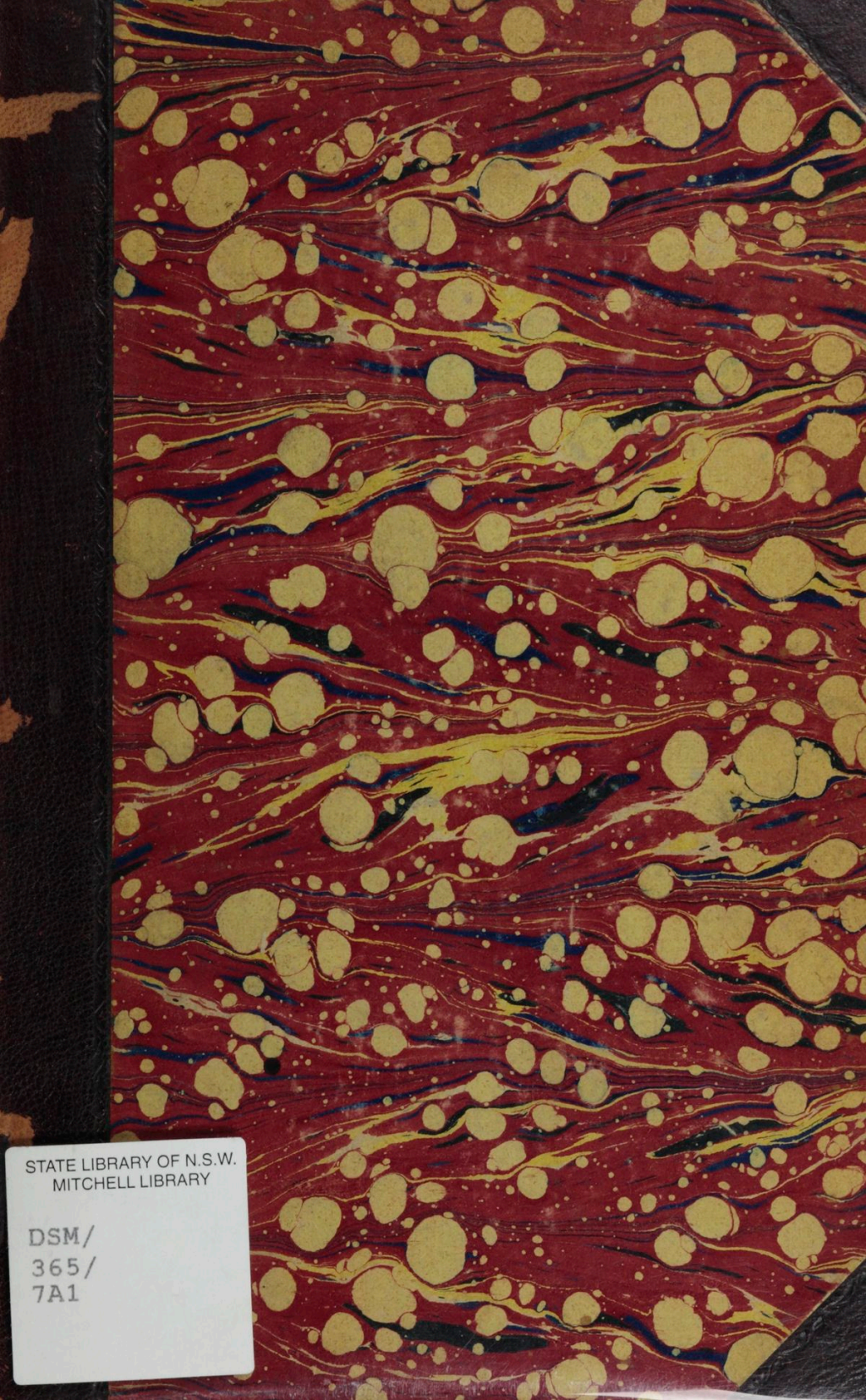

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David Scott Mitchell.

With the

Archbishop of Dublin's

Compliments

Dr. Whately.

THOUGHTS

ON

SECONDARY PUNISHMENTS,

IN A

LETTER TO EARL GREY.



BY RICHARD WHATELY, D. D.

ARCHBISHOP OF DUBLIN.

TO WHICH ARE APPENDED, TWO ARTICLES

ON TRANSPORTATION TO NEW SOUTH WALES, AND

ON SECONDARY PUNISHMENTS;

AND

SOME OBSERVATIONS ON COLONIZATION.

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LETTER TO EARL GREY.

My Lord,

In availing myself of your Lordship's obliging permission to address you on the subject now before me, I feel bound to state that it is not my design to implicate your Lordship in any of the opinions I have myself formed on that subject; not knowing, indeed, what degree of especial attention you may have bestowed on the several questions connected with it, or what conclusions as to each of these you may have adopted. I sought this permission from your Lordship, merely as from a Minister at the head of the present administration, and one disposed to receive favourably whatever suggestions shall appear at once reasonable, and conducive to important public ends.

The principal object of this letter is to invite your Lordship's attention, and that of the legislature and the public, to the subjoined reprint of an article which appeared in the London Review, on the punishment of transportation. The greater part of it was written by myself;

but as I am not the author of the whole, I have thought it best to reprint it exactly as it originally appeared, although the style of it is, in some parts, more adapted to its original destination than to a separate treatise. I have likewise subjoined another and later article, extracted, with the author's permission, from a very ably conducted magazine, in which the same opinions are maintained, with the support of additional arguments and statements of facts more recently brought to light.

It has never been my practice, nor is it my intention, to occupy myself with questions of a purely political character; especially questions of party politics. But the present is not one of that description, and it is so closely connected with morality,—so much do I feel myself, professionally, not only not prohibited, but even called on, to take an interest in it, that in investigating the subject, and endeavouring to diffuse correct views of it, I do not conceive that I am at all departing from the course I had marked out for myself. I found myself long since, as a parish minister, inculcating moral conduct under circumstances unfairly disadvantageous; when the law afforded not only

no adequate discouragement to crime, but even, in many instances, a bounty on it. When I met with instances in my own immediate neighbourhood, on the one hand, of persons of the best character not only refusing to proceed against depredators, but labouring in every way to promote the escape of the guilty, because the law denounced death against the offences, and they could not bring themselves to incur even the remote and almost imaginary risk of exposing a thief to that fate ;—and, on the other hand, of persons receiving letters from relatives who had been transported, exhorting them to find *some means* of coming out to join them, and depicting the prosperity of their condition in such terms, as naturally to excite the envy of the honest and industrious labourers whom they had left at home, struggling for a poor subsistence :—when all this, I say, came under my own observation, I could not feel and teach that Government answered its end of being "for the punishment of evil-doers, and for the praise of them that do well," while its enactments produced, on the contrary, rather a terror to the good than to the evil. And I could not but feel that, not only as a member of the com-

munity, but as a minister of the Gospel, I had a right to complain of this counteraction of my endeavours to diffuse morality.

The utter inexpediency of the punishment of transportation, of which I have long been convinced, and of which all my inquiries and reflections convince me more and more, is at present much more generally and strongly felt than a few years back. The removal of criminals to our Australian colonies was an experiment; whose failure, though not anticipated to the extent I should have expected, has, in some degree, been forced by experience on the minds of most. And many, who still object to any alteration of the system, do so, not so much from conceiving it to be a good one, as from despair of finding a substitute.

If, however (as is, I conceive, decidedly proved in the subjoined articles), the system of transportation is the very worst of all,—is productive of less advantage, and open to more objections than *any* that has been proposed or ever can be conceived as a substitute,—our deliberation ought properly to be, not, whether ~~or no~~ it shall be continued till we can fix on the *best* kind of secondary punishment

in its stead, but merely *what* experiment we shall try next; secure that, whether, in the first instance, we make the best possible decision or not, *any* change must be for the better.

In the article in the London Review, a few hints as to this point are thrown out; but in these, and in whatever else I may suggest on the subject, I speak with doubt and diffidence,—feeling so strongly my own incompetence to decide positively on so difficult a question, that I should never have presumed to treat of it had I not been quite clear as to the one fundamental point, that the existing system ought at all events to be abandoned; and that we are at least in no danger of adopting any that will not be an improvement.

And we should remember, that if it should be resolved to try *various* experiments in secondary punishments,—to abrogate any that may be found to disappoint our hopes,—and ultimately to adopt, in place of transportation, not one, but many different modes of punishment, with reference to the character of each offence and the situation in life and circumstances of each criminal, this would be by no means so *novel* a procedure, as many

misled by a name, might, at the first glance, imagine. Transportation, — at least "*sentence* of transportation," — does not, as a stranger might suppose, imply some *one* description of punishment, but several different ones; such as (besides actual removal to New South Wales) imprisonment in a house of correction, confinement on board the hulks, &c. &c. with the greatest uncertainty as to what description of punishment really does await each convict. So that, if the law should give specific directions as to the punishment of several different classes of offenders, this would not be, in reality, substituting a more complex for a simpler system, since the simplicity is merely in name, and not in reality.

The points which most persons would look to, as important requisites in any kind of punishment ~~that is~~ to be awarded, are, first, and above all other considerations, that it should be *formidable: i. e.* that the apprehension of it should operate as much as possible to deter men from crime, and thus to prevent the necessity of its actual infliction: secondly, that it should be *humane; i. e.* that it should occasion as little as possible of *useless* suffering;—of pain or in-

convenience that does not conduce to the object proposed: thirdly, that it should be *corrective*, or at least not corrupting;—tending to produce in the criminal himself, if his life be spared, and in others, either a moral improvement, or at least as little as possible of moral debasement: and lastly, that it should be *cheap:* such as to make the punishment of the criminal either absolutely profitable to the community, or at least not excessively costly.* This last point is of far less consequence than the others; and of less than it is, I think, usually considered; but still is one which must not be entirely overlooked; since a failure in this point, inasmuch

* It appears, from the parliamentary returns, that the average annual expense of each male convict transported to New South Wales was, in the year 1828, 26*l.* 18*s.* 6*d.* for each male, and 34*l.* 8*s.* 6¾*d.* for each female;—in 1829 it was 25*l.* 15*s.* 9¼*d.* for each male, and 27*l.* 12*s.* 6¼*d.* for each female. The average expense of transportation to Van Dieman's Land was, in the year 1828, 26*l.* 0*s.* 2¾*d.* per male convict, and 28*l.* 14*s*, 5¾*d.* per female convict;—in 1829 it was 25*l.* 6*s.* 9*d.* for each male, and 29*l.* 1*s.* 10¾*d.* for each female. No returns appear to have been made of the expense of the colonial establishment of civil and military officers, and troops, necessarily employed in regulating and guarding the convicts at the convict settlements.

as it admits of infinite degrees, might conceivably be such as to amount to a very serious evil. It would be a paltry and ridiculous economy that should calculate nicely the difference of a few pounds; but one may conceive a system so expensive as to amount to a very serious burden. Still I should consider the question of cost as one altogether of minor importance in comparison of the others, as long as it is defrayed by the public: any part of it that falls on *individuals* is a consideration of the highest importance, since it has a manifest tendency to prevent the bringing of criminals to justice.

In every one of these requisites, it has been shewn, I think, very clearly in the subjoined articles, that the punishment of transportation is eminently defective; and most so, in the most important,—the power of exciting a salutary terror in offenders. But its incidental ill effects, in respect of the well-being of our Australian colonies, are also very serious. And I greatly rejoice, therefore, that, in our last experiment,—the colony at Swan River,—the introduction of convicts has not been resorted to. Accordingly,

whatever other errors have been committed in the establishment of that colony (and they seem to have been not inconsiderable), I am inclined to hope favourably for its ultimate success.

But still the question recurs,—What is to be done with those classes of offenders who are now sentenced to transportation ?

The experiment of penitentiaries, it has been said, and I have no doubt will still be said, has been tried, and been found open to many objections. But, in fact, the expression is not by any means correct. The *system* of punishing criminals through the means of a penitentiary, cannot properly be called *an* experiment. There are, in reality, as many different experiments as there are houses of correction conducted on dissimilar plans : and even when the differences of management may appear to be unimportant, the results will often present such variation as to prove that we cannot fairly reason from the success or failure of one of these institutions to others not exactly resembling it. In some penitentiaries, in this, and in other countries, the prisoners are allowed almost unrestricted intercourse with each other ; solitary confinement

has been adopted in others: in some, as where the tread-mill has been adopted, they are all employed in the *same* kind of labour; in others they are allowed each to occupy themselves in working at their respective trades. The modes of coercion, again, for the refractory, and the whole system of discipline, have been varied in almost every possible way.

And that the success of different plans has been extremely unequal, is attested particularly, by the very great variations in the numbers of *recommittals* to different penitentiaries.

It is also to be considered that when we attempt to form a judgment from a review of the various experiments which have been tried or are still going on, great allowance must be made for the effects resulting from the different characters of the individuals superintending the respective establishments; since it is plain that under the care of an active, firm, and judicious governor, a system may be found to work well, which, in ordinary hands, would prove a complete failure.

I am inclined to think, therefore, that the confidence with which several persons have

advocated each his favourite plan of prison discipline as preferable to all others, must be somewhat premature. It is but of late years that the subject has engaged any large share (and it still engages much less than it deserves) of the attention of active and intelligent men, at once philosophical, and practically observant: and I am convinced we have still much to learn, which experience, aided by careful reflection, can alone teach. In the present state of our knowledge, therefore, it would perhaps be our wisest and safest course to establish, in different places, *several* penitentiaries on different plans, such as may seem to have the most to recommend them; and after a trial of a few years, to introduce modifications as experience shall suggest, and remodel the less successful on the pattern of those which may be found to answer their purpose better.

I do not, of course, mean that we should try experiments at random, or adopt every suggestion of the wildest theorists: but if we made trial of those plans in favour of which sound reasons could be offered, and were careful to guard in every case against such errors as might

plainly be shewn to be such, and to tend towards the defeat of our object, there can be little doubt that, in the course of a very few years, we should be enabled by attentive observation to ascertain what system worked best. And we might rest assured in the mean time that none could be more exceptionable than the existing system, of transportation.

Of the errors which I have said we ought, in all cases, watchfully to guard against, there is none into which zealous philanthropists are more likely to fall, than that of studying too much the comfort of those sentenced to imprisonment for their offences. When, indeed, a man is committed to prison for *trial*, every comfort and indulgence, consistent with his safe custody, ought to be allowed him. But when imprisonment is the allotted *punishment* to a criminal, it is plain that it ought to *be* a punishment.

It might seem, in the abstract, mere trifling to insist on this: but it is found, in practice, that several circumstances tend to keep it out of sight. First, the plea of humanity is so specious,

as often to be insincerely resorted to by popular declaimers, for the sake of recommending themselves to the unthinking multitude: secondly, the feelings of real humanity will often blind the understanding, and bias the judgment, of the unreflecting: and thirdly, ignorance of the habits and modes of life of the labouring classes, is liable to deceive one who is inexperienced as to what their comforts and discomforts consist in.*

Humanity in punishment, *i. e.* care to avoid the infliction of any *useless* suffering, is one of the points which I have mentioned as claiming our attention: but though no one can have, strictly speaking, too much humanity, it is very possible to be led by an injudicious and misdirected humanity.

Neither compassion, we should remember, nor any other feeling of our nature, is, in itself, either virtuous or vicious, but only so far as it is or is not under the control of sound principle, and under the guidance of right reason. But the word "humanity," being applied loosely and indiscriminately to the *feeling*, and to the *virtue*, leads, in many cases, to such conduct

* See the first Article on Transportation.

as is absurd and pernicious. Those who act from feeling, and not from principle, are usually led to show more tenderness towards the *offending* than the *unoffending: i. e.* towards the culprit, who is *present,* and the object of their senses, and whose sufferings or apprehensions they actually witness, than the absent, unknown, and undefined members of the community, whose persons or property have been endangered by him. We *feel* for an individual, especially if before our eyes, even though guilty; for the *public* no one has, or can have, any feeling. Public-spirit, therefore, implies a benevolent *habit;* and that combined with something of reflective abstraction.

No doubt, every kind and degree of suffering which has no tendency either to deter offenders, or to reclaim them, or which exceeds the benefit thus produced, is so much pure evil, which we should sedulously guard against. But the infliction of such punishments as are indispensably necessary to repress crime, is the truest humanity. In fact, if it were our business merely to make punishments as little disagreeable as we can, and to study the comfort

of those sentenced to imprisonment,—if it were this, and only this that humanity requires of us, it would be a much shorter and easier plan to pull down the prisons at once, and abolish our criminal laws altogether.

While, therefore, we carefully avoid the subjecting of a fellow-creature to any *gratuitous* misery, we must be careful, on the other hand, not to make a house of correction such an abode of comparative comfort and ease, as to forfeit all right to the name, and even to tempt men to commit crimes (of which there are many instances recorded) for the sake of obtaining in them a refuge from distress. Those, however, which are perhaps the severest sufferings of all that prisoners are in any case subjected to, are precisely those which sound policy, as well as humanity, would teach should be prevented, as far as possible, in all cases: viz. the sufferings of disease arising from imperfect ventilation and filth; — from capricious tyranny in superintendants; — and, above all, from the persecution and oppression exercised by some of the prisoners over the others,— the stronger and more ferocious over the weaker

and more timid,—when they are allowed unrestricted intercourse. All these should be, as far as possible, guarded against, not only as sources of pain never tending to any, at least adequate, good result; but, what is more, as grievous to each in a greater degree, in proportion as he is the *less* deserving of the infliction. The misery, indeed, which wicked men, when living together, unrestrained in their mutual intercourse, can inflict on each other, is enormous; but they inflict still greater on those of comparatively decent character and habits. To live in the midst of every kind of filth and indecency,—profaneness and obscenity,—and in perpetual strife and noise, is the least intolerable to the most degraded and hardened ruffians; and makes the punishment of each the more severe in proportion as he is deserving of the more lenient. A strict, and even troublesome enforcement of cleanliness and ventilation, and also of quietness, order, and decency, should accordingly be aimed at in every penitentiary, as having the double advantage of not only saving from unnecessary suffering those who, generally speaking, will be of the

less atrocious class of criminals, but also as even adding a wholesome terror to the punishment, in the eyes of all those whom it is the most important to deter.

The same holds good, in a great degree, of the prohibition of spirituous liquors and other indulgences of that description : it adds to the terror of the punishment the more, generally speaking, in proportion as each prisoner is of the more profligate character.

In all cases also, convicts should never be allowed (whatever may be the regulations for their hours of work) unrestricted intercourse when *unemployed.* The pleasures of society among convicts, besides diminishing the efficacy of the punishment, most, where it is most wanted, *viz.* to those who have been *accustomed* to bad company, can scarcely ever fail to have a very corrupting effect. No expense or trouble connected with buildings, or superintendents provided for this purpose, ought to be grudged.

And more especially, should all mixture of *juvenile* delinquents with older, and probably more hardened villains, be carefully avoided.

The evils of this are so generally perceived, that it is very common, partly for this reason, and partly from a feeling that allowance should be made for the transgressions of children, for magistrates to dismiss them with impunity "in consideration of their youth." But I cannot conceive a more pernicious practice than this of holding out to children the encouragement of impunity. If there is no proper place or mode provided for the punishment of young offenders, that is a reason for earnestly calling on the legislature to lose no time in providviding one; not for leaving them unpunished.

If, indeed, the *infliction of suffering* on the guilty were in itself a desirable object, we might console ourselves with the thought that the young culprit would be pretty sure not to escape ultimately. The fisherman who throws back the small fish into the water, in expectation that when they are grown large he shall catch them again, has seldom better ground* for being confident of this, than we have for expecting that he who in childhood has been encouraged, by the prospect of impunity, to commence a

* See Wakefield's Pamphlet.

career of crime, will persevere in it, as he grows up,—will have formed early habits, too strong to be subsequently eradicated by the denunciation of punishment against the *man*, and will probably end his days on the gallows, or in the hulks. But if our object be, as that of every penal-legislator ought to be, the *prevention* of crime, no opportunity should be lost of checking its first beginnings. I should say that the denunciation of punishment to young, and, consequently, as yet less hardened, offenders, is even the *more* important, as the more likely to be effectual. "If you had punished instead of applauding me," said the man in the well-known tale, to his mother, "when I first pilfered from my school-fellows, you would not now have to witness my disgraceful death."*

And it should be remembered, that it is not to the children alone, but also to those proficients in crime who act as their tutors and employers, that this procedure offers encouragement. The youthful depredator is generally

* It is a maxim which I have elsewhere inculcated, to "take care of the children, and the grown people will take care of themselves."

the tool of a more experienced offender; who so contrives matters that, in case of detection, nothing shall be brought home to himself, and that thus both shall escape,—the one on account of his youth, the other through his caution in acting through the instrumentality of his young associate.*

But even independently of this consideration, I should still say, that to repress, or nip in the bud, evil habits, is so incomparably a more hopeful task than to attempt eradicating or repressing them when fully formed, that, even for the sake of the juvenile offenders themselves, impunity ought never to be held out to them.

On a similar principle (if I may be allowed what cannot, I trust, be thought an impertinent digression), I should deprecate the common practice of passing over "first offences." That a scale of punishment, indeed, rising in severity on each repetition of an offence, should (not at the discretion of the magistrates, but by the laws) be provided, is reasonable and desirable; but that absolute impunity, or such a mitiga-

* The most active incendiaries in the fires at Bristol are said to have been mere boys.

tion of punishment as nearly amounts to this, should be held out to "first offences," tends, I am convinced, very greatly to increase the number of second and third offences, and the amount of punishments we are ultimately obliged to inflict. In fact, next to the abolition of all penal law, I can hardly conceive any system better calculated to train boys and men gradually to crime. Every one, it should be remembered, hopes, when he violates the laws, to escape conviction; if, in addition to this, we back the temptations to crime by a prospect of impunity on the first conviction, we have every reason to expect that, by the time this first conviction has taken place, he will have become too much hardened in iniquity to be subsequently affected by the fear of punishment, except in using all the artifice and caution his experience will have taught him, in contriving to escape detection. For this, also, should be kept in mind; that the plea of a "first offence" is generally urged and admitted without any ground. It is urged on the occasion of a first *conviction;* which, we may be assured, by no means implies a first *offence.*

The mischief would be immensely diminished, if the plea were then only admitted when the culprit was able to prove a negative; and to establish satisfactorily that he really never had offended before. But, even in that case, I should appeal to the proverb,—"*C'est le premier pas qui coute.*" A man is much more easily deterred by fear of punishment, or by any other motive, from the first offence, than from any subsequent one: and, next to this, his best chance is, to have the association established in his mind between crime and suffering, by his having been so fortunate as to have been convicted and punished for his very first transgression.

It is said that those who train young dogs to attack foxes, badgers, and other such vermin, are anxious that they should not be severely bitten in their earliest attempts; which might have the effect of daunting their spirit for ever: they accordingly muzzle or otherwise disable the beast which the dogs are first set at; and when they have acquired the habit of attacking it, without having formed an association of pain and danger, they will afterwards

not be deterred by the wounds they may receive. Now it appears to me that to hold out impunity to the young, and to first offenders, and thus, as it were, to muzzle the law, till they shall have acquired the habit of defying it, is precisely an analogous kind of training, and just what is best suited to breed up hardened criminals.

I am inclined to think that in this, and in many other points, important practical errors may be traced to the very prevailing mistake of confounding together two perfectly distinct considerations; the *moral guilt* of an offender, and the propriety of punishing him for the sake of *example*. The theory of punishment, indeed, *viz.* that it is inflicted for prevention, and not for retribution, is, in the abstract, understood and admitted by almost every one, and is distinctly recognized in our legal enactments. But, in particular cases, there are notions and practices inconsistent with a doctrine so evident, which are by no means uncommon. Irrelevant considerations,—irrelevant I mean, on the supposition, whose truth almost every one admits, that man has no right to

think of inflicting vengeance,—are perpetually allowed to influence our judgment.

To this, principally I am inclined to trace the tendency to leave unpunished the offences of the young, and of all others who may be proved or may be supposed to have been seduced and incited by others to the commission of crimes. Undoubtedly the instigator to crime, ought, if he can be brought to justice, to be punished more severely than those led by him; because the *public good* more particularly requires that an example should be made of such a character. But I suspect that even when this, which is the right course, is pursued, it is often on a wrong principle; *i. e.* from the consideration of the greater *moral turpitude* of him who seduces others. And the leniency often injudiciously shewn towards youths, and towards any who are supposed to be the seduced, and the instruments of others, arises, I conceive, chiefly from the idea that their fault, in a moral point of view, is less. But if the temptation they are exposed to from the instigation of their elders is strong, it needs the more to be counterbalanced by the fear of punishment. Morally

speaking, the strength of temptations from bad education and habits, bad associates, strong passions, ignorance, distressed circumstances, favourable opportunities for crime, &c. may be taken into account as palliations of an offence; but if we make allowance for them, politically, as palliatives in the eye of the law,* we are encouraging crime by adding, to all these other incentives, the promise of impunity, and withdrawing the salutary check of fear precisely in the very cases where it is the most needed.

As for the circumstances relating to any one's

* I have little doubt that Adam Smith is right in laying down, in his "Theory of Moral Sentiments," that the first origin among semi-barbarous nations, of the infliction of punishments by the community, was derived not so much from views of public expediency, as from a feeling of Indignation, *i. e.* sympathetic Resentment, against the offender; a feeling which would, of course, look to retaliation rather than prevention, and to the moral turpitude of the agent rather than to the difficulty and the importance to society, of preventing the offence. The true theory of punishment was not likely to take place of these feelings all at once. Sounder principles would creep in by little and little: and even now that they are recognized generally in our legal enactments, the writings and conversation of most men, even of those who shall have distinctly laid down the true principle, will occasionally exhibit marks of an admixture of the other.

responsibility in the sight of God, they can be fully known to Him only. The exact amount of each offender's moral guilt, man can neither ascertain with certainty; nor, if he could, would have any right to pretend to visit with proper retribution. Vengeance belongs not to us. *We* punish, (and we have thus only a right to punish) a transgressor, not because he has transgressed, but that others may, by his example, be deterred from disturbing society. We punish a "wilful and malicious" offender, not on account of his being morally more culpable than one who offends accidentally, but because wilful acts are the only ones that can be *prevented* by the fear of punishment. We punish a criminal, on the same principle that we extinguish a conflagration, to prevent its spreading; or destroy a mad dog, that its bite may not communicate the infection. We seek to check the example of crime, and to substitute an example of terror.

Obvious as these principles are, they are frequently overlooked, not only in such cases as I have already alluded to, but also in those which relate to persons suspected of insanity. Strangely-confused notions seem often to occupy

the mind both of judges who give directions, and of juries who endeavour to act on them, as to the question, how far a person labouring under any degree of derangement is a proper subject of punishment. I have known judges enter into most perplexed and unintelligible metaphysical disquisitions, on the question how far such and such a person was capable or not of "distinguishing right from wrong," or was in a "sound state of mind" at the time of his doing a certain act, &c. And the decisions of juries accordingly have been, in such cases, as inconsistent with each other, as might have been expected, considering that they were not formed on any clear and intelligible principle. *No man* can be, properly speaking, in a sound state of mind when he commits a crime. He whose passions so prevail over his reason as to induce him to commit murder, for instance; or who coolly and deliberately commits it, fully aware of his own wickedness in so doing; or again who has persuaded himself that it is *not* a wicked but a meritorious action,—like the persecutors of the first Christians, who "thought that whosoever killed them, did God service;"—all these

persons are, in some sense, in a disordered state of mind, whether that disorder proceed from any bodily disease or not. But the principle on which we are to proceed in awarding punishment, is very simple, if we do but steadily keep in mind the *end* of human punishment, prevention. If a man *intends* to do what he does, and not otherwise, he is a proper subject for punishment; because a person so circumstanced may be deterred (as it is well known persons confessedly insane often are) by the fear of punishment. If it is clear that he did not intend the act, whether the absence of intention be referable to insanity, or to any other cause, his punishment would answer no good purpose. If a man, for instance, who raises a fire, can be proved to have laboured under such a kind of insanity as not to know that fire would consume, he is properly exempted from punishment, on the very same ground that another would be who should throw a spark on gunpowder, which he believed to be dust; because no punishment denounced against incendiaries could operate on persons so circumstanced, *viz.* who have no *design* of the kind. But if a man designs to

burn a house, or to do any other act, we have nothing to do with the causes which led to his entertaining such a design. We know, on the one hand, that no one can be, strictly speaking, in a sound state of mind, who designs *any* crime; and we know, on the other hand, that many, who have been impelled to such designs by the strongest and most evidently morbid aberrations of intellect, have yet shewn, by the precautions they have taken for accomplishing their purpose undetected, that they were fully aware of the *particular act* they were engaged in, and consequently that they, and others similarly circumstanced, might be checked by the apprehension of punishment.

