding morality and social norms was less important to the community than one might have expected. Or, perhaps more accurately, people turned to other institutions such as the church, the school, and an ever growing list of reform associations to enforce such norms. Convictions for such crimes remained consistent throughout the period from the 1790s to the 1820s, marking an end to the dramatic decline in prosecutions from the late colonial period to the revolutionary era. Scholars have argued that the upheaval in the criminal justice system brought on by the revolution lessened concern with prosecuting crimes that may have offended moral or religious sensibilities but did not immediately endanger residents’ lives.<sup>44</sup> In Pennsylvania, the confluence of a weakened, strained court system, a diminished role for Quakers who were at the root of many efforts to regulate

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<sup>44</sup> G.S. Rowe, “Women’s Crime and Criminal Administration,” and Clare Lyons, *Sex Among the Rabble*.

“immoral” behaviors, and increasing concern over the financial viability of the newly independent states all shaped a judicial system that spared prostitutes, adulterers, fornicators, gamblers, and drinkers severe punishment from the 1780s on.

Crimes against morals and order included adultery, running a bawdy, disorderly, or tippling house, bigamy, perjury, rioting, and being a nuisance. Convictions peaked in 1795 at 19 percent of all convictions against women and then wavered between roughly 5 percent and 10 percent over the next thirty years. This low percentage of convictions is largely due to the lack of interest on the part of most Philadelphians in supporting such charges. Prosecutors were most vigorous in pursuing fathers of bastard children for purposes of child support, not punishment.<sup>45</sup> Running an establishment that encouraged drinking, sexual encounters, and/or general, unregulated merriment was far more likely to land a woman in jail than an individual indiscretion in one of the said activities. Running a disorderly house constitutes the second largest category of convictions for women, but remains far behind larceny. The turn of the nineteenth century saw an increase in the percentage of convictions for running disorderly houses, yet the overall numbers still remained low.<sup>46</sup>

Race or place of birth is available for ten of the nineteen women convicted of running a disorderly or bawdy house in the sample years.<sup>47</sup> Most women were white, although two mulatto women and one Native American were also convicted. The length of sentence for such a charge peaked in 1799 at one year of hard labor. Most women

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<sup>45</sup> Lyons, *Sex Among the Rabble*, 78-79.

<sup>46</sup> The Mayor's Court. Philadelphia City Archives.

<sup>47</sup> Prison Sentence Docket, Inspectors of the Jail and Penitentiary House.

convicted in later years were sentenced for one to four month stays.<sup>48</sup> Relative leniency in sentencing is striking because disorderly houses enabled a range of other illegal activities yet perpetrators were never punished as severely as those convicted of petty theft.

Convictions for crimes against morals or persons, however, always comprised a higher percentage of women's crimes than of men's (see table 23). This stricter enforcement of social morals for women was likely the result of a double standard that held women more accountable for moral transgressions. Violent crimes against persons, such as assault and battery, manslaughter, and infanticide, made up the smallest percentage of convictions against women. Physical violence or assault against persons was less tolerated among women, however, and constituted a larger percentage of their overall convictions than men's.

Table 23: Percentage of Convictions by Category of Crime and Sex						
	1795		1807		1823	
	Women	Men	Women	Men	Women	Men
Order/Morals	19%	4%	5%	2%	8%	5%
Persons	5%	1%	5%	5%	16%	12%
Property	76%	95%	90%	93%	76%	83%

Table 23 is important because it reveals – though in a nuanced way – what many expect the conviction records to say about the differences between men and women. Despite the shocking statistic that women, like men, were overwhelmingly charged with property crimes, it was also true that women were held to a different standard of conduct than men concerning behaviors which involved speaking out, such as cursing, yelling,

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<sup>48</sup> There were a few exceptions in 1815; one woman was sentenced to 6 months and another to 1 year, but she was pardoned after serving only 1 month; Prison Sentence Docket, Inspectors of the Jail and Penitentiary House.

and rioting, or acting out, such as fighting, throwing things, defending oneself, or engaging in sexual relations.

The one crime against persons that was more often committed by women than men was the murder of a bastard child or the concealment of the death of a bastard child. This charge and conviction was unique to women, though some accused women tried to pin the murder on the father.<sup>49</sup> Very few women were charged with and/or convicted of either of these charges during this period, however. It is no coincidence that the only conviction of a woman for killing her bastard child occurred outside of the Philadelphia area. In the 1780s, court attitudes toward infanticide shifted dramatically away from presuming the guilt of any woman whose child died in infancy to presuming her innocence.<sup>50</sup> By the late eighteenth century, such women were much more likely to be charged and found guilty of *concealing* rather than *causing* the death of their children. And even these cases occurred outside the Philadelphia area. Hannah White was tried in the court of Oyer and Terminer in Armstrong County in the western part of the state and sentenced to four years of hard labor. Born in Donegal County, Ireland, Hannah likely arrived in Pennsylvania as an indentured servant like so many of her countrywomen. Hannah was twenty-eight at the time of her conviction and described as having a dark complexion and lame right hip. The trip to Philadelphia to serve out her sentence may have been well worth it for Hannah, as she was pardoned and released after serving only two months of her four-year sentence.<sup>51</sup> Other women convicted of concealing the death of children were also released having served only a fraction of their sentences. Twenty-

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<sup>49</sup> *A Faithful Narrative of Elizabeth Wilson*.

<sup>50</sup> Rowe, "Women's Crime and Criminal Administration;" Bradford, *An Enquiry How Far the Punishment*, 26-29.

<sup>51</sup> September 24, 1807, Prison Sentence Docket, Inspectors of the Jail and Penitentiary House.

two year old Dutch woman Barbara Young was charged in the court of Oyer and Terminer for Northampton County in 1795 and served one year and ten months of a three year sentence.<sup>52</sup> Lucy Low received a slightly longer sentence of five years from the court of Quarter Sessions in Chester County, but was pardoned after serving only one year.<sup>53</sup>

While manslaughter and infanticide were truly rare occurrences, assault and battery were more common than the rate of convictions for these crimes against persons suggest. Assault and battery charges usually resulted in fines, not imprisonment, so many of those found guilty were not listed as convicts in prison. Some of them, however, ended up spending some time behind bars because they were unable to pay the fines. This changed in the early nineteenth century with the introduction of imprisonment as the standard punishment for assault and battery. In 1815 and 1823, seven and fifteen women respectively were sent to prison on such charges. This contributed to the increase in the overall percentages of women convicted of crimes against persons during these years.

In several instances, assault and battery charges involved an attempt to take someone's life, in which case the women were sentenced to hard labor in prison in addition to a fine. Both of the available examples concern women of color. One was a "dark" mulatto woman Catherine Evenson who was sentenced to one year of imprisonment on December 16, 1823.<sup>54</sup> Three members of the Combs family, George, Catherine, and Phebe, accused Catherine of assaulting and threatening to kill them while wielding a "naked knife."<sup>55</sup> Earlier that same year, a 30 year-old "yellow woman"

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<sup>52</sup> June 22, 1795, Prison Sentence Docket, Inspectors of the Jail and Penitentiary House.

<sup>53</sup> February 20, 1799, Prison Sentence Docket, Inspectors of the Jail and Penitentiary House.

<sup>54</sup> December 16, 1823, Prison Sentence Docket, Inspectors of the Jail and Penitentiary House.

<sup>55</sup> October 25 & 27, 1823, Prisoners for Trial Records, Inspectors of the Jail and Penitentiary House.

Elizabeth Jones was charged with assaulting and attempting to murder Jacob Hall “by striking him twice with a hatchet and then stabbing him in the back with a fork declaring at the same time she intended to kill.”<sup>56</sup> Like many women who left prison and declared their intentions, she planned to remain in the city and work as a house servant.

Crimes against persons almost always elicited the lowest percentage of female convictions, with the exception of 1823. Manslaughter and murder charges were predominantly made against men. Women charged and convicted of either crime were truly exceptions to dominant social and legal patterns. Hannah Finckle was only twelve years old when she was convicted of manslaughter in Philadelphia’s Court of Oyer and Terminer, February 16, 1807.<sup>57</sup> Her sentence was relatively light – two years of hard labor, one month of which would be spent in the solitary cells. Perhaps because of her age, Hannah received a pardon from the governor after serving only two months of her term.

Had she committed the same crime fifteen years earlier, she may have been subject to the permanent disfigurement that Margaret Byron received for committing manslaughter in 1792. Margaret was accused of “violently assaulting” another woman and knocking her down a flight of stairs, which led to a serious head injury that threatened to kill her. She was punished with a fine in addition to “the burn of the left thumb with M.”<sup>58</sup> Branding, a common punishment in colonial Pennsylvania, was increasingly perceived as inhumane and spiritually scarring. Marking a person with a permanent sign of their crime hindered their ability to be reborn. Hannah was not

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<sup>56</sup> June 26, 1823, Prisoners for Trial Records, Inspectors of the Jail and Penitentiary House.

<sup>57</sup> February 16, 1807, Prison Sentence Docket, Inspectors of the Jail and Penitentiary House.

<sup>58</sup> June 11, 1792, Prisoners for Trial Records, Inspectors of the Jail and Penitentiary House.

physically scarred in this way, though there is no telling what two months in prison may have done to a twelve year old girl.

In the early years of the penitentiary, pardons for all classes of crimes were frequent. In 1795 and 1799, roughly half of the women sentenced received early release. Though the pardon was retained as a penal tool in the era of enlightenment reforms, the condition of “banishment” was eliminated before the turn of the century. The last woman to be released from the penitentiary on the condition of leaving the state left Walnut Street in 1798.<sup>59</sup> By 1807, however, the percentage of pardons dropped dramatically to 11 percent and never returned to its frequency of earlier years, where a whopping 62 percent of inmates gained early release in 1795. Fewer than 6 percent of the women convicted in 1823 received such pardons (see table 24).

Table 24: Pardons Granted Convicted Women Prisoners					
	1795	1799	1807	1815	1823
Number of Pardons	13	20	6	16	6
Number Convictions	21	39	53	92	95
Percentage of Pardons	62%	51%	11%	17%	6%

The issue of pardons and early release aroused heated debate at the turn of the nineteenth century. As larceny constituted the large majority of convictions, this analysis of pardons concerns those granted for larceny. Most women convicted between 1795 and 1823 were sentenced to a one year term and served out the full time. Pardons were more frequent and of greater length during 1795, but the median pardon term dropped from 4 months in 1795 to 1 month in 1799. In the following years, the pardon rate was

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<sup>59</sup> Several women were discharged under that condition in 1798; Prison Sentence Docket, Inspectors of the Jail and Penitentiary House.

negligible, as most women served their full terms and the median term served was equal to the sentence.

Table 25: Time Served in Relation to Sentence for Larceny Convictions Against Women by Months (m)					
	1795	1799	1807	1815	1823
Median	-4m	-1m	=	=	=
Mode	=	-1m	=	=	=
Mean	-4m	-1.3m	-.75m	-1.5m	=

Critics of the penal system often complained of discrepancies between terms of sentences and time served, arguing that early release undermined the efficacy of the system. Some claimed that frequent pardons undermined the judicial system, giving criminals reason to believe they would be released long before serving a complete sentence. Even before conviction, those charged with crimes often presumed they would receive pardons if found guilty. Early reform proponents, however, held pardons to be a good thing, offering incentive for prisoners to follow the institution's rules at the very least and to embrace the spirit of personal transformation at best. The gradual discontinuation of pardons inspired president of the board of inspectors, Thomas Bradford Jr., to write to the governor to advocate the continued use of the pardon as a tool of reform. In 1821, Bradford explained that pardons were a key to making prisoners more orderly and hard working. He wrote, "The stimulus to industry and obedience was hope and hence pardons were frequent... Hope of reward and fear of punishment in the cells were the powerful and efficient agents in maintaining the admirable discipline



which then existed in the prisons.”<sup>60</sup> His position failed to win a change in policy, however.

By 1800, pardons of one year or more were uncommon, accounting for only 18 of 447 sentences. Though larcenies accounted for 81 percent of the convictions, those convicted of other crimes such as counterfeiting, burglary, concealing or committing the death of a child, and arson were more likely to receive lengthy pardons. Of those pardoned for periods of one year or more, seven were African American and three were white, leaving eight undesignated. Fewer than ten percent of the sentences were for periods of three years or more.<sup>61</sup> Yet sentences of this long were rare, accounting for only 32 of 447 convictions.

Limited records of the racial identity of prisoners make analysis of the relationships between race and patterns in sentencing and pardons difficult to trace over time. In 1795, 1799, and 1807, a woman’s race was only designated if she was a woman of color. The records do not conclusively demonstrate, however, that absence of a racial classification, such as negress, mulattress, or black, necessarily meant that the woman was of European descent. Still, women with and without racial designations are distributed throughout the range of sentences and terms served. Pardons appear to have been well-distributed as well. In 1799, for example, of the twenty women who received pardons of one month or more, at least ten of them were of African descent. There is no evidence that women of African descent were less likely to receive pardons.<sup>62</sup> Still, women of African descent comprised a larger proportion of the women in prison than in the population of Pennsylvania or Philadelphia, suggesting either a higher incidence of

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<sup>60</sup> Minutes, May 21, 1821, Inspectors of the Jail and Penitentiary House.

<sup>61</sup> 32 of 447 in the Prison Sentence Docket, Inspectors of the Jail and Penitentiary House.

<sup>62</sup> Epstein also documents this in her dissertation, “Patterns in Sentencing.”

crime or a higher incidence of prosecution or both.<sup>63</sup> Ample evidence of increased hostility toward African Americans in the city along with the development of hardened categories of “whiteness” and “blackness” certainly support the hypothesis that even in this early period they were more likely to be charged and convicted than their white sisters.

### **Life in Prison: Demographics**

Birth was one of the most consistently documented pieces of demographic information in prison records. In the decade from 1794 to 1804, the birthplace of inmates was recorded in the docket book roughly 70-80 percent of the time. This high percentage made birthplace one of the most consistently available pieces of information women who otherwise evaded documentation. From 1794 to 1797, women in prison were as likely to be born in Europe as the United States.

Table 26: Convicted Women Prisoners by Birthplace, 1794-1797				
	1794	1795	1796	1797
Europe	4	9	12	6
US	3	9	11	6
Other	0	2	1	0
% US of All	43%	45%	46%	50%

Only three women during this period were born outside of Europe or the United States, and two of them were from Cape Franchoise, the most common birthplace outside of Europe or the United States for women convicts. Women from Cape Franchoise likely arrived in Philadelphia as slaves of French planters and aristocrats who fled in light of the

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<sup>63</sup> Leslie Patrick-Stamp, “Ideology and Punishment.”

slave rebellion in Saint Domingue. The percentage of convicted women born outside of the United States dropped dramatically the following year. By 1798, 70 percent of all women convicted were born in the United States and this percentage remained relatively steady for the next twenty years.

Table 27: Convicted Women Prisoners by Birthplace, Sample Years					
	1795	1799	1807	1815	1823
Europe	9	10	7	13	8
US	9	23	11	48	52
Other	2	0	0	4	3
% US of All	45%	70%	61%	74%	83%

In the early years of record keeping, racial classification was reported only 20 percent of the time. Racial designations of convicted women prisoners increased consistently in the early nineteenth century, reaching 71 percent in 1815, and peaking at 90 percent in 1823. This increase is consistent with other aspects of institutional recordkeeping and management that reveal a heightened sensitivity toward and focus on racial classification.

Table 28: Convicted Women Prisoners Designate by Race					
	1795	1799	1807	1815	1823
Number Designated	4	18	10	65	84
Total Number	20	41	22	92	93
% Designated	20%	44%	45%	71%	90%

The most interesting aspect of racial designation in the records, however, is the consolidation of terminology used to describe women of African descent. Racial categories underwent a lumping process between 1798 and 1823. A woman of African descent may have been described as black, negress, negro, mulatto, mulatress, or

coloured throughout the 1790s (see table 29.) It is possible that the clerk assessed the woman's skin tone, occupational status, criminal conviction, place of birth, or all of the above when determining what term to use. In another way, the loose interchange between feminine and masculine gendering of terms may represent a disregard for the "sex" or

Table 29: Racial Designation of Convicted Women, 1794-1803										
	1794	1795	1796	1797	1798	1799	1800	1801	1802	1803
Negress	2	3	8	4	0	14	6	9	8	4
Negroe	1									1
Black			3	1	1					
Mulatto		1	1		1	2				
Mulattress				1	2	1	2	1	1	1
White									1	
Indian						1				

"sexuality" of a group that was often hyper-sexualized in the eyes of white men, particularly during this period. While usage of the term "negroe" was rare (appearing only twice) and "negress" was the most commonly used term by far, clerks used descriptions of "mulatto" and "mulattress" interchangeably when describing women.

The terminology changed in 1808, the same year the slave trade with Africa ended. The terms negress, negroe and mulattress fell out of usage. Women of African descent were no longer designated with special feminine descriptions but rather were lumped en masse with men as "black" or "mulatto" while new terms, like "coloured" and "yellow," were introduced. Only with this consolidation of the language of darkness or "blackness" did people previously designated only by birthplace come to be classified as "white." The lone exception to this pattern is Mary Wolfe who was a 21 year-old native Philadelphian convicted of receiving stolen goods in 1802. Her description, "A white girl

born in this city, stout made, brown hair,” marks whiteness years before it became a common practice (see table 30).<sup>64</sup>

Table 30: Racial Designation of Convicted Women, Sample Years			
	1808	1815	1823
Black	5	32	39
Mulatto	3	2	4
Coloured	2	3	-
Yellow	2	2	7
White	-	26	34

Finally, women in prison were generally young women. The majority of those convicted were in their twenties. Designation of an inmate’s age was made at least 75 percent of the time and sometimes, such as in 1795, as often as 95 percent of the time. Women in their twenties constituted the largest percentage of those convicted (see table 31). Seventy percent or more of the women convicted were consistently under the age of

Table 31: Convicted Women Prisoners in Their 20s					
	1795	1799	1807	1815	1823
# of Women	9	19	11	31	34
% of Total Known	45%	59%	58%	47%	49%

40. Women under twenty and over fifty made up the smallest percentages of women convicted. In the early nineteenth century, however, these categories began to diverge as women under age twenty were more likely to be in the ranks of the convicted and older women less likely.

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<sup>64</sup> 1802, Prison Sentence Docket, Inspectors of the Jail and Penitentiary House.

Table 32: Convicted Women Prisoners by Age					
	1795	1799	1807	1815	1823
# of Women < 20	2	2	4	8	14
% of Women < 20	10%	6%	21%	12%	23%
# of Women > 50	5	2	0	5	1
% of Women > 50	25%	6%	0%	8%	1%

For women, age was the most regularly documented demographic and occupation the least. This is the single most significant discrepancy in the recordkeeping of male and female convicts. References to women's occupations were only made in conjunction with a reference to their status as servants or slaves. In this instance the designation functions as a sign of power and ownership. Single women and those married to men who could not support their families alone worked in a wide range of predominantly low-paying occupations such as washerwomen, maids, nurses, and hucksters. The fact that a large percentage of women were convicted of minor property crimes suggests the likelihood that convict women who were employed worked in low paying jobs. Recent runaway servants and slaves likely resorted to theft until they found new work opportunities for themselves. Women held as vagrants were often unemployed or prostitutes. Aside from a few exceptional women criminals from middle-class families who engaged in high-stakes burglary and counterfeiting schemes, women in prison were disproportionately employed in marginal economies.

Despite these general characterizations regarding birthplace, race, age, and occupation, the portrait of women's crime in Pennsylvania during the early national period is quite incomplete. Available sources allow for a broad picture of the categories of crime women were likely to be charged with, held in prison for, and convicted of committing. Discrepancies between rates of charge and conviction for various crimes

reveal something of the values and priorities of the community. Women were more likely to be charged with and convicted of property crimes than crimes against persons or morals. They also received harsher sentences for these crimes. Yet women were also more likely than men to be imprisoned for things other than property crimes, namely crimes against morals and persons. This suggests less tolerance for perceived moral indiscretions on the part of women. And women were far less likely than men to be charged or convicted of the most serious offenses of any category of crime, namely high-stakes property crimes such as horse stealing, burglary, and counterfeiting, or violent crimes against persons such as murder or manslaughter.

Other demographic information about women in prison is inconsistent. While extant records suggest that during the later years, such as 1823, women of African descent were more likely to receive longer sentences, there is no evidence of this for the 1790s and early 1800s when racial division in Philadelphia was arguably solidifying. Still no firm argument is possible given the incomplete nature of the records designating race. The favoring of white women during sentencing is about all that can be proven from these records. Other types of sources for the period substantiate racial discrimination against African Americans in nearly every realm of society, and the data does reveal that a disproportionate number of African American women were in Walnut Street Prison between 1795 and 1823. Most of them, like the white women who shared their cells, were guilty of being poor and doing what they could to keep themselves alive in spite of that fact.

## Chapter Five: Visitation Rights and the Rhetoric of Virtue

Feminist theories of sexuality and gender provide new frameworks for analyzing the relations between sex, gender, and sexuality in historical situations. The constitutive nature of these relationships is outlined by feminist theorist Monique Wittig, who claims, “The category of sex is the political category that founds society as heterosexual. As such it does not concern being but relationships (for women and men are the result of relationships), although the two aspects are always confused when they are discussed.”<sup>1</sup> The very category of sex, according to Wittig, is not ahistorical and biological but rather political and given meaning through heterosexual marriage. This construction has particular salience for the early American republic when the institution of marriage gained particular social and political significance. Republican ideology valued marriage between a man and a woman, not only because women and men were now to be “conjugal equals” but even more importantly because their relationship was to be a model for “all the relationships in the society and the polity.”<sup>2</sup>

This heightened privileging of heterosexual marriage gave weight and meaning to the differences between – and the different functions of – men and women. What marked men and women as distinct shifted from culturally-prescribed gender roles to biologically rooted sexual differences, as the long-standing one-sex model of humanity gave way to a two-sex model in the eighteenth century.<sup>3</sup> Women were now deemed physiologically

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<sup>1</sup> Monique Wittig, “The Category of Sex,” *The Straight Mind and Other Essays* (Boston, 1992), 5-6.

<sup>2</sup> Jan Lewis, “The Republican Wife: Virtue and Seduction in the Early Republic,” *William and Mary Quarterly*, 44 (1987): 699; Also see Ruth Bloch, “Changing Conceptions of Sexuality and Romance,” *William and Mary Quarterly*, 60 (2007): 39.

<sup>3</sup> Lacquer shows this developed simultaneously in multiple epistemologies and discourses. See Thomas Laqueur, *Making Sex: Body and Gender from the Greeks to Freud* (Cambridge, MA, 1990).



distinct from and weaker than men and this became the justification for a whole host of social, political, and economic inequities between the sexes. But this causal relationship moved the other way as well. Since the new concept of sexual difference went against centuries of scientific thinking, it required support from other knowledge producing apparatuses. As Foucault notes, “We should admit rather that power produces knowledge (and not simply by encouraging it because it serves power or by applying it because it is useful); that power and knowledge directly imply one another.”<sup>4</sup> Despite its relative newness, the idea that women were a distinct sex who by nature of that distinction were grouped together into a class of citizens who had no formal political voice, limited economic opportunities, and a subordinate position within the family and the church was incorporated into a broad range of competing ideologies. Old understandings did not disappear, but newer ones quietly took hold.

Arguments for the subordination of women were previously rooted in gender roles, not biological difference. In the United States, even as biological categories gained ground, gender roles continued to serve important functions at the turn of the nineteenth century. The early republic gave rise to a powerful form of the heterosexual political economy, in which women’s domestic labor gave visibility and legitimacy to men’s work and the concept of a male provider.<sup>5</sup> Of this arrangement, Wittig writes, “The category of sex is the one that rules as ‘natural’ the relation that is at the base of (heterosexual) society and through which half of the population, women, are ‘heterosexualized’ (the making of women is like the making of eunuchs, the breeding of slaves, of animals) and

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<sup>4</sup> Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan, (New York, 1995), 27.