In fact, although no one considers the brute animals as moral agents, every one is well aware that it is possible to operate on them through the fear of punishment. It is not reckoned a useless cruelty, or an absurdity, to attempt to teach a dog, by beating, to abstain from worrying sheep. Any one, therefore, who, well knowing that irrational animals can be trained, by fear of punishment, to check their impulses, yet would proclaim impunity to any *man* who may

be, partially or wholly, reduced to the state of an irrational animal—such a one plainly shews that he is allowing his views to be influenced by irrelevant considerations.

But in respect of the punishment, not only of the supposed insane, and of juvenile delinquents, but of offenders generally, there is afloat in the world much false (not a little of it, I suspect, affected) tenderness. Merely excessive and misplaced compassion is, indeed, an error as much to be respected as any error can be: but when compassion is withheld from the deserving, and bestowed *only* on the undeserving, the error is as odious as it is practically noxious. It seems to me one of the worst and most barbarian features of the character of a great part of the nation, that, by the multitude at least, very little sympathy, comparatively, is felt, except for the guilty. The sufferings inflicted by the hand of justice ought, indeed, not to be excessive; that is, beyond what the object calls for; and they are at all events to be deplored; since suffering is in itself an evil: but that these should be, alone, or chiefly, pitied, by those who are comparatively callous to the sufferings from lawless

outrage, or apprehended outrage, denotes a most disgraceful and a most dangerous state of the public mind. It is said that in Corsica, and in several of the Italian States, while it is hardly possible, by the offer of any amount of pay, to induce a native to accept the office of public executioner, nothing is more easy than to hire, at a moderate price, men, who will be ready, at at their employer's bidding, to assassinate any one he may point out. I hardly know how far we are in a condition to exult in our own superior state of society, when I recollect the strong sympathy that was manifested, or feigned, for the incendiaries and rioters in various parts of the country, and particularly at Bristol,—the exertions that were made to save them from punishment,—the commiseration expressed for any of them that suffered it,—and the indignation and contempt lavished on soldiers, officers of justice, and all who were concerned in suppressing violations of the law, contrasted with the indifference manifested to the suffering of those who were threatened, harassed, plundered, burnt out of their houses, deprived of their subsistence, and sometimes of their lives; and who

had, in most instances, every possible claim to the sympathy of their countrymen, *except* the one, as it seems, most essential claim, of being *criminals.* And yet I am persuaded that the losses and injuries actually inflicted, in these outrages, great as they were, and much the greater, doubtless, on account of the encouragement which public sympathy afforded to the perpetrators,—all these, I conceive, constitute but a small fraction of the real evil.* "He who does an injury to one," says the Latin proverb, "threatens it to many." The sense of *insecurity*, produced by every crime that is committed, is by far its worst result; because uneasiness or distress of mind, from perpetual apprehension, though a less evil in each single case than the actual occurrence of what is dreaded, is an evil which extends to many thousand times more. But for this, even the crime of murder would be but a comparatively insignificant evil. For there is hardly any country in which the whole number of persons murdered annually, constitutes more than a very trifling portion of the total number of deaths. But the *apprehension* of being

* "Multis *minatur* qui uni facit injuriam."

murdered,—the feeling that one is in continual peril from the hand of the assassin, is one of the most intolerable evils that man can be exposed to. Any one who will but sufficiently reflect on the sleepless and anxious nights,—the harassing anxiety,—the distressing alarms,—the restless and troublesome precautions,—in short, all the evils implied in a feeling of insecurity, which are inflicted on thousands for every crime actually perpetrated,—will be convinced that that person is more truly and properly *compassionate* (to wave all other considerations), who sets himself to devise means for the protection of the unoffending, than he whose kindly feelings are bestowed chiefly on the violators of the law. And yet the former must prepare himself to expect from the unthinking, who are, in most places, the majority, to be censured as hard-hearted.

In pleading the cause of the innocent in opposition to the guilty,—in urging the claims to protection of the peaceable and inoffensive citizen, against the lawless plunderer or incendiary,—and in wishing that honest men may be relieved from the misery of perpetual terror, by trans-

ferring that terror to the evil-doer, I am sensible that I expose myself (such is the strangely perverted state of many men's feelings) to the charge of inhumanity.

To effect this object,—to prevent crime, as far as can be done, by denunciation of punishment,—the most effectual method, if we will listen either to reason or to experience, we cannot doubt must be, not to trust to the severity of the punishments, which are *threatened* merely, and seldom inflicted; but to establish as close a connexion as we are able between the ideas of crime and punishment. We cannot, indeed, make sure of punishing *every* offender: if we could, we might hope, that with a very moderate degree of severity, there would soon be no more to punish: but it should be our object to approach as near to this point as we can;—to let as few as possible escape with impunity; and especially to check, by timely chastisement, the young and the unpractised delinquents, at their first entrance on a course of crime.

For this purpose it is, as I have said, most important to provide a complete separation of ages as well as of sexes:—to establish, in short,

distinct penitentiaries for men, for boys, for women, and for female children. And all, on whatever plan each might be constructed and regulated, should be carefully and strictly governed and watched; so as to enforce, in the most effectual manner, their respective systems.

I have already observed, that I do not think there is any one system which, in the present state of our knowledge, we are authorized to fix on as decidedly preferable to all others. It would certainly be the most modest, and I think it would also be the wisest, procedure, to give a fair trial to each of several different ones, which have been well recommended; taking care, in every case, to avoid such errors as I have adverted to.

The plan which, as far as I am competent to judge, seems to me, on the whole, to promise the most favourably, is that which is suggested in the article from the London Review, but which has not, that I know of, been hitherto any where tried; *viz.* that of requiring, of such criminals as are sentenced to hard labour, a *certain amount of work:* compelling them indeed to a certain

moderate quantity of daily labour, but permitting them to exceed this as much as they please; and thus to shorten the term of their imprisonment, by accomplishing the total amount of their task in a less time than that to which they had been sentenced. I would also allow them, for a certain portion of the work done, a payment in money; not to be expended during their continuance in prison, but to be paid over to them at their discharge; so that they should never be turned loose into the world entirely destitute. My object in this would be, to superadd to the habit of labour, which it is the object of most penitentiaries to create, an *association* not merely of the ideas of disgrace and coercion with crime, but also of freedom and independence with that of labour.

It seems to me perfectly reasonable, that those whose misconduct compels us to send them to a house of correction, should not be again let loose on society, *till* they shall have given some indication of amended character. Instead of being sentenced, therefore, to confinement for a certain fixed time, they should be sentenced to earn, at a certain specified

employment, such a sum of money as may be judged sufficient to preserve them, on their release, from the pressure of immediate distress: and orderly, decent, submissive behaviour during the time of their being thus employed, should be enforced, under the penalty (besides others, if found necessary) of a proportionate deduction from their wages, and consequent prolongation of their confinement.

It may be said that all these regulations would require much integrity, vigilance, and discretion in the superintendants of such an establishment. This is true; but after all, how can such a requisition be avoided? How much is left, and must necessarily be left, to the discretion (or indiscretion) of those who have the management of convicts! And when we do not select, to fill the office, persons whose activity, uprightness, and good sense can be relied on, what mischievous consequences unavoidably ensue!

In respect of the kind of labour in which it may be thought advisable that convicts should be employed, I would suggest, that, though it is in itself very desirable that it should be

profitable enough to go some considerable way in defraying the expense of their maintenance, this is by no means a point of so much importance as many others, to which accordingly we should be always ready to sacrifice it. The best conducted of the American penitentiaries are said to defray fully all their own expenses, from the proceeds of the prisoners' labour. This, I conceive, cannot be expected in any country which does not combine, to such an extraordinary degree as America, the advantages of a very high value of labour and cheapness of provisions. But even if this, or something nearly approaching to it, could be attained, I should still say that it is an object of far less consequence than the moral improvement of the offenders, or, still more, the prevention of crime by the apprehension of punishment. That a penalty should be *formidable* is, as I have said, decidedly the first point to be looked to: that it should be *corrective* is another point of great, though far inferior, consequence: that it should be *economical,* is (though by no means insignificant) a matter of only a third-rate importance.

There are several different descriptions of

labour which have each some circumstances to recommend them. And it would be, besides, absolutely necessary to resort to more than one; inasmuch as the kind of labour that might be found most suitable for able-bodied adult males, would not be adapted to infirm persons, women, and children. I should be disposed to give a preference, other points being equal, to such kinds of labour as the convict might resort to after his discharge, as a means of maintenance; and, with this view, to such as may be carried on without the aid of much machinery. In this respect, the labour of the tread-mill is less eligible than many others. It has however many great advantages to counterbalance that defect. In many instances, recourse might be had to some of the less artificial and more laborious operations of husbandry, such as trenching, stone-picking, &c. This would require a larger number of such overseers as could be relied on for vigilance and firmness, to prevent the escape of convicts; but I think there are sufficient advantages on the other side, to make this plan well deserving of a trial. In particular, it would afford great facilities for the adoption (which I

consider as highly important) of the system of task-work.

Convicts should never be allowed, as in New South Wales, to be employed and paid by farmers: but the superintendants might contract for the levelling, draining, or trenching, &c. of a piece of ground, and would then set the convicts to work under their own inspection. And though the payment for this, and indeed any other labour of convicts, could seldom be expected to cover the cost of their maintenance and other expenses, it might still be regarded as so much clear gain, since they *must* be maintained at any rate.

An experiment has, I understand, been begun on a small scale on the Sussex coast, in the neighbourhood of Pevensey; which, whether successful or not as a matter of speculation, may be well worthy of attention in reference to our present object. There is, in that neighbourhood, an enormous extent of sea-beach forsaken by the sea, and presenting an expanse of seemingly hopeless sterility. It has been found, however, that the shingle, when covered over to the depth of a few inches with good soil, will produce good crops, and may be permanently reclaimed. And

the immediate vicinity presents an inexhaustible supply of such soil. The marshy meadows which are immediately bounded by this barren region, contain a vast depth of rich alluvial soil. The method, accordingly, which I have alluded to as in a course of trial, consists in digging up this soil to a considerable depth, and spreading it over the shingle: the pit thus dug is filled up again with shingle from the beach, to within about a foot of the surface; and these pebbles, being then covered with a sufficient depth of the soil dug out, and the turf replaced, the meadow is so far from being damaged by the removal of the soil, that it is even benefited, by the substratum of gravel acting as an underdrain. The process is, of course, expensive; but it is important to observe, that the whole of the expense consists of the *labour* employed. Whether it will, in any case, answer as a profitable speculation, must probably depend on the existing rate of wages: and it has come to my knowledge, that in many parishes in that part of Sussex, labourers will, at all times of the year, refuse to work except at the highest wages, *because they receive a parish-allowance whenever*

they are out of work. This system, I hope and trust, will not be allowed to continue much longer. But at any rate, though it may be doubtful whether this undertaking will in any case answer, *i. e.* more than replace the expense of maintaining the labourers, especially when these are convicts, it must at least repay a *part* of the expense; and every acre of land thus brought into a productive state by the labour of those who, whether employed or unemployed, must have been maintained at the public expense, may, as I have before observed, be regarded as so much clear gain to the community.

This, and some other hints, which I have thrown out, are intended merely to suggest matter for the consideration of those on whom the task may devolve (supposing the punishment of transportation should be abolished) of devising and regulating systems of secondary punishment. I do not think it would be possible for any one man, even if he could devote himself exclusively to the work, to collect all the facts and make all the observations, much less try all the experiments, which would be requisite to enable him to ascertain the comparative advantages and

disadvantages of all the different modes of secondary punishment that have any where been adopted or thought of. Nor do I think that even the combined labours of a number of the most active and intelligent men, would be sufficient for the full and satisfactory solution of all the important questions relative to this subject, unless, according to my former suggestion, they were enabled to make *trial*, for some time, of several different penitentiaries, established on different plans, such as they might think best deserving of a trial, and subjected to their inspection and superintendance.

Nor, again, do I conceive that this suggestion could be properly acted on, except by persons not only selected for their intelligence, experience, or habit of attention to the subject, but also able to devote the principal part of their time and thoughts to the business. For this reason, parliament, or the members of the administration, would be unable, without calling in other assistance, to do justice to an inquiry so multifarious and so important.

I will take the liberty, therefore, of most earnestly recommending the appointment of a

Board of Commissioners, analogous to that which is now occupied with the no less important subject of the poor-laws, and from whose labours every one, who is acquainted with the character of the individuals composing it, must hope for the most favourable results.

Whether the legislature is constituted in one way or in another, it is clearly impossible that it should be capable of going through, with proper care, all the necessary details of that vast and heterogeneous mass of business which belongs to its decision. And those who are at all acquainted with parliamentary proceedings, have no need to be reminded how much slovenly legislation has resulted from the non-adoption, or very slight and imperfect adoption, in the highest department of all, of that important principle, division of labour; but for which, even the humblest arts could never have been brought to any degree of perfection. Let the task of minute investigation, and uninterrupted reflection, on each subject separately, be entrusted to a small number of competent persons, expressly selected for the purpose; and let the legislature examine and judge of the result of

their labours; adopting, rejecting, or modifying their suggestions, as it may see best; and I am much mistaken if a striking effect will not be produced in the increased wisdom of its enactments, in all departments in which such a procedure shall have been adopted.

I will not presume to point out in full detail what should be the points, relative to the present subject, to be laid before such a Board of Commissioners as I have proposed; but I would suggest that they should not be too strictly confined to their own proper subject of secondary punishment; because, in respect of, first, *capital punishments,* and secondly, *police regulations,* it is possible that many facts might be ascertained, and many improvements in our present practice suggested, which might, in various ways, materially modify our practical conclusions in respect of secondary punishments. Every thing, for example, that in any way conduces to the increase or diminution of crime, must have an important bearing on the question as to the more or less *extensive* scale, on which it may be requisite that penitentiaries should be established.

Capital punishments could not, indeed, with

safety to the community, be entirely abolished; but I am strongly inclined to think that their effect, in preventing crime, would be much increased, and consequently the necessity for inflicting them; and other punishments also, very greatly diminished, by doing away with *public* executions. All the ends of justice would be answered, and much better answered, by a private execution, in presence of a certain number (say twelve) of respectable individuals, chosen by lot to witness the execution, and duly to certify it under their hands. The publication of this certificate would remove all doubts as to the infliction, and the proper infliction, of the sentence, and the many and serious evils which, experience shews, attend public executions, would be avoided.

The spectacle of a public execution strikes terror, I apprehend, into few, except those who are not of a character to commit heinous offences. It creates, in most minds, a feeling of *sympathy with the culprit;* which is the very last that should be encouraged with a view to the ends of justice. And a feeling not merely of pity, but rather of admiration and emulation,

is excited in some by that kind of triumphant penitence which is displayed by many; * and, in some, again, by the unbending hardihood exhibited by others. The idea of a public death by the hand of the executioner, is shocking in the way of *disgrace,* to those persons chiefly who are of a different description from such as need to be deterred from crime by the apprehension of capital punishment. That familiarity which is the proverbial parent of contempt, is the sentiment, I conceive, most frequently generated in the greater part of the unthinking and profligate mobs, which usually assemble for the purpose of witnessing such spectacles. They become hardened against that kind of danger, in the same manner as veteran soldiers are to the

* With whatever truth and propriety, and with whatever beneficial effect, the confident promise of perfect acceptance with God, and of a happy immortality, may be held out (as has often been the case) to a penitent criminal on the verge of execution (whether sufficient grounds have been shewn for such confidence, is a question I shall not now discuss), every one, I think, must admit that the benefit, whatever it is, must be confined to the penitent himself; and that there can therefore be no advantage in holding out to his associates, who witness his triumphant departure, the hope of a like happy end to a life spent in crime.

danger of battle; and they are chiefly anxious to witness a spirited and becoming submission to a fate which the sufferers, in common with many of the spectators, have long been accustomed to look forward to almost as their natural end.

The *speediness*, again, of the execution of sentence of death, would, I think, contribute more than in the case of almost any other punishment, to enhance the salutary terror of it. For we should remember, that, as *nature* has sentenced *every one* to death; delay, and especially uncertain delay, in the infliction, tends, as far as it goes, to approximate the penalty of the law to the ordinary course of nature; and thus to impair its character as a penalty.

On these points, however, and on several others more or less closely connected with their immediate and proper subject of inquiry, such a Board of Commissioners as I have ventured to recommend, would have the best opportunities of arriving at right conclusions, and offering useful suggestions.

In the Appendix I have subjoined to the articles above alluded to, some brief remarks

drawn up, at my request, by another friend, on the subject of colonies, which is also closely connected with that of transportation. For, whenever the abolition of that system is proposed, the two questions almost always immediately raised, are, "What shall we do with the convicts?" and, "What shall we do with the colonies?"

I have the honour to be,

My Lord,

Your Lordship's faithful

and Obedient Humble Servant,

R. Dublin.

Dublin,
July, 25, 1832.

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APPENDIX.

APPENDIX, No. I.

1. *Report from the Select Committee on Criminal Commitments and Convictions.* 1828.
2. *New South Wales. Return to an Address of the Honourable the House of Commons, dated* 1 *May,* 1828, *for a Copy of a Report by the late Major General Macquarie, &c. and an Extract of a Letter from Major General Macquarie to Earl Bathurst, in October,* 1823, *in answer to a certain part of the Report of Mr. Commissioner Bigge, on the State of the said Colony, &c.*
3. *Two Years in New South Wales; comprising Sketches of the actual State of Society in that Colony; of its peculiar Advantages to Emigrants; of its Topography, Natural History, &c. &c.* By P. Cunningham, Surgeon, R. N. 2 vols. Second Edition, revised and enlarged. 1827.

We remember to have heard an anecdote of a gentleman who, in riding through the deep and shady Devonshire lanes, became entangled in the intricacies of their numberless windings; and not being able to

obtain a sufficiently wide view of the country to know whereabouts he was, trotted briskly on, in the confident hope that he should at length come to some house whose inhabitants would direct him, or to some more open spot from which he could take a survey of the different roads, and observe whither they led. After proceeding a long time in this manner, he was surprised to find a perfect uniformity in the country through which he passed, and to meet with no human being, or come in sight of any habitation. He was however encouraged by observing, as he advanced, the prints of horses' feet, which indicated that he was in no unfrequented track: these became continually more and more numerous the further he went, so as to afford him a still increasing assurance of his being in the immediate neighbourhood of some great road or populous village; and he accordingly paid the less anxious attention to the bearings of the country, from being confident that he was in the right way. But still he saw neither house nor human creature; and, at length, the recurrence of the same objects by the roadside opened his eyes to the fact, that all this time, misled by the multitude of the turnings, he had been riding in a circle; and that the footmarks, the sight of which had so cheered him, were *those of his own horse;* their number, of course, increasing with every circuit he took. Had he not fortunately made this discovery, perhaps he might have been riding there now.

The truth of the tale (and we can assure our readers that *we* at least did not invent it) does not make it the less useful by way of apologue: and the moral we

would deduce from it is, that in many parts of the conduct of life, and not least in government and legislation, men are liable to *follow the track of their own footsteps*,—to set themselves an example,—and to flatter themselves that they are going right, from their conformity to their own precedent.

It is commonly and truly said, when any *new and untried* measure is proposed, that we cannot fully estimate the inconveniences it may lead to in practice; but we are convinced this is even still more the case with any system which has *long been in operation.* The evils to which it may contribute, and the obstacles it may present to the attainment of any good, are partly overlooked or lightly regarded, on account of their familiarity, partly attributed to such other causes as perhaps really do cooperate in producing the same effects, and ranked along with the unavoidable alloys of human happiness, the inconveniences from which no human policy can entirely exempt us. In some remote and unimproved districts, if you complain of the streets of a town being dirty and dark, as those of London were for many ages, the inhabitants tell you that the nights are cloudy and the weather rainy: as for their streets, they are just *such as they have long been;* and the expedient of paving and lighting has occurred to nobody. The ancient Romans had, probably, no idea that a civilized community could exist without slaves. That the same work can be done much better and cheaper by freemen, and that their odious system contained the seeds of the destruction of their empire, were truths which, familiarized as they were to the

then existing state of society, they were not likely to suspect. "If you allow of no plundering," said an astonished Mahratta chief to some English officers, "how is it possible for you to maintain such fine armies as you bring into the field?" He and his ancestors, time out of mind, had doubtless been *following their own footsteps* in the established routine; and had accordingly never dreamed that pillage is inexpedient as a source of revenue, or even one that can possibly be dispensed with. *Recent* experiment, indeed, may bring to light and often exaggerate the defects of a new system; but *long familiarity* blinds us to those very defects.

What we would infer from these general remarks, is the importance of reviewing, from time to time, those parts of our legislative system which are supposed to have the sanction of experience, but to whose real consequences our eyes are likely to have been blinded by custom. Custom may bring men to consider many evils unavoidable, merely because they have never hitherto been avoided; and to reason like those Arabs of whom the story is related, who concluded that a country must be miserable which had no date-trees, merely because dates had always been, *to them*, the staff of life. Nothing, indeed, should be hastily altered on the ground merely that it is not, in practice, perfect; since this is not to be expected of any system. And we should remember also that custom will often blind men to the good, as well as to the evil effects, of any long-established system. The agues engendered by a marsh, (like that ancient one which bore the name and

surrounded the city of Camarina,) and which have so long been common as to be little regarded, may not be its only effects: it may be also a defence against an enemy. The Camarinæans having drained the swamp,* their city became healthy, but was soon after besieged and taken. The *preventive* effects, indeed, whether good or evil, of any long established system, are hardly ever duly appreciated. But though no law or system, whether actually existing or proposed, can be expected to be unexceptionable, or should have its defects pointed out without any notice of corresponding advantages, it is most important to *examine* every measure, whether new or old, and to try it on its intrinsic merits; always guarding against the tendency to acquiesce without inquiry into the necessity of any existing practice. In short, we should, on the one hand, not venture rashly on untrodden paths without a careful survey of the country; and, on the other hand, be ever on our guard against following, in confident security, the *track of our own footsteps.*

We have no intention of entering, at present, on so wide a field as the examination of the subject of crimes and punishments generally: but we wish to call the attention of our readers to the consideration of one particular class of them with reference to the existing state of the law among ourselves. The subject is not an agreeable one; but as long as crimes exist, and punishments are, in consequence, necessary to check

* In opposition to the oracle,

Μὴ κίνει Καμάριναν, ἀκίνητος γὰρ ἀμείνων.

them, there can hardly be one of much greater importance. The theory of punishment is usually regarded as too elementary to require or admit of a detailed discussion: but it often happens that principles are, in practice, overlooked, from the very circumstance of their being so obvious as to be never disputed, and, consequently, seldom adverted to. And it will be found accordingly in this, oftener perhaps than in any other subject, that the same truths which, when stated generally, are regarded as truisms not worth insisting on, will, in their practical application, be dreaded as the most startling paradoxes. We are convinced, therefore, that those who are best acquainted with the subject, will be the least disposed to complain of our laying down distinctly in the outset, the principles from which our deductions are made.

We may be allowed then to premise the remark, that there are three, and only three objects, with a view to which punishments can be inflicted or threatened: 1st. *Retribution*, or vengeance;—a desire to allot a proportionate suffering to each degree of moral guilt, independent of any ulterior consideration, and solely with a view to the *past* ill-desert of the offender: 2dly. What may be called correction;—the prevention of a *repetition* of offence by the *same* individual; whether by his reformation or removal: 3dly. The *prevention* of the offence, generally, by the terror of a punishment denounced; whether that object be attained by the *example* of a culprit suffering the penalty, or, simply, by the mere threat and *apprehension* of it. To these appropriate objects may be added another, *incidental*

advantage, not belonging to *punishments, as such,* but common to them with other legislative enactments;—the public benefit, in an economical point of view, which may be, conceivably, derived directly from a punishment; as when criminials are usefully employed on any public work, so as to make in that way some compensation to society for the injury done to it. Such a compensation, however, we should remember, must necessarily be so very inadequate, that this object should always be made completely subordinate to the main end or ends proposed in the denunciation of punishment.

And what *is* to be regarded as the great object? All probably would admit, in the abstract, whatever they may do in practice, that it is the *prevention* of crime. As for the first of the purposes just enumerated, the infliction of just vengeance on the guilty, it is clearly out of *man's* province. Setting aside the consideration that the circumstances on which moral guilt depends, the inward motives of the offender, his temptations, and the opportunities he may have had of learning his duty, can never be perfectly known but to the Searcher of hearts,—setting aside this, it does not appear that man, even if the degrees of moral turpitude could be ascertained by him, would have a right to inflict on his fellow-man any punishment whatever, whether heavy or light, of which the ultimate object should be, the suffering of the offender. Such a procedure, in individuals, is distinctly forbidden by the Founder of our religion, as a sinful revenge: and it does not appear how individuals combined into a community can impart

to that community any right which none of them individually possessed;—can bestow, in short, *on themselves* what is not theirs to bestow. Our Saviour and his apostles did not mean to deprive even an individual of the right of defending (when there is no other defence to be had) his own person and property; and this right he is competent to transfer, and is considered as having transferred, to the community; but they meant to forbid the "rendering of evil for evil," for its *own sake:* and as no man is authorized to do this, or can authorize others to exercise such a right, even over himself, so neither can ten men or ten millions possess any such right to inflict vengeance; for "vengeance is mine, saith the Lord."

Of the other two, which are legitimate objects of punishment, the prevention of a repetition of the offence by the same individual, whether by his reform or removal, is clearly of incalculably less importance (desirable as it is in itself) than the other, the prevention of crime generally, by the terror of example or of threat. If we could ever so completely attain the other objects, by some expedient which would yet fail of, or very inadequately accomplish, this last, such a system must be at once pronounced inefficacious. Could we be sure of accomplishing the reformation of every convicted criminal, at the same time making his services available to the public, yet if the method employed should be such as to deter no one from committing the offence, society could not exist under such a system. On the other hand, if the punishment denounced had no other tendency whatever but to deter, and could be *completely*

effectual in that, it is plain that it would entirely supersede all other expedients, since *it would never even be inflicted.* This truth, though self-evident, is frequently overlooked in practice, from the necessary imperfection of all our expedients. Hardly any *denunciation* of punishment ever was thus completely effectual; and thence men are often led to look to the actual infliction as the object contemplated. Whereas it is evident, that every instance of the infliction of a punishment is an instance, as far as it goes, of the *failure* of the legislator's design. No axiom in Euclid can be more evident than that the object of the legislator in enacting that murderers shall be hanged and pilferers imprisoned or transported, is, not to load the gallows, fill the jail, and people New Holland, but to prevent the commission of murder and theft; and that consequently every man who is hanged, or transported, or confined, is an instance, *pro tanto,* of the inefficacy, *i. e.* want of *complete* efficacy of the law. The imprisonment may reform the offender; death removes him from the possibility of again troubling society; and the example may in either case operate to deter others in *future;* but the very necessity of inflicting the punishment proves that the dread of that punishment has, so far at least, failed of producing the desired effect. This absolute perfection indeed—the entire prevention of crime—is a point unattainable; but it is a point to which we may approach indefinitely;—it is the point towards which our measures must be always tending, and we must estimate their wisdom by the degrees of their approach to it.