<sup>5</sup> Jeanne Boydston, *Home and Work*, 31; Mary Blewett, *Men, Women and Work: Class, Gender, and Protest in the New England Shoe Industry, 1780-1910* (Urbana, 1988); Susan Branson, “Women and the Family Economy;” Wulf, *Not All Wives*.

submitted to a heterosexual economy.”<sup>6</sup> This chapter shows how penal laws and institutional rules were used to solidify and naturalize the category of woman in a specific way at the turn of the nineteenth century. Both the prison reform movement and the prison itself were dynamic sites for the production of the category of sex.<sup>7</sup>

The instability of the categories of sex, gender, and sexuality was manifest in many of the actions of inspectors, keepers, and reformers. They regulated some sexual relationships and not others; they disrupted family structures in the name of the “family” of man; they invoked feminine qualities of moral authority and virtue while denying actual women participation in prison reform. Moreover, prison reforms alternately reinforced and undermined this heterosexual economy rooted in the institution of marriage. The very introduction of imprisonment as the central method of punishment divided families, undermining their ability to function as economic units and denying spouses companionship and intimacy.

This chapter shows how efforts to regulate interactions between prisoners and non-prisoners were rooted not only in sexual differences, but also in the gendered roles constructed through the institution of heterosexual marriage. Imprisonment and visitation restrictions attempted to keep prisoners apart from families and friends. Gendered values of criminality and moral authority shaped who was and was not permitted in certain spheres of the prison. Male reformers upheld virtue as the path to reformation for all prisoners, and reform literature deployed the increasingly gendered language of virtue, seduction, and desire. This literature often portrayed a male criminal being transformed

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<sup>6</sup> Wittig, “The Category of Sex,” 5-6.

<sup>7</sup> Foucault, *Discipline and Punish* and *The History of Sexuality*; For more discussion of the concept that “sex” has a history, see Denise Riley, *Am I That Name? Feminism and the Category of Women in History* (Minneapolis, 1988); Judith Butler, *Gender Trouble* (New York, 1990); Laqueur, *Making Sex*.

by feminine powers in a sexualized way, yet the participation of actual women in reform work was restricted. Taken together, these developments reveal how prison reforms used gender roles to enforce the idea of sexual difference. The presumption and privileging of heterosexual desire and relationships, however, also disrupted the political economy rooted in heterosexual family units and undermined their moral authority.

The prison system and prison reform movements are excellent sites for analyzing the instability and historical contingency of the category sex and the concept of woman. As Denise Riley writes, “‘Women’ is historically, discursively constructed, and always relatively to other categories which themselves change; ‘women’ is a volatile collectivity in which female persons can be very differently positioned, so that the apparent continuity of the subject of ‘women’ isn’t to be relied on.”<sup>8</sup> This chapter aims to show some of the ways the category of woman was given meaning in the early American republic through a range of other orderings, disciplines, and differences.

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The most important and complete separation imposed on criminals was that of removing them from society. This was the foundational element of the 1790s reforms and the basis of the penitentiary. By isolating convicts from society, however, one also separated them from their family. This restriction is the most obvious and as a result often evades critical analysis. But the function of the separation of convicts from their families is just as telling as the various other restrictions placed on prisoners once behind the walls.

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<sup>8</sup> Denise Riley, “Does a Sex Have a History,” in *Am I that Name? Feminism and the Category of ‘Women’ in History* (Minnesota, 1988), 1-2.

Like the categories of sex and woman, the role of the family in penal reform was contradictory. The first published constitution of the PSAMPP invoked the unity of the family of mankind as a central goal of prison reform efforts. “By the aids of humanity, their undue and illegal sufferings may be prevented; the links, which should bind the whole family of mankind together under all circumstances, be preserved unbroken.”<sup>9</sup> And yet the penal system, while calling on a sense of universal mankind to elicit compassion and support for criminals, also required the undoing of specific family structures to achieve its larger goals. Punishment put an individual’s obligation to the state ahead of his or her obligation to the family.

The institution of the prison functioned in ways similar to the institution of slavery. Just as the separation of parents from children and spouses from each other was justified under slavery by placing the freedom and economic rights of slave holders above the familial ties or emotional needs of slaves, so too did the new penal system disregard the familial ties or emotional needs of prisoners. The correlation is even stronger when one considers that the large majority of prisoners were charged with property crimes. Rights of property holders, including slave owners, were still those most privileged in the new republic. Foucault writes that imprisonment serves “to deprive the individual of a liberty that is regarded both as a right and as property.”<sup>10</sup> By formulating the denial of liberty as not only the restriction of a right but also that of property, the ideological association between slavery and imprisonment became even stronger.

The introduction of imprisonment as a form of punishment for a wide range of offenses was radical in that the state sanctioned the break-up of the family and the

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<sup>9</sup> PSAMPP Constitution, *The American Museum; or, Repository of Ancient and Modern Fugitive Pieces*, May 1787, 454.

<sup>10</sup> Foucault, *Discipline and Punish*, 11.

disruption of often tenuous family economies. Moreover, the liberal ideology of isolating individuals to punish and change them was at odds with widely articulated republican values. Yet the state believed that the lessons taught by isolating an individual criminal from family and friends far outweighed the damaging social effects of such punishment. Indeed, Benjamin Rush, an advocate of female virtue and family responsibility, argued that separating a prisoner from the family and restricting visitation rights was key to good prison policy. He wrote, “An attachment to kindred and society is one of the strongest feelings in the human heart. A separation from them, therefore, has ever been considered as one of the severest punishments that can be inflicted upon man.”<sup>11</sup>

While Rush considered emotional pain as part of the reformation process, others described it as an insensitive and unnecessary punishment. The break up of families due to the imprisonment of one person had material as well as emotional consequences. Through the introduction of penal laws that mandated incarceration and policies that increasingly restricted visitation, reformers cut inmates off from spouses, lovers, parents, siblings, and children. Brissot de Warville offered a critique of this practice after his visit to Philadelphia in 1788, “By imprisonment, you snatch a man from his wife, his children, his friends; you deprive him of their succor and consolation; you plunge him into grief and mortification; you cut him off from all those connections which render his existence of any importance.”<sup>12</sup> The male prisoner portrayed by Warville was a model man of sensibility who thrived in his relationship with his family and whose happiness and very existence depended on the attention, love, and support of others. Popular renderings of prison life portrayed male prisoners alone and despondent, longing to be reunited with

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<sup>11</sup> Benjamin Rush, *An Enquiry into the Effects*, 10.

<sup>12</sup> M. Warville, “Of the Prison of Philadelphia, and Prisons in general,” *The New York Magazine, or Literary Repository*, December 1792.

their wives. One concluded, “My days were dull, my nights were long! My evening dreams, My morning schemes Were how to break that cruel chain, And, Jenny, be with you again.”<sup>13</sup> Yet despite Warville’s and the prisoners’ horror, such popular representations of the despair caused by separation from a spouse served to reiterate the value and centrality of marriage while serving as a warning to those with criminal inclinations. As Rush saw it, the sanctity of the family was held up as a deterrent to criminal behavior.

Of course this view presumes the prisoner was happily married. There were likely wives and children long ago deserted by some prisoners, with or without the intervention of the court system. Such women had learned to live without the financial support of men even before they were incarcerated.<sup>14</sup> Others were happy to see abusive or neglectful husbands and fathers locked up. Some may have mourned the loss of their husbands’ income but rejoiced in the reprieve from playing wife or serving as the object of spousal abuse and violence. Beyond the hetero-nuclear family, however, an extensive network of other relationships was also disrupted. Men may have supported or cared for parents, grandparents, aunts, uncles, siblings, friends or neighbors. Moreover, despite the press’ depiction of all prisoners as male, women were also incarcerated, and they were even more likely to serve as caregivers for children, parents or friends. Still most representations by reformers highlighted the dependence of wives and children and lamented the plight of a heterosexual nuclear family without a male head. A 1796 poem portrays a woman despondent and destitute, “Say, does a wife, to want consign’d, While weeping babes surround her bed, Peep through, and see the fetters bind Those hands, that

<sup>13</sup> *The Freeman’s Journal or, The North-American Intelligencer*, April 10, 1787.

<sup>14</sup> Karin Wulf, *Not All Wives*; Ellen Hartigan-O’Connor, “‘She Said She Did Not Know Money’: Urban Women and Atlantic Markets in the Revolutionary Era,” *Early American Studies* 4 (2006): 322-352.

earn'd their daily bread?"<sup>15</sup> The children are weeping though the wife is not. Moreover, the fact that they are doing without their daily bread suggests that the fundamental problem is economic, not emotional.

Whatever the emotional costs, the financial disruption imprisonment imposed on families was very real and in many cases had dire consequences. It was common for prisoners – men and women – to petition PSAMPP members for relief of fines or release, citing children and other family members in dire straits because of their imprisonment.<sup>16</sup> Some appealed to have their earnings from prison labor distributed to family members. Men and women prisoners who authored such petitions invoked wives, husbands, children, and family as the motive for their pleas, but in distinctly gendered ways.

Men in prison were eager to reassert themselves as providers for their families, and this idea often shaped the basis and tone of their letters. They were not looking for handouts, but merely the opportunity—both noble and appropriate—to provide for their families. James Parkins wrote, “Your well known sensibility and the goodness of your heart I flatter myself will be an advocate for a whole family and by your benevolence and kind influence I anxiously wish that a drooping family may once more smile and thank their generous benefactors.”<sup>17</sup> Other men wrote explicitly about which family members should benefit from their efforts to provide. A group of PSAMPP members wrote a letter on behalf of Alexander Drian, stating that his child was only two years old and his wife

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<sup>15</sup> Dr. Darwin, “The American muse. Selected poetry. Idyllium. The Prison,” *The New York Magazine, or Literary Repository*, (August, 1796); also printed in *The Philadelphia Minerva, Containing a Variety of Fugitive Pieces in Prose* (August 26, 1797) and *Universal Repository of Knowledge and Entertainment* (Jan 1798).

<sup>16</sup> Box 1, folders 1-6, loose papers 1787-1799, PSAMPP Papers.

<sup>17</sup> “James Parkins letter to Wm Rogers January 9, 1788,” Box 1, folder 3, Papers January – June 1788, PSAMPP Papers.

was in critical condition.<sup>18</sup> Parkins did not specify exactly who comprised his family, but he made his case for special consideration based on their collective need rather than his individual desires. John Crums begged to be released so that he could “work honestly for my bread and my wife as I always did before,” adding that he would rather be dead than to see his “wife suffer as she does.”<sup>19</sup> Men never cited only children as those in need of their aid, perhaps because the very fact that they were men would have disqualified them from being perceived as legitimate caretakers. Men could be providers, not caretakers. Gender roles rooted in the heterosexual political economy shaped the men’s expressions of need, further molding the category of man.

The imprisonment of a woman could have just as devastating an impact on a family, particularly if children, husbands, siblings, or parents relied on their labor, income, or both. Ann Carson’s account portrays this view of the financial and familial consequences of a woman’s imprisonment. She reports, “My family were, by my confinement, thrown into a state bordering on distraction; ever accustomed to have me at the head of both business and household, they knew not how to proceed without my presence.”<sup>20</sup>

Some women prisoners spoke of the needs of children who were in prison with them.<sup>21</sup> Other women spoke of families outside the walls, such as Susy Mines, who had “a family [and] small distress[ed] children [to] provide for which are now in a most

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<sup>18</sup> “Copy of Representation to Council on Alex. Drians case del.d Septem. 1, 1787,” Box 1, folder 2, Papers July –December 1787, PSAMPP Papers.

<sup>19</sup> “John M. Crums Address 14, May, 1788; to John Oldan Esq,” Box 1, folder 3, May 14, 1788, PSAMPP Papers.

<sup>20</sup> Ann Carson, *The History of the Celebrated Mrs. Ann Carson, Widow of the Late Unfortunate Lieutenant Richard Smyth; With a circumstantial account of her conspiracy against the late Governor of Pennsylvania, Simon Snyder; and of her sufferings in the several prisons in that state* (Philadelphia, 1822), 184-5.

<sup>21</sup> “Catharine Usoons Address to John Morrison Nov. 1787,” Box 1, Folder 2, Papers July to December 1787, PSAMPP Papers.



suffering condition and starved and cold winter just approaching.”<sup>22</sup> Elizabeth Elliot was a widow with “a family of five small children.”<sup>23</sup> These women did not refer to husbands who were in need of their support. In some cases, it was clear that a woman did not have one; Elizabeth, for example, stated that she was a widow. But dominant attitudes regarding poor relief and gendered notions of economic self-sufficiency make it unlikely that such a request would be well received.<sup>24</sup> Men and women petitioners understood and invoked the gendered expectations that were most likely to fit the expectations and appeal to the sympathies of their middle and upper class male readers. Women’s role in the heterosexual economy was one of dependency and that fact shaped how they expressed their needs and asserted themselves as women.

Unlike men, however, women prisoners were able to continue in the role of parents to their children while in prison. Descriptions of female inmates referenced children ranging in age from infancy to ten years old. Cast outside of dominant social values, including republicanism, poor convict women were nonetheless valued in their roles as mothers. The prison system, even as it disrupted families intentionally, recognized the importance of or need for women to care for their children. But make no mistake; these women were not republican mothers. Accounts of women raising children in prison condemned them doubly, once for their own depravity and again for subjecting their child to a place void of morals. One visitor wrote, “What can be expected from those whose infancy has passed in such a nursery as this?”<sup>25</sup> We may also view this

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<sup>22</sup> “Petition of Susy Mines [or Susey]; Enquire of J. Harwell and Lewis Weiss, Esq. Sept 25, 1787,” Box 1, Folder 2, Papers July to December 1787, PSAMPP Papers.

<sup>23</sup> “Petition of Elizabeth Elliot,” April 4, 1788, Box 1, Folder 3, Papers January to June 1788, PSAMPP Papers.

<sup>24</sup> Karin Wulf, *Not All Wives*.

<sup>25</sup> “Utility of inspecting into the State of Jails,” *The American Museum; or, Repository of Ancient and Modern Fugitive Pieces*, May, 1787.

permissiveness as delegitimizing the value of the maternal relationship. If, according to Rush, the centrality of the family unit was precisely why its disruption provided a valuable lesson, why did the same logic not apply to women and children? What would deter a woman from committing a crime but the fear of separation from her children? This issue is one more example of the way that reformers did not figure women criminals into their philosophies of punishment.

Imprisonment then both threatened and reinforced the heterosexual family unit. The fact that breaking up families was used as a deterrent and punishment reinforces how central an institution marriage was to the social order. But these temporary disruptions were fragmentary and partial, as we have seen. Women were always defined by their relationships to family, as dependants of men or caretakers of children. While prison may have offered a temporary respite to a woman convict from the obligations of such a role in her own home, the prison simply replicated and further reinforced a heterosexual economy. Just as they did at home, women in prison spun, sewed and cleaned, day after day. In the early republic, the category of woman was increasingly constituted through the institution of marriage. Yet while republican rhetoric drew attention to the emotional bonds of a marriage, prison stripped the relationship of sentiment and exposed the underlying material basis for women's marital ties.

Imprisonment destabilized the heterosexual political economy while the arrangement of punishment schemes aimed to reinforce it. Inspectors instituted a wide range of policies aimed at regulating who prisoners could interact with and under what circumstances. These policies applied not only to other inmates but concerned visitors as well. Regulation of visitation rights is the second great restriction that destabilized the

family. Both sets of rules were guided by a philosophy of presumptive heterosexuality and gender roles rooted in sexual differences. Sex as a category was given meaning through this range of regulatory practices. It was the most significant marker that determined what areas of the prison one could visit or stay in and under what circumstances. Prison inspectors repeatedly boasted of the successful separation of men and women prisoners. It was one of the few attempts at instilling order that seemed to work. But prisoners were far from the only people in the prison. Just as a more complete study of records has shown that convicts were outnumbered by vagrants, runaways, prisoners for trial and debtors who constituted the majority of prisoners at any given time, a veritable parade of family members, clergy, politicians, reformers, foreign dignitaries, lawyers, and local officials could be found visiting the prison. Regulating who was able to visit and under what conditions required significant attention. Once again, sexual difference was the single most significant factor on which this set of regulations depended. Initially such rules were implicit, but they were later stated explicitly.

The first official set of rules was printed in 1792 and outlined the categories of people who were to be granted access to the prison. The turnkey was instructed to admit the following people,

Inspectors, Keeper, his Deputies, Servants or Assistants, Officers and Ministers of Justice, Counsellors or Attornies at Law, *employed by a Prisoner*, Ministers of the Gospel, or persons producing a written license signed by two of the said Inspectors; and the latter only, in his presence or some one of the Officers of the Prison.<sup>26</sup>

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<sup>26</sup> *Directions for the Inspectors, & c. of the Gaol of the City and County of Philadelphia*, (Philadelphia, 1792).

The law is explicit in naming the positions of those not related to the prisoner but having legitimate, official reasons for visiting them. This enforced a patriarchal system of power, authority, and supervision. Those concerned with the behavior, treatment, and reform of said prisoners were granted access to the prisoners nearly without restriction. Every one of the occupations listed would have been filled by a man. There is no specification on how to handle prisoner requests for other visitors, including friends or family members. The rules neither encourage nor deny visits from parents, spouses, children, siblings, or friends.

Later revisions of the rules offered specific instructions based on the sex of prisoners. The first rule focused on which people were permitted to visit the women's apartments, stating, "No men shall be permitted to visit the women's apartments unless in the company of one or more of the Inspectors of the Prison." This allowed almost any man to visit a woman, depending on the discretion and philosophy of individual inspectors. Rules regulating women's cells were always less clearly detailed, pointing to not only less concern for women's rehabilitation but also less regard for their treatment. Moreover, it is unlikely that this rule applied to the keeper, his assistants, the physician or other men whose admittance to women's spaces was a necessity of their jobs.

The rules also restricted women's movements within the prison. They state, "And no woman shall be permitted to visit any other part of the prison than the women's apartments, unless it be such as desire to meet with the prisoners in the meeting house on the first day of the week for the purpose of communicating religious instruction."<sup>27</sup> This policy may have had a two-fold purpose: first, to deny men access to women and, second, to protect women from this undesirable class of men. The exception to this clause,

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<sup>27</sup> Minutes, March 14, 1808, Inspectors of the Jail and Penitentiary House, Philadelphia Prisons System.

however, signals a shifting emphasis toward moral reform and the role that women might play in it. This issue is considered more extensively later in the chapter.

There were distinct provisions concerning the rights of spouses, which pointed to the privileging of the relationship between husband and wife. In this instance, however, husbands and wives were treated the same. It grants convicts visitation by “their husbands or wives, parents or children” once every three months if their conduct and work habits earn them the privilege.<sup>28</sup> These visitation rights came with a whole host of restrictions since prisoners had to adhere to a list of requirements to be eligible to receive guests, stipulating its contingency, “Such of the convicts as conduct themselves properly and are diligent in their work and such.”<sup>29</sup> Keepers exercised broad discretion when determining proper conduct and certainly used visitation as leverage to discipline prisoners. The visits were severely restricted anyway as the visitor had to speak with the prisoners “through both the grates” of the wooden door.<sup>30</sup>

Rules determining which people were legitimate visitors loosened throughout the 1820s, though other restrictions remained constant. Possible visitors were no longer designated by sex or the precise nature of their relationship to the prisoner.

Persons are admitted to visit the prison by an order from a visiting inspector; and the relatives and friends of such prisoners as behave well are permitted to see and converse with them through both the grates; the wooden grated door being shut, and a keeper in the entry to hear all that passes – the interview not to last more

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<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

than fifteen minutes; this is allowed once in three months by an order of the visiting inspector.<sup>31</sup>

Here the description of relatives and friends is gender neutral and does not privilege family members specifically. It no longer officially mattered if you were the wife or brother or daughter of an inmate. The question remains, however, if the guards themselves continued to regulate visitors on assumptions of propriety rooted in sexual difference and the privileging of the marriage relationship.

Debtors always had more freedom regarding visitors than convicts or prisoners for trial. For this reason, rules regulating their visitation were more detailed and updated more frequently than those governing convicts. A group of male debtors complained of the treatment of their visitors, “That our friends, wives, & c have been & daly are search’d in the most insulting & indecent manner for spirituous liquor, which whenever discovered is taken from them.”<sup>32</sup> This letter illustrates the distinctive position of debtors who felt quite entitled to their unregulated, constant stream of visitors and were outraged at the keeper’s attempt to restrict it.

A new set of rules explicitly for the debtors was introduced in 1804. The single most significant category of distinction underlying the regulation was sexual difference. Articles two and three of the 1804 rules stated that “no male” could visit a woman prisoner and no woman could go to a man’s room “except the wife of some one of them at a time unless in cases of sickness of a prisoner and the physician directs a nurse.”<sup>33</sup> While the laws appear to rigidly restrict access to both men and women, the men were

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<sup>31</sup> George Rugan, “Documents Accompanying the Commissioners’ Report.”

<sup>32</sup> “Representation of Prisoners in Jail Nov. 10, 1787,” Box 1, Folder 2, Papers July to December 1787, PSAMPP Papers.

<sup>33</sup> Minutes, January 9, 1804, Inspectors of the Jail and Penitentiary House, Philadelphia Prisons System.

granted an exception, allowing a nurse or their wives to visit them. The women were not guaranteed the same right to be visited by their husbands, and the rule is vague as to whether ill women prisoners were treated by nurses or doctors.

In 1808, inspectors reiterated the importance of keeping men and women separate from each other, but this time specified exactly which men were permitted to visit the women's apartments. "No men shall be admitted to [women prisoners] apartments, excepting the keeper, his assistants, the inspectors, or physician in case of any of the women being sick." Women, then, were always stuck with male visitors who transcended the category of male through their occupation but may easily have engaged in the same types of behaviors the policy was meant to deny. Such exceptions need not be listed for men, as it was considered proper for male prisoners to have male visitors. Women who were granted an exception to the rule included the mother or wife of a prisoner, as long as both of them did not visit at the same time. A nurse, on instruction of a doctor, was also permitted. There was even a special rule devoted to ensuring that no women remain in the men's cells after dark.<sup>34</sup> Again, no exception was made for husbands or fathers to visit women prisoners even though female debtors were imprisoned during this period and there was no reference to male visitors spending the night.

The restriction on female visitors is one manifestation of a systemic philosophy of criminality and morality rooted in sexual difference. This same system explains why women were not permitted into the realm of prison reform as full actors for the first thirty years of the movement. One reason women prisoners were largely invisible in public debates over prison reform and in popular verse on the plight of convicts is that

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<sup>34</sup> "Debtors Rules," January 4, 1808, Inspectors of the Jail and Penitentiary House, Philadelphia Prisons System.

associations between women and moral virtue were important and the very existence of criminal women and vagrant women threatened to undermine it. Just as importantly the absence of significant numbers of women prison reformers lessened the likelihood that women prisoners would be viewed as central to reform.