We have dwelt, at the risk of being thought tedious, on these first principles, because many of the maxims inevitably resulting from them are so perpetually violated in practice, that some persons would even be startled at the inculcation of them:— because, in short, the present case is one where the premises pass for truisms, and the conclusions, frequently, for extravagant paradoxes. Even those who are too intelligent and too well taught not to be fully aware of the true end of human punishments, are perpetually liable to be led into a forgetfulness of it by the circumstance that the same action may be at once a *sin* and a *crime*—an act of moral turpitude, and also one calling for legal punishment on grounds of political expediency;—yet may be of incalculably different magnitude according as it is viewed in this light or in that; and may be even aggravated in the one point of view by the very circumstances which extenuate it in the other. So that if we lose sight for a moment of the precise object with which we are considering any offence, we are liable to draw a conclusion not only wide of the truth, but exactly opposite to it. *E. g.* it is plain that the strength of the temptations to any offence is an extenuation of the moral guilt of the offender; and it is no less plain, and is a rule on which legislators act—as in the case of stealing sheep and other necessarily exposed property—that this very circumstance calls for the heavier punishment to counterbalance it, in order to prevent the offence. Yet we have known an intelligent writer, doubtless well aware of this principle,

but losing sight of it through the inadvertency just alluded to, contend for the justice of a more severe punishment in the case of offenders whose temptations are less, in consideration of the increased moral guilt of the offence. After remarking that confinement to hard labour, &c. is a far severer infliction on persons of the higher ranks, he adds, that rank and education ought not to lighten punishment, because if they make the feelings more susceptible to an equal infliction, it must be remembered also that the moral restraint and social obligation were the stronger, and that the violation of them *merits* a severer suffering. And so it does, in a *moral* point of view, which is evidently that which the author was inadvertently taking, forgetting, for the moment, the proper end of legislative enactments. Into the very same error no less a writer than Adam Smith has been betrayed, in condemning the punishments denounced against smuggling for being more severe in proportion to the strength of the temptation, which, he says, is contrary to the principles of just legislation. (Wealth of Nations, p. v. c. 2.)

But to proceed to our inquiry; there is no question perhaps more perplexing to the legislator than the treatment of that class of offenders whose crimes fall short of capital, and yet are such as cannot be adequately repressed by pecuniary mulct, or such corporal chastisements as are now in use among us. The majority of offences of this description are at present visited by sentence of transportation. We say "*sentence* of transportation," because in a large proportion

of cases, including a great majority of those in which the sentence is for seven years only, actual transportation is not the punishment inflicted; but confinement with hard labour, either on board the hulks or in the Penitentiary, is substituted, either for the whole term, or for some part of it.

> "Dic, ... quo discrimine, ripas
> Hæ linquunt, illæ remis vada livida verrunt."

There may be reasons to justify such a system of uncertainty; but they ought to be very strong ones; for it seems on the face of it open to many objections. It is universally admitted that the certainty of punishment, *i. e.* of receiving *some* punishment, is far more effectual in deterring from crime than severity; because the same kind of disposition which leads men to venture in a lottery, viz. the tendency to calculate on their own good luck, makes them more willing to run some small risk of a very heavy penalty, than to encounter a certainty, or nearly a certainty, of the lightest. In fact, if every man could be quite sure of being speedily visited, though with a moderate punishment for every transgression, hardly any would ever incur it. And this is the point to which, though not perfectly attainable, we should always endeavour to approach as nearly as possible. Now it seems to be consonant to this principle, that we should remove, as far as can be done, every kind of uncertainty in reference to punishments. And though it is out of man's power to insure the *detection and conviction* of every offender, it evidently *is* possible to let every one know beforehand the

precise meed of punishment which will await him *in case of* his being convicted. This, we say, is possible to be done to the fullest extent; but should that be, for any reason, judged inconvenient, at least there should be *as little* uncertainty as possible. For otherwise, may it not be inferred from the natural character of man, that each malefactor, in addition to the chances of escaping conviction, will, and does console himself with the hope of undergoing that species of punishment, which, to him, is the lightest? Like a party of gamblers at *rouge et noir*, all buoyed up with hope, some in the confidence that success will attend the red, others the black, convicts who have taken tickets in our penal lottery, flatter themselves with opposite hopes; he who dreads nothing so much as a penitentiary, that he shall *only* be transported; and he who is most afraid (if there be any such) of expatriation, that he shall *not* be transported, but left in the penitentiary or the hulks.

We are aware that no penalty can be devised which shall be of precisely equal severity to every one who undergoes it: a punishment which is the most dreaded by one man, on account of his peculiar feelings and habits, is to another, of opposite habits, comparatively light. Nor, again, can any system be framed which will allot, with perfect regularity, to each class of characters, the punishment most dreaded by each. But one of the inconveniences, and perhaps one of the greatest, of the system of complete uncertainty to which we have been objecting, is that it precludes the legislature from profiting by *experience:* indeed, from acquiring any, concerning the respective efficacy of

different kinds of punishment. For it should be remembered that, with a view to the main object, prevention, it is, in all cases, the *expectation*, not the *infliction* of the punishment, that does good; the only benefit that can arise from the example of the infliction being, the excitement in others of this expectation;—the wholesome terror of suffering the like. Now this benefit can only exist as far as men are led to anticipate for themselves, in case of a similar offence, a similar suffering. The infliction of a whipping is no *example* to thieves, on the mere ground that the person so chastised is a thief and is whipped for it, but on the ground that *other* thieves may *expect* hereafter to be whipped. Yet this maxim, truism as it is, is practically violated in every instance in which it is left to chance to decide which, out of several different punishments, a certain convict shall receive, There are *then* no means of judging which of these are more, and which less efficacious in deterring offenders. A certain kind of punishment we will suppose may be inflicted on a considerable number of convicts, without any diminution of that class of offences; and yet, for aught we know, this very punishment may be an object of dread to those very men, and might have deterred most of them, if they had been assured *what* punishment awaited them. The labourer at the hulks, if we could dive into his thoughts, might perhaps be found to have offended, not in defiance of the hulks, but of transportation: and he who groans under solitary confinement, might prove to be one who thought little of imprisonment among good company on board the hulks. As long as

this uncertainty remains, all our judgments respecting the comparative efficacy of punishments must remain involved in equal uncertainty. No legislator can decide what penalty malefactors most *dread*, unless he knows what they *expect*. On the other hand, any penalty which should be invariably inflicted on a certain class of offenders, even should it prove wholly ineffectual, would at least have served the purpose of an *experiment;* we should have *ascertained* its inefficacy, and might proceed to change it for another. But on the opposite plan, our practice neither springs from experience, nor tends to produce experience; we cannot refer effects to their causes; but are left to proceed by guess and at random from beginning to end.

Now if it be the fact, and we shall presently proceed to show that it is at least highly probable, that actual transportation is, to most offenders, either a very slight punishment, or a *reward*, it will be evident from what has been just said that this circumstance will not only nullify the effect of transportation itself as a preventive of crime, but will also impair the efficacy of such *other* penalties as are liable to be commuted for it. It is opening a door to hope. And in legal enactments the same rule holds good, as in mechanics: nothing is stronger than its weakest part. If a poor man is convinced (we wish the supposition were impossible and inconceivable) that a trip to Botany Bay would be the best thing that could befall him, he may be even tempted by such a belief to steal a sheep in the hope of a free passage, and to run the risk of being sent to the hulks instead, trusting that he shall have better

luck than that: especially if there be some *aggravation* in his offence, which will procure him a sentence of fourteen instead of seven years; in which case actual transportation is much the more likely to be the consequence.

But can there be any, some of our readers will perhaps say, to whom transportation really is no punishment? Doubtless to a person in a tolerably comfortable situation in his own country, and whose habits are quiet and regular, a four months' voyage, and a settlement, either permanent or temporary, at the antipodes, is likely to be felt as a grievous exile; to say nothing of the abridgement of liberty and compulsory labour. But the higher classes, or indeed those in any class, will fall into great errors if they judge too hastily of the feelings of others by their own, and conclude that every thing must be felt by all as a punishment, which would be such to themselves. If a fine lady or gentleman were promised a sight of a criminal sentenced to hard labour, and were to be shown a man occupied all day in raking mud out of a ditch, and dining on hard dumpling with dripping poured over it, (the Suffolk dainty,) they might perhaps think his punishment too severe, and might be surprised to be told that he was, after all, no criminal, but an honest labourer, who was very well satisfied to get such good employment; and that, though probably he would be glad of better diet, more beer, and less work, he would find himself as uncomfortable if confined to the mode of life and occupations of those who pitied him, as *they* would be in the scene of his highest enjoyment, the chimney-corner

of a dirty alehouse. In fact, the great mass of mankind are sentenced to hard labour by the decree of Providence. And though a tolerably steady character, in tolerable circumstances, will usually prefer undergoing this lot in "his own, his native land," to the chance of even bettering his condition in another, it is well known that all men are not steady characters, nor all in even tolerable circumstances: multitudes are every way exposed to the trials of "*malesuada* fames, ac turpis egestas."

The man who is able and willing to work hard, yet is unable with his utmost exertions to provide bare necessaries for his wife and family without resorting to parish relief,—the man who, without being incorrigibly idle, has a distaste for steady hard work, rewarded with a bare subsistence, and a taste for the luxuries of the lower orders, yet cannot acquire them by honest means,—the man who by his irregularities has so far hurt his character that he cannot obtain employment except when hands are scarce,—these, and many other very common descriptions of persons, are so situated that transportation can hardly be expected to be viewed by them as any punishment. As a punishment, we mean, when viewed in comparison with the *alternative* of living by honest industry: for it would be absurd to say that, to lazy vagabonds, the necessity of labour is itself a punishment: they *dislike* it indeed, but they cannot *avoid it by abstaining from crime.* Labour they must at any rate, or else steal or starve; and *that* only can operate as a preventive punishment which it is in one's power to avoid by good conduct. It would be

ridiculous to exhort a poor man not to subsist by stealing but by hard labour, lest he should be condemned to hard labour! If every thing that a man *dislikes* is to be regarded as therefore a punishment to him, we might hope to deter people from stealing by the threat of merely compelling them to restore what they steal; for they all probably would agree with Falstaff in "hating restitution, as double trouble." Yet a man would be reckoned an idiot, who should say, "brave the cold contentedly in your own clothes, and do not steal my cloak; for if you do, I will—if I *can catch you*—make you pull it off again."

We should apologize for noticing a truth so obvious were we not convinced that it is often overlooked, in consequence of the difference, in effect, of the same sentence, on different persons. To one brought up in refinement, a sentence to wield the spade or axe, and live on plenty though coarse food for seven years, would be felt as a very heavy punishment for flagrant misconduct, and might induce him to abstain from such misconduct; to the majority of mankind, it is the very bonus held out for good conduct.

To the great bulk of those, therefore, who are sentenced to transportation, the *punishment* amounts to this, that they are carried to a country whose climate is delightful, producing in profusion all the necessaries and most of the luxuries of life;—that they have a certainty of maintenance, instead of an uncertainty; are better fed, clothed, and lodged, than (by *honest means*) they ever were before; have an opportunity of regaling themselves at a cheap rate with all the luxuries

they are most addicted to;—and if their conduct is not intolerably bad, are permitted, even before the expiration of their term, to become settlers on a fertile farm, which with very moderate industry they may transmit as a sure and plentiful provision to their children. Whatever other advantages this system may possess, it certainly does not look like a very terrific punishment. Æsop, we are told, remonstrated with a man who, when bitten by a dog, attempted the superstitious cure for the wound by giving the beast bread dipped in the blood: if the dogs, said he, find this out, they will all fall upon us in hopes of these sops. We fear the shrewd old fabulist would entertain similar apprehensions from what is called our humane system of laws.

Perhaps therefore, all things considered, it is as well that the execution of *such* a sentence should take place in the other hemisphere, that the lower orders in England may have the less opportunity of comparing their own condition with that of the convicts: if the punishment really *were* a punishment likely to strike terror, there would be a very serious objection to its being removed so far from the knowledge or notice of those whom it is designed to deter. But let any man of common sense judge how far those under a temptation to any crime are likely to be deterred, by a knowledge of such facts as Mr. Cunningham among others lays before us:—

"I question much, however, whether many *English* "labourers live better than our convict servant here, "whose weekly ration consists of a sufficiency of flour "to make four quartern loaves at least; of seven pounds

" of beef; two ounces of tea, one pound of sugar, and " two ounces of tobacco, with the occasional substitution " of two or three quarts of milk daily for the tea and " sugar allowance. Numbers of the English working " poor would doubtless be happy to bargain for such a " diet; and thus their situation might in these points " be bettered, by their being placed upon an equality " with *convicts!*"

The natives of the sister-island, it seems, have their eyes more speedily opened to the advantages of their lot than ourselves:—

" The Irish convicts are more happy and contented " with their situation on board, than the English, al- " though more loth to leave their country, even im- " proved as the situation of the great body of them is " by being thus removed,—numbers telling me they " had never been half so well off in their lives before. " It was most amusing to read the letters they sent to " their friends on being fairly settled on board, (all " such going through the surgeon's hands,) none ever " failing to give a most circumstantial account of what " the breakfast, dinner, and supper, consisted of; a " minute list of the clothes supplied, and generally " laying particular emphasis on the important fact of " having a blanket and bed to " my own self *entirely*," " which seemed to be somewhat of a novelty by their " many circumlocutions about it. One observed, in " speaking of the ship, that ' Mr. Reedy's parlour was " never half so *clane*,' while the burden of another " was, ' Many a *Mac* in your town, if he only knew " what the situation of a convict was, would not be

"long in following my example! thank God for the "same! I never was better off in my life!'"

This dangerous knowledge however does, not unfrequently, reach this country also; and may be expected to be more and more generally diffused, and to lead to its natural results. Sundry instances have come under our own observation, (and many of our readers probably could multiply them to a great extent, if each would note down such as he hears of on good authority,) of convicts writing home to their friends in England in the same style of self-congratulation, and exhorting such of them as are in a distressed situation to *use their best endeavours* to obtain a passage to a land where such cheering prospects await them.* Two

* The Committee of the House of Commons, which sat in 1831, to inquire into the best mode of giving efficiency to secondary punishments, examined Potter Macqueen, Esq. He possessed some property in New South Wales, although he had never been in that country. In the course of his examination (see 1st Report, p. 92) he was asked:—"Are you able to state, from the communications you have had with persons in that country, what is the general condition of convicts who are in the employment of settlers?"——"I have had regular agents of my own, and have received their accounts at stated periods. From being a Member of Parliament, for a considerable space of time, I have had communication made to me from many of the most opulent settlers. I have had statements of their supposed grievances made to me, for the purpose of procuring an amendment to those grievances. I have had, in my own employment, from sixty to ninety convicts yearly. I have considered, from the average expense, as forwarded to me by my agent there, that these convicts have been placed in the possession of relative comforts which, had I to provide the same comforts for my own labourers in Bedfordshire, would cost me 56*l.* 10*s.* a man, per annum; and, at the same time, labourers in my own district have averaged for their support 8*l.* per annum."

"That

instances we know, of a master, and a mistress, who had each been robbed by a servant subsequently trans-

"That is taking a single man?"——"I am taking the average of a family; a man and his wife and three children costing a parish 40*l.*"

"What is the average wages of an unmarried man in Bedfordshire?"——"The average of an unmarried man, taken from the returns made to Parliament, are 4*s.* per week."

"About 10*l.* a-year?"——"Yes; I have instances, in my own knowledge, of lads who get up in the morning, walk three miles to their master's residence, and walk back to their miserable cottage at night, and get 4*s.* at this moment."

"Of what age?"——"Sixteen, seventeen and eighteen. I believe I have evidence of overseers to bring forward if the Committee wish for it."

"In point of fact, you consider the condition of the convict labourer in New South Wales, as infinitely superior to that of the agricultural labourer of this country?"——"Infinitely so; and I have found from my own experience, as a magistrate, that many persons have asked what extent of crime would insure their transportation?"

"You think, in short, comparative comforts are enjoyed by the convicts in New South Wales which are unknown to the agricultural population in Bedfordshire?"——"Certainly; and I have a letter in Bedfordshire which I could send for in a few days. I have an extract from it, which may set the question at rest. Five years ago a young man, a wheelwright, of the name of Northwood, was brought before me for poaching in the Duke of Bedford's wood. He was a tall handsome young man, nineteen years of age; he had been three years indented to a wheelwright; I did not like to send him to prison as a poacher. I have always found commitment to prison is the first step to make a confirmed vagabond. I recommended him to enter the King's service: he accordingly entered a regiment which happened to be under orders for New South Wales, I believe the 39th. On his arrival at Sidney, he writes to his father a letter, in which he says, 'The pay of wheelwrights here is 15*s.* per day; and there is a gentleman who will agree to pay for my discharge, and I will work for him so long for a less rate of wages, as we can agree upon.' He begs I will send him out his indenture, to prove he has been three years at work in Bedfordshire, which I have done. I believe he is going on exceedingly well. He then proceeds to give his family some

ported, receiving a friendly greeting, in one of the instances personally, in the other, by a letter, accompanied by a present, with acknowledgments of former kindness, from these very servants, who had realized large property, one of them in New Holland, the other in Van Dieman's Land. The latter seriously urged her mistress to come out and join her, promising herself to patronize and assist her, and holding out the certainty of making a fortune! It is most consolatory, no doubt, to reflect how thrifty and well-conducted these individuals must, in all likelihood, have become, and to observe their dutiful gratitude. But gold may be bought too dear. Is it worth while to hold out a temptation which will be the means of spoiling one thousand servants, for the sake of trying how effectually we can reform half a dozen of them:—

> "Only to shew with how small pain,
> A wound like this is healed again?"

Shall we, in short, to cure one bite, throw a sop to the dog which will bring a whole pack upon us?

It may perhaps be said, that such instances of rapid accumulation of wealth must be very rare; and that

information of the Bedfordshire transports, whom he has already recognized in the colony. He says, 'Norman Hughes (a convict transported for stealing wheat, a most notorious character in Bedfordshire) has taken a large farm in M'Quarrie's Harbour, and is doing extremely well. Philip Hibbs (a boy about 18, transported for picking pockets) receives 50*l.* a year wages, as tapster of the Commercial Tavern.' This letter was read over among the agricultural labourers of Bedfordshire; the effect of it was only this,—they were anxious to know what they would commit to entitle them to be transported."

As to the effect of the punishment on convicts, *See* the evidence of Mr. E. Gibbon Wakefield, quoted in the second Appendix.

many of the accounts transmitted are probably much overcharged. We should answer, so much the worse. The mischief is done, not by the *attainment* of these advantages in New South Wales, but by the *expectation* of them excited at home: a very few prizes of twenty or thirty thousand pounds will induce multitudes to take tickets; false descriptions may excite real hopes; and if the credulous are allured by these hopes, it is no comfort to think that they are ultimately disappointed; on the contrary, it is an aggravation of the evil, since our object is, not the *infliction* of suffering, but the excitement of a salutary *dread* of it, at the least expense of actual pain that is compatible with that object. If it were possible that we could carry offenders to an Elysium, and at the same time succeed in keeping up the *belief* that they were carried to a Tartarus, this would be of all things the most desirable; but if they *expect*, whether truly or not, a passage to Elysium, our object is completely defeated: as long as such hopes, however visionary, are kept up, we must expect to find the distressed or discontented part of the community resembling (according to the felicitous allusion to the Æneid by one of our contemporaries) the disconsolate ghosts on the banks of Styx:—

> "Stubant orantes primi transmittere cursum
> Tendebantque manus, ripæ ulterioris amore."

We find Mr. Cunningham, whose testimony is the more important, on account of his being a decided advocate for the system of colonizing with convicts, distinctly admitting that hitherto, i. e. for about forty years during which this system has been in operation,

it has totally failed of the main object, the deterring of offenders by the fear of punishment; but he consoles himself with the hope that hereafter a better method will be pursued, and so that transportation may begin to be really penal.

"A penal colony, however, to prove fully beneficial "to the mother country, must be regulated so as effi- "ciently to *punish* the crime committed, before the "*reform* of the criminal is thought of; and in this par- "ticular has hitherto consisted the great defect of our "New South Wales system; for transportation here "could scarcely be called a punishment, and indeed, in "half of the cases at least, proved a *reward.* The ju- "dicious measures, however, commenced by our pre- "sent governor, promise a speedy reform in these "matters, and will, I hope, convert the colony from "a *Paradise,* into a *purgatory,* for criminals."

We do not dispute that improvements may be introduced into the system; but the only effectual one, we are convinced, will be to abandon it altogether. Means doubtless may be used to make transportation no longer altogether a reward; but it does not follow that even then it will operate as a punishment; and we must be ever on our guard against concluding at once (according to the fallacy above noticed) that it does so, on the ground of criminals beginning to *dread* and *dislike* it; they must dread and dislike it *more,* much more, than a life of honest industry, before it can operate as a check to those whose only alternative is such a life, or one of dishonesty, and who are disposed to prefer the latter. We have said that this penal labour ought to

be *much* more dreaded than honest industry, for two reasons; first, on account of the uncertainty of the criminal's detection: he who had rather steal than submit to ordinary hard work, will *take his chance* of being sent to Botany Bay, unless his punishment there is apprehended to be something far beyond ordinary hard work: second, on account of the hope held out, (and which is a principal design of the system to hold out,) that at the expiration of his term, if not sooner, he shall be located on a farm, and placed in a situation exceeding the brightest dreams of an English cottager. This hope will need much to counterbalance it, if transportation is to become a dreaded punishment. Mr. C. trusts it will become a purgatory; but he must remember it is one which, like the Popish purgatory, leads to a Paradise.

Supposing this point, however, to be fully attained, and to suppose it, is what Johnson would call "the triumph of hope over experience," still it would be a long time after the completion of this change, before the character of it would be so fully *understood* in England as to do away the impression produced by forty previous years of impunity and reward. And till then—till the reformation of the discipline in New South Wales were fully appreciated in England, no good whatever would be effected by the change: for, as we must once more repeat, it is not suffering, but the *expectation* of suffering, that does good. Generation after generation of criminals would be shipped off before the truth was completely learned, that the same sentence which formerly implied nothing terrific, was

at length become a serious penalty. And lastly, the effect must even, after all, be comparatively trifling, of a punishment undergone at the distance of a four months' voyage.

That a system, on the face of it so little calculated to secure the great end of punishment, the prevention of crime, should have been so long persevered in, indeed, should have ever been resorted to, is to be attributed, we conceive, chiefly to the hope of attaining those other objects which we have already noticed as of a subordinate character: viz. first, reform, or at least, removal of the individual culprits; and, secondly, the benefit to the colony resulting from their labour. It may, perhaps, be thought scarcely necessary ever to notice these supposed advantages, because, as we have above remarked, could these be attained in the utmost perfection, yet if the great object, prevention, were not accomplished, the whole scheme must be regarded as a failure. We shall, however, venture on a few remarks relative to these subordinate objects, because, we conceive, that the expediency of the present system, even with a view to them alone, is greatly overrated.

With respect to the reformation of offenders, that it has been, in some instances, more or less perfectly attained, there can be no doubt: but that, in the generality of cases, the discipline undergone in the colony should be sufficient even to *undo the evil of the passage*—to remove but the additional contamination contracted during the voyage out—is more than either reasonable conjecture, or experience, would allow us to hope. For let any one but consider the probable

effects of a close intercourse for four months, of a number of criminals of various ages, and degrees of guilt, with *nothing whatever to do* in all that time but to talk over their exploits of roguery! They must be like grass heaped together in a green state, and suffered to become *mow-burnt* before it is spread out and turned. That would deserve to be called a mighty reformation, which should ever bring them back to their former state, and leave them merely no worse than they were before the voyage. Of the sort of life led by the convicts during the passage, Mr. C. gives nearly such an account as might have been anticipated.

"A man being estimated in this kind of society "according to the amount and adroitness of his vil- "lainies, it is no wonder that the yet 'mute inglorious' "Barringtons of the day should crown themselves "occasionally with the bays appertaining to other "brows, or boast of robberies committed only in their "imagination, in order to elevate themselves to some- "thing like a par with more dignified culprits. Almost "all their conversation is of the larcenous kind,— "consisting of details of their various robberies, and "the singular adventures they have passed through; "but generally one-half of these are either sheer "invention, or dressed up in such a way as to show off "in the most flattering point of view before the eyes of "their associates.

"The adventures of some of these men are certainly "both extraordinary and amusing; and the tact with "which they will humbug the very individuals whom

" they are plundering, might serve to entertain even " the plundered party. It is the rogue's interest, of " course, to make the adventure tell well to his own " *credit*, and therefore considerable deduction must " generally be made for the embellishments wherewith " he garnishes his tale. I once listened, unobserved, " to the relation of an adroit and facetiously-managed " robbery, which the hero was detailing with great " glee; and the admirable manner in which the whole " was wound up, called forth such a spontaneous burst " of laughter and applause from the throng around, " that he rapturously exclaimed, while striking the " bench with his firmly-clenched fist, (his whole coun- " tenance beaming delighted,) ' By G—, I could steal " a shirt off a fellow's back without his knowing it.'

" It is, in sober sadness, time fruitlessly expended, " to attempt the reformation of these people when " crowded thus ' knave upon knave:' those who may " be seriously inclined are jeered out of it by the rest, " and the *reformation* you bring about is a mere bam " meant to be turned to gainful account by making a " dupe of you. All you ought to attempt, under such " circumstances, is to bring about regularity and " decency of conduct. If you aim at more, you only " make *hypocrites*, which is ten times worse than " permitting them to remain (as you found them) open " downright knaves."

Accordingly, those convicts who return after the expiration of their sentence, or who escape before, are generally found to be the most perfect and accomplished villains.

Many, however, remain and settle in the colony; but the majority of them appear to turn out just such settlers, as from their previous habits of life, might be anticipated.

" The thriving and fertile districts of Airds and " Appin are situated in the county of Cumberland, " immediately beyond the Cow-pasture, looking from " Camden. They are chiefly occupied by small settlers, " who having been originally convicts, out of many of " whose hands the grants are slowly passing, through " the thoughtless, spendthrift conduct of the occu- " pants."

Their posterity, however, appear to be considerably improved. Of the *currency*-population (as the natives of the settlement are called), Mr. C. seems to think very favourably; and indeed no class of mortals are more likely to meet with an indulgent judgment, since even tolerable conduct presents a striking contrast to that of their progenitors. They are described as remarkable for honesty: query, in what degree may this be attributed to the total absence of all hope of being rewarded for dishonesty, by being sent to New South Wales? *Honesty*, however, in another sense, is represented as far less common than black swans. The females, it seems, are cleanly and active, but " do not reckon chastity as the first of virtues." But though they cannot boast that " the women are all virtuous," " the men are all brave." By Mr. C.'s account, they excel as pugilists; practising that noble art with great valour and skill from their childhood, and generally proving victorious in a boxing-match,

" between sterling and currency!" Who knows but that in addition to her exports of merino-wool, Australia may one day furnish a " champion of England."

It is, however, considered by some as a matter of great self-congratulation, that these persons are so much superior to what any children of such profligate parents *would* have proved if they had remained in England. But this proceeds on the manifestly false assumption that, in that case, the same numerous progeny would have *arisen;* whereas reason and experience show that (to say nothing of the boasted fecundity of the worst description of females in New Holland) whenever settlers are placed in an unoccupied territory, where consequently the supply of subsistence is practically unlimited, population increases with vast rapidity; as in the North American States, where the numbers advance as much in five-and-twenty years, as in Europe in five centuries. The immediate progeny of one thousand reprobates of both sexes, reared in England in one generation, would hardly much exceed, probably would fall short of, the number of their parents: in a new colony, they are likely to be four or five times as numerous. Whether, therefore, these are better than their parents, is not the question; but whether they are the best population with which we could stock the country—whether it be wise to *save for seed* the worst plants—whether they are better than none at all—and whether, if they are, the advantage is worth purchasing at such a cost as that of holding out a bonus to criminals, and consequently shaking the very foundations of social order.

But to return to the consideration of the actual convicts: we are inclined to think that transportation is looked to not so much with a sanguine hope of their reform, as with a view to the *getting rid* of them. Now supposing we could (which is not possible) clear the kingdom at once of *all* criminals, by shipping them off to New South Wales, and that every sentence of transportation were for life (which should clearly be the case if *riddance* be our object), still the country would be no gainer unless we got rid of the *crimes* as well as the *individual criminals;* and this could never be done unless the transportation were a dreaded punishment. For it is not to be imagined that thieves are a distinct species, like wolves, so that if we could but exterminate them all (as the Saxon king did our four-footed sheep-stealers), the breed would be extinct. "*Man*" (says the legal maxim) "is a wolf to man." While human nature remains, property, as far as it is not protected by fear of punishment, will ever offer a temptation to depredation. Fresh offenders would immediately arise; not indeed corrupted by the example and instruction of those sent out of the country, but encouraged by their impunity; and thus we might go on till we had peopled New Holland with rogues, without the least diminishing the number at home. "*Uno avulso, non deficit alter.*" To think of diminishing crime by simply *removing* the criminals, without holding out an effectual terror to future offenders, is like undertaking to empty a lake by baling out the water, without stopping the river which flows into it. Now the existing system exactly corresponds with the

above supposition, except in two points: first, that as we *cannot* transport all, or nearly all offenders, there are always enough left at home to train successive generations of tiros in villany; and, secondly, that as most sentences of transportation are only for a *term of years*, we do not effectually get rid even of those who *are* sent out. We do indeed get rid for ever of such of them as *are disposed* to lead a reformed life; *they* seldom fail to become settlers; but the most incorrigible are sure to return. So that this system of "riddance" not only fails of its object, but, by a kind of whimsical perversity, fails precisely in the instances in which its success is most desired.

Some writers express wonder and alarm at the increase of crime: we wish they were more alarmed, and less astonished; to us, the wonder is, that crimes do not increase much faster; and we look forward with great alarm to the continuance of the present system, as one likely to bear its poisonous fruits in continually greater abundance and perfection as it advances toward maturity of growth.

Having now arrived at our conclusions, by an analytical examination of the subject, it is time that we should compare them with those of the Select Committee, whose Report we have mentioned at the head of this article. In this comparison we regret to find a most essential difference, between the Report and our own views. In regard to transportation for fourteen, and for seven years, the views of the Committee may be said to coincide with ours; but the coincidence is more of detail than of principle. Their objection to the

former term of years is that " for those who dread the loss of their native country, it gives a hope of return, which greatly diminishes the value of the punishment." With this they couple the consideration that " the returned transport is generally a very abandoned character, and he usually returns to his old criminal society, thus forming a link, as it were, between the thieves at large, and the thieves under punishment." (P. 14.) In regard to the shorter term of transportation, " the Committee would be inclined to recommend that the punishment should be abolished;" but as some convicts had lately been sent to Bermuda, and the result of the experiment was as yet unknown, they thought proper to suspend their judgment. Of transportation commuted into labour on board the hulks, the Committee expressed their disapprobation, at least in its present state, on account of the lightness of the labour enforced, and the want of separation between the different sorts of criminals.

But the approbation which the Committee give to transportation for life, is most positive and unqualified.

" Transportation for life is an excellent punishment " in certain cases. Where a man has made crime his " habit and profession, where he has become the chief, " or a member of a band of thieves, and has no resource " on his return from imprisonment but to herd with the " same gang, and pursue the same practices, it is both " mercy and justice to spare his life, and remove " him to a distant colony, where he may first afford an " example of punishment by hard labour, and by

" degrees lose his vicious propensities in a new state of " society. Much has been said of the advantages " enjoyed by the convicts in New South Wales, and " the little effect which the punishment inspires. Still " there are numbers to whom the notion of being " banished for life, with several years of convict-labour " in addition, is very formidable, nor would it be wise " to abandon such a punishment." P. 14.

No power of argument, or even demonstration, can avail against such decisions. The Committee's conclusion amounts to this: much has been said against transportation for life, but still " it is an excellent punishment." Experience seems to prove that the threat of such a punishment inspires no fear; but " still there are numbers to whom it is formidable." To what class the individuals belong who form these *numbers*, the Committee do not stop to inquire. The notion of banishment for life, and convict-labour, is far from being agreeable to themselves, and on the strength of this feeling they assert the existence of *numbers* to whom this notion is formidable. How the Committee are prepared to prove that it has that effect on that *sort* of men, in relation to whom they ought to have settled the question; — how either from reasoning or experience they can show *that a man who has made crime his habit and profession, who has become the chief or a member of a band of thieves*, which, in ninety-nine out of a hundred cases, is the effect of his not being able to subsist by labour, as hard and much more hopeless than that with which he is threatened; — how they are to persuade the

world that such men are so attached to their native soil as to dread the exchange of it for one more fertile, mild, and cheerful—one, besides, of the same language as their own—one, in fine, where, as far as *country* means any thing connected with the intellectual and moral part of man, an Englishman will find himself more at home than if he was sent to many parts of Ireland, or the Hebrides;—we are at a loss to guess.

But we cannot take leave of the Committee without adverting to the unsteadiness of their views in regard to any standard by which to ascertain the usefulness of the punishment which they were considering, and which they so strongly recommended. The *excellence* of transportation for life, to judge by their statement, consists, 1st, In the example of punishment afforded by the temporary hard labour of the convict; 2ndly, In the probability that by degrees he will "lose his vicious propensities in a new state of society." This is a striking example of unphilosophical investigation. The question is, whether transportation for life is good as a punishment? Good in respect to what end of punishment? ought to have been the first question. A glimpse of the true end—prevention of crime—seems to have crossed the minds of the Committee; and accordingly they endeavour to make out transportation useful as an example. On finding this impracticable, they seize on an incidental circumstance of transportation, *i. e.* hard labour, and on this they fasten their conclusion. But it happens, unfortunately for the argument, that the *hard labour*, which, as we have

observed, is a mere incident in the case, wants every one of the circumstances which are essential to useful example: it is not seen by those who should be deterred; it is an evil with which they are familiar; it cannot be much worse than the hard labour to which they must submit if they abstain from crime; and being to their minds at an indefinite distance of time and space, it loses in the gay hues of hope every harsh feature of punishment. So much for example. The weakness of this argument being probably felt by the Committee, they turned to the usual resource in such cases — accumulation of reasons. If removal for life to Botany Bay (they seem to say) should not be found to act powerfully as an example, it is, at all events, conducive to the reform of the convict. But what is the ground of their hopes on this score? The influence of a new state of society. Now if a *new state* of society can have any chance in correcting vicious habits, its *novelty* must consist in the removal of every thing that cherished the evil propensities, and smothered the good ones of the individual to be reformed. One half, and perhaps more, of our worst characters would be reformed, could they be placed among a set of virtuous and industrious people, who, from their ignorance of the previous misconduct of the strangers, should be ready to treat them with kindness, and able to give them a share in their industry and profits. But what is the *new state* of society to which the convicts are removed? What is there *new* to them in their place of exile, but what, if transportation is not to be a reward instead of punishment, must neces-

sarily increase their viciousness? Are they not introduced into a society in which depravity is the general rule, and honesty the exception? Are they not to be reduced to a kind of *slavery*, the greatest corrupter of the human heart? Are they not to be branded with a mark of infamy, which even a thorough reformation, supported by all the influence of the first authority of the country, can never remove? Let any one who doubts it, read the parliamentary report on the state of New South Wales, and he will find that the main source of all the disturbances occasioned by the government of General Macquarie, was his leniency towards reformed convicts — his (as we think) benevolent yet mistaken view of the penal end of transportation. It is curious indeed to observe how two men, in bitter opposition to each other, agree, though unawares, in furnishing proofs of our position, that if convicts are treated in New South Wales, as they must if transportation is to be a punishment to them, it is morally impossible that they should be reformed.

Commissioner Bigge observes, very justly, that "A propensity to violence of language and abuse, "insensibly becomes a habit in those to whom the "irksome task is committed of enforcing compulsory "labour, or wholesome restraint, against refractory "and vicious men; such conduct indeed certainly has "no tendency to the improvement of a depraved "character, and as certainly debases and hardens the "heart of others." P. 30.

It is most true, and it has long been known both

from theory and experience, that *slavery* corrupts both the slave and the master. Now take the picture drawn by General Macquarie.

"I have no doubt that many convicts who might "have been rendered useful and good men, had they "been treated with humane and reasonable control, "have sunk into despondence by the unfeeling treat- "ment of such masters; and that many of those "wretched men, driven to acts of violence by harsh "usage, and who by a contrary treatment might have "been reformed, have betaken themselves to the "woods, where they can only subsist by plunder, and "have terminated their lives on the gallows; but, with "every indulgence that can reasonably be extended "to convicts, transportation is far from being a light "sentence; it is at best a state of slavery; and the "fate of the convict, as to misery or comparative "comfort, depending on the will of his master, the "constant sense of degradation and loss of liberty is "a severe punishment, which has no remission while "he is in a state of bondage." Ib. p. 31.

The natural, inevitable inference from these statements is, that the improvement of such convicts as are generally transported, is incompatible with an adequate punishment of their crimes: so that the additional reason adduced by the Committee to prop up their lame defence of transportation as *punishment*, namely, the probability of reform, excludes, and is mutually excluded by that argument which it was meant to support. It is like the advice of a physician who prescribed *ice* to his patient; and then, fearing that might

be too cold a remedy, suggested, as an improvement, that it should be warmed.

But what is to become of the colony, on which we have already expended so much, if we cease thus to supply it with labourers at the public expense? It would be a pity to check its rising prosperity, to which convict-labour so much contributes.

"Nothing, in fact, (says Mr. Cunningham,) ever "created greater dismay among us, than the announce- "ment, some two years ago, of a project for the future "disposal of convict-labour in the furtherance of go- "vernment works at home, and in other colonies in "preference to this; while our colonial wags still occa- "sionally delight to work upon our fears, by propa- "gating *alarming* reports of the *increasing morality* of "the people of Great Britain, or of the lightness of the "last jail-deliveries there—reports which the visiter to "England will soon find *quite* destitute of foundation." —Vol. I. p. 12.

Aristotle long since remarked this principle—the high value set on any thing that has cost so much; which is recognised in the proverbial expression of "throwing good money after bad." And so powerful is this principle, that if we were not prepared to point out a mode of much more effectually benefiting the colony by a different procedure, we should almost despair of obtaining a fair hearing for the reasons against the present system. And yet the object of affording aid to the settlers is clearly and confessedly subordinate to the main one—the prevention of crime. Indeed, the colony was first settled with a view to that

very object; so that it would evidently be an absurd inconsistency, when that object is found not to be promoted, to continue sacrificing the end to the means; first to found a colony for the sake of transporting convicts, and then *(following our own footsteps)* to transport convicts for the sake of the colony. We remember an old country squire, who kept a number of horses, and, of course, a great many servants to look after them. For the last forty years of his life he never rode; but he still kept the horses, to find employment for his servants in exercising and grooming them!

To adhere to a system which cherishes, or at least does not keep down violations of the laws here, in order that we may be enabled to keep up a supply of useful labourers for New South Wales, is the same sort of economy which Swift recommends in his "directions to the groom," for the benefit of his master's service, viz. to "fill the horses' rack with hay to the top, though perhaps they may not have the stomach to eat; *if the hay be thrown down, there is no loss, for it will make litter, and save straw.*"

In the present instance, however, the spoiled hay does not appear even to make *good* litter. The emancipists, as they are called—those who have come out as convicts, are described, in an extract already given, as for the most part idle, unthrifty settlers; and the *currency*, those born in the colony, are represented as *generally preferring a seafaring life, having the odious associations of crime and slavery connected with agricultural pursuits;* a feeling perfectly natural under such circumstances, but the very last one we would wish to

find in a colony. This particular disadvantage was not especially pointed out, among the rest, by Lord Bacon; but the system has, on other accounts, his decided disapprobation. "It is," says he, "a *shameful and unblessed thing* to take the scum of people and *wicked condemned men* to be the people with whom you plant." One of the results, not, we apprehend, originally contemplated, is that these "wicked condemned men," have planted for themselves several volunteer-colonies; escaping in small craft, either to the South Sea Islands, (in many of which, for a good while past, each native chief has for a prime minister some choice graduate of the university of Newgate), or more frequently, to some part of the coast of New Holland, or some of the small islands at a little distance from the main, particularly one called Kangaroo Island; where they settle, and subsist chiefly on wild animals; especially seals, whose skins and oil form a profitable article of traffic with the small traders from the mother-colony. Several more of these lawless settlements are supposed to exist besides those generally *known;* as it is clearly the interest of the above-mentioned traders, when they discover such a one, to keep the knowledge to themselves, for the sake of monopolizing the commerce. A most profitable trade they of course find it; as their customers are not only willing to pay an enormous price in oil for the luxuries of rum and tobacco, but, when once intoxicated, are easily stripped of all. Another article, it seems, has been found more profitable in this trade than even rum, viz. *women;* who, if kidnapped at Botany Bay, and carried off to one of

these settlements, will sell for a whole ocean of seal oil! This infernal traffic was betrayed by the wreck of a vessel, from which, in consequence, two women, who had been thus carried off from Sydney, made their escape, and it is to be hoped put others on their guard against the detestable fate designed for them. These volunteer settlers, however, it seems, resort to another expedient to supply themselves with wives; viz. seizing on the native black women, after, we presume, knocking on the head the males of the tribe.

"At Kangaroo Island, on our southern coast, about "four hundred miles to the west of Bass Straits, a "settlement of this kind has long existed, as I have "before-mentioned; (by the latest accounts, this set- "tlement contains a population of forty individuals,— "men, women, and children;) the men having reached "that point by coasting along in boats, and having "seized and carried off native women. During the "seal season they live upon the coast, feasting upon "the seal-flesh which their *wives* procure for them; "and, on the season being over, retire to their "village, built in a valley in the interior, and subsist "upon the produce of their gardens and what game "they can destroy. They lead a most slothful, idle "life, obliging their women to perform all the drud- "gery, but occasionally assisting vessels calling there "to load with salt, which is found covering the bed of "a lagoon six inches deep; and bartering their seal- "skins for rum, tea, sugar, and so forth, with the "crews. The senior individual upon the settlement is "named Abyssinia, and has lived there fourteen years

" and upwards. Various islands in Bass Straits are " also peopled in like manner; Flinder's Island, ac- " cording to the latest accounts, containing twenty, " including women and children."—Two Years in New South Wales, vol. ii. p. 203.

So that we may hope, in time, to have the coast of New South Wales, surrounded by a *fringe*, as it were, of colonies of half-castes, consisting of a mixture of the blood of the most debased of savages, with that of the more refined and intelligent scoundrels of civilized society; and exhibiting, we may anticipate, a curious specimen of the worst possible form of human nature. And thus it is that we are proceeding to people Australia; the land is certainly planted, but it is planted with the worst of weeds, according to the ingenious experiment suggested, in the Tempest, for Prospero's Island—

> " *Gonzalo.* Had I plantation of this isle, my lord.....
> " *Antonio.* He'd sow it with nettle seed."

" But all these," we have heard it replied, " are merely *incidental* evils; they are no part of the design." If this means merely that no system should be at once condemned, solely because some incidental evils are connected with it, as some must be with *every* system, in this we heartily concur. Navigation is a good thing, although ships are occasionally wrecked, and men drowned. But if it be meant that incidental evils are, on that ground, to be *totally disregarded*, and left out of calculation, the best mode we can think of for disabusing one who holds such an opinion, is, that he should take up his abode next door to a soap-boiler,

with a brazier on the other side of his house, a slaughter-house over the way, and a store of gunpowder in the vaults beneath him; being admonished at the same time to remember that if his eyes, nose, and ears, are incessantly annoyed, and he is ultimately blown up, these are only *incidental* evils.

But we must hasten to redeem our pledge of pointing out (which our limits warn us must be done in a very few and brief hints) a mode of even improving the situation of the colony without this every-way-objectionable supply of convicts. The persons we would have sent out (we would not have called it *transportation*) are able-bodied paupers; those who are capable and desirous of labour, but cannot get employment, or not sufficient to maintain a family without parish aid. These are precisely the description of persons to whom a colony, with a practically-boundless extent of territory, is best suited; because there, a moderate degree of industry will furnish a more abundant subsistence, and a better security against future want, than the most severe and unremitting toil in a full-peopled state; and because a large family is there an aid instead of a burden, and a source, not of gloomy anxiety, but of cheering anticipations. Many a man so circumstanced, and provided for in the way here suggested, would probably be one, who, under the present system, would ultimately have found his way, in another character, to Botany Bay; but not till after having yielded to the temptations arising from distress, he had been led on, step by step, to the commission of crimes which would have gone far to disqualify him for becoming a useful

settler. Had the system recommended been pursued from the beginning, many of the same colonists would have now been there who are there now; with the difference of an unstained character and undepraved disposition; with those evils, in short, *prevented*, which we are now, too often in vain, labouring to cure. And no one who was reduced to apply to the public for relief, could *complain* of its being bestowed in the mode most convenient to the public. The community would say to these persons, "we do not force, or even ask you to leave your country; stay and welcome, if you can maintain yourself by your labour at home; but if you cannot, it is both allowable and kind to send you to a place where you can." And, as there would be no compulsion to go, so there would be no prohibition of return; if, as would probably sometimes happen, a man should, in the course of years, have realized enough to place him above want in his own country, and he had a desire to end his days in it. Only, every such emigrant should be made, in the eye of the law, a *native* of that country (whether New Holland, Canada, or the Cape—for we would not confine the system to any one colony) to which he had been conveyed at the public expense. He should, if he chose to return, have no claim to parochial relief.

One objection has been suggested to us, which, though at first sight formidable, will admit, in theory at least, of a ready answer: it is, that such a measure as we are recommending should be preceded by a repeal of the corn-laws; on the ground that it is unreasonable to send a man to earn his bread in a

foreign land, who *could* earn it at home, if you would let him buy it as cheaply as others would be willing to supply it. This is not the place for discussing the question of the corn-laws; but it is sufficient for the present purpose that it should be admitted, which is surely undeniable, that they either are, or are not necessary for the *public* welfare; that if they are *not*, then, however profitable they may be to any individuals, they ought, at any rate, to be altered; and that if they *are* a public benefit, no one has a right to complain of being obliged to submit to the consequences of them.

But what shall we do with the convicts? This is a question truly important; but of which the full discussion does not seem necessary, if the foregoing conclusions be admitted as established. If what we now hold out as a punishment be proved to be in some cases a very inadequate punishment, in more, a reward, *that* is surely a sufficient reason for beginning to turn our thoughts towards the adoption of *some* system of punishment, and of effectual punishment; though we may not be able at once to point out which is the *most* effectual.

The traveller, whose case we adverted to in the opening of this article, when he discovered that he was riding in a circle, was not probably able to decide at once which was his best road; but he did not, we imagine, for that reason continue contentedly to follow his own track, round and round; it was plain he was going *wrong*, whichever way might be right.

But, in fact, it cannot be said that we should be

even for a moment utterly at a loss how to dispose of criminals, should actual transportation be discontinued; since, as it is, a majority of those sentenced to it do not actually undergo it. And of all the substitutes that have been resorted to, unequal as their recommendations may be, we will venture to say the very worst is far less objectionable, in many respects, than actual transportation.

With respect to every sentence of confinement to hard labour, whether at the tread-wheel, or of any other kind, we would venture to suggest what we cannot but consider as a most important improvement, viz. that instead of a certain period of *time*, a convict should be sentenced to go through a certain quantity of *work*. We mean that a computation should be made of the average number of miles for instance which a man sentenced to the tread-wheel would be expected to walk in a week: and that then, a sentence of so many *weeks*' labour should be interpreted to mean, so many *miles*; the convict to be released when, and not before, he had "dreed his weird;" whether he chose to protract or to shorten the time of his penance. In the same manner he might be sentenced to beat so many hundred weight of hemp; dig a ditch of such and such dimensions, &c.; always exacting *some* labour of all prisoners, and fixing a *minimum* sufficiently high to keep up the notion of hard labour, but leaving them at liberty as to the amount of it above the fixed daily task. The great advantage resulting would be, that criminals, whose habits probably had previously been idle, would thus be habituated not only to labour, but

to form some *agreeable association* with the idea of labour. Every step a man took in the tread-wheel, he would be walking out of prison; every stroke of the spade would be cutting a passage for restoration to society.

Among other kinds of penal labour, we would hint at one not much different from the best kind of employment of the transported convicts, viz. the draining, paving, and burning, and otherwise fitting for cultivation, of the Irish peat-bogs; not with a view, however, to their being afterwards *settled* by the convicts; as it would be easy to people the territory thus reclaimed with far better colonists, and with such as would ultimately prove of eminent service to that country.* We are aware that, in most instances, the land thus reclaimed would not be worth the cost of the labour bestowed on it, were that labour to be hired; but that is not the question: if worth *any thing*, that worth would be all clear gain. The convicts *must* be maintained at the public expense, even though kept in idleness. Though their work, therefore, should amount to less than their maintenance, it is yet desirable that it should *diminish* that public expense, which it is sufficient to cover. The first object is *penal labour;* the next point is, that that labour should be at least of *some* use. And if the expense of a four months' voyage to New South Wales be taken into the calculation, it will probably be found that every acre cleared by convict-labour there, costs the public many times more

* On this subject, see some remarks (with most of which we fully coincide, though not with all) in a "Letter to Mr. Malthus," in No. 17 of the Pamphleteer.

than an acre reclaimed from an Irish peat-bog, which is thenceforward of many times greater value to the country. And it is to be observed, that all the principal bogs in Ireland (amounting, it is supposed, to between one and two millions of acres) are capable of being not only drained, but brought into a state of great productiveness. Peat contains abundance of vegetable matter, the main material of fertility; but is barren through its constant wetness, its spongy texture, want of decomposition, absence of a sufficient mixture of earthy matter, and the occasional presence of sulphate of iron. This last, which is poisonous to vegetation, is decomposed, and rendered salutary by the addition of lime, which also is a powerful decomposer of vegetable fibre. Gravel, sand, or clay, in fact any earthy substance, forms a most effectual and permanent manure for peaty land ; at once decomposing its parts, and giving firmness to the soil. And, in most cases, such a manure is at hand; most peat-bogs resting on a clayey substratum. We are ourselves acquainted with a peat-bog in Yorkshire, which, after draining, was converted into good corn-land, at the expense of seven pounds per acre, by overspreading the surface with clay, which was found at the depth of six feet.

But whether this, or any other scheme of penal labour, be thought worth trying, or whether in any, or in all instances, corporal chastisement should be considered preferable, there are two important conclusions which we think both reason and experience will fully warrant, and which we hope to see practically admitted: 1st, That the *particular kind* of punishment

allotted to each offence should be as far as possible fixed, and known with certainty beforehand, in order that the execution of the sentence may at least furnish an *experiment*, and may serve to guide our judgment as to its efficacy:—2ndly, That we should not be too anxious to accomplish *several objects at once*; but keep steadily in view the *main* purpose of penal legislation, lest we sacrifice that in the pursuit of subordinate objects, and lose sight of the prevention of crime, in the midst of our schemes for reclaiming hardened villains and Australian forests.

APPENDIX, No. II.*

1. *Report from the Select Committee on Secondary Punishments, together with the Minutes of Evidence, an Appendix of Papers, and an Index.* Ordered by the House of Commons to be printed, 27th Sept. 1831.
2. *Facts relating to the Punishment of Death in the Metropolis.* By EDWARD GIBBON WAKEFIELD, Esq. London. 1831.

THE subject of criminal law has of late years occupied so large a share of public attention, both on account of the improvements which it has undergone, and of the large and increasing number of convictions, which, in spite of these improvements, annually occur, that we need not offer any apology for recurring to a matter of such paramount importance to the welfare of the community as the state of its penal jurisdiction. It is, indeed, true that as, in this country, the criminal law is simpler in character, less voluminous in bulk, and furnishes a smaller proportion of the business of the courts than the civil law, it is not cultivated with so much

* From the Law Magazine for January, 1832, Vol. VII.

care by the principal members of the profession, or the most learned writers on legal subjects. Nevertheless, in acknowledging all the importance of civil law, we must not forget that it owes its authority and jurisdiction, nay its very existence to criminal law ; for without some penal process in the last resort, to enforce its commands, the decrees of a civil tribunal would be powerless and ineffectual. Without a civil law, a society might exist in a rude and uncivilized state ; but without a criminal law it could not exist at all.

Crimes, or infractions of law for which a punishment is appointed, may be prevented in two different methods. The first is when a person intends to commit a crime, but cannot find an opportunity for carrying his purpose into effect : to which class belong all precautions taken by the proprietor for guarding his property, such as bolts, bars, private watchmen, &c. The only preventive of this kind which falls within the care of the whole community is *police ;* a subject on which the most disgraceful prejudices have been entertained in this country, partly awakened and encouraged for party purposes, and partly arising from mistaken notions as to liberty, which consists, not (as is often supposed) in a mere absence of restraint, but in the undisturbed enjoyment of legal rights, alone to be derived from the efficient protection of government. This cause has, however, recently made an immense advance, in consequence of the institution of a metropolitan police, whose powers, if a vigorous war is ever to be carried into the fastnesses of the London thieves, are either

too limited for the end to which they are to be applied, or the policemen are too sparing in the exercise of them. Altogether, this branch of the public administration admits of very great improvement and extension in this country, a question which we cannot stay to consider in this place, but must pass to the *second* kind of preventives of crime, or those which deter a man from the commission of an offence, when it can be done without interruption. These are inflictions of pain on the offender when legally convicted, in various forms, and to such an amount as more than counterbalances the pleasure derived from the commission of the offence; so that no man in his senses would commit the crime, if it were certain that the punishment would follow it. The object, therefore, of all penal law is to arrange the system of punishments in such a manner that all persons may be deterred from committing the prohibited acts, not by any sense of the difficulty of the undertaking, but by a fear of the consequences which they will entail.

The means used for this purpose, are either the taking away of the criminal's life, or the inflicting on him some other less pain, mental or bodily. The penalty of death is threatened by our law in numerous cases where it is never inflicted; so that, of the whole number of capital convictions, the executions are a very small part; and generally, it may be said, the legal punishment is only suffered to take its course in cases of treason, murder, wounding with intent to murder, arson, rape, sodomy, aggravated and extensive forgery, and housebreaking and highway robbery

accompanied with violence. In the last session of parliament a petition, numerously signed, was presented to the House of Lords, praying that the punishment of death might be confined to crimes attended with violence in their commission.* To this absurd proposal the Chancellor very properly objected that it tended to foster the popular error, that punishment is retaliation, by declaring that personal violence is only to be inflicted in return for personal violence; an error, it may be remarked, further countenanced by the misinterpretation of a well-known text of Scripture (which, even if its meaning were different, would not be binding on modern legislators), "*Whoso sheddeth man's blood, by man shall his blood be shed.*" For this command, admitting it to be applicable to the government of England, merely authorizes the execution of murderers; but does not forbid the execution of other offenders. It says that murderers shall die, but does not say that incendiaries and traitors shall *not* die. Another objection to this suggestion which would inflict punishment on a retaliatory principle is, that one of the most dangerous crimes, and most difficult of detection, and therefore most calling for severe penalty, is arson, in which there is no violence either offered or committed; and therefore, according to this strange rule, nothing that can justify the infliction of death. The same may be said of treason, which, as being a crime which strikes at the root of all society, of every thing for which laws are made or administered, can surely not

* See Law Magazine, Vol. VI. p. 515.

be considered as a less offence than burglary with violence, than arson, or even than murder itself.* We confess that none of the arguments which we have hitherto met with, have convinced us of the expediency of abolishing the punishment of death in this country; nor, on the other hand, does it appear to us to be a subject of such importance as both parties in this controversy agree to consider it. In England, so long as the present penal system is continued, death is the only efficient punishment for savage and desperate persons of the lowest order. All the others, as we shall presently show, they would justly treat with entire disregard. If there was any other punishment in this country formidable to all classes and varieties of criminals, the maintenance of capital punishments would become a matter of comparative indifference.

Having offered these few remarks on the subject of capital punishment, we shall proceed to the class of preventives of crimes which do not consist in the deprivation of life, or (as they are usually termed) *secondary punishments.*

* On the other hand, it is not every crime in which the extreme of violence is committed, that ought to be visited with capital punishment. An instance of this, recognized by the laws of all civilized nations, is manslaughter; and we would that we could add (so far at least as this country is concerned) *infanticide;* a crime wanting in all the attributes which distinguish the murder of adults, viz. the wickedness of the motive, the danger to the community, the feeling of alarm and insecurity which it occasions—reasons by which all people are unconsciously swayed when a young woman is indicted for this offence, and which render trials for child-murder little more than solemn contrivances for decorously evading the harsh and impolitic enactments of the law.