Women did not belong in prison in any capacity, and yet women were in prison in Pennsylvania from the advent of the penitentiary system. More shocking, perhaps, was the fact that some women were employed by the prison system. Mrs. Richards was employed in some capacity in 1788. Announcements by the Acting Committee of the Prison Society noted that “Any old blankets, shoes, stockings, mens and womens apparel, will be highly acceptable; such articles looked up and forwarded to the care of Mrs. Richards, at the Work-House, will be duly administered to the wretched and suffering prisoners.”<sup>35</sup> Another woman, Mrs. Mary Weed served as keeper for three years in the 1790s after her husband, Elijah Weed, died of yellow fever. It is believed that under his watch, the jail was significantly reformed through the institution of the separation of the sexes and the implementation of hard labor. His success on these fronts inspired the hiring of his wife: “In consideration of his faithful performance of the functions of his office, his widow was nominated to succeed him. She is exceedingly attentive and human[e?].”<sup>36</sup> The practice of women taking over jobs and responsibilities usually restricted to men in place of their husbands was common. It fit neatly into proscribed traditions of women who re-negotiated their economic opportunities and responsibilities upon the death of their husbands.<sup>37</sup> In her role as deputy husband, Weed

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<sup>35</sup> *Pennsylvania Journal and Weekly Advertiser*, January 16, 1788.

<sup>36</sup> Robert J. Turnbull, *A Visit to the Philadelphia Prison*, 61.

<sup>37</sup> Similar to the role of deputy husband. See Laurel Thatcher Ulrich, *Goodwives: Image and Reality in the Lives of Women in Northern New England 1650-1750* (New York, 1982).



officially transcended the category of sex. Queer theories suggest that lesbians are not really women because women come into being through their relationships to men.<sup>38</sup> The absence of such relationships renders them outside the category of women. Similarly, while marriage to Elijah may have constituted Mary as a woman, his death enabled her to transcend the category. Only then could she be viewed with the competency and authority to run the prison.

Just as large numbers of Quaker men filled the membership rolls of PSAMPP, so large numbers of women would likely have joined if allowed. Women related to active members of PSAMPP started several charity and educational organizations in Philadelphia in the 1790s. The Female Society for the Relief and Employment of the Poor opened a House of Industry in 1799, which functioned in practice quite like the City's Bettering House. Quaker women ran the house by regulating industry, labor, and general deportment, much the same way their husbands, fathers, and uncles ran the prison.<sup>39</sup>

Yet ideas related to separate spheres of social and political involvement served to keep women from the most important public and political decisions, and in effect to reinforce the distinction between men and women. Because women were not active political participants and women had less responsibility and influence, a woman was both different from and less than a man. Sexual difference was the fundamental ordering principle on which the entire penal reform system was based. In a political culture which did not allow women's participation and an economic system which valued their labor

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<sup>38</sup> Monique Wittig, *The Straight Mind*.

<sup>39</sup> Margaret Morris Haviland, "Beyond Women's Sphere: Young Quaker Women and the Veil of Charity in Philadelphia, 1790-1810," *The William and Mary Quarterly*, 51 (1994): 419-446.

less, this difference served to further regulate their behavior and restrict their freedom. At the same time, this separation privileged women's abilities in certain realms and guaranteed certain autonomy for some women. Quaker women, for instance, were well-versed in working both separately from and independently of men.

Women interested in doing charitable or reform work related to prisons began in small ways. On December 22, 1797, Mrs. Susanna Bradford, widow of Thomas Bradford, donated turkey to those "under sentence of confinement and labor" along with Benjamin Rush, Peter Brown, and Robert Wharton.<sup>40</sup> Sarah Moore regularly made small financial contributions to PSAMMP. There was even some discussion at meetings whether or not to accept the money from her. Society meeting minutes for April, 1804 noted, "Report was made of a donation from Sarah Moore of five dollars, with an offer of becoming a contributor of 7lb annually, if the Society think proper – On motion, the same was accepted and the secretary desired to inform her thereof."<sup>41</sup> This did not make her an official member, however. Sarah Moore was dedicated enough to the cause that she left the Society her estate when she died. "The Secretary reports that the deed to this society from the executors of the last will of Sarah Moore deceased, for a ground rent of thirty six dollars per annum, left to the society by her will was duly executed."<sup>42</sup>

Moreover, the Society was not above asking women for help when it came to the particular needs of women prisoners. When one prisoner gave birth, inspectors communicated this to some women who immediately offered assistance.<sup>43</sup> This practice

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<sup>40</sup> *The Autobiography of Benjamin Rush: His "Travels Through Life" Together With His Commonplace Book for 1789-1813*, ed. George W. Corner, (Princeton: 1948), 238.

<sup>41</sup> April 9, 1804, Minutes of PSAMPP, 1787-1809, vol. 1, PSAMPP Papers.

<sup>42</sup> April 11, 1814, Minutes of PSAMPP, 1810-1832, vol. 2, PSAMPP Papers.

<sup>43</sup> July 10, 1800, Minutes of the Acting Committee of PSAMPP, 1798-1820, vol. 6, PSAMPP Papers.

naturalized the sexual division of labor by suggesting male reformers were not capable of assisting female prisoners. In many ways, women were admitted to the realm of prison reform when the men finally gave it up, in the 1820s. In 1823, then, women's efforts were not only acknowledged by male reformers but were even embraced.<sup>44</sup> The admittance of women to the arena of prison reform occurred simultaneously with other dramatic changes, including the removal of non-convict women from Walnut Street to Arch Street Prison in 1823, the construction of the House of Refuge for young offenders in 1824, and increasing attention granted to the future of punishment, embodied by Eastern State Penitentiary, opened in 1829.

Still, the arrival of women reformers to prison was not without incident. It required reformers to reconsider the general state of prisoners in light of visits from mixed company. A report on this development states,

Resolved that the visiting committee of the prison society be instructed to afford clothing to such of the females in the vagrant, as will render them fit objects to be seen by men and women visiting them together; and that, in case a committee of women should be disposed to visit said ward, some one or more of the visiting committee accompany them.<sup>45</sup>

In this regard, inclusion of women reformers was good for women prisoners – instantly. Middle-class men and women together would be uncomfortable at the sight of half-naked women. The remarkable point of this effort is what it reveals about previous practices. For decades when men were visiting women vagrants without the company of women

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<sup>44</sup> Negley Teeters, *They Were in Prison*, 249.

<sup>45</sup> November 24, 1823, Minutes of the Acting Committee of PSAMPP, 1798-1820, vol. 6, PSAMPP Papers.

reformers, the fact that women were not sufficiently clothed was considered acceptable. Now it was unacceptable, so women prisoners were ordered to make clothes for each other.

Just because women were admitted to visit, however, did not mean that the prison was ready to hire more women to work officially for the prison, nor were they admitted to serve as inspectors or full members of the Society. Women were still held to serve special functions, particularly the assistance of women and children. Reformers may have seen the value of women's efforts or may have simply been overwhelmed by the founding of yet another institution. The opening of the House of Refuge for juvenile offenders moved the Society to ask women for help. It stated, "It will be essential to its usefulness to enlist the sympathy and services of judicious and religiously disposed females to assist in its management, especially in extending advice and care towards the unhappy subjects of their own sex who may be confined therein."<sup>46</sup> This was the same group of women who had been meeting women prisoners since 1823 to instruct them in "religious advice and counsel."<sup>47</sup>

Women were still not hired as matrons in Philadelphia's prisons, even though prisons in other states and countries initiated the practice many years earlier. Reformer Roberts Vaux argued in favor of hiring a female matron. He wrote, "Though the appointment of a female officer in a jail would be novel, yet it ought not to be considered less proper, since, for various reasons that might be given, it would produce very important advantages to the women convicts."<sup>48</sup> Vaux used evidence from a Glasgow

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<sup>46</sup> January 21, 1826, Minutes of PSAMPP, 1810-1832, vol. 2, PSAMPP Papers.

<sup>47</sup> January 9, 1826, Minutes of PSAMPP, 1810-1832, vol. 2, PSAMPP Papers.

<sup>48</sup> Roberts Vaux, *Notices of the Original and Successive Efforts*.

prison as support for his position. He explained the benefits of such a complete separation of men and women at every level, arguing, “The females occupy a separate building under the control of officers of their own sex; a most important provision to guard against the total loss of modesty and decorum, which the employment of males in the like capacity is likely to cause.” While this shift in concern for the proper handling of women convicts was new and aimed to benefit the women, it also signaled an expansion of the distinctions between men and women.

On March 13, 1827, the visiting committee conferred with the inspectors over the possibility of hiring Sarah Maryland as matron in the newly opened prison for vagrants, Arch Street Prison.<sup>49</sup> Despite Vaux’s advocacy, they decided against the practice.<sup>50</sup> Part of the resistance to women matrons was the underlying belief that women did not belong in prison even though they were always there. Yet the fact that some women landed themselves in a place of corruption, filth, and depravity forced a reconfiguration of the meaning of the category of woman. Middle-class women, long denied access to the space of the prison, were now seen to be the key to the more complete reformation of women. Special treatment that only a female matron could administer made this even more likely. Nonetheless, the PSAMPP resisted the change in policy.

Women were still associated with depravity, desire, and destruction. An unusual proposal from 1786, at the height of debates over a system of public punishment, suggests the power of women to both seduce and destroy. The procedure was presented as follows:

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<sup>49</sup> March 13, 1827, Minutes of the Acting Committee of PSAMPP, 1798-1820, vol. 6, PSAMPP Papers.

<sup>50</sup> May 29, 1827, Minutes of the Acting Committee of PSAMPP, 1798-1820, vol. 6, PSAMPP Papers.

The criminal is placed on a scaffold, opposite to the gigantic figure of a woman, with arms extended, filled with spikes, or long sharpened nails, and a dagger pointed from her breast, she is gradually moved towards him by machinery for the purpose, till he gets within her embrace, when her arms encircle him, and the dagger is pressed through his heart.<sup>51</sup>

Such a graphic portrayal of execution and the deployment of women to achieve this end runs counter to dominant discourses concerning both execution and women at the time. There was no published response to the passage, but the decision of the *Pennsylvania Gazette* to publish it suggests some degree of popular interest in the themes.

From the 1780s to the mid 1820s, women remained largely invisible in the prison and in prison reform. Women of high standing and virtue were considered irrelevant to the prison reform project. This is ironic given that the abstract manifestation of woman was presented as the key to reform. Some women were deemed an obstacle to reform, others were simply refused participation. Imprisonment denied men access to the promise of a republican wife, but virtue could still make herself available to those open to her influence.<sup>52</sup> If the rhetorical criminal was a man, virtue itself was certainly a feminine force. In an anonymous essay entitled "The Pennsylvania Prison By a Lady," the feminine aspect of virtue and women's utility in promoting the same are clearly laid out. The lady writes,

Virtue *will* display her charms, to beings who never before beheld her, and they will instinctively be led to adore and follow what has afforded so much tranquil,

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<sup>51</sup> *Pennsylvania Gazette*, August 23, 1786.

<sup>52</sup> For further discussion of the meaning of virtue, see Jan Lewis, "The Republican Wife: Virtue and Seduction in the Early Republic," *William and Mary Quarterly*, 44 (1987): 689-721; Ruth Bloch, "The Gendered Meanings of Virtue in Revolutionary America," *Signs*, 13 (1987): 37-58.

solid pleasure – in pursuing industry and good order, they will *see*, is the only road that leads to happiness, while idleness, and its concomitant vice, they will *feel*, leads only to misery. – The Philadelphia prison, is one of the most striking emblems, of *progress* in refinement.<sup>53</sup>

As historian Ruth Bloch notes, “Women’s taming of male aggression depended on the infusion of female qualities into men.”<sup>54</sup> One would thus expect that model middle class women would have been useful in transforming criminal men. As Jan Lewis has shown, the strength of the bond between husband and wife was foundational to the future stability of the new nation. But women were not all-powerful – even women who embodied morality and virtue. She writes, “We have seen that feminine influence had its limits; no wife could expect to triumph over a thoroughly corrupted man on this side of the grave.”<sup>55</sup> Eighteenth century writers and reformers clearly adhered to this belief as well. Otherwise, they would not have had to remove a criminal man from the warm confines of his family to effect his personal transformation.

In the early republic, men aspired to qualities that were gendered feminine for themselves and each other. Delicacy, a trait admirable in women, was now valued for men. Rush explained, “Solitary beds and rooms are a great desideratum for the convicts. They are calculated to awaken delicacy, which is one of the outposts of virtue, and to favor reflection, repentance, and silent or oral devotion.”<sup>56</sup> Reformers also framed their work in terms of the one experience that men would never have: pregnancy and

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<sup>53</sup> “The Pennsylvania prison,” *Universal Repository of Knowledge and Entertainment* (February 1798).