On this entire subject, embracing the nature and kinds of secondary punishments in this kingdom, the mode of their infliction, the rules according to which they are apportioned, their comparative severity and efficiency, their effects on the minds both of the sufferers and the community at large, and the improvements of which they are susceptible, copious information is to be found in the evidence taken before a Committee of the House of Commons on secondary punishments, which sat during the spring and summer of 1831; and although the Committee appear, from their questions, not to have possessed a very distinct or comprehensive knowledge of the subject of their inquiries, and have neither made any report nor agreed to any resolutions on the matters referred to their investigation; still the evidence of the various persons examined by them, sheds a great light on the working of our penal system. Of the witnesses thus examined, not the least intelligent or useful is Mr. E. G. Wakefield, whose work, named at the head of this article, contains an account of the various things which he learnt from the successive inhabitants of Newgate, during a three years' residence in that prison, where he was confined under the sentence of a court of justice. This work, of which the title conveys an inadequate notion, contains some highly interesting information on the state of the large criminal population of London who flourish under the fostering influence of our laws; and it is professedly founded on communications with the class whose feelings and habits it describes. It is very far from our wish to accuse Mr. Wakefield of intentionally

misrepresenting the truth, and we believe that his book (though often written in a bad spirit) was dictated by a good motive; but under these circumstances, it is natural that his statements should sometimes be tinged with the colour of the minds from which they came: and altogether, his work may be considered as a statement of the case against the law by an enemy, who has engaged with it at close quarters, and whose feelings are enlisted in the same cause as his reason. The chief fault of this work is, that it represents the effects of punishment on the minds of prisoners, and judges them by that test, without adverting to their effect on the many persons at large, whom the prospect of impunity, or the insufficiency or uncertainty of punishment, will allure at any moment into crime. A punishment which stirred up all the bad passions of all the worst inmates of Newgate, might be a good punishment, if it struck terror into the minds of that much more numerous class, the would-be criminals without the walls of Newgate. On the whole, however, we conscientiously recommend this work to the study of all persons who wish to understand the operation of our penal system, giving them notice that they must not take offence at a few instances of bad taste; and cautioning them carefully to separate the facts from the inferences, and those parts which relate to our own system of punishment generally, and so work on the community at large, from the internal regulations of Newgate gaol, to which a large and disproportionate space is assigned, and which certainly appear to cry loudly for amendment.

We need not detain our readers with the thrice-told

tale of our sanguinary criminal code, and its late relaxation under the auspices of Sir Robert Peel. Suffice it to say, that by this reform, in many capital offences for which the judges had been accustomed to pass sentence of death, they were empowered to order sentence of death to be *recorded;* after which, as formerly after sentence being passed, the punishment intended to be actually inflicted is assigned. On what ground this new fiction of law was introduced; why an offence is to be called capital for which death is never meant to be inflicted; what advantage is derived from the judge informing a prisoner that his life is forfeited, but that he will only be transported; whether this fiction was invented in the vain hope of frightening offenders with an empty name, or whether it proceeded from a superstitious adherence to the old law, are questions which we are unable to answer. But this change, so far as it has gone, has unquestionably had a beneficial effect. For, although on the circuit it may have the effect of producing inconvenience and delay, and of concealing from the public the exact punishment intended to be awarded, these mischiefs are light indeed as compared with those of the old system; which, for no good reason that we can discover, is retained in the place where most criminals are sentenced, and where, therefore, an improvement in the law would be most felt, viz. at the Old Bailey Sessions for London and Middlesex.

It is unquestionable, that the state of miserable suspense in which many criminals are kept, by this system of passing indiscriminately sentence of death in all

capital offences, and the useless pain which it inflicts—a pain neither known to the public, nor calculated upon by misdoers—necessarily begets in some a feeling of violent disgust and hostility against the law; and, in others, a sentiment of pity and sympathy towards the condemned criminals, quite incompatible with a desire to aid and abet in the detection and conviction of offenders. It cannot be too often repeated that no system of penal law can be efficient which is unpopular, in the execution of which the community do not cordially co-operate. The state of feeling which induces prosecutors not to prosecute, witnesses not to give evidence, and which holds informers in abhorrence, is of all things the most unfavourable to the prevention of crime.

The extent to which the system of fictitious capital punishment has been carried, both in the country and in London, when, although a secondary punishment is intended to be inflicted, the judge in the one case orders sentence of death to be recorded, in the other, actually passes it, may be judged from the following table :—

	Persons sentenced to death in England and Wales.	Executed.	Sentenced to death and not executed.
In 1829	1385	74	1311
1830	1397	46	1351

It appears, therefore, that in the year 1830, just one for every thirty persons capitally convicted, suffered capital punishment. Of these sentences, many were only recorded, by a fiction at the best only harmless,

and, as we maintain, positively mischievous, though far less mischievous than the practice of passing sentence of death where there is no intention of carrying it into effect. For surely all persons who have considered how awful and how painful a duty it is to dispose of the life of a man brought to the bar of a court to be judged according to law, must agree that, least of all things, the passing of the sentence of death should be made a solemn mockery.

In all cases where death is not inflicted in consequence of the sentence of a court of justice, the punishment is either—1. Transportation to the colonies for life, or for a term of years: 2. Imprisonment with or without hard labour; or 3. Fine. The last of these punishments, whether inflicted singly or in conjunction with imprisonment, is only applicable to inferior offences committed by persons of property, a class of so little extent and importance, that we shall take no further notice of it, and proceed to consider the two great weapons of our penal armoury, *transportation and imprisonment.*

The system of transportation appears to have arisen from two sources: 1. The difficulty of disposing of condemned criminals in the mother country; and 2ndly, a notion that criminals are a certain class who ought to be eradicated from the community, and that banishment removes them from the country. A trace of the latter opinion may be found in the words which are sometimes addressed by the court to the prisoner, that "he is not fit to remain in the country:" as if some advantage accrued to the public from his exile rather than his

imprisonment.* In justice, however, to the first introducers of this system, it must be said, that at the beginning, transportation was probably a very different thing from the punishment which now bears that name.† As at present constituted, its nature appears to be as follows:—

When it is finally determined that a criminal is to be transported to New South Wales, he is moved in a caravan, under a proper guard, to the coast, in order to be embarked in a convict ship. This necessity of moving prisoners to long distances from the place of their confinement is, of itself, an evil and an expense, and, in times of disturbance, might become a matter of serious difficulty. However, among the evils of the entire system, this holds a very subordinate place. From the evidence of Dr. Rutherford, who has sailed seven times to New South Wales as surgeon of convict ships, it appears that about 200 convicts go out together;‡ that mutinies are not frequent; that the

* See the Evidence of Mr. Chesterton, governor of the House of Correction in Coldbath Fields, (Q. 517-20,) who thinks that all confirmed thieves should be sent out of the country, as there is no hope of their amendment, in order that they may be got rid of. He does not perceive that by this means the evil exists, and in a very aggravated form; only that the colony suffers, and not the mother country. Also Captain Hall's remarks, Travels in America, Vol. I. p. 62.

† See Wakefield, Ev. 1443, and Major M'Arthur's remarks, Rep. p. 145.

‡ Mr. Wakefield states, in his Evidence, that "during the first four or five years of the existence of the colony of New South Wales, the contracts for the transportation of prisoners were made for so many embarked in England, not for so many disembarked in the colony: the consequence was, that the captain of the transport had a

convicts enjoy generally good health, are well fed, are not ironed, do little work, have free intercourse with each other, and (as may easily be expected) their conduct is reckless and careless; they amuse themselves with the stories of their past life, and glory in the remembrance of their misdeeds: the natural consequence of which is, that any stray remnants of virtue and good feeling which some of the crew may possess at starting, are effectually eradicated before the ship reaches its destination.* When so large a body of criminals are crowded indiscriminately into so small a space for so many months, without being forced to work, and having no diversion except conversation with each other, a much less proportion of depraved and reprobate persons than is commonly to be found in such a number of convicts, would be sufficient to leaven the whole mass with one uniform taint of depravity.

When the convicts arrive at New South Wales, the term of their regular punishment commences,† and

direct interest in killing his prisoners, and the fact was that, as to a great number of ships, one-third—as to a considerable number, a half—and as to some, two-thirds of the prisoners died on the passage."—Q. 1573.

* Evid. Q. 1052-9 1095-6. His answers, 1045-9, do not agree with the evidence of most of the other witnesses; but it is very probable that the state of suspense in which the prisoners are kept before they land in New South Wales, from an ignorance of the precise lot which will befall them, may make them anxious and uneasy.

† It is suggested by the committee that the voyage itself is considered a punishment (Q. 1068); but we cannot see in what the condition of the convicts differ from that of soldiers on board a transport. They are put under no restraint, they associate together, and none, except tailors, carpenters or joiners, do any work.

they are severally disposed of in different manners, according as they belong to one of the classes of, 1. Gentlemen convicts; 2. Mechanics; 3. Common male convicts; and 4. Women.* Now the punishment which all convicts suffer in New South Wales for crimes committed in the United Kingdom, may be described, in a word, as *domestic slavery*. They are placed in precisely the same situation as the working classes in the ancient states, and in the West Indies; that is, they have not their personal liberty, and they are maintained by those who profit by their labour, to which they are forced by the dread of punishment, not induced by the prospect of a reward. The local government of New South Wales is, therefore, in the situation of a large slave merchant,—with this difference, however, that it gives away slaves for nothing, on condition that the master will defray the cost of their maintenance. This being, of course, a very advantageous bargain for the settler, on the arrival of every convict ship the government finds itself possessed of the patronage of giving away the services of several hundred slaves. There are, as might have been expected, complaints of abuse and favouritism in the disposal of this patronage,† which, whether well or ill founded, are in themselves an evil, and an evil necessarily attendant on a system of transportation. The *convict women* are allotted to private individuals as domestic servants; and with them there is no difficulty, as, on account of

* See Mr. Busby's Observations, Report, p. 125.

† Major M'Arthur, 1624. Mr. Scott, p. 146.

the great disproportion between the sexes, caused by the unnatural manner in which the society has been formed, females are at a great premium in New South Wales. But the class of *gentlemen convicts* (as they are called), *i. e.* persons who, in England, belonged to the upper or middle ranks, being devoid of mechanical skill, and unfit for common agricultural labour, occasion a greater perplexity. At one time, a penal settlement named Wellington Valley was made in the interior at a distance of about 250 miles from the coast, where the gentlemen convicts were employed in light agricultural work, such as tending sheep, and were thus removed from the society and luxuries of the towns. This measure being the means of inflicting a much severer punishment than that usually endured by the upper class of convicts, had the effect of spreading great alarm among criminals of the same rank in London who were lying in prison under sentence of transportation,* and we may reasonably suppose, among other persons meditating crimes which would entail the same consequences. The establishment at Wellington Valley, however, having proved expensive, was discontinued,† and gentlemen convicts have now returned to their former state of comfort and enjoyment; that is to say,

* "Some returned convicts brought an account of their having been sent to Wellington Valley, and in speaking of it, they called it the 'Swell's settlement,' the 'gentlemen-convicts:' and it created a great deal of apprehension in the minds of this class of persons, clerks, and others convicted of forgery and embezzlement."—Wakefield, Ev. 1453.

† On Wellington Valley, see Busby, 1181-97. 1203-8. Rep. 135.

they are employed as clerks in the government offices, or given as tutors to private families;* their whole time, except when occupied with business, being at their own disposal. Of those who are employed as tutors, Mr. Busby, who held an official situation at New South Wales, states that "as far as regards the necessaries and many of the comforts of life, they are exceedingly well off." (Ev. 1198.) Any annoyance to which those persons are exposed who have the command of money, is probably removed by means of an amicable arrangement, either with the subordinate officers of government, or with the master to whom the convict is assigned; for Mr. Wakefield states that, "he knows that what are called 'respectable convicts' under sentence of transportation, and really expecting to be transported, make the greatest exertions to have money remitted, on their account, to merchants in the colony, and for the express purpose of paying for indulgence."† Speaking of the same class of persons, Mr. Potter Macqueen says:—"In order to keep down the expenses of "the colony to as low an ebb as possible, the different "governors have preferred employing men of this de- "scription as clerks in government offices, to having "regularly salaried persons of free character; of course "they knew that persons so placed were amenable to "any punishment they might have inflicted. But "the evil it has produced in the system has been

* Dr. O'Halloran, a convict, kept an academy at Sydney, (Walker, 996.) Thus these persons corrupt, not only the grown, but also the growing generations.

† On the Punishment of Death, 192.

"that those persons being able to live much in the "same kind of manner as formerly (for they all had "tickets of leave the moment they were placed in "this position), they assumed a formidable rank in "society; they acted together; they found the freemen "and officers in different regiments would not asso- "ciate with them, looking on them as convicts, and "they were in a different situation from agricultural "labourers; those have been the disaffected persons "who have been continually at variance with the go- "vernment, and who have caused very considerable "impediments to the general operations of that go- "vernment." Q. 1760.*

In his report, too, Mr. Busby states that, "as from "an unwillingness to force the upper class of convicts "into an association with the lowest class by confining "them in the common barrack, it has been usual to "allow them to provide themselves with lodgings, their "situation, has, in most cases, been so comfortable "as to be divested of almost every appearance of "punishment."—Report, p. 125.

* We recommend the following passage in Mr. Macqueen's Evidence to the study of all persons interested in the amendment of the law of real property, either in England or the colonies. Having mentioned the frequency of concubinage in New South Wales, he proceeds to declare that "he has no hesitation in saying that, in a very few years, this country will be compelled to pass some law of indemnity to enable a transfer of property from persons of this description, who, having natural children to leave it to, can make no form of conveyance." Q. 1361. A bill of *indemnity* to *enable* persons having illegitimate children to make a *conveyance* by *will*, must certainly be considered as a rare, if not altogether unheard-of phenomenon in the annals of legislation.

The knowledge and talents of these persons enable them to accumulate wealth, after the expiration of their term, and to form a political party opposed to the government and the free settlers. From all these circumstances Mr. Busby very justly infers that "The "transportation of this class of offenders, while it "inflicts a great evil upon the colony, affords no means "of effectually punishing their crimes during the period "of their bondage; and so great are the means of "bettering their circumstances by enterprise and in- "dustry after its expiring, or after a prescribed period "of good conduct, that the dread of incurring the "sentence certainly proves, in the majority of cases, "no check upon the commission of crime."—Report, p. 126.

The other two classes of convicts do not create any difficulty in a colony where manual is more valuable than intellectual labour. The *mechanics* are usually taken by the government to be employed in public works, and are distributed in Sydney and the other towns. Most convict mechanics are, at first landing, induced to conceal their skill, either by a belief that if they are taken into the service of government they will not so soon get their ticket of leave (*i. e.* a pardon conditional on their good conduct), or by a hope that they may be assigned as common labourers to a person who will share with them the profits of their mechanical skill. So great is the demand for skilled labour in New South Wales, that mechanics in the employ of government frequently neglect their regular work, that they may be able to labour on their own account after

the government hours, by obtaining permission to sleep out of barracks as a reward for good conduct; and the wages which they thus procure enable them again to bribe the overseers for fresh indulgences. Mr. Busby states that "he had heard of a case, of the truth of which he had no doubt, of a mechanic in the service of the government at Sydney, who contrived to work for an individual as many hours during one week as entitled him to the wages of eight days' labour," by which means (as the same person adds) the convict mechanic is able to procure a reward for his labour and the means of indulgence to a greater extent than the most industrious mechanic in England can procure. (Rep. p. 126.)* The other convicts, not skilled in mechanical arts, are allotted to persons living in the country, by whom they are lodged, fed, and clothed, and for whom they work as slaves: being, as has been already remarked, in precisely the same situation as the gangs of slaves on the estates of an ancient Roman landlord, or a modern West Indian sugar planter; except that their treatment is milder, and their condition altogether more agreeable, — partly from their former position as freemen, and partly from the difficulty of inflicting punishment, and the distance of magistrates, whose sanction is necessary for this purpose.†

* Mr. Walker likewise states that he has known instances in which convicts in the service of government "have been able to bribe their overseers, and get away for hours together from their work; and, in fact, the general manner in which they work in the town of Sydney, is quite proverbial; they do very little."—Ev. 962.

† Walker, 803.

Now with regard to this class of convicts who form the great mass of the criminal population of New South Wales, there is a very important regulation which is not, as we believe, sufficiently known in this country, even to those who are familiar with the administration of criminal law; we mean the practice of granting *tickets of leave*, i.e. a conditional suspension of slavery, by which a convict is permitted to work for his own profit, provided he lives within a certain prescribed district, and commits no fresh crime.*

"A convict for seven years is allowed the privilege "of a ticket of leave at the end of four years' service; "a convict for fourteen years, after six years': and a "convict for life after eight years' service; provided "that they have continued during these respective "periods in the service of one master. But it is in "general taken for granted, that if a change of masters "has occurred, the convict has not exerted himself to "give satisfaction, and the period of probation, before "he can obtain a ticket of leave, is lengthened accord-"ingly." Busby, Report, p. 126. †

Hence it appears that the sentence of a common prisoner to transportation for life in fact amounts to no more than this: if he conducts himself with sufficient

* See Walker, Q. 870.

† We conclude, that if the change of masters take place from any other reason than the misbehaviour of the convict, for instance, if the master dies, changes his occupation, becomes insolvent, leaves the country, &c., the convict is not prejudiced. Substantially, therefore, the condition of the ticket of leave, in other words, of the remission of the rest of the sentence, is the good conduct of the convict.

propriety to avoid the commission of fresh crime, he becomes an agricultural labourer for eight years, during which time he is guaranteed against all contingencies, and is fed, lodged and clothed by his master: and after the expiration of this term he is allowed to work on his account within a certain district, where labour commands high wages, and common industry ensures to every one a tolerable livelihood. This is the worst lot that can befall a convict who is not guilty of fresh misconduct in his place of punishment, as it is called. And by such prospects as these, it is hoped to terrify into an observance of the law a population who, if they are not maintained by an allowance from the poor-rates scarcely sufficient to support life, can, by the hardest and most unintermitted labour, only earn a bare subsistence. It is a mere mockery to call such a system as this a system of punishment. As a matter of prudence, it would be advisable to many thousand persons in Ireland and the South of England to commit a crime which would ensure them seven years' transportation to New South Wales: the expenses of their voyage would be paid; even the short probationary period of four years of servitude would be a vast improvement on their former state: and then would come the reward in the shape of a ticket of leave, and free labour for the rest of their lives; besides which, government would, after a certain period, send out their families to join them, at the public cost.* If it were not for the danger of being sent to the hulks which a criminal would incur, this

* See Evid. Q. 1261. 1317.

would be the most advisable course of defraying the expenses of emigration, which a pauper could adopt.

On the insufficiency of transportation as an engine of punishment, there seems to be but one opinion: all the witnesses examined by the committee vie with one another in condemning it; not a solitary voice is raised in its defence. As, however, we do not wish our assertion to be taken on trust, we will subjoin extracts of the most important testimonies.

Mr. Wonter, 394. "I think the evil is this, that "persons who are sentenced to transportation, know "that their friends are exerting themselves to get good "situations for them; and they are receiving information "from New South Wales that this person and that "person, whom they had known here, are in situations "where they are getting money: *this makes transpor-* "*tation no terror to them.* I have known men who "have gone there, to whom it has been as severe a "punishment as it could be; others who have been "fortunate enough to curry favour with the persons "with whom they were going out, such as the captain "of the ship, and they have situations upon going "there." "Generally speaking, has transportation "sufficient terror? *It has not sufficient terror, be-* "*cause the spirit of the sentence is not carried into* "*effect.* I mean that when they are transported, they "are not sent into country to perform labour; they are "not secluded, but they mix with the bodies that they "have gone out with."

Mr. Chesterton, 494. "They dread transporta- "tion, but many of them say they would rather be

" transported than be for a twelvemonth in the house of " correction at hard labour. I was told by an intelli- " gent prisoner, who inquired among the thieves, that " he believed there was not a man of that class in the " yard that would not prefer seven years' transporta- " tion to two years' imprisonment and hard labour."

544. " Are there many instances of prisoners not " dreading transportation? Not many: we had an " instance on receiving the prisoners after the last Old " Bailey sessions, of a man, sentenced to imprison- " ment for one month, endeavouring to be transported " for seven years, by exchanging clothes with a man " who was sentenced to be transported: they ex- " changed clothes, the man who was sentenced to be " transported answered to the name of the man that " was to be imprisoned; but he had hardly come into " our prison before it was discovered at Newgate. I " questioned this man as to his motive for wishing to " be transported; and his answer was this, that he had " not been in prison before for nine years, that he had " endeavoured to support himself by labour as a brick- " layer, that his work had altogether failed him, and " that he wished to have a chance in another country " which he had not in this." *

545. " Do you think the class of persons sentenced " to transportation in London have correspondence " with persons in New South Wales? I always

* It is clear that this person considered transportation merely in the light of emigration: if he was willing to forego the advantages of living in his native country, among his friends and relations, there was no *further* punishment worthy of notice.

" endeavoured to impress upon them that transportation " over the seas is absolute slavery; *but they seemed to* " *listen to the statements with that sort of distrust,* " *that I think they do not believe it to be the case.*"

Mr. Busby, 1257. " Do you mean then to say that " you think that the present system of punishment is " not efficient, and is not dreaded by criminals in this " country? I am probably not qualified to speak as " regards this country; but from what has come to my " knowledge of the feelings of persons transported from " this country, I should say not. I have known indi- " viduals who have committed crimes to get to New " South Wales; and I think I have known of people " who have endeavoured to induce their relatives or " connexions to commit crimes in order to get them " sent out. I have no doubt that communications re- " lative to the desirableness of transportation have been " made to persons in England, whose friend had been " previously transported."

1259. " Do you not think the number of agricul- " tural labourers sent our during last winter will commu- " nicate with their friends here, and spread the notion " that it is not severe punishment? I think it is indu- " bitable. These are precisely the people who will do " so: men who are willing and have been accustomed " to work, and who have experienced the effects of an " insufficiency of food."

Mr. Macqueen, (Q. 1354) furnishes an extract from a letter written by a private soldier quartered in New South Wales: he says, " Norman Hughes (a convict " transported for stealing wheat, a most notorious

" character in Bedfordshire) has taken a large farm in " Macquarie's Harbour, and is doing extremely well. " Phillip Hibbs (a boy about eighteen, transported for " picking pockets) receives 50*l.* a year wages, as tapster " of the Commercial Tavern. This letter (continues " Mr. Macqueen) was read among the agricultural la- " bourers of Bedfordshire; the effect of it was only " this, *they were anxious to know what they could " commit to entitle them to be transported.* The " same witness also states that he considered the con- " dition of the convict labourer in New South Wales " as infinitely superior to that of the agricultural " labourer of this country, and that from his own " experience as a magistrate, he has found that many " persons have asked what extent of crime would " ensure their transportation (1353):* that the situ- " ation of the convict is far superior to that of the " labourer in this country, and that the terror of the " punishment is lost sight of." (1382.)†

* In Appendix, No. 2. to the Report, is a curious extract from a dispatch of Governor Darling, containing the names of thirty female convicts arrived from Ireland, whose husbands or other relations were either suffering their sentence in New South Wales and Van Dieman's Land, or were expected to arrive in a short time. It is quite clear that most of these women committed crimes for the express purpose of being transported, and that they viewed transportation as an improvement in their condition. We fear, however, that as the wife may chance to be quartered in New South Wales, while the husband is in Van Dieman's Land, or the converse, these Irish women may sometimes find themselves not less mistaken in their calculation, than their countryman who bought a commission in the 71st regiment, in order to be near his brother in the 70th.

† Mr. Estcourt states that in Wiltshire transportation is more dreaded than imprisonment in the hulks, although letters often pass

Mr. Wakefield, being asked to describe the state of mind of persons under sentence of transportation, begins by stating the manner in which he had particular opportunities in Newgate of gaining correct knowledge on this point, and proceeds as follows:

"I took very great pains, during the course of three "years, to observe the state of mind of those persons; "and I do not now remember a single instance in which "a prisoner appeared to me to be deeply affected by "the prospect of being transported to the colonies. "On most occasions when I examined any prisoner, "I found his mind bent upon the colonies, when he "expected to go there; and bent upon attaining a "degree of wealth and happiness, such as he had no "prospect of attaining in this country. Amongst "a number of persons sentenced to transportation, "and living together, I have generally found one, and "sometimes two or three, who had already been in the "colonies . . . . . consequently the convicts associate "with those men who have the best opportunities of "hearing reports as to the state of the convicts in "New South Wales and Van Dieman's Land: these "reports are always exceedingly favourable; in many "cases no doubt they are much exaggerated in favour "of the convict, because a man who returns from "transportation takes pleasure in making people believe

between convicts in New South Wales and their relations in that country. (Ev. 570-5.) This statement disagrees with all the other accounts: and at any rate the prejudice against transportation in Wiltshire is completely unfounded, and must be soon dissipated by the publication of the evidence taken by the late committee.

" that he has cheated the law, and that he has enjoyed " himself notwithstanding the sentence passed upon " him. But whilst some allowance must be made for " this exaggeration of the returned convict, the story " he has to tell is, when true, a very favourable one in " the estimation of these people : he states such facts, " as that a great number of the persons who keep " carriages in Sydney were once convicts, and he " gives the names of those persons, and describes " how they, in the course of a very few years, have " raised themselves from the situation of convicts " into that of the most important persons, in point of " wealth perhaps, in the colony. All these represen- " tations are received with great delight by the con- " victs, and those who think upon the subject at all go " out with the prospect of benefiting themselves and " doing well. A great number never think on the " subject at all ; they are of reckless habits, perfectly " careless of the future ; *but they have no impression* " *on their minds of the probability of receiving any* " *pain;* they have no dread of any ; they are going to " be removed, they would be glad to remain if they " could, and they make great efforts to remain even in " the hulks in a great many cases ; but it is always to " be discovered that their object is not to avoid any " pain to be inflicted upon them during the passage or " in the colonies ; but to remain in this country, and be " able in a short period to resume their old habits, and " to lead that life of riotous enjoyment which belongs " to the habits of criminals." (1395.) In answer to another question, the same witness expresses his

opinion that the punishment of transportation "makes "no impression at all upon the great mass of criminals, "certainly not upon boys; he has known boys endea- "vour to be transported rather than whipped." (1429, and see 1465.)

If all these circumstances are taken together, it may be confidently affirmed, that transportation cannot properly be considered as a punishment: the cases in which it has that operation are so rare as to be scarce worthy of notice. To most persons of the higher and middle ranks, the disgrace of detection and conviction, and a perpetual banishment from England, would be a sufficient preventive against crime: but with the lower class, from which the great mass of criminals proceed, a more powerful motive is needed; and this the punishment of transportation does not supply. To many poor convicts the change is neither for the better nor for the worse, to the greater number it is an unquestionable improvement. Even to the upper class of convicts the slight punishment which they endure at New South Wales is much less than it would be if inflicted in this country, as the disgrace is little felt when a person is removed from those whose opinion he cares for; and is moreover countenanced by the large number of other persons in the same situation as himself. It is impossible to consider the life of a transported convict as a life of pain, unless we adopt the fancy of Montesquieu, that "everything which the law *calls* a punishment is *in fact* a punishment,"*

* Esprit de Lois, l. 6, c. 9.

The utter inadequacy of transportation to compass the object expected of it, *viz.* to be the most severe secondary punishment inflicted by our law, becomes more evident, when it is considered what lot befalls a criminal who just escapes the most formidable of all punishments, death. We will take an example which is probably fresh in the memory of most of our readers, in the person of May, who was duly convicted as a principal in the murder of an Italian boy, killed for the sake of selling his body; a case in which we need not say there was no extenuating circumstance whatever. For reasons not made known to the public, but doubtless satisfactory to those in whom the determination of such matters is lodged, this man was reprieved between his sentence and the time appointed for his execution, and will doubtless suffer transportation for life. Now, what a vast difference is there between this man's original and commuted sentence! Instead of being ignominiously put to death, in two days after his trial, amidst the yells and execrations of a savage populace, he is detained for some weeks, in the society of his friends, at Newgate; he then sets sail, in company with two hundred criminals, among whom there is every variety of vice, adapted to every taste; whether finished and refined villany, coarse brutality, or wanton profligacy and recklessness, should be most agreeable to his disposition; till, after some months passed in a state of total idleness, the ship lands its cargo at New South Wales. He will then probably, not being a mechanic, find himself assigned to a farmer in the interior, where the lightness of the labour, the

abundance of food and clothing, the excellence of the lodging, and the fineness of the climate, will soon reconcile him to his change from the life of a resurrection-man; and out of mere prudence, he may perhaps avoid misconduct towards his employer, and the commission of fresh crime during the next eight years; at the end of which period he will receive his ticket of leave, become his own master, and by industry at one time, and at another, perchance by less regular means, may contrive to keep the evening of his life in a state of tolerable comfort and physical enjoyment.

At the last summer assizes for Lancashire, two persons, of the middle rank of life, were convicted of forgery, and left for execution, who had been for many years engaged in most extensive transactions of that nature, and had converted the forgery of bills and notes into a regular trade, by advancing the capital requisite for the undertaking, and employing various subordinate persons to execute the mechanical parts of the process. These men have since been reprieved, and for aught we know, are now on their voyage to New South Wales; where, on their first arrival, the one will probably become a clerk in a government office, the other will become a tutor in the family of a private person, himself perhaps an ancient convict, or at least of convict blood. Both, of course, will immediately receive their ticket of leave; and have the entire command of their time, except during the hours of business. And this, according to our system, is the alternative for death: this is the severest infliction which the law can devise for those who just escape capital punish-

ment. To a merchant's or banker's clerk, in distressed circumstances, who is not deterred by moral principle from the commission of crime, the question therefore naturally presents itself in this shape. "Forgery or embezzlement will, if successfully practised, extricate me from my difficulties; if I am detected, I have no wife and family, and few friends to regret; I am so embarrassed with debts as to have scarce any enjoyment of life in England; in New South Wales I shall have little feeling of disgrace when I am separated from all who know me; and when I have taught arithmetic at Sydney for a certain period, I shall begin the world afresh, with new views, and under more favourable circumstances."

The distance of the place of punishment from those for whose warning the punishment is inflicted, has an ill effect in two ways. 1. It diminishes the disgrace of a criminal's lot, both by removing him from the eyes of all whose good opinion he values, and whose censure he dreads, and by putting him in the midst of many other persons who are in the same case as himself; so that, at any rate, there is nothing singular or remarkable in his condition, his fate is shared by so many, that it seems to be rather his misfortune than his fault. There are some criminals so utterly abandoned, so lost to all sense of shame, that no punishment can reach them but the infliction of physical privation and pain. But there are others of a higher class, by whom the disgrace of being branded as a felon, would in England be acutely felt, while in New South Wales, the standard of moral estimation being one degree lower, they

are favourably judged, in comparison with those more guilty, as having only committed one crime. "Here "(says Mr. Wakefield) as to the class in question, "detection by itself is a severe punishment; there, "they know, the state of society places settlers who "have committed crimes in England, but none in the "colony, on a line of equality with those who have not "committed crimes anywhere. Here, the punishment "of disgrace is unbearable; by being sent thither, they "wholly escape that punishment. Here they are with-"out hope; by being sent thither, they are filled with "hope."* In the second place, the distance favours suppression of the truth, and the dissemination of false reports, with respect to the condition of the convicts. For although, on the principle of *omne ignotum pro magnifico*, the *name* of punishment may sometimes lead persons who know nothing on the subject, to believe that transportation *really* is a punishment, yet those who are personally interested in the matter, and being led by their inclination to crime, naturally seek to ascertain the good rather than the bad parts of their probable destiny, are sure to receive from the convicts an exaggerated account of its pleasures, to hear from them little of its pains, and to apply to themselves the best parts of the description, and whatever is most agreeable to their own tastes. To convicts they naturally apply for information, as being the best authorities on the advantages and disadvantages of a transported convict's life: "They best can paint them who have

* On the Punishment of Death, 193.

felt them most:" and criminals always have a pleasure and pride in seeming to cheat the law, and to outwit the officers of justice.* "The distance of the colony "(says Mr. Wakefield) prevents criminals from re- "ceiving intelligence that is disagreeable, while, at "the same time, it allows them to receive that which "is agreeable." "It is to be observed, in all cases, "that the mind dwells upon what is pleasant rather "than what is unpleasant; and it would be found, upon "examining a number of convicts here, who are ac- "quainted with the advantages of a convict's life in "New South Wales, that they know little or nothing "of its disadvantages." (Ev. 1438. 1481.) Hence much pain is really suffered which never comes to light: nor even if it were known, would it be more than an exception; and an example is useless which no one will apply to himself. Mr. Wontner, the gaoler of Newgate, mentions that he had received a letter from a convict, for whom great interest had been made to get him comfortably settled, stating his disappointment at having been sent into the country as an agricultural labourer, his constant work, and his hardships; and recommending Mr. Wontner to communicate to persons in his situation what transportation sometimes is, and entreating that exertions might be made to ameliorate

* It was from this feeling that Bishop the murderer made his confession; a mere tissue of improbable falsehoods, by which many persons, unacquainted with the ways of criminals, were induced to believe that he was improperly convicted. The object, in such cases, is to throw a general discredit and doubt on the administration of justice.

his condition. (Ev. 396.) It will be observed, that even this person entertained hopes of improvement, which should be altogether excluded from a good penal system: but what would be the effect on the minds of criminals if it *were* known that in a single instance transportation was really a punishment? They would merely set it down as an exception by which their calculations ought not to be influenced. If transportation to the colonies is not the means of inflicting pain, then all must admit that the system ought either to be amended or abolished. If, on the other hand, New South Wales is not an agreeable retirement, or a new field of enterprize for unsuccessful rogues, if it is not the Paradise of felons which it has been called,* then our system is worse than if these notions were correct; for it is almost universally believed to be so: and it would thus seem to be contrived in order to obscure the pains, and to throw a false glare of light round the pleasures of transportation. In the arrangement of punishment, pain inflicted, and not publicly known, is pain thrown away. It is an infliction of pain only justifiable because beneficial to society, by which society gains nothing. It is not sufficient that a punishment should *be* painful, it should *seem* to be so. The object of *real* punishment is to produce *apparent* punishment. Still more objectionable is a system which encourages not only the concealment of truth as to pain really endured, but the fabrication of falsehoods as to pleasures never enjoyed. The secrets of the prison-house should

* See Report, p. 130.

be known in all their worst features, that human suffering may not be in vain. If opportunities are to be given to the colouring and misconception of facts, it would be better that the public should deem too lowly than too highly of the state of a condemned criminal. Above all things, in penal jurisprudence, we should avoid whitening our sepulchres.

Many regulations with regard to convicts have been established at New South Wales, the sole object of which has been either the good of the colony, or the convenience of its government. "The convicts," says Mr. Busby, "have been distributed to the service of "the settlers, or retained in that of government, with "a view to the demands for their labour, and to the "saving of expense in their maintenance, rather than "to an uniform or discriminate system of discipline." (Rep. p. 127.) At the arrival of every convict ship, the local authorities have had to provide for so many hundred convicts: and as their principal object was to govern the society, to increase its wealth, and to raise its moral condition, the convicts were disposed so as best to effect these purposes. Thus the object of their transportation, viz. to deter others from crime by their example, has too often been forgotten.*

Similar relaxations in the discipline of the convicts have been introduced from a view to economy. It is of course cheaper to quarter a convict on a free settler,

* "In the management and discipline of convicts in New South Wales, the local government has seldom, if ever, adverted to the punishment of transportation, with reference to its operation as a preventive from crime in the mother country."—Busby, Rep. p. 127.

who is willing to maintain him for the value of his labour, than to keep him in a place of punishment at the public expense. But all the vulgar opinions on this subject are founded in error; for neither is economy the end of punishment, not even an important element in the problem, nor is the system pursued truly economical. It is a common objection to the science of political economy, that it looks only to the wealth, and not to the morality or happiness of a nation. Yet if it is proposed to adopt a measure which goes directly to diminish crime, and so to increase and strengthen national virtue, an objection is raised, probably in the very same quarters, that the plan is so expensive that it cannot be adopted; evidently implying that morality is less important than wealth, or that vice is a less evil than taxation. Even if the suppression of crime could only be purchased at a dear rate, the sacrifice of public revenue would be repaid at an usurious interest by the increase of public morality. But the truth is, that a cheap punishment which encourages crime and multiplies criminals, is in the end less economical than a system which represses crime, and greatly reduces the number of criminals. It is cheaper to punish a hundred men at 10*l.* a-head, than a thousand men at 5*l.* a-head. The expense of each individual may be less, but the aggregate expense of the whole number is greater. It is not our intention to enter into any calculations on the comparative expenses of our different modes of secondary punishment; but when the cost of transports, of regiments stationed at New South Wales for the purpose of guarding the convicts, of the colonial police,

and other sources of expenditure are taken into the account, we are satisfied that the expenses even of transporting a single convict have been greatly underrated; and if any person will agree to put the question of transportation or no transportation on the issue of economy, we will undertake to prove that the revenue would gain by its entire abolition, and the adoption of a new system. Those persons who estimate the merits of a punishment by its cheapness, ought, if they were consistent, to re-enact the code of Draco, and punish every offence with death; for no punishment, it is to be remembered, is so cheap as that which requires only a rope and a scaffold.

The Committee lay it down, in a question put to a witness, that "there are two modes of preventing "crime, one by reformation of the prisoners, the other "by deterring bad characters from the commission "of crime." (Ev. 201.) We cannot admit that the reformation of the convict is an essential part of punishment; it may be joined incidentally, but cannot necessarily belong, to a penal system. Undoubtedly it is desirable to reform all vicious persons in the community; but the government cannot effect this purpose by any direct means. All the praiseworthy endeavours of rulers to make men good by law have utterly failed. The object of punishment is to deter men from crime by a dread of suffering pain. If the punishment is really painful, and such that if a person thought it a sure consequence of detection, he would not commit crime; then the convict, having experienced it in his

own person, is of all men least likely to place himself again in the same situation. If the punishment to be dreaded, needs but to be known, the convict has the best means of knowing; and therefore the strongest motive for avoiding it. But a punishment which reforms criminals without inflicting pain on them, is useless, because others will not be deterred from crime by the prospect of that from which nothing is to be feared. The error of supposing that crime is to be prevented by the reformation of convicts arises from a notion that criminals form a class of a certain definite number, that they are a peculiar order in the state, to be dealt with like a band of conspirators, or a foreign army; whence it follows, that if these persons can be either exterminated, or sent out of the country, or turned from their evil courses, the community will be free from crime. But criminals are an uncertain and fluctuating body, liable at any moment to be diminished or increased to an indefinite amount, according to the motives working on the community, as any man may at any time be tempted to commit crime by the prospect either of great gain, or of complete impunity, or of slight punishment. As well, therefore, might we attempt to drain a river by carrying away the water without cutting off the source whence its stream is replenished, as to endeavour to suppress crime by banishing or reforming criminals without attacking the fountain-head from which a new flood of offenders will continually pour in. As well might it be proposed to put a stop to disease and old age, by expelling or

destroying the aged and sickly, without devising any means of preventing the young and healthy from filling up their places.*

But if by reforming convicts, is meant, the bringing their minds into such a state that they will avoid crime from principle, and not from the fear of detection and punishment, we believe that such a reformation, though so much stress is laid on this subject both in the Penitentiary and New South Wales, is an event of very rare occurrence. And we suspect that in the best modes of punishment devised by the wit of man, in which the infliction of severe pain is combined with moral discipline, the effect of the mental training is as nothing in comparison with the fear of the punishment, in the prevention of second offences. We fear greatly that to reform a hardened, or a reckless criminal, is little less difficult than to change the colour of his skin. People sometimes think that an unlettered reprobate can be taught virtue as he can be taught to read: but they forget that in the one case they have to contend with ignorance, in the other with fixed habits. If a man cannot read, he merely labours under a defect of knowledge; but a man who does not practise virtue, practices vice.

* "The prevention of crime being the primary object of all punishments, a regard to the effects produced upon the minds of those who are liable to the temptation of violating the laws, ought to be the first object regarded in determining the nature of the penalty. The reformation of the convict himself is secondary to this; inasmuch as it is of more importance to the community that the many should be kept from falling, than that the few who have fallen should be reclaimed." —Busby, Rep. p. 130.

This view of the subject is unhappily supported by the strongest evidence.

"I am perfectly satisfied," says Mr. Wakefield, "that "the number of cases in which man, woman, or child "once a thief is not always a thief, are so few as to "be undeserving of notice. But few persons who "indulge in the excitement of gambling ever conquer "that propensity: but thieving is a species of gambling "far more agreeable than any other game of hazard, "for two reasons; first, because the persons who follow "it are generally of a class, who could not live honestly "otherwise than by hard and constant labour, than "which nothing is more irksome to all who have once "indulged in idleness: and secondly, because in the "game of robbery, the player *always wins until he "loses all.* Whatever the cause, however, the fact is "certain, that a thief is hardly ever—I am tempted "to say never—reformed."—*On the Punishment of Death*, 75.

Mr. Chesterton, the governor of the House of Correction at Coldbath-fields, likewise expresses his conviction that the London thieves are irreclaimable from their vicious habits; and he even thinks that no punishment which can be devised will deter them from the commission of crime (Ev. 513, 517): but it must be remembered that thieves are nevertheless men, liable to be swayed by human motives; and if a punishment can be made painful, speedy, and certain, they will unquestionably avoid crime, on the balance of inconvenience. Mr. Chesterton doubtless meant to say that it is hopeless to attempt the reformation of a

professional thief: and that as our punishments are not sufficiently painful to deter by fear, the only advisable course is to send such a person out of the country (518): proceeding on the notion to which we have already adverted, that the criminals form a limited class, and that every deduction from their number is so much gain.* Whereas the removal of a few criminals, while the same temptations which led them astray are left to work on the rest of the community, has no more effect in preventing crime, than the deaths of a few persons in arresting the course of a pestilential disease, while the contagion is flying over the whole country.

It may, therefore, be confidently asserted that the moral impressions made on a convict's mind during his state of punishment are in almost all cases feeble and evanescent; that when, on his liberation, he rejoins his former companions, he may be expected to yield to the temptation of recurring to his old habits of idleness and enjoyment, and their necessary consequence, crime.

* We might apply to this subject the question of Pontanus, so wittily answered by Scriverius—

"Dic mihi quid majus fiat, quo pluria demas?"

For every one subtracted from the number of the regular thieves, and sent to a state of enjoyment in New South Wales, two, perhaps, are added to the same class, attracted by the prospect of gain, and the uncertainty or mildness of the punishment. It must be remembered that the body of thieves, or persons living on the property of others, is capable of very rapid expansion: it is not like the body of lawyers, or physicians, among whom there is only a certain limited quantity of business to be divided: the quantity of plunderable matter in this country is immense, and would probably support, in ease and luxury, a much larger number of persons than even now subsist by dishonesty.

Unless he abstains from fear, no reliance is to be placed on his principle.

> "Ad mores Natura recurrit
> Damnatos, fixa et mutari nescia."

Such is the unattainable object which forms so prominent a feature in our penal system, and especially in that of transportation, where the true end of punishment is entirely lost out of sight, for the sake of improving the moral condition of the convicts. Here, accordingly, the question arises, Whether by this system the reformation of the criminals, to which so much has been sacrificed, is really attained? and whether the policy of forming a colony of the criminal population of the mother-country, and reforming these abandoned persons in their new abode, has been successful, considered merely as a colonial measure, and without reference to its connexion with our penal system?

If it were proposed to select all the worst characters from the thickly peopled gaols of a large nation, to send them in transports by hundreds to a distant quarter of the globe, enjoying unrestrained intercourse and entire idleness during a voyage of several months; on their arrival to distribute them for a few years as bond-slaves to various task-masters throughout the towns and country, under an imperfect system of inspection, and with different degrees of liberty and comfort, their number to be perpetually increased by fresh supplies of convicts from the mother country, so as to enable them soon to form the most numerous order in the new colony, and to establish a public opinion and a separate

interest of their own: could even the most sanguine person expect that a society so formed would, according to the ordinary course of nature, exhibit any other spectacle than that of the most frightful licentiousness and immorality? If these transported criminals are so depraved, that separately they are dangerous to a large state, how will a small state resist them when they are collected together? If the matured strength of the mother country cannot endure the evil, how is it to be borne by the feeble infancy of the colony? Why should we expect that the dwarf will bear up against a weight which the shoulders of the giant are declared to be incapable of supporting? Indeed, when it is considered of what elements the population of New South Wales is composed, the wonder is, not that all the accounts should represent its moral state as being at the lowest ebb, but that it should have been possible to maintain a system of regular government and administration of justice in a society formed of persons who have lived by the habitual infraction of law. Certainly New South Wales, as far as we are aware, is the only instance of a *commonwealth of thieves* recorded in history.

The testimony of the different witnesses, particularly of the Rev. Mr. Scott and Major M'Arthur, is very strong and explicit on this point; but although it is a subject which does not admit of precise definition, some notion of the moral condition of this convict colony may be derived from the following statements.

The population of New South Wales in 1828 was 36,598, omitting the runaway convicts, who are cri-

minals that set the law at defiance, and live by outrage and depredation. In the year 1830, 134 persons were capitally convicted, and 49 were executed (11 for murders) in that colony. (Rep. p. 139, 141.) In the year 1830, 1,397 persons were capitally sentenced, and 46 executed in England and Wales. Taking the population of New South Wales at 40,000, and of England and Wales at 13,000,000 in 1830, the executions would be about one to every 280,000 persons in the mother country, and one to every 900 in the colony. In the year in question, notwithstanding the immense difference in the population, the whole number of executions in New South Wales exceeded the whole number of executions in England and Wales. This large amount of crime is satisfactorily explained by the manner in which the convicts are treated.

"The history of a convict may be thus traced:—on "his arrival, if he be not retained for the use of the "government (which most of the mechanics and useful "sort were) he is assigned to some applicant, without re- "gard to his crime, sentence, or behaviour; and, far too "often, without regard to the character of the applicant. "If the latter be one of the *freed* men, the convict "most likely eats and drinks with him, and shares in "all the familiarity of his *domestic* life (if it can be so "called) of drunkenness and debauchery. Under little "controul, and often through bad or harsh treatment, "he runs away, or is seduced away, and gets drunk, "committs some theft, and is taken up and is punished "by being returned on the hands of government, or "sentenced to some imprisonment. Of these, in the

" year 1829, there were upwards of 4,000 at the dif-
" ferent stations, where the overseers of the different
" gangs are convicts themselves; and if they are near
" places where work is to be had, especially near
" Sydney, nothing was more common than for the
" overseer to wink at the absence of a convict for many
" hours from his employ, and share with him his gains,
" which, if he were a good mechanic, would be four or
" five shillings. As they were fed, clothed, and housed
" by government, the surplus generally was spent in
" spirits."

" The instances of well-conducted convicts who are
" now proprietors of land, settled on it at an enormous
" expense to the crown, are very few indeed. If the
" progress and character of all those who have received
" these boons were thoroughly investigated, such de-
" tails of fraud and vice would be unfolded, a stranger
" would scarcely believe." Rev. T. H. Scott's Letter to Lord Howick, Rep. p. 146.

" No real advantage (says Major M'Arthur) can be
" expected from the crowd of helpless outcasts who
" arrive in the settlements under the various classes of
" forgers, utterers of forged instruments, clerks and
" apprentices guilty of embezzlement, swindlers, pick-
" pockets, and some description of thieves from cities
" and large manufacturing towns. No industrious
" settler, with the foreknowledge of their corrupting
" influence, will, excepting by the direst necessity,
" receive them into his establishment. He fears the
" insubordination which they have talents to excite.
" He dreads the example of their vices; and calculates

" that their services will not repay him the cost of " providing them with food and clothing; unable, " therefore, to distribute them through the country, " the colonial government is reluctantly compelled to " permit their residence in the towns, where some " obtain tickets of leave; and others, employment as " clerks and servants. They become shopkeepers, and, " as part of their trade, receivers of stolen goods. " Supplies of money from confederates in England, " from friends and relatives, or from the produce of " their robberies and frauds in the colony, are alike " wasted in drunkenness and debauchery. Nor is it " less painful to know that those whose sentences have " expired, or to whom pardons have been granted, " seldom or never incline to reform, even when they " have acquired property. Intoxication and fraud are " habitual to them, and hardly six persons can be " named throughout the colony who, being educated " men, and having been transported for felonies, have " afterwards become sober, moral, and industrious " members of the community. Crime is of constant " occurrence; and so completely organized, that cattle " are carried off from the settlers in large numbers, " and slaughtered for the supply of the traders in " Sydney, who contract with the commissariat. It is " not, therefore, the vicious habits alone of the towns " which are to be dreaded, but the effects that are " communicated and felt throughout the country. The " agricultural labourer is encouraged to plunder his " master, by finding a ready sale for the property he " steals; and whenever his occupations call him to the

" towns, he sees and yields himself to the vicious habits " around him. He returns intoxicated and unsettled " to his employer's farm, and excites his comrades to " the same sensual indulgences, with equal disregard " of the risk and of the consequences. To these causes " the present vicious and disorganized state of the " convicts in New South Wales is chiefly attributable; " and the extent of the evil may be, in some degree, " estimated, when it is stated that the expense of the " police establishment amounts to more than 20,000*l.* " per annum." Rep. p. 142.

These general statements are confirmed by the other witnesses, who add some particulars to complete this melancholy picture of crime and immorality, created in the wilderness by an act of parliament. When the convicts are assigned to settlers in the country, each person is furnished with a full allowance of clothes, blankets, &c.; but these are almost always stolen from them, or sold by them before they reach their destination. (Ev. 827.) When the new-comer arrives among his brother convicts, he takes a fresh lesson of roguery; for (as Mr. Walker says, Q. 913) " the colony has a *curious effect* upon the most practised thieves in this country; one of the most experienced thieves in London has something to learn when he comes out there; probably he would be robbed the first night he came into his hut." It is needless to repeat the statements of those persons who merely describe the generally low state of morality, and the frequency of atrocious crime; but we may remark that on account of the degraded class to which the female convicts have belonged, and

the great disproportion of the women to the men, prostitution prevails to a great extent.* It is only to be hoped that such a state of things does not produce effects far more demoralizing than even prostitution.

If all the criminals, annually convicted in England, were punished in the country, neither during their punishment nor after their liberation, could they become an important class in the state. They would bear so small a proportion to the whole population, and would be spread over so wide a surface that they could produce no sensible effect on the rest of the community. But when all the convicts of a large nation are collected into one place, and that place a new settlement in an uninhabited country, in which the number of free settlers is inconsiderable, they assume a different aspect,—they herd together; not only do they form a class, but the most numerous† and powerful class in the society, they support one another in vice by their mutual countenance and good offices: and at length, when a sufficient number of convicts have served their term and been emancipated, they form a political party, having its own opinions and organs of communication

* According to the census of 1828, New South Wales contained 27,611 males, and 8987 females, i. e. something less than one woman to three men. In all countries there are more males born than females; but wherever the population is in a natural state, and has not been disturbed by an injudicious system of compulsory emigration, the numbers of adult males and females are nearly equal, or that of the females a little preponderates.

† Much the larger half of the population are, or have been, convicts. In 1828, the free settlers and those born in the colony were 14,390; leaving 22,208 for the convicts out of a population of 36,598.

with the public. Political parties have been at different times formed in a great variety of manners: there have been political parties of the rich, of the middle ranks, and of the poor; of freemen and of slaves; of the inhabitants of the heights and of the plain; of the court and the country; but probably this is the first instance of a political party of emancipated malefactors which has been known in the history of the world.

"The existing vice and evils (says Major M'Arthur) "are now frightful in a moral, but they will soon be- "come alarming and dangerous in a political, point of "view. The towns are filled with the most useless and "depraved men. Instead of adopting the habits of "others, they communicate their own. With numbers "they have acquired confidence; and already give a "tone and character to the society. Nor are the "political consequences unworthy of notice. Repub- "lican sentiments are in active operation. It is "made a merit among the lower orders to treat their "superiors with disrespect; and there appears already "the germs of a wild democracy. Without contem- "plating, therefore, any immediate danger, it is surely "necessary to provide against the increase of evils "which may, in time of war, hazard the safety of the "colony." Rep. p. 143.

Mr. Busby states that the influence of this party, in consequence of a change in the policy of the government, has diminished of late years: he mentions, however, that "all the opposition press is of their party; for, as its conductors are under the influence of those who purchase the greater number of their newspapers,

the prejudices of this class are flattered by the editors of the papers, merely to procure a sale for their papers." (Ev. 1281—4.)

Another evil consequence of scattering convicts upon the face, and along the outskirts of a thinly-peopled settlement, is, that if they become dissatisfied with the hardships of their condition, they escape from their masters, unite together, and form roving bands, whose only subsistence is derived from plunder. The number of these *bush-rangers*, as they are called, had much increased in New South Wales during the last few years, and highway robbery and other outrages were so frequent, that it became necessary for government to take very strong measures to repress the evil. This evil could only be counteracted by other evils, viz. the enactment of tyrannical laws, and the establishment of a large mounted police.* A dispatch from General Darling describes a conflict between the police and a troop of nearly fifteen bush-rangers, well mounted and armed, in which the police were beaten off and obliged to retire, with the loss of two men and five horses, after a smart engagement of a quarter of an hour. (Rep. p. 137.) In a colony founded by voluntary settlers, who would only be induced to emigrate by prospects of personal advantage, such a state of things could never occur.

The deplorable enmity between the settlers and aboriginal inhabitants of the neighbouring colony of Van Dieman's Land, and the savage cruelties of which it has been the occasion, appear in great measure to have

* See Walker, 818—21. Busby, 1296—1303.

arisen from the barbarities originally practised by the convicts on the natives. The following illustration of the benefits derived from convict settlements is furnished by a dispatch of Lieutenant-Governor Arthur to Sir George Murray.

" Soon after the colony was settled, in the year 1805, " a scarcity of provisions was felt, amounting almost to " a famine. In this extremity, the convicts were per- " mitted to go into the bush in order to find food; and, " as the country abounded with game, they readily " discovered it, and were afterwards indisposed to " return and submit to the authority of the government. " This state of things continued until the year 1809 or " 1810, and laid the foundation for that system of " plunder which was denominated 'bush-ranging.' " The convicts leading this predatory course of life, " continually associated with the aboriginal natives, " whom, it is unquestionable, they treated with the " most unnatural cruelty, taking away their women, " and often murdering their men."*

An instance of the conduct of these convicts to the natives, " which (as the Committee at Van Dieman's Land may well say), from its atrocity, would have appeared to them perfectly incredible, had it not been confirmed by testimony which they cannot doubt," appears, in the examination of a witness, to the following effect:

* Correspondence between Lieutenant-Governor Arthur and the Secretary of State for the colonies, on the military operations lately carried on against the aboriginal inhabitants of Van Dieman's Land. Printed for the House of Commons, 23rd September, 1831, p. 60.

" Lemon and Brown, the bush-rangers, committed " every species of cruelty upon the natives; they used " to stick them, and fire at them as marks whilst alive; " knew Carrotts, who had been a convict; he told " him that he had cut off a native man's head at Oyster " Bay, and made his wife hang it round her neck, and " carry it as a plaything; from Carrotts' manner, he " credited the story." Correspondence, p. 36, 49.

Nevertheless, some of the convicts have forgotten their ancient diversions, and have preferred assisting the natives in the bloody and revengeful war carried on by them against the lives and properties of the whites; for the Lieutenant-Governor states, that " although the idea seems too monstrous to be credited, it is his duty to report, that there are very strong reasons for apprehending that some miserable convicts have incorporated themselves with the savages." P. 60.