<sup>54</sup> Ruth Bloch, “Changing Conceptions of Sexuality and Romance in Eighteenth-Century America,” *William and Mary Quarterly*, 50 (2007).

<sup>55</sup> Jan Lewis, “The Republican Wife,” 718.

<sup>56</sup> “Letter from Benjamin Rush To Thomas Eddy Philadelphia, October 19<sup>th</sup> 1803,” *Letters of Benjamin Rush* edited by L.H. Butterfield, (Princeton, 1951) vol. 2: 1793-1800, 874.

childbirth. In explaining why a man as important and busy as Benjamin Rush devoted so much time to the cause of prison reform, Turnbull likened the bright possibilities of the prison system to those of a newborn child. He described the penal reform efforts, “so pregnant with the future happiness of millions, and which simply required public spirit and perseverance to deliver to mankind.”<sup>57</sup> Men used metaphors of pregnancy, birth, miscarriage and rape for a range of their economic, political, and social endeavors.<sup>58</sup> Yet they rarely allowed women to raise their voices.

If the pregnancy resulted in miscarriage, which by the 1820s many reformers admitted was the case with prison reform, all was not lost. At least reformers themselves stood to benefit from their efforts. Belief that involvement in reform efforts heightened the sensibility of participants was widespread. Benjamin Rush wrote to John Coakley Lettsom in 1787, “I have the pleasure of informing you that, from the influence of our Prison Society, a reformation has lately taken place in the jail of this city in favor not only of humanity but of virtue in general...One thing is certain, that if no alleviation is given by them to human misery, men grow good by attempting it.”<sup>59</sup> This did not work for everyone, however. Critics of reformers, inspectors, and keepers used the rhetoric of virtue to portray their limits and failings. One former prisoner blasted the violent and cruel treatment that keepers commonly used on prisoners, claiming that it undermined any effort to restore prisons to virtue. Though prisoners may have been “led astray from

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<sup>57</sup> Robert J. Turnbull, *A Visit to the Philadelphia Prison*, 17.

<sup>58</sup> Toby L. Ditz. “Shipwrecked; or, Masculinity Imperiled,” 77.

<sup>59</sup> “Letter from Benjamin Rush To John Coakley Lettsom, Philadelphia, September 28<sup>th</sup>, 1787,” *Letters of Benjamin Rush* edited by L.H. Butterfield, (Princeton, 1951) vol. 1: 1761-1792, 443.



the paths of virtue,” he writes, “they may be reclaimed, and become Virtuous Members of Society,” if they are handled by a “mild and gentle usage” in prison.<sup>60</sup>

The establishment of the connection between sex and virtue involved particular exclusions. Virtue, while embodied by middle-class women and held as a vehicle to reformation for men, had no relevancy for convict women. While male convicts stood to be rescued by virtue, female convicts apparently did not. Virtue was also tied explicitly to social rank in the republican formulation, excluding even poor women who were not necessarily criminals.<sup>61</sup> Ultimately, then, the reformation through virtue was constitutively tied to class and one’s position as a self-supporting worker. No amount of moral fortitude could offset one’s economic failings.

The ultimate signifier of successful reformation was also distinct. If virtue was the vehicle to redemption for men, submission to a man redeemed women, thus avoiding the necessity of female seduction of another woman and reasserting male authority. Those who observed women prisoners throughout the 1790s often commented on their submission. But the man to whom an imprisoned female must submit was an external authority, not an idealized moral concept. While the spirit of feminine virtue may have uplifted men, nothing short of a physical man – preferably the sensitive kind – could reform a woman by eliciting her emotional submission.

Prison reform literature contributed to changing public ideas about men and women as well as masculinity and femininity. Rather than call on women to bring about desired outcomes, reformers turned to men who embraced feminine qualities to lead the way. These men believed that by taking on those traits of women that were most

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<sup>60</sup> M.’Kenzie, “*A Just and True Account, by Person Who Has Been An Eye Witness* (Philadelphia, 1820).

<sup>61</sup> Ruth Bloch, “The Gendered Meanings.”

admirable, they could bring about the best result.<sup>62</sup> Those committed to assisting the prisoners, who formed the core of PSAMPP, were men of distinction in a wide range of fields, including religion, law, and business. This was significant, but, as one commenter pointed out, not really important when it came down to achieving the task at hand. He compared this situation to firemen: when fighting a fire, their other accomplishments and distinctions were meaningless. The commitment of PSAMPP members to justice and helping those in need, not their titles or professional accomplishments, was the marker of – or even vehicle to – their manhood. He writes, “Nothing further need be said, respecting the members who come to their relief, but that they are *men*, engaged in the noblest office that can employ human nature, that of mitigating the miseries of their fellow creatures.”<sup>63</sup> The same writer also predicted that women would be drawn into the reform effort, though he failed to acknowledge that women were already fully engaged in charitable work in Philadelphia. The writer asserts,

It is not to be doubted but the fair sex will also, willingly, become patronesses of a design so amiable, and so suited to the tenderness and sensibility, which so justly characterize them. Their influence is extensive and irresistible. Let it then be engaged in the cause of human nature, and of virtue.<sup>64</sup>

Virtue was embedded in the reform project itself; women did not yet have an exclusive claim to its powers or the transmission of it. This process unfolded throughout the post-revolutionary era. In her study of the gendered meanings of the concept of virtue

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<sup>62</sup> This practice of men adopting women’s skills, roles, or performances to a more successful end than women themselves is a common critique of contemporary practices of drag queens, male fashion designers, and chefs.

<sup>63</sup> “Observations recommendatory of the Philadelphia Society for alleviating the Miseries of Public Prisons,” *Repository of Ancient and Modern Fugitive Pieces & c.*, May 1787.

<sup>64</sup> “Observations Recommendatory.”

in the post-revolutionary period, Ruth Bloch found that sexual difference was increasingly marked by the selfishness or selflessness of ones' activities. She writes,

A transition in the meanings of virtue associated with changes in ideas about sex difference meant that women and the emotions became increasingly associated with moral activity, while men and reason became more exclusively associated with the utilitarian pursuit of self-interest.<sup>65</sup>

Philadelphia would become one of the last places to allow women full participation in prison reform activities, attesting powerfully to the centrality of the men's perception of such work as more appropriate for their sex, and indeed a means to their own fulfillment of the category of man. If women were granted respect and nobility through their actions as wives and mothers, granting them some degree of moral authority over the home, then men could achieve this same respect through their public benevolence.

Feminist theories critiquing late twentieth-century relationships between gender, sex, and power provide a thought-provoking framework for unpacking those same relationships in the eighteenth-century. "Sex" and "gender" not only constitute each other, but perpetuate and are perpetuated by other systems of social, political, and economic power. Wittig writes, "Masculine/feminine, male/female are the categories which serve to conceal the fact that social differences always belong to an economic, political, ideological order."<sup>66</sup> Elaborate systems of domination, including the penal, prison, political, social, and economic systems, manipulated the meaning and function of gender and sexuality to the end of solidifying the category of "sex" and providing justification for the concept of sexual difference. This is always achieved *relationally*,

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<sup>65</sup> Ruth Bloch, "The Gendered Meanings of Virtue."

<sup>66</sup> Monique Wittig, *The Straight Mind*, 2.

never independently. The process is never completed – nor is it ever entirely successful. Idealized gender roles change. Attitudes toward sexual behavior change. Competing discourses and subversive practices always threaten the ideological ordering of sex roles. The pervasive power of the heterosexual political economy, however, remained in tact and was reinforced and reproduced through the intense focus on sex-segregation and the sexual division of labor in prisons.

### **Conclusion: Sexual Orderings and Same-Sex Sex**

If sexual difference is the primary organizing principle of an institution, distinguishing men from women is crucial to the entire enterprise. Feminist theorist Judith Butler argues that sex is not a biological state of being but rather an identity determined by a gender performance of masculinity or femininity.<sup>1</sup> It is the repetition of the performance of gender roles that make a man a man or a woman a woman. The idea that men and women prisoners could and should easily be separated from each other was based on a number of assumptions. First, it presumed that the sex of a human being was obvious and successful identification a simple matter of looking. In most instances, officials relied on a set of gender performances of masculinity and femininity to distinguish men from women. Second, it presumed the heterosexuality of the prisoners. Belief in the pervasiveness of heterosexual desire negated the possibility that prisoners would turn to members of the same sex for sexual intimacy. The ordering in prison was intended to deny sexual intimacies between prisoners and to reinforce a heterosexual political economy. At the same time, however, such regulatory efforts inadvertently produced situations that were conducive to homosexual interactions. This conclusion examines the basis for these two dominant presumptions concerning gender and sexuality and the consequences of their application to the organization of prisons.

Successful implementation of the separation of men and women required prison officials to accurately distinguish them from each other. In late eighteenth-century Pennsylvania, clothing styles for men and women were so dramatically distinct that the performance of gender through clothing was often enough to signify one's sex. The

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<sup>1</sup> Judith Butler, *Gender Trouble: Feminism and The Subversion of Identity* (New York, 1990).

classification of prisoners upon arrival had yet to meet the level of a medical exam or a systemic examination of any kind. Common entries by the clerk included eye color, hair color, some reference to weight such as “stout” or “thin visage” and place of birth.<sup>2</sup> For men, occupation was consistently documented. Race was sporadically defined until the 1810s when it, too, became more systematic. This quick scan was deemed sufficient for documentation and classification purposes. As classification and segregation became more important, so too did physical assessment. In the early decades of the penitentiary, however, intakes were superficial. It probably never occurred to the clerk that they might not be able to distinguish men from women.<sup>3</sup>

Prison officials must have been shocked and flustered then when they discovered one of their “male” inmates was actually a woman dressed as a man. When charged with the crime of burglary on December 4, 1799 at the court of Oyer and Terminer in Alleghany County, judges accepted Sarah Johnson’s presentation of herself as a man named Samuel Johnson. It was later determined that “This woman had accustomed herself to wear mens cloaths for several years” so perhaps she was a master male impersonator by the time she landed before the judges. It was not until she was charged, transported, and imprisoned in Philadelphia for nearly a year that officials discovered that he was a she. Sarah was a thirty-seven year old Virginian, with a “thin visage” who stood “four feet eleven inches high” when she “comm[itted] the crime in mens apparel and was tried and convicted and brought to jail in the same.”<sup>4</sup> The lone record of her discovery is registered in the Prison Sentence Docket along with the date of her discharge. We do not

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<sup>2</sup> Prison Sentence Docket, Inspectors of the Jail and Penitentiary House.

<sup>3</sup> This process was not even systematic; sometimes prisoners were admitted with very little personal information recorded and sometimes prisoners were released without a final report by the clerk.

<sup>4</sup> December 4, 1799, Prison Sentence Dockets, Inspectors of the Jail and Penitentiary House.

know the reactions of other inmates, the keeper, or the public, or even if others found out about her secret. All we know is that she (as a he) was sentenced to “be kept at hard labour” and may have worked with men cutting stone or heading nails. Despite her three year sentence, she was discharged in less than a year, and it seems likely that the discovery that she was Sarah and not Samuel precipitated the speedy discharge. Though it was not an everyday occurrence, it was also not unheard of in the eighteenth century for people to discover that individuals were not the sex they presented themselves to be.<sup>5</sup>

The multiple regulations based on sexual difference within prison were aimed at training men and women prisoners to fulfill their role in the heterosexual political economy and at the regulation of sexual behavior. By examining the significance of sex-segregation efforts, in particular, we can better understand how reformers viewed the relationship between sex, gender, and sexuality; we can see why reformers were not overtly concerned with the possibility of same-sex intimacy and how instilling social orders based on a heterosexual economy was more important than restricting sodomy. Historians of sexuality have largely shown that same-sex intimacies were not at the forefront of peoples’ thoughts in the eighteenth century. While sodomy was a mainstay on the list of capital crimes for centuries, people were rarely even charged with attempted sodomy, let alone found guilty of attempted or actual sodomy.<sup>6</sup> Moreover, no coherent category of “homosexual” identity was yet invented. Several historical studies of men

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<sup>5</sup> Tales of women cross-dressing to gain access to occupations and social freedom reserved for men abound. See Dianne Dugaw, *Warrior Women and Popular Balladry, 1650-1850*, (Cambridge, England, 1989), Peter Guillery, "The Further Adventures of Mary Lacy: 'Seaman', Shipwright, Builder," *History Workshop Journal* (2000): 212-219; Alfred Young, *Masquerade : the Life and Times of Deborah Sampson, Continental Soldier* (New York, 2004); For analysis of the cross-dressing, possibly intersex person known as Thomas/ine Hall, see Kathleen M. Brown, “‘Changed...Into the Fashion of Man’: The Politics of Sexual Difference in a Seventeenth-Century Anglo-American Settlement,” *Journal of the History of Sexuality*, 6 (1995): 171-193.