Such is the picture, as drawn by eye-witnesses, of the moral and political condition of a convict colony: such the results of our novel experiment of forming a society of thieves. For let it not be said that this method of punishing criminals, by employing them as the materials for the foundation of a new commonwealth, can be defended on the plea of prescription and ancient usage. It was a mere experiment both in politics and jurisprudence, and it has so signally, and in all its parts failed, that we devoutly trust that it may deter this and every other state from ever giving it a second trial. There is no convict in New South Wales who, by his crimes, has worked a tenth part of the mischief, or by his example and instruction been half

so instrumental in the diffusion of vice, as the person, whoever he may have been, and however unconscious of the evil which he was about to originate, who devised the plan of transporting convicts to New South Wales. He set in motion a machine for the production of evil, which has for years been working with a continually increasing power, and a constantly accelerated velocity. When Cicero said, that in no respect does the virtue of man approach so near the attributes of the Divinity, as in founding new states, or in preserving states already founded, little could he think that this high office would ever be so abused as to found a commonwealth of condemned criminals; or that a large and civilized nation, in establishing a new colony, instead, like the ancients, of carrying the sacred fire from the hearth of the state, would empty the polluted scum of its gaols on the virgin shores of an unpeopled continent.

However, even if it were admitted that transportation is the means of inflicting little pain, that it is an expensive method of punishment, that it does not reform the convicts, and that it occasions great evil, moral and political, to the colony itself, still if that little pain was certain in its amount and infliction, the punishment might, by preventing crime, be beneficial to the mother country. In this respect, however, the system of transportation is perhaps more defective than any other; a defect which arises from the variety of our secondary punishments, and can only be explained in connexion with them.

An original or commuted sentence of transportation,

ether for life or a term of years, may mean any one of three things, *viz.* transportation to the colonies, imprisonment in the hulks, or imprisonment in the Penitentiary. Of these, the *Penitentiary*, as appears from the full account contained in the Evidence taken by the Committee, seems to be far the most painful, and is accordingly most dreaded by convicts under sentence of transportation. (Wakefield, 1399, 1401, 1446, 1488). It may be described, in general terms, as an imperfect attempt to carry into effect the system of solitude and silence which has been brought to perfection in the United States: the average period of imprisonment is three years, and the number of prisoners is about five hundred. The chief object of this institution is stated to be the reformation of the prisoners (Chapman, 130, 134, 181); nevertheless, although it is managed on this mistaken principle, its regulations are so contrived as to inflict considerable pain on the convicts, and thus to attain the true end of punishment. *Imprisonment in the hulks* is, as well as the Penitentiary, for the most part limited to convicts sentenced to seven years' transportation (Capper, 649—665), and the punishment actually inflicted is forced labour in the dockyards during the day, and confinement, without separation, in a floating prison during the night, for a term of about four years. The discipline is described as lax, and the convicts are able to procure many indulgences incompatible with severe privation; and on the whole they consider it as a "pretty jolly life." (Wakefield, 1408—14). The opinions on the comparative advantages of the hulks

and transportation are not uniform: for London thieves, married persons, and others who wish to remain in their native country, prefer the severer, but shorter, discipline of the hulks, to the idleness and liberty of a long or perpetual exile: others, again, who have not been so successful in crime as to lead a life of dissolute enjoyment, look forward to New South Wales as a land of promise, where they will become rich and great, after the short probationary period of servitude inflicted by the law. There can be no doubt that three years' confinement in the hulks is a severer punishment than three years' bondage in Australia (see Capper, 748): but the sentences of transported convicts are usually either for fourteen years or life; and thereupon, *upon the whole*, confinement in the hulks is perhaps preferable: though, *for equal times*, actual transportation is evidently a much easier lot.

It might be thought that a variety of secondary punishments is desirable, for this reason: that a person in meditating a crime would naturally be prepared for the worst; and if, among all his expectancies, there was *one* which appeared painful to him under his peculiar circumstances, he would reckon upon the chance of undergoing that punishment, and therefore abstain from crime. But unhappily for the effectiveness of our penal system, this view of the matter is not only not true, but is the very reverse of the truth. A person meditating crime, always anticipates the best, and not the worst lot which may befall him: on the principle stated by Adam Smith, that every one overrates his own good fortunes; and because the mind is

more disposed to hope than despair, and dwells more willingly on a pleasing, than on a painful object.* The mere exposure to a chance of suffering has little or no effect, if the chances of not suffering are equal or superior. How small is the number of persons smitten with a mortal disease, who expect it to prove mortal? When was there ever a want of volunteers for a forlorn hope? In cases such as these, every man thinks that he himself will, in some way or other, be an exception to the general rule, and hopes for the best, however unlikely that best may be. Hence it is that a man meditating forgery, does not expect death to be a consequence of detection: for though he knows that many forgers have been hanged, he likewise knows that many more have been transported. For this reason, a variety of punishments is eminently unfavourable to the prevention of crime; for every person chooses out of the whole number that one, and the modification of that one, which is most agreeable to his peculiar taste: whence it happens that those punishments which are severe, have no effect in deterring from crime, because nobody expects to suffer them; and that a criminal may often endure a punishment which would have deterred him if he could have known beforehand that he would endure it. There is, perhaps, many a man in the Penitentiary, who would never have committed crime if he had known that he would be

* The effects of the uncertainty of punishment have been explained with great ability and judgment by Mr. Wakefield, both in his book, p. 74-8, 134-6, and his Evidence 1379, 1402, 1404, 1426-7, 1434-5-7, 1482, 1565.

imprisoned in the Penitentiary: but he reckoned on being sent to the hulks. There is, perhaps, many a man in the hulks who would not have committed crime if he had known that he would be imprisoned in the hulks; but he reckoned on transportation. And on the other hand, some persons have perhaps been transported who committed crime on the speculation of remaining in England, and passing a short time in the hulks. So long as a rule has exceptions, the mind fastens on the exceptions, and not on the rule. A rule with many exceptions is, in penal jurisprudence, little better than no rule at all. If, therefore, our secondary punishments were in most cases severe, the advantage of the severe punishments would be in great measure lost, because every body would be inclined to reckon even on the exception. But what can be expected when the severe punishments are the exception, and the slight punishments the rule? If a severe punishment has little effect as the rule, it can have no effect as the exception. When 200 convicts are sent annually to the Penitentiary, 1000 to the hulks, and 4000 to the colonies,* what person, bent on the commission of

* We have not been able to procure any account of the precise numbers of the convicts annually sent to the Penitentiary, the hulks, and the colonies: but the numbers in the text probably approximate to the truth. The Penitentiary usually holds about 500 (Russel, 314-15), which, if about a third part is changed every year, would give something less than the number stated. The total number in the hulks in July, 1831, was 3897 (Capper, 579), which would give about 1000 a year, if the average imprisonment is somewhat less than four years. In 1829, 3664 convicts were transported to New South Wales; the number in the following year appears to have been

crime, supposing even that he proceeded on the most refined calculation of chances, could reasonably expect a confinement in the Penitentiary? On the other hand, he might, without great improbability, reckon either on the hulks or New South Wales, whichever might happen best to suit his inclination. The great object in arranging a system of punishments, is to make it as little a lottery as possible: to convict, award sentence, and inflict punishment with a kind of mechanical regularity, undisturbed by human mercy, discretion, caprice, or indolence. No opinion of power in the officers of justice, or of terror in the punishment, is sufficient, if there appears a reasonable prospect of escape. And thus Juvenal's admirable description of the course of thought by which a man doubting whether he shall commit a crime, persuades himself that he shall elude the anger of the gods, applies with double force to the less infallible discoverers of crime, and the feebler executors of justice, who are entrusted with the administration of human laws.

> But grant the wrath of heaven be great; 'tis slow,
> And days, and months, and years precede the blow.
> If then to punish *all*, the gods decree,
> When, in their vengeance, will they come to me?
> But I, perhaps, their anger may appease,
> For they are wont to pardon faults like these:
> At worst, there's hope; for every age and clime,
> See different fates attend the self-same crime.
>
> GIFFORD's Translation, Sat. xiii.

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greater: and as this is exclusive of the convicts transported to Van Dieman's Land, probably the number in the text is too small.

Another reprehensible part of our system is, that in the more serious offences, the criminal rarely suffers the punishment to which he is publicly sentenced. If he is sentenced to death, that generally means that he is *not* to suffer death, but to be transported for life; if he is sentenced to transportation for seven years, that means that he is *not* to be transported for seven years, but to be imprisoned about half that time in the hulks or the penitentiary. Unless a felon is hanged, the sentence which he will really suffer is a matter of entire uncertainty: even if he is transported for life, he may receive a full pardon at the end of eight years. In the midst of all this uncertainty, the only thing that seems absolutely certain is, that he will *not* suffer the punishment which the law declares that he is to suffer, *viz.* death.

There is, moreover, a further evil in transportation, peculiar to itself, and not shared by the other two secondary punishments. It is not certain that a convict will be imprisoned in the penitentiary, but if he is imprisoned in the penitentiary, there is only one punishment for all the prisoners. The same is true of the hulks; the mode of punishment is the same for all. But with transportation, not only is it not certain that a convict will be transported, but when he is transported, there is an immense variety of lots which may befall him. He may live either in the town or in the country; may serve the government or a settler; have a good or a bad master; remain poor or grow rich; be well or ill treated; be a tutor or a shepherd; a government clerk or a tavern-waiter: whence it arises, that

every one selects the condition which is most agreeable to himself, and expects to meet with that particular destination: any case of hardship which may come to his ears, he sets down as a lamentable accident for the unhappy sufferer, who is much to be pitied for his misfortune; but he never thinks of applying it to his own case. The banker's clerk, or the London thief, expects to be a tutor, or to be employed in a public office: the mechanic expects to cheat the government and work for his own profit: the agricultural labourer to have little fatigue, and be well fed, clothed and lodged. And the truth is, that they are generally right in their respective calculations, as the government is forced to employ them in the way which best suits their former habits; in other words, in the way most agreeable to themselves. Transportation may, indeed, be said to unite in itself all the attributes of a bad punishment; to furnish a model for a penal system which should be imitated by contraries. Even if it were rendered certain by making it the *only* secondary punishment, this change would rather aggravate the evil. For its chief defect is its extreme mildness, and want of terrors: and the happy facility with which it adapts its various pleasures to the case of each individual. Hence, by persons under sentence in England, it is coveted rather than dreaded, and is an object of ambition rather than aversion. While of the convicts, some are tormented with the fear of death; some depressed with the disgrace of a conviction in their native country; some with the dread of the hulks, others of the penitentiary: and while most are intent on the prospect of wealth

and importance in a new home, the tickets of the lottery are drawn, and happy they who get the prize of transportation.

> " Alii panduntur inanes
> Suspensi ad ventos; aliis sub gurgite vasto
> Infectum eluitur scelus, aut exuritur igni.
> Quisque suos patimur manes: exinde per amplum
> Mittimur Elysium, et pauci læta arva tenemus."

There is only one remedy for our system of secondary punishments, *viz.* to destroy every part and parcel of it, and to substitute an entirely new system in its place. The building is too crazy and rotten to be propped up by temporary supports, or to be patched by partial repairs. It has grown out of a succession of expedients and palliatives: but the time for shifts and provisional arrangements is now past; and the evil has at length become so great that it ought no longer to be endured. So far as it goes, the penitentiary is founded on a right principle; but the numbers of the prisoners are so few, the separation so imperfect, and the expense so considerable that even this institution calls for a radical reform. Confinement with hard labour in the hulks is a punishment which to a working man has few terrors: he enjoys the society of his companions, and is not debarred from many of the luxuries to which he has been accustomed. The hulks are considered in the light of a sacrifice of so much time; a prisoner gives up three years of pleasure, but he does not pass three years of pain. Far worse, however, than even the hulks, is the system of transportation: the pain inflicted by this punishment is insufficient in amount,

irregular in its operation, often unknown on account of the distance at which it is endured, and if known, so uncertain as not to be reckoned on: its disgrace is not felt, because the sufferers are out of the sight of those whom they respect; it injures the mother country by substituting the semblance for the reality of punishment: it injures the colony by forming a society of the most worthless and abandoned wretches drafted from the prisons of a large community. By annually pouring in fresh supplies of this moral poison; by concentrating, multiplying, and perpetuating the scattered and transitory forms of vice, it has made this new and wealthy settlement a storehouse of depravity, one vast heap of moral corruption. It is a system from which nothing is to be hoped, and everything to be feared; a system of elaborate mischief and consistent impolicy, originating in helplessness, continued in ignorance, and tolerated only by supine and culpable indifference.

We have learnt, both with surprise and concern, that all proposals to discontinue the annual shipments of convicts to the Australian provinces, meet with great opposition from the free inhabitants of those colonies, who consider that they have a *vested right* to be provided with bond-slaves at the public expense; and that the system which might have been less objectionable in the early state of the colony, is to be maintained for their benefit, however injurious it may prove to the lasting interests both of the mother country and the colony itself. Sincerely do we hope that ample ground may be given to these colonists to be loud in their complaints, by a cessation of the supplies of convicts; and

that a trial may be given in this country to the American system of home imprisonment for short periods of time, of which an account may be found in the Travels of Captain Basil Hall. This system combines all the advantages which transportation has not; it begins immediately after sentence; it is painful in the extreme, by enforcing strict silence and hard work by day, and solitude by night; it is constant and uniform; in cheapness it far exceeds every other punishment except death;* and it affords the best chance of reformation which any mode of reclaiming depraved persons can afford, inasmuch as it connects labour and instruction with their most agreeable associations, as silence is never broken except by the voice of the teacher; and where conversation and amusement are forbidden, labour itself is a relief.†

It is, however, necessary to remark that the most perfect mode of punishment which can be devised, will be ineffectual if an alternative is offered to the minds

* Captain Hall states that the manager of the Sing Sing prison mentioned that in a short time he should be in a condition to offer to take upon himself the whole expense of the establishment, provided that he received the produce of the prisoners' labour. Under these circumstances, the only expense to the public would be the interest of the prime cost of the building.

† Mr. Wakefield states that "when Captain Hall's account of the American prisons was published, he read it to many of the convicts at different times, and the effect it produced upon their imaginations was very striking: it made them shudder, and any such punishment as that they would dread beyond measure."—Ev. 1462. The penitentiary at Geneva has recently attracted much of the attention of foreign writers, but we are not sufficiently acquainted with its plan and arrangements to pronounce an opinion.

of the intended criminals, by suffering other imperfect modes of punishment to co-exist with it. If, therefore, the penitentiary could receive all the convicts now imprisoned in the hulks, and its regulations were formed on the American model, its effect would still be inconsiderable, as all persons would calculate on transportation. The substitution of one colony for another, of Trinidad for New South Wales, even of an unhealthy for an healthy climate,* would be sufficient to nullify the effect of any improvements at home. We are firmly assured that the opinion expressed by Mr. Wakefield, as to the possibility of affecting a great and immediate diminution of crime by a certain, speedy, uniform, and painful punishment, is neither sanguine nor ill-founded ;† and if the present, or any other government, should have the courage and perseverance to undertake the entire re-construction of our system of secondary punishments, they would effect an improvement in our penal law in comparison with which

* We are sorry to find in some of the questions proposed by the committee (see e. g. 1487), a trace of an opinion more worthy of the cruel spirit of an unenlightened age, than of the wisdom which ought to characterize a modern reformer of our law, *viz.* that convicts are to be punished by sending them to perish in an unhealthy climate. A measure of the Roman empire, by which several thousand Jews were transported to the island of Sardinia, without regard to the unhealthiness of the climate, has been properly considered as worthy of the despotism from which it emanated. "Actum et (says Tacitus) de sacriis Ægyptiis Judaicisque pellendis: factumque patrum consultum ut quatuor millia libertini generis ea superstitione infecta, queis idonea ætas, in insulam Sardiniam veherentur, *coercendis illic latrociniis, et si ob gravitatem cœli interissent, vile damnum.*"—Ann. l. 2. c. 85.

† Ev. 1485-6, 1592-3.

the reforms introduced by Sir Robert Peel would shrink into nothing; and they would confer on the community a greater benefit than perhaps any other legislative measure, except an amendment of the poor laws, is capable of effecting.

There are many parts of our penal system, which in the narrow compass of an article we have not been able even to notice, and many others to which we have only alluded: if, however, the committee on secondary punishments should be re-appointed in this session, and collect additional evidence, especially on the subject of Van Dieman's Land, to which their researches have not extended; and if there should appear on the part of the government any symptom of an acknowledgment of the evils of our present system, and of a wish to amend it, we may perhaps find an opportunity of recurring, on a future occasion, to this most important and much misunderstood subject.

POSTSCRIPT

TO THE

FIRST AND SECOND APPENDICES.

THE following passages from the Eighth Report of the Society for the Improvement of Prison Discipline, convey their observations and most material conclusions from the evidence which has come before them on the snbject of secondary punishments.

"The next penalty, (to the punishment of death,) "in the scale of severity, is transportation; a sentence "essentially defective in those qualities that should "attach to judicial punishment. If even it inflicted "the sufferings which the law designs, the scene "in which they are supposed to be endured is too "remote to produce a beneficial example upon offenders "at home. A convict soon finds, on his arrival in the "colony, that if his conduct be only regulated by ordi- "nary propriety, his condition will have been benefited "by the sentence. Accounts are received in this country "of the prosperity and comfort of men who have thus

" profited by the commission of crime; and although " such instances of individual prosperity are probably " not so numerous as is generally imagined, they have " given rise to a prevalent feeling among offenders in " this country that transportation is but a separation " from connexions, and affords a prospect of successful " enterprise and advantageous settlement. It is in evi- " dence before a Committee of the House of Commons " that the generality of those who are transported con- " sider it as a party of pleasure;—as going out to see " the world;—they evince no penitence, no contrition, " but appear to rejoice at the event, and many of them " to court it. ' I have heard prisoners,' says the Ordi- " dinary of Newgate, ' when the sentence of transpor- " tation has been passed by the Recorder, return thanks " for it, and seem overjoyed at what appears to them " to be an escape from punishment.'* The sentence " therefore altogether fails to correct, and its defects, " as a reformatory punishment are equally striking. " From documents which have been laid before Parlia- " ment it appears that of 4376 convicts, whose sen- " tences had been remitted, or whose time had expired, " 296 only were considered as of reputable character; " while in Van Dieman's Land the moral condition of " the convicts appears to be far lower than even in " New South Wales.

" Transportation for a period of seven years is usually " commuted to a sentence of four years' confinement on " board the hulks. But if transportation be inefficient,

* Parliamentary Reports.

" imprisonment on board the hulks (as will be seen " hereafter) is still more objectionable. It is acknow- " ledged that a system of order and cleanliness on board " these vessels is carried to an extent that is most " creditable to those who have the superintendence of " them; yet no arrangement of which the hulk system " is capable can prevent the moral contamination which " must ever result from the nature of such imprison- " ment. Here there is an entire absence of classifica- " tion—the minor offender and the hardened convict " are associated, and compelled to drag on together " their term of imprisonment in mutual debasement. " Few quit the hulks without being more depraved " than when they entered them, while the sentence " equally fails to operate as an exemplary punishment. " The entire failure therefore of transportation as a " secondary punishment, (to say nothing of the serious " expenditure which it entails,) and the utter hopeless- " ness of improving the hulk system so as to render it " effective for that purpose, make it necessary that " recourse should be had to other punishments.

" The Committee have given to this subject their " best consideration, and have no hesitation in declaring " their conviction that an effectual substitute may be " found for the penalty of death in a well regulated " system of penitentiary discipline; a system which " shall inspire dread, not by intensity of punishment " but by unremitted occupation, seclusion, and restraint. " The enforcement of hard labour, strict silence, and a " judicious plan of solitary confinement, will be found " the most powerful of all moral instruments for the

" correction of the guilty; and when to these are added
" the application of religious instruction, the utmost
" means are exercised which society can employ for the
" punishment and reformation of the human character.
" This discipline admits of a great variety of combina-
" tion, and is therefore adapted to the treatment of
" offenders of different classes of criminality. For
" successful examples of this nature the Committee
" refer to some of our best houses of correction, and
" especially to the Penitentiary at Milbank. It is,
" however, from the United States that the most ex-
" tensive experience on this subject is to be derived;
" where a system has been adopted which combines
" solitary confinement at night, hard labour by day, the
" strict observance of silence, and attention to moral
" and religious improvement. These plans are enforced
" with great success at the prisons at Auburn and Sing-
" Sing, in the state of New York, and at Weathers-
" field, in the state of Connecticut. At sun-rise, the
" convicts proceed in regular order to the several work-
" shops, where they remain under vigilant superin-
" tendence until the hour of breakfast, when they repair
" to the common hall. When at their meals the prisoners
" are seated at tables in single rows, with their backs
" towards the centre, so that there can be no inter-
" change of signs. From one end of the work-rooms
" to the other, upwards of 500 convicts may be seen
" without a single individual being observed to turn
" his head towards a visitor. Not a whisper is heard
" throughout the apartments. At the close of day,
" labour is suspended, and the prisoners return in mili-

" tary order to their solitary cells; there they have the " opportunity of reading the Scriptures, and of reflect- " ing in silence on their past lives. The chaplain " occasionally visits the cells, instructing the ignorant, " and administering the reproofs and consolations of " religion. The influence of these visits is described " to be most beneficial; and the effect of the entire " discipline is decidedly successful in the prevention " of crime, both by the dread which the imprisonment " inspires, as well as by the reformation of the offender. " Inquiries have been instituted relative to the conduct " of prisoners released from the Auburn penitentiary— " the prison at which this system has been longest " observed—and of 206 discharged, who have been " watched over for the space of three years, 146 have " been reclaimed and maintained reputable characters " in society.

" Another system of penitentiary discipline practised " in the United States is of a more formidable character, " the severity of which has excited considerable opposi- " tion. It is enforced at Philadelphia and Pittsburg, " in the state of Pennsylvania. The main feature by " which it is distinguished from the government at " Auburn consists in the enforcement of solitary con- " finement *by day* as well as by night. It was originally " intended that this perpetual solitude should be " inflicted at the Philadelphia prison without any relief " arising from manual labour, but the Commissioners " appointed to revise the penal laws of Pennsylvania " were adverse to the experiment. This system has " now been in operation for the last eighteen months,

" and it must be allowed that although the plan is in
" some respects objectionable, the serious apprehen-
" sions to which it has given rise have not been realized.
" Both these prisons were lately visited by a member
" of this Society, who paid particular attention to the
" effect which continued solitude had produced upon
" the health of the prisoners. ' I attempted,' he writes,
" ' to detect any latent evils belonging to the system,
" and was for this purpose allowed to repair to the cells
" alone; I did so frequently, and was at length satisfied
" that the prisoners had sustained no injury from the
" seclusion. Each prisoner is employed in some branch
" of trade, and is required to execute a given quantity
" of work; if he disobeys, he is kept on low diet, no
" corporal punishment being allowed. There is, how-
" ever, but little necessity for resorting to punishment;
" for, rather than remain in idleness, the prisoners prefer
" employment for its own sake, as well as for the inter-
" course which it occasions with the prison-officers.
" Labour is here prescribed as an alleviation of punish-
" ment, and not superadded to aggravate it.' Satis-
" factory as this may be to a certain extent, it is
" notwithstanding extremely difficult, at a distance so
" remote, and with conflicting evidence, to form a
" correct judgment upon the safety and expediency of
" continued solitude, even when mitigated by employ-
" ment; and after having maturely weighed the state-
" ments adduced by the advocates of the respective
" systems, the Committee adhere to the opinion ex-
" pressed in their former Report, that solitary confine-
" ment *by day* as well as by night, however suitable

" for short periods and as a temporary punishment for " gaol-offences, would not be justifiable as an ordinary " system of prison discipline. It appears that before " the adoption of the present system at Auburn, an " experiment was tried at that prison of the effect of " perpetual solitude upon eighty prisoners, during a " period of ten months. The result was decidedly un- " favourable to the adoption of the plan, and it was " accordingly abandoned. The punishment was found " in many cases to injure the health, to impair the " reason, to endanger life, to leave the prisoner en- " feebled and unable to work on quitting confinement, " and as ignorant of any useful occupation as when he " entered it. Reformation did not follow, and conse- " quently recommitments were more frequent. This " testimony is corroborated by the opinions of the " governors of several of the best regulated prisons in " England, whom the Committee have consulted on this " important subject. They unite in stating their con- " viction that solitary confinement is a punishment to " be used with extreme caution; that the health of " every individual must be regularly watched; that " serious effects would have resulted from its adoption " in their own experience, had they not been prevented " by the timely removal of the prisoner into society, " and that it would not be wise to render general a " discipline the administration of which requires un- " ceasing vigilance, and the abuse of which may be so " fatal to the mind as well as health of the prisoner. " Much of the benefit ascribed to solitary confinement " may be derived from allowing the prisoners to labour

" in classes agreeably to the course pursued at Auburn,
" but restricting them to the most rigid observance of
" silence. Great importance is justly attached in these
" penitentiaries to the effect of religious impressions in
" a state of solitude; and doubtless the arrangements
" for imparting such, have been carefully made.

The Committee of the House of Commons, appointed to inquire into the best mode of giving efficiency to secondary punishments, have recently (June 22, 1832) sent in their Report, which has been printed, together with the additional evidence collected. Some extracts from their Report will serve to shew the state of the question on several of the chief points of inquiry. With respect to the evils resulting from the indiscriminate association of prisoners, they state that—

" Efforts have, of late years, been made to remedy
" these evils, by the classification of prisoners; but the
" result has been far from satisfactory. By the Gaol
" Act, 4 Geo. IV. c. 64, no provision is made for
" dividing prisoners, before or after trial, into more
" than two classes. The larger prisons, especially those
" in and near the metropolis, usually contain several
" hundred prisoners, whose periods of confinement
" before trial, vary from a few days to several months.
" It is hardly necessary to remark, that any classifica-
" tion, with the inadequate means provided by the
" Gaol Act, must be inefficacious; that in the case of
" untried, it must associate the most hardened offenders

" with those who may be guiltless of crime; and that " even an innocent man sent for trial can hardly " escape contamination. Your Committee are of " opinion, that none but a moral classification can be " effectual; but they fear that the difficulties which " stand in the way of such a classification, whether as " regarding prisoners before or after trial, are nearly " insurmountable. If such be the difficulty of estab- " lishing an effective system of classification, your " Committee see no alternative but that of the sepa- " ration of prisoners both before and after trial. They " therefore recommend that prisoners, when committed " for trial, should be placed in light, solitary sleeping " cells, provided with employment where practicable, " and furnished with moral and religious books; that, " although they should be strictly confined to their " cells at night, and while at their meals, they should " be allowed to receive visits from their friends, under " proper superintendence, and also to walk in the " airing-yards of the prison, in company with the other " untried prisoners, under the constant and vigilant " superintendence of a turnkey; and, although your " Committee consider the classification of prisoners " insufficient of itself to prevent contamination, they " think that, used as an auxiliary to the precautions " here recommended, it may be found of advantage.

" If your Committee felt any difficulty in recom- " mending a treatment approaching to solitary confine- " ment, in the case of untried prisoners, they have " none whatever in urging its adoption with reference " to those hitherto sentenced to imprisonment, with or

" without hard labour. With respect to what is usually " termed hard labour on the tread-wheel, so different is " the extent to which it is inflicted, in different prisons, " that, unless in some it is carried to an excessive and " cruel degree of severity, it is in others only a punish- " ment in name. By a reference to the Appendix, it " will be seen, that there is so little uniformity of " system, as regards the number of hours devoted to " labour, the height of the steps of the wheel, and the " rapidity of its rotation, that in some prisons the " punishment is nearly three times as severe as in " others. For instance, in Bedford Gaol, the labour " performed is equal to an ascent of 5,000 feet in " summer, and 3,600 in winter, while in Knutsford " House of Correction it is 14,000 feet in summer, and " 9,800 in winter; so that a prisoner, sentenced to " three months' imprisonment and hard labour in " Knutsford Gaol, would perform as much work as one " sentenced to eight months' labour in Bedford Gaol. " In the one case your Committee do not find fault " with the discipline as being too severe, but they " cannot help suspecting that in the other it is infinitely " too lax. The same inequality exists in the diet of " the prisoners; the weekly cost of feeding a prisoner " in the Gaol of Hereford, being 3*s.* 7¾*d.*; and, in the " House of Correction at Preston, 1*s.* 11½*d.*

" Your Committee, therefore, taking into considera- " tion all the objections to which the present mode of " punishment is liable, its inefficiency, its inequality, " and its tendency to demoralize, instead of to improve, " are of opinion, that hard labour alone is not

" sufficient for the correction of crime, and that hard " labour, with the addition of solitary confinement, " should be substituted. They are fully aware of the " caution necessary to be observed in adopting this " new mode of punishment. Experience in the Gaols " of the United States proves, that solitary confinement, " strictly enforced, and amounting to a total seclusion " from all society, if continued for any length of time, " is attended with the worst consequences; that it " destroys the physical, and frequently the mental, " powers of its victims, and that instances have oc- " curred of their resorting to suicide to escape its " horrors. The system of confinement which your " Committee would recommend, is of a very mitigated " description, and formed in imitation of that which " has been practised in the prisons at Auburn and " Sing Sing, in the United States of America.