<sup>6</sup> Thomas Foster, *Sex and the Eighteenth-Century Man: Massachusetts and the History of Sexuality in America* (Boston, 2006).

who were thought by their contemporaries to prefer sexual relations with other men, however, do suggest some recognition of the fact that people engaged in sodomy.<sup>7</sup> Sodomy charges were most commonly brought against seamen serving in the Royal Navy or merchant marine.<sup>8</sup> Popular perceptions of such cases presumed men turned to each other in desperation for want of women, not because they preferred each others' company. Still no explicit discussions of problems related to single-sex prisons exist, suggesting that reformers did not fear that sex-segregation of inmates might foster sexual relations among people of the same sex. The silence also indicates that even single-sex institutions—like prisons—were not seen as promoting sexual relations. In her work on twentieth-century prison sexual culture, Regina Kunzel argues that “situational homosexuality” is a “distinctly mid-twentieth-century invention” of social scientists and not “a description of sexual acts produced by the presumable ahistorical forces of circumstance and environment.”<sup>9</sup>

It would be easy to claim then that when separating the sexes from each other, reformers did not even consider that prisoners might turn to their cellmates for sexual intimacy. However an interesting and somewhat perplexing anecdote reminds us that even silence can have multiple meanings. One man of central importance to the Pennsylvania penal system wrote about the cause and practice of sodomy and how the law should handle those who commit it. The timing and clarity of his discussion combined with his engagement with the prison and prison reform movement undermine

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<sup>7</sup> Richard Godbeer, “The Cry of Sodom: Discourse, Intercourse, and Desire in Colonial New England,” *William and Mary Quarterly*, 52 (April 1995): 259-286; Clare A. Lyons, “Mapping an Atlantic Sexual Culture: Homeoeroticism in Eighteenth Century Philadelphia,” *William and Mary Quarterly*, 60 (2003): 127; Thomas Foster, *Sex and the Eighteenth-Century Man*.

<sup>8</sup> B.R. Burg, *Boys at Sea: Sodomy, Indecency, and Courts Martial in Nelson's Navy* (New York: 2007).

<sup>9</sup> Regina Kunzel, “Situating Sex: Prison Sexual Culture in the Mid-Twentieth-Century United States,” *GLQ*, 8 (2002): 253-270.



theories that same-sex sexual practices were not on the radar of reformers, inspectors, or judges. In his analysis of penal reforms in Pennsylvania published in 1793, William Bradford offered an explanation for why “Crimes Against Nature” should not be capital offenses. Bradford was named Attorney General of Pennsylvania in 1780 and published his report the year before he became Attorney General of the United States in 1794.<sup>10</sup> His legal opinions were widely respected, and he played a significant role in the penal reforms of 1786 and 1794. As one historian notes, “He had thought more deeply about crime and its resolution in Pennsylvania than any person of his day.”<sup>11</sup> Moreover, Bradford’s essay on “Crimes of Nature” was widely distributed at the time of its publication. Even French observer La Rochefoucault Liancourt noted the document had “found its way through every part of North America.”<sup>12</sup>

For Bradford, crimes against nature refer to sodomy and buggery, practices previously assigned separate entries in the criminal code.<sup>13</sup> The jurist offered several explanations as to why crimes against nature should not be capital crimes. His central argument was that there was no evidence to support the idea that punishment by death effectively deterred people from committing the crime in the first place. This was the main test for justification of capital punishment in the period. Bradford discovered that men charged with sodomy or buggery did not even know that it was a capital offense.

Bradford’s comments reflect two views of homosexuality at the time – one from the past and one from the future. In the past, the practice of teenage boys served as sexual

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<sup>10</sup> G.S. Rowe, *Embattled Bench: The Pennsylvania Supreme Court and Forging of a Democratic Society* (Newark, 1994), 150, 202; Sharf and Westcott, *History of Philadelphia*, vol. 2, (Philadelphia, 1884), 1530-1.

<sup>11</sup> G.S. Rowe, *Embattled Bench*, 203.

<sup>12</sup> Liancourt, *On the Prisons of Philadelphia*, (Philadelphia, 1796) 32.

<sup>13</sup> Sodomy, “an unnatural form of sexual intercourse, esp. that of one male with another” and buggery, “unnatural intercourse of a human being with a beast, or of men with one another, sodomy. Also used of unnatural intercourse of a man and a woman.” OED, second edition 1989

subordinates to older men as a right of passage. This has been well documented for seventeenth and early eighteenth century England.<sup>14</sup> Older men who penetrated boys were exercising their right to sex with all those subordinate to them, including boys and women, and were not categorized as homosexuals.<sup>15</sup> The practice was never legal or publicly approved, but prosecutions were rare. The fact that this custom continued in England as late as the first decade of the eighteenth century may explain in part Bradford's pragmatic approach to the crime. Bradford's understanding of why men would turn to each other for sexual gratification reflects this view. He reasoned that men would only turn to each other for gratification when opportunity to dominate and penetrate a member of the opposite sex was not available. He wrote, "In a country where marriages take place so early, and the intercourse between the sexes is not difficult, there can be no reason for severe penalties to restrain this abuse."<sup>16</sup> Because men have easy and regular access to women for sex, he reasoned, they are unlikely to turn to each other. Marriage at a young age was thought to prevent not only homosexuality but also the desire to engage in prostitution. Warville wrote, "Young people marrying early, and without obstacles are not tempted to go and dishonour and empoison themselves in places of prostitution."<sup>17</sup>

The other view of homosexuality presented by Bradford reflected the future – the formation of a distinct identity derived from one's desire for sexual intimacy with those

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<sup>14</sup> Randolph Trumbach, *Sex and The Gender Revolution, Volume One: Heterosexuality and The Third Gender in Enlightenment London* (Chicago, 1998).

<sup>15</sup> This practice was not unique to Europe; See Indrani Chatterjee, "Alienation, Intimacy and Gender: Problems for a History of Love in South Asia," in Ruth Vanita ed., *Queering India: Same-Sex Love and Eroticism in Indian Culture and Society* (New York; London: Routledge, 2001), 61-76; Matthew Sommer, "The penetrated male in late imperial China: judicial constructions and social stigma," *Modern China*, 23 (1997): 140.

<sup>16</sup> William Bradford, *An Enquiry How Far the Punishment*, 21.

<sup>17</sup> Visit to the Bettering House, or House of Correction, *The New York Magazine or Literary Repository*, December 1792..

of the same sex regardless of the availability of women. By the 1790s, appropriate male sexual aggression was to be directed at women, not young boys. Only the “pejorative effeminate sodomite” developed as a “homoerotic type” during the eighteenth century.<sup>18</sup> By then, older men who desired sex with other men or boys were labeled Molls, acquiring a distinct identity rooted in their sexual practice.<sup>19</sup> Bradford suggested recognition of this distinct category of men, but argued that they may not be identifiable to those outside of their own community since it was rare to catch people in the act and hard to identify those likely to engage in sodomy or buggery.

Reading Bradford’s discussion of penalties for rape and crimes against nature together offers further insight into prevailing values regarding male sexual desire. If crimes against nature should not be severely punished because they were “unnatural” and therefore, infrequent, rape should not be severely punished because it represents the culmination of that which is most natural, male sexual desire. “This offence,” he writes, “arising from the sudden abuse of a natural passion, and perpetrated in the phrenzy of desire, does not announce any irreclaimable corruption.”<sup>20</sup> Male sexual desire, then, was natural. Its misdirection or excess should not be the cause of much concern among judges, politicians or reformers.

Despite the relative silence regarding same-sex sexual desire, changes to sodomy and buggery laws in Pennsylvania along with the increasing awareness of a more coherent “homoerotic identity” in the Atlantic world demonstrate that the issue was on

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<sup>18</sup> Clare A. Lyons, “Mapping an Atlantic Sexual Culture: Homoeroticism in Eighteenth Century Philadelphia,” *William and Mary Quarterly*, 60 (2003): 127.

<sup>19</sup> Randolph Trumbach, *Sex and The Gender Revolution*.

<sup>20</sup> William Bradford, *An Enquiry How Far the Punishment*, 41.

the radar of judges and reformers in early national Philadelphia.<sup>21</sup> Moreover, reformers and visitors occasionally made comments that suggested an awareness of the possibility of same-sex intimacies, though only among men. That may be what Caleb Lownes had in mind when he described the lodging practices among men in Walnut Street:

The prisoners are lodged in beds, with sheets and blankets on bedsteads; the beds are filled with red cedar shavings. We have found this regulation greatly conducive to cleanliness and decency. The former practice of prisoners sleeping in their cloaths, and being crowded together without any regard to decency, was destructive to the health of the prisoners, and was attended with many other ill consequences, especially where men are collected in the manner they are in prison<sup>22</sup>

What did Lownes mean when he said “crowded together without regard to decency” and what exactly were the ill consequences of this? He might have been concerned with the rapid transmission of disease and vermin or inmates made irritable by lack of privacy. But intimate contact might also refer not only to physical or sexual attacks but also consensual acts of physical or sexual intimacy.

By separating women and men to prevent sexual activity and failing to acknowledge the fact that such a “solution” might lead to the problem of same-sex sex among inmates, reformers inadvertently dictated homosexual behavior by presuming a heterosexual identity. One account even suggests a long-term relationship between two men in prison. The brother of House Speaker General Muhlenberg fell on hard times and

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<sup>21</sup> Clare A. Lyons, “Mapping an Atlantic Sexual Culture.”

<sup>22</sup> Caleb Lownes, *An Account of the Alteration and Present State*, 84-85.

resorted to forgery. His conviction and subsequent stay in Walnut Street, however, had an upside according to one observer,

For this crime he was sentenced to many years in prison. I saw this man, who had lived in so much grandeur, threading a loom and dressed in a suit of course [coarse?] woolen cloth made in the prison. He seemed very happy with a young sailor friend he had found and showed it, like all the other prisoners, in his smiling face.<sup>23</sup>

Records of those convicted of crimes in Pennsylvania sentenced to a year or more in Walnut Street reveal three buggery convictions, one each in 1795, 1804, and 1805, one sodomy conviction in 1821, and one assault and battery with intent to commit sodomy in 1823.<sup>24</sup> In June 1795, Toby Morris was convicted of buggery in the Court of Oyer and Terminer in York County. Morris was described as a thirty-seven year old mulatto man, born in Maryland and working as a ship carpenter. Like many other prisoners during the first decade of the penitentiary system, he was discharged long before serving the full term of his sentence. Though sentenced to the minimal amount of time allowed by law – ten years – he was pardoned by the governor in just under two years, on April 19, 1797.<sup>25</sup>

By the 1820s, reformers acknowledged the practice of sex between men in the prison. One report explained that prisoners who were caught engaging in “unnatural acts” were sent to the solitary cells for punishment. The interesting point of this report, however, is the claim that no one was actually sent to prison on a sodomy or buggery

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<sup>23</sup> Robert C. Smith, “A Portuguese Naturalist in Philadelphia, 1799,” 103.

<sup>24</sup> Roberts Vaux, *Notices of the Original and Successive Efforts*.

<sup>25</sup> June, 1795, Prison Sentence Docket, Inspectors of the Jail and Penitentiary House.

conviction, suggesting that prisoners were not pre-disposed to such practices.<sup>26</sup> Other records contradict this claim, documenting that although the number of people convicted for sodomy or buggery was very small, they did exist. A pamphlet by leading reformer Roberts Vaux published in 1826 cited four such cases. This inconsistency reveals that reformers were not very concerned about the practice. Were the presence of sodomites in prison more controversial or important, surely they would have taken time to check the records and report more accurately. They do acknowledge in the report that people were convicted of such charges in court.

In fact, a table of offenses for which people were sentenced to Walnut Street lists six sodomy convictions, one each in the following years: 1795, 1804, 1805, 1821, 1823, 1825 and one assault to commit sodomy in 1823. This record reveals that clerks referred to sodomy and buggery indiscriminately. In 1823, while the official totals list one person convicted of sodomy, the prison sentence docket refers to the same man as convicted of buggery. David Van Guilder of Tioga County was convicted on September 16, 1823 and sentenced to five years hard labor. Only 20 years old, he was described as a New York native, a white man with a dark complexion, hazel eyes, and black hair.<sup>27</sup>

While there was general indifference and some confusion over the categories of sodomy and buggery among men, Pennsylvania reformers were not at all concerned about the possibility of sex among women in prison. While women were thought to have the sexual power to seduce a man from grace, there was no concern that they might corrupt each other sexually. Virtual silence, however, still merits consideration. Historians have often concluded that sodomy and buggery laws were not applied to

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<sup>26</sup> George Rugan, "Documents Accompanying the Commissioners' Report."

<sup>27</sup> Sept 16, 1823, Prison Sentence Docket, Inspectors of the Jail and Penitentiary House.

women. Though such cases were far less common than those concerning men, women were prosecuted under sodomy laws for sexual intimacies with other women.<sup>28</sup> Early Pennsylvania statutes for sodomy and buggery applied explicitly to men and women. The 1682 statute states, “That if any person shall be Legally Convicted of the Unnatural Sin of Sodomy or, joining with beasts, Such persons shall be whipt, & forfeit one third of his or her estate & work Six Months in the house of Correction at hard Labour, and for the Second Offense imprisonment as aforesaid during Life.”<sup>29</sup> The 1705 Statute did not designate the sex of the offender but suggests that buggery could be committed by a man or a woman, stating, “And if a married person be legally convicted of buggery, he or she shall suffer the same punishment [as a single person].”<sup>30</sup> The punishment for sodomy seemed to address men, though it did not completely exclude women, stating, “he or they shall suffer imprisonment.”<sup>31</sup>

Other evidence from the colonial period offers some insights about the treatment of sexual acts between women. Puritan ministers throughout New England generally included women in their declarations against sodomy, which they described as “unnatural lusts of men with men, or women with women.” The only legal references to sodomy that included women as possible offenders were cited in a draft of a code for Massachusetts in 1636 that was never used and the New Haven law of 1655, which was put into effect. It described sex between women as a capital offense.<sup>32</sup> Yet little evidence suggests that colonial authorities recognized the possibility that women could be sexually involved

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<sup>28</sup> Louis Crompton, “The Myth of Lesbian Impunity: Capital Laws from 1270 to 1791,” *Journal of Homosexuality*, 6½ (1980) 11-25.

<sup>29</sup> Mitchell and Flanders, *Statutes at Large*, chap. 9, “Law Against Sodomy and Bestiality,” 1682.

<sup>30</sup> Mitchell and Flanders, *Statutes at Large*, chap. 124, “An Act Against Sodomy and Buggery,” 1705-6.

<sup>31</sup> For further discussion of legal references to sodomy and their application to women, see Richard Godbeer, *Sexual Revolution in Early America*, (Baltimore, 2002) p. 105.

<sup>32</sup> Richard Godbeer, *Sexual Revolution*, 105.

with each other. The case in Europe, or at least Holland, was quite different. Between 1795 and 1798 alone, eleven women were tried in the courts of Holland for same-sex sex.<sup>33</sup>

Common intimacies between women may not have fallen under the anti-sodomy laws anyway, having more to do with gender transgressions than sexual practice. A short story from 1790 about two women who resolved “to live as man and wife” makes no reference to sexual or physical intimacy.<sup>34</sup> The main issue concerned dress, and the two “drew lots to decide who should be the man.” Remarkably, in the telling, all a woman needed to do to become a man was to dress like one and all that two women who want to live together “as man and wife” need to do is accept that one of them will play the role of a man.<sup>35</sup> This explains why cross-dressing was a punishable offense for which more than one person was prosecuted. If becoming the opposite sex was as easy as changing your outfit, what would keep anyone from doing it?

Cross-dressing was a threat to the social, political, and economic order of society for obvious reasons. Gender – through dress – gave weight to the organizing principal of sexual difference. If women and men refused their proscribed roles by performing the opposite gender, society could devolve into chaos. The “naturalness” of sexual difference would be exposed as a social construction.<sup>36</sup> During the early nineteenth century, at least two people were convicted of cross-dressing in Philadelphia’s courts. Mintis Jennings was convicted on July 16<sup>th</sup>, 1807 and sentenced to thirty days for dressing in women’s

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<sup>33</sup> Theo Van Van Der Meer, “Tribades on Trial: Female Same-Sex Offenders in Late Eighteenth-Century Amsterdam,” *Journal of the History of Sexuality*, 1 (1991), 425.

<sup>34</sup> “Extract of a letter from a gentleman in Scotland,” *New York Daily Advertiser*, October 12, 1790.

<sup>35</sup> Judith Bennett argues that historians should at least consider “lesbian-like cross-dressing” as a part of lesbian history, even if we don’t have explicit evidence that they were lesbians. See ““Lesbian-Like” and the Social History of Lesbianism,” *Journal of the History of Sexuality*, 9, (2000), 17.

<sup>36</sup> For thorough analysis of this process in contemporary American life, see Judith Halberstam, *In a Queer Time and Place: Transgender Bodies, Subcultural Lives* (New York: 2005).



clothing. Jennings was “convicted on the oath of John McCloskey with being a base imposter dressed in the garb of a female when know[n] on the street to be a male and taken up in the street in a state of intoxication.” Catherine Deveu was held overnight in prison on June 30<sup>th</sup> 1815 on the charge of rioting and committing assault and battery in men’s clothing. The formal charge reads, “On oath with dressing herself in mens apparel and committing a riot on 2<sup>nd</sup> inst together with other persons unknown” and “on oath with committing an assault and battery” on three people.<sup>37</sup> Attitudes toward men dressing as women were more severe than those concerning women. Mintis Jennings simply donned a dress and perhaps had too much to drink. For this, he was berated in the usually quite bland institutional reports for being “a base imposter.” Catherine Deveu, who not only cross-dressed but also participated in a riot with several other people, walked out in less than twenty-four hours. Sarah Johnson, a convicted burglar, was also released quickly and quietly after serving only a fraction of her sentence. While women dressing as men had the potential to significantly undermine the social order, officials seemed to dismiss their behavior as a petty antic. Men, on the other hand, who gave up social freedom and privileges when posing as women, were more upsetting to the moral order.

Cross-dressing also had the potential to undermine prison security. Perhaps this is why Sarah Johnson was released upon the discovery that he was a she rather than further prosecuted. Her presence undermined the ordering of the prison and revealed a weakness in its ability to identify, categorize, and reform prisoners. In one account from Connecticut reprinted in Philadelphia magazines, a man actually escaped from prison by swapping clothes with his wife during her visit.<sup>38</sup> Manipulating dress did not always

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<sup>37</sup> June 30, 1815, Prisoners for Trial, Inspectors of the Jail and Penitentiary House.

<sup>38</sup> *Pennsylvania Mercury and Universal Advertiser*, February 14, 1789.

involve taking on the clothes of the opposite sex, however. A month later the same paper reported a story from Philadelphia in which a group of prisoners managed to get the clothing off of a turnkey, whereby one of the prisoners posed as the turnkey and secured freedom for six others in the process.<sup>39</sup>

Except when the occasional transgender transgressor undermined the system, sex segregation was ultimately the most successful reform implemented at the nation's first state penitentiary. By no means did it solve the most pressing problems plaguing the institution. Other distinctions were arguably more important for the effectiveness of both discipline and punishment, such as separating convicts from pre-trial prisoners and vagrants or ensuring that those convicted of violent crimes were separated from debtors. But such regulations in the first thirty years of the state penitentiary were never fully implemented. Keeping most prisoners alive, fed, partly clothed, and segregated from members of the opposite sex were just about all the keepers, inspectors, and visitors could manage.

Even in the face of overwhelming numbers of prisoners and limited resources and space, sex segregation was deemed vital because sexual difference served as the primary ordering principal of society. While reformers may have appeared to be thwarting heterosexual liaisons at every turn, it was precisely this excessive regulation of them that produced and reproduced compulsory heterosexuality. By restricting the mixing of the sexes in the name of restricting sex, the possibility or likelihood of sex among men or among women was negated. Sexualities are produced and given meaning through language and regulation.<sup>40</sup> The *absence* of concern about alternative sexualities enabled

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<sup>39</sup> *Pennsylvania Mercury and Universal Advertiser*, March 10, 1789.

<sup>40</sup> Michel Foucault, *The History of Sexuality*, trans. Robert Hurley (New York: 1990).

the reformers' presumptive heterosexuality to reproduce the social structure of compulsory heterosexuality, rooted in a heterosexual political economy, while simultaneously nurturing same-sex desire.

## APPENDIX

Data collection about women in prison relied on the three main sets of records documenting women in prison at Walnut Street between 1790 and 1823. All of them are held in a single record collection of the Inspectors of the Jail and Penitentiary House of the City and County of Philadelphia (see bibliography). The Prison Sentence Docket contains the names and some descriptive information of those actually convicted and sentenced to Walnut Street. An extensive data base was made of women convicted from 1794-1803 and then for sample years, 1807, 1815, and 1823. The total number of convictions against women in this database is 447. Prisoners for Trial Records were more vast and detailed, and covered a wider range of women in prison. Anyone charged with a crime, even one what was not serious enough to merit a prison sentence, may have ended up in this record – and in prison – due to lack of surety for future appearance in court. These women were disproportionately poor. I constructed a database of all women's records from 1791-1799 and then for sample years 1807, 1815, and 1823. The total number of records in this database is 3259.

Reports from both of these sources considered category of crime, race, place of birth, length of sentence, length of time served. Prisoners for Trial Records offered a more detailed reporting of the crime itself. Records from the Vagrancy Docket were collected for the sample years, 1790/91, 1807, 1815, and 1823, totaling 1040 records of vagrancy charges. These records were checked against each other for overlap to create a more complete view of the prisoners. They were also checked against Minutes of the Inspectors and Minutes of PSAMPP, as PSAMPP regularly discussed the cases of individual prisoners and Inspectors were authorized to approve and record pardons.

Start year for each source is the first available record. Sample years were chosen both to cover an even span of years and also because all three sources had records for them. Mayors Court records were studied for a slightly different view, and 479 records of women before the Mayors Court from 1795, 1799, 1807, 1815, and 1823 were collected.

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## CURRICULUM VITAE

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2008 Ph.D., History, Rutgers University

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2006-present	Visiting Instructor, History	Connecticut College
2002-2004	Lecturer, Women's and Gender Studies	Rutgers University
2002-2003	Teaching Assistant, History	Rutgers University
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**PUBLICATIONS****Book**

- *Taking Back the Academy: History of Activism, History as Activism*, eds., Jim Downs and Jennifer Manion (Routledge, 2004).

**Articles and Reviews**

- "New Directions in Early American History," *Signs: Journal of Women in Culture and Society*, forthcoming.
- Book Review, *Sex Among the Rabble: An Intimate History of Gender and Power in the Age of Revolution, Philadelphia, 1730-1830*, by Clare Lyons, *Pennsylvania Magazine of History and Biography*, October, 2007.
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