" They, therefore, recommend that, in all cases " which have hitherto been punished with imprisonment, " with or without hard labour, the prisoners be in " future confined in light solitary cells, except while at " hard labour: that, in proceeding to and returning " from exercise, they be marched in single files, and " strict care taken to prevent even a whisper passing " from one prisoner to another: that, to prevent con- " versation while at exercise, the wheel be divided " into compartments, with partitions to contain one " person in each; and that no more prisoners be taken " out for exercise at a time than may be sufficient to " fill the wheel: that no prisoner be allowed to receive " visits from his friends, or to hold any communication

" with them even by letter, except in special cases, and " with the permission of the visiting Magistrates: that, " when shut up in their cells, the strictest silence be " enforced, and for that purpose a turnkey be constantly " perambulating the galleries of the prison: further, " that every cell be furnished with books of a moral " and religious character, and such employment pro- " vided for the prisoners, when not at hard labour, as " may tend to encourage habits of industry, and repay " a portion of the expense incurred in their main- " tenance.

* * * * * *

" The more frequent delivery of gaols is an object of " great importance, as the speedy infliction of punish- " ment, combined with its certainty, is the best pre- " ventive of crime. But, in England, a prisoner is " frequently confined, before trial, for a longer period " than that to which he is sentenced after conviction, " while, should he be acquitted, no reparation can " be made to him for the restraint and degradation " to which he has been subjected. Nor does the " system work alike or equally; in London, the period " of confinement, before trial, cannot exceed six " weeks, while in some counties it may extend to " several months; an evil aggravated by the custom " which prevails, in some parts of the country, of " committing for trial at the assizes for offences " within the jurisdiction of the intervening court of " quarter sessions. A third assize has been insti- " tuted in the home-circuit; the benefits which ' have resulted from this arrangement, afford a

" strong argument in favour of extending it to the " other circuits. Taking, therefore, into consideration " the inequality of imprisonment, before trial, in cases " of capital felonies, in London not exceeding five or " six weeks; in the home-circuit, four or five months; " and, in other parts of the country, extending to seven " or eight months: your Committee recommend to the " serious consideration of the House, the expediency " of affording, by a more frequent gaol-delivery, some " remedy to the evil they have pointed out."

In reference to the Penitentiary at Millbank, the Committee state that—

" As a place of punishment, it possesses one great " advantage over any other in this country, in being " generally dreaded for the strictness of the discipline, " and irksomeness of the confinement. There was, " however, till very lately, much to be desired in the " way of improvement. It was the rule of the esta- " blishment to divide the prisoners into two classes; on " their entrance into the prison, they were confined in " the first class; after remaining in which, from " eighteen months to two years, they were removed to " the second. During the first period, separation was " always strictly enforced (except when the prisoners " were at work in the crank-mills and water-machine " for a short time each day); and it appears that, " generally speaking, a decided improvement in their " deportment and conduct took place. But, on being " removed to the second class, and being allowed to " associate with their fellow-prisoners during the day, " the consequences, as described by the Governor and

" Chaplain, were such as might have been expected; " any progress towards reformation, effected by the " discipline of the first class, being frequently followed " by a relapse when removed to the second. Your " Committee, however, are given to understand, that " new regulations have lately been adopted, that there " is no longer a distinction between the classes, and " that it is intended to subject the convicts, in future, " to the discipline of the first class during the whole " period of their sentence, from which it is expected " that hopes of permanent amendment may be enter- " tained, and that a shorter period of punishment will " be found sufficient."

The Committee express " their unqualified disapprobation of the whole system pursued on board the hulks," and adduce considerable evidence to support this conclusion. With respect to the labour on board the hulks, the Committee state—

" During the day, the convicts are employed in the " arsenals and dock-yards, but there is nothing in the " nature or severity of their employment which deserves " the name of punishment or hard labour. They are " supposed to work from eight to ten hours per day, " according to the season; but so much time is lost in " the repeated musters which it is necessary to make, " when going to, or returning from labour, that the " number of hours' work actually performed does not " exceed eight and three quarters in summer, and six " and a half in winter. As a common labourer usually " works ten hours per day, and when at task-work, or " during harvest-time, much longer, the Committee

" fully agree with the opinion expressed, that the " convicts do no more work than is sufficient to keep " them in health and exercise; and ' that the situation " of a convict cannot be considered penal; that it is a " state of restriction, but hardly of punishment.' In- " deed, three out of four convicts examined by your " Committee, admitted that the labour is not more " than sufficient to keep them regularly employed, and " less severe than the daily occupation of a labourer.

" This short sketch of the manner in which a cri- " minal sentenced to transportation for crimes to which " the law affixes the penalty of death, passes his time, " which pourtrays him well-fed, well-clothed, indulging " in riotous enjoyment by night, with moderate labour " by day, will prepare the House for readily believing " that confinement on board the hulks fails to excite a " proper feeling of terror in the minds of those who are " likely to come under its operation. The Minutes of " Evidence furnish ample testimony, that the hulks are " not dreaded; ' that the life in them is considered a " pretty jolly life ;' and that if a criminal can conquer the " sense of shame, which such degradation is calculated " to excite, he is in a better situation than a large " portion of the working-classes, who have nothing but " their daily labour to depend on for subsistence. " Indeed, so far is this punishment from operating as a " preventive to crime, that your Committee have " evidence, that the situation of a convict has been " regarded with envy by the free-labourers who see " him at his daily work; and in the words of Mr. Lang, " the master shipwright of Woolwich dockyard, under

" whose superintendence all the convicts in that yard " are placed, ' many labourers would be glad to change " places with him, and would be much better off than " they were before.'

" Notwithstanding all that your Committee have " been under the necessity of stating, with respect to " the system hitherto pursued in the hulks, they are by " no means prepared to recommend the abolition of the " convict establishment. The punishment of mere " transportation to New South Wales, as they will " hereafter have occasion to show, is not sufficient to " deter from the commission of crime, and as yet no " means have been suggested of inflicting adequate " punishment in the penal colonies without entailing a " very great additional expense on the country. It is " therefore necessary, that the more exclusively penal " part of the sentence of criminals condemned to trans- " portation, should be inflicted before they are sent to " New South Wales; but, as the Penitentiary is not " sufficiently large to receive, even for a limited period, " all those who are sentenced to transportation, and is, " besides, attended with a heavy expense, an improved " system of hard-labour in the dockyards and arsenals, " which may repay to the country a portion of the cost " of maintaining the convicts, appears to your Com- " mittee desirable; and they entertain a confident " expectation, that, with judicious management, such " labour may be made effectual to the punishment of " the criminal, and conducive to his moral improve- " ment."

The Committee admit the evils of transportation, and

the vicious state of society, but they nevertheless state that—

"Although transportation, as known to the practice "of this country, appears inadequate if inflicted as the "sole penalty for crimes of a deeper dye, it may be "considered a most valuable ingredient in the system "of secondary punishments. Unless there existed "some such mode of disposing of criminals whose "offences do not merit the penalty of death, but "whose morals are so depraved that their reformation "can hardly be expected, no alternative would remain "between perpetual imprisonment and the constant "infusion into society of malefactors, who, after the "term of their punishment had arrived, would again "be thrown as outcasts on the world, without friends, "without character, and without the means of gaining "an honest livelihood. This evil is strongly felt in the "United States, and the want of some place to which "irreclaimable offenders may be sent is a source of "anxiety to the statesmen of that country; in the "words of a competent witness, 'it is the cause of the "gradually increasing culprit population in America, "of which the Legislature cannot rid the country.'"

The Committee thus describe the remedies which they propose for the admitted evils of the system.

"With respect to the general treatment of convicts "in the penal colonies, your Committee were desirous "of ascertaining by what means it could be made "consistent with its professed object, and various "suggestions have been offered for that purpose. It "was the opinion of some of the witnesses most con-

" versant with the subject, that transportation might be
" rendered an object of greater terror, if the convicts,
" on their first arrival in the colony, were subjected to
" a certain period of hard labour in the road-gangs.
" But although, unquestionably, such a punishment
" would be severely felt, its tendency to render the
" criminal more depraved, if possible, and more reck-
" less of consequences, and the great expense, from
" the difficulty of finding profitable employment for so
" many as must be added to the Government-gangs,
" are objections to the adoption of such a plan. The
" employment of convicts by the Government, except
" for offences committed in the colony, appears to be of
" very doubtful policy; it necessarily congregates them
" in large numbers, the evil consequences of which
" have already been adverted to, and is inconsistent
" with economy, as the public works on which they have
" usually been employed can be executed at a cheaper
" rate by contract than by Government. But the
" practice of allowing any portion of the Government
" convicts to sleep out of barracks, and to provide
" themselves with lodgings in the town, with leave to
" work on their own account, appears so incompatible
" with any well-regulated system of restraint, as to
" require the immediate attention of the colonial de-
" partment. The Committee, therefore, recommend,
" That all convicts in the service of Government be
" strictly confined in their barracks at night in separate
" cells, and that the barracks be, for that purpose,
" altered upon the plan of the prisons in the United
" States. That all male convicts, on their arrival from

" the mother country, be assigned to settlers in the " rural districts, and that none be allowed to enter the " service of those living in the large towns, until after " several years' residence in the colony.

" That none but persons of respectability be allowed " to have convicts in their service: the consequences " of allowing settlers of profligate and abandoned " character to have convict servants, are forcibly com- " mented on in the Report of Archdeacon Scott.

" That, as the heavy expenses attendant on the " support of the colonies in New South Wales and " Van Diemen's Land are likely to be augmented by " *the increased number of persons whom it is proposed* " *to send there*, no convict be assigned to a settler " until he shall have paid, or given security for the " payment, by instalments, of the expense incurred " in the conveyance of such convict from the mother " country.

" That the service in the colony necessary to the " obtaining tickets of leave, which appear hitherto to " have been granted on too easy terms, be not short- " ened in consequence of any punishment inflicted " previously to transportation.

" It was with a knowledge of the difficulty of pro- " viding adequate punishment in the colony, that the " Committee recommended, in their remarks on the " hulks, an improved system of convict labour in the " dockyards; and they are of opinion, that the in- " creased severity of the punishment thus inflicted on " convicts previous to transportation, will render it " unnecessary, on their arrival in New South Wales, to

" resort to any measures of coercion beyond what may " be required to insure a wholesome restraint, and a " denial of indulgences inconsistent with a state of " punishment.

" The Committee trust, that thus transportation will " be clothed with sufficient terrors to deter from the " commission of crime many whom no virtuous motives " will influence ; and that they will learn, that whatever " advantages may eventually be acquired by banish- " ment from the land of their birth, can be attained " only by the painful endurance of a severe and pro- " tracted servitude."

APPENDIX, No. III.

Colonization.

SUPPOSING the system of stocking colonies with criminals to be, as may be hoped, abandoned, never to be restored, it becomes an important question, what steps shall be taken in respect of the now convict-colonies; of our other existing colonies; and of any that may hereafter be contemplated? Shall everything be left to go on as it is, with the single exception of no longer transporting criminals? Or shall any means be thought of for remedying the mischiefs done to our convict-colonies, and assimilating them to the character of our other colonies? Or shall we consider whether important improvements may not be introduced into those also, and into the whole of our plans of founding and conducting colonies?

In order to discuss these questions profitably, it will be necessary to premise a brief statement of some general principles that have been usually overlooked, which has been attempted in the following

Suggestions for the Improvement of our System of Colonization.

It is remarkable, that notwithstanding the greater facilities which modern times afford for the settlement and growth of colonies, the ancients were more successful with theirs than we are with ours. If we look back on the history of Greek emigrations especially, we find many ruinous enterprises indeed, owing sometimes to the situation for the new settlement being ill-chosen, sometimes to the difficulties and dangers of rude and unskilful navigators; sometimes again, to the imprudence of the settlers, or the jealousy of neighbours embroiling the infant state in quarrels before it was strong enough to protect itself. But supposing the colony to escape accidents of this kind, it was generally so efficient in itself, so well organized and equipped, as to thrive; and this at far less cost, it would seem, and with less looking after, on the part of the parent state, than is usually bestowed (and often bestowed in vain) on our colonial establishments. After a few years a colony was seen, not unfrequently to rise into a state and maturity that afforded support or threatened rivalry to the state that had lately called it into existence.

Our colonies are, in fact, far less liable to those accidents which have been alluded to as occasionally interfering with the success of those of ancient times, both from the greater stock of useful knowledge, and from the greater power and wealth possessed by those

who now send out colonies. And yet how many instances there are of modern European states, carefully providing for a new plantation of its people—expending on it ten times as much money and labour as sufficed in earlier ages; and still this tender plant of theirs will be stunted and sickly; and, if it does not die, must be still nursed or tended like an exotic. At length, after years of anxious looking after, it is found to have cost the parent state more than it is worth; or, perhaps, as in the instance of the United States, we have succeeded in rearing a child that disowns its parent—that has acquired habits and feelings, and a tone of character incompatible with that political στοργη which colonies formerly are represented as entertaining, through generations, for the mother country.

The main cause of this difference may be stated in few words. We send out colonies of the limbs, without the belly and head;—of needy persons, many of them mere paupers, or even criminals; colonies made up of *a single class* of persons in the community, and that the most helpless, and the most unfit to perpetuate our national character, and to become the fathers of a race whose habits of thinking and feeling shall correspond to those which, in the mean time, we are cherishing at home. The ancients, on the contrary, sent out *a representation of the parent state—colonists from all ranks.* We stock the farm with creeping and climbing plants, without any trees of firmer growth for them to entwine round. A hop-ground left without poles, the plants matted confusedly together, and scrambling on the ground in tangled heaps, with here and there some

clinging to rank thistles and hemlocks, would be an apt emblem of a modern colony. They began by nominating to the honourable office of captain or leader of the colony, one of the chief men, if not the chief man of the state,—like the queen bee leading the workers. Monarchies provided a prince of the blood royal; an aristocracy its choicest nobleman; a democracy its most influential citizen. These naturally carried along with them some of their own station in life,—their companions and friends; some of their immediate dependents also—of those between themselves and the lowest class; and were encouraged in various ways to do so. The lowest class again followed with alacrity, because they found themselves moving *with*, and not *away from* the state of society in which they had been living. It was the same social and political union under which they had been born and bred; and to prevent any contrary impression being made, the utmost solemnity was observed in transferring the rites of Pagan superstition. They carried with them their gods—their festivals—their games; all, in short, that held together, and kept entire the fabric of society as it existed in the parent state. Nothing was left behind that could be moved,—of all that the heart or eye of an exile misses. The new colony was made to appear as if time or chance had reduced the whole community to smaller dimensions, leaving it still essentially the same home and country to its surviving members. It consisted of a general contribution of members from all classes, and so became, on its first settlement, a mature state, with all the component parts of that which sent it forth. It

was a transfer of population, therefore, which gave rise to no sense of degradation, as if the colonist were thrust out from a higher to a lower description of community.

Let us look now at the contrast which a modern colony presents, in all these important features, and consider the natural results, Want presses a part of the population of an old-established community such as ours. *Those who are suffering under this pressure* are encouraged to go and settle themselves elsewhere, in a country whose soil, perhaps, has been ascertained to be fertile, its climate healthy, and its other circumstances favourable for the enterprize. The protection of our arms, and the benefit of free commercial intercourse with us and with other nations, are held out as inducements to emigrate. We are liberal, perhaps profuse, in our grants of pecuniary aid from the public purse. We moreover furnish for our helpless community a government, and perhaps laws; and appoint over them some tried civil or military servant of the state, to be succeeded by others of the same high character. Our newspapers are full of glowing pictures of this and of milk and honey. All who are needy or discontented—all who seek in vain at home for independence and comfort and future wealth, are called on to seize the golden moment, and repair to it.

"Eja!
Quid statis? Nolint. Atque licet esse beatis."

Those who do go, have, for the most part, made a reluctant choice between starvation and exile. They go, often indeed with their imaginations full of vague

notions of future riches, for which they are nothing the better: but they go, with a consciousness of being *exiled;* and when they arrive at their destination, it is an exile. I am not now alluding to the morbid sensibilities of a refined mind: I am speaking of the uneducated clown, the drudging mechanic. His eye and his heart miss in all directions objects of social interest, on the influence of which he never speculated; but which he nevertheless felt, and must crave after. He has been accustomed, perhaps, to see the squire's house and park; and he misses this object, not only when his wants, which found relief there, recur; but simply because he, from a child, has been accustomed to see gentry in the land. He has been used to go to his church; if the settlement be new, there is no place of worship. He has children old enough for school; but there is no schoolmaster. He needs religious comfort or instruction, or advice in the conduct of his life; there is no parson, and no parson's wife. His very pastimes and modes of relaxation have been so associated with the state of society, in which he learnt to enjoy them, that they are no longer the same to him. In short, no care has been taken, as was the custom formerly, to make especial provision for the cravings of his moral nature; no forethought to carry away some of the natural soil about the roots of the tree that has been transplanted. We have thought of our colonist, only as of so much flesh and blood requiring to be renewed by food, and protected by clothing and shelter; but as for that food of the heart, which the poor man

requires as much as the more refined, although of a different quality; it has not been thought of.

Nor is this defect in our system of colonization, one that merely affects happiness of the emigrant-colonist, by adding to the strangeness of his condition, and keeping alive a mischievous regret for his old country. He was a member of a community made up of various orders; he was a wheel in a machine of a totally different construction; it is a chance if he answers under circumstances so different. He must adapt his habits of thinking and acting to the change; and in doing this he ceases to be an Englishman. He has no longer, probably, his superior in wealth to ask for pecuniary assistance; his superior in education to ask for instruction and advice. His wits are doubtless sharpened by the necessity of doing without these accustomed supports; but whilst he learns to be independently sacrificing some objects, or by otherwise supplying some, he finds himself and those around him gradually coalescing into a community of a totally different character from that which they left at home. Witness the United States of America. Let any thoughtful observer consider the traits of character that distinguish these children of our fathers from Englishmen of the present day; and the probable causes of the difference. We are apt enough, indeed, to ridicule as foibles, or to censure as faults, their national peculiarities—their deviations from our habits. But it would be wiser and worthier of us to trace them to their causes, and to add the result of our inquiry to our stock of legislative experience. We sent them forth, poor

and struggling only for the means of subsistence. Is it we that should taunt them with becoming a money-making, trafficking people? We severed the humble from the nobles of our land, and formed the embryo of a plebeian nation. Is it we that should find fault with their extravagant abhorrence of rank, or their want of the high breeding and gentle blood which we so sparingly bestowed on them? We gave for the new community only some of the ingredients that enter into our own. Can we wonder at the want of resemblance, and of congenial feeling, which has been the result?

And yet our American colonies, including the islands which are still attached to us, were not altogether without an admixture of the higher ranks of the British community: and no doubt their early advance to wealth and strength was greatly promoted by this circumstance. But the advantage, such as it was, was accidental. It made no part of our legislative project. Whoever of birth or fortune betook themselves to the settlements in the New World, did so in order to escape political struggles, and their consequences; which made their stay at home uneasy and dangerous. Surely it is a reproach to modern nations that none of their colonies are, even comparatively, well-constituted in this respect, through the influence of political or other evils at home, such as drive out some of the better portions of the community, as a portion of the life-blood is forced from a wound, and not as a healthy secretion. Our later colonies have not had even this scanty and ill-administered aid. They are altogether communities of needy persons representing only one class in the parent

country, — persons who carry away with them the habits of a complex fabric of society to encounter the situation of a solitary savage tribe, each member of which has been trained from infancy to live among equals; to shift for himself, however rudely, and to perform, though with barbarian clumsiness, almost all the offices of life. The military and civil appointments attached to them form really no exceptions; for these are no parts of the permanent community, but extraneous to it—temporary props, instead of stones in the edifice. They live to themselves, and are always in readiness to shift their quarters.

Much has been said lately about enlarging our colonies, or establishing new ones, in order to relieve Great Britain of a portion of its needy population. Our success, experience shews, must be purchased, if at all, at an enormous rate, and the final result must be the rise of states, which, like those in America, may be destined to influence the character and manners of the whole world, and to form important portions of civilized society, without deriving from us any of that national character, on which we so much congratulate ourselves; owing their national character, in fact, to chance, and that chance a very unpromising one.

But what is to be done? Are we to force our nobles and gentry to join the herd of emigrants? They have no need to go,—no inclination to go; and why should they go? What inducement can we hold out sufficient to allure them? Can we afford to bribe them? They may, I conceive, be bribed to go; but not by pounds, shillings, and pence. Honour, and rank, and power,

are less ruinous bribes than money, and yet are more to the purpose, inasmuch as they influence more generous minds. Offer an English gentleman of influence, and competent fortune (though such, perhaps, as may fall much short of his wishes) a sum of money, however large, to quit his home permanently and take a share in the foundation of a colony; and the more he possesses of those generous traits of character which qualify him for the part he would have to act, the less likely is he to accept the bribe. But offer him a patent of nobility for himself and his heirs,—offer him an hereditary station in the government of the future community; and there will be some chance of his acceding to the proposal. And he would not go alone. He would be followed by some few of those who are moving in the same society with him,—near relations, intimate friends. He would be followed by some, too, of an intermediate grade between him and the mass of needy persons that form the majority of the colony,—his immediate dependents,—persons connected with them, or with the members of his household. And if not *one*, but some half-dozen gentlemen of influence were thus tempted out, the sacrifice would be less felt by each, and the numbers of respectable emigrants which their united influence would draw after them so much greater. A colony so formed would fairly represent English society, and every new comer would have his own class to fall into; and to whatever class he belonged he would find its relation to the others, and the support derived from the others much the same as in the parent country. There would then be

little more in Van Diemen's Land, or in Canada revolting to the habits and feelings of an emigrant than if he had merely shifted his residence from Sussex to Cumberland or Devonshire,—little more than a change of natural scenery.

And among the essential provisions which it would then be far easier to make than at present, is the appointment of one or more well-chosen clergymen. It is so great a sacrifice to quit, not simply the place of abode, but the habits of society, to which an educated man is brought up, that, as our new colonies are constituted, it would be no easy matter to obtain accomplished clergymen for them. In truth, however, it makes no part of our colonization-plans; and when a religious establishment is formed in any of these settlements, it has to contend with the unfavourable habits which have been formed among Christians, whose devotions have been long unaided by the presence of a clergyman or a common place of worship. By an accomplished clergyman, however, I do not mean a man of mere learning or eloquence, or even piety; but one whose acquirements would give him weight with the better sort, and whose character and talents would, at the same time answer for the particular situation in which he would be placed.

The same may be urged in respect of men of other professions and pursuits. The desirable consummation of the plan would be, that a specimen or sample, as it were, of all that goes to make up society in the parent country should *at once* be transferred to its colony. Instead of sending out bad seedlings, and watching their

uncertain growth, let us try whether a perfect tree will not bear transplanting: if it succeeds, we shall have saved so much expense and trouble in the rearing; as soon as it strikes its roots into the new soil it will shift for itself. Such a colony, moreover, will be united to us by ties to which one of a different constitution must be a stranger. It will have received from us, and will always trace to us, all its social ingredients. Its highest class will be ours,—its gentry ours,—its clergy ours,—its lower and its lowest ranks all ours; all corresponding and congenial to our manners, institutions, and even our prejudices. Instead of grudgingly casting our morsels to a miserable dependent, we shall have sent forth a child worthy of its parent, and capable of maintaining itself.

These suggestions are obviously no more than prefatory to a detailed scheme for the formation of a colony on the general principle which I have been advocating; but, supposing that principle to be sound, the details of the measure would not be difficult. Certain it is that our colonies prove enormously expensive to us: such a system promises an earlier maturity to them, and consequently a speedier release from the cost of assisting them. Our colonies are associated in the minds of all classes, especially of our poorer classes, with the idea of banishment from all that is nearest to their hearts and most familiar to their habits. Such a system would remove much that creates this association. Our colonies are not only slow in growing to maturity, but grow up unlike the mother country, and acquire a national character

almost necessarily opposed to that of the parent state;—such a system would remove the cause of this, too. And lastly, among the disadvantages under which the colonist is now placed, none is more more painfully felt by some, none so mischievous to all, as the want of the same religious and moral fostering which was enjoyed at home. This, too, is a defect whose remedy is proposed in the above scheme. It contemplates a colony in short, that shall be an entire British community, and not merely one formed of British materials,—a community that shall carry away from the soil of Great Britain the manners, the institutions, the religion, the private and the public character of those whom they leave behind on it; and so carry them away as to plant them in the new soil where they settle.

Should it be replied, however, that all this is indeed theoretically true, but cannot be reduced to practice in modern times, it is at least some advantage, though it may be a mortifying one, to know where we actually stand, and to be aware of our own inferiority, in this point, to the Greeks and Romans, if not in political wisdom, at least in the power of applying it. If the art of founding such colonies as theirs be indeed one of the "*artes perditæ*," it is well to be sensible of the difference and of the cause of it, that we may at least not deceive ourselves by calculating on producing similar effects by dissimilar and inadequate means. But if we are ashamed to confess this inferiority, we should be ashamed to exhibit it: we should consider whether we may not, from candidly contemplating it, proceed

to do something towards at least diminishing, if we cannot completely remove it.

It may be necessary to notice an objection that is not unlikely to be raised against the practical utility of the foregoing remarks. These views, it may be said, might have been advantageously acted on when we first began to colonize. But we have not now to form a system of colonization; this has been long since done. Wisely or unwisely, we have adopted a different course, and are actually proceeding on it. The practical and pressing questions, therefore, about colonization, are those which relate to the state of things as they are in these settlements of ours,—the best remedies which may be applied to the evils existing in them,—the best method of improving them now that they have been founded.

And it must be admitted that, with respect to our old colonies, this is true; but our new colonies are not yet out of our forming hands. There is one, especially, in the constitution of which we are bound to retrace, if possible, all our steps,—bound on every principle of expediency and national honour; nay, on a principle (if such a principle there be) of national *conscience*. It will be readily understood that this one is the convict colony in New South Wales,—a colony founded and maintained on principles which, if acted on by an individual in private life, would expose him to the charge either of insanity or of shameless profligacy. Imagine the case of a household most carefully made up of picked specimens from all the idle, mischievous,

and notoriously bad characters in the country! Surely the man who should be mad or wicked enough to bring together this monstrous family, and to keep up its numbers and character by continual fresh supplies, would be scouted from the society he so outraged,—would be denounced as the author of a diabolical nuisance to his neighbourhood and his country, and would be proclaimed infamous for setting at nought all morality and decency. What is it better, that, instead of a household, it is a whole people we have so brought together, and are so keeping up?—that it is the wide society of the whole world, and not of a single country, against which the nuisance is committed?

If, then, the question be, What can be done for this colony? Begin, I should say, by breaking up the system; begin by removing all the actual unemancipated convicts. I do not undertake to point out the best mode of disposing of these; but let them be brought home and disposed of in any way rather than remain. There is no chance for the colony until this preliminary step be taken. In the next place I should propose measures, which may be compared to the fumigation of pestilential apartments, or to the careful search made by the Israelites in every recess and corner of their houses, for the purpose of casting away all their old leaven before beginning to make the unleavened loaves for the Passover. There should be a change of place,—a transfer, if possible, of the seat of government to some site within the colony, but as yet untainted with the defiling associations of crime and infamy. *Names* of places, too, should be changed;

they make part of the moral atmosphere of a country, Witness the successful policy of the French at the revolution. The name of *Botany Bay*, &c. could not, for generations, become connected in men's minds with honesty, sober industry, and the higher qualities of the British character. Change as much as will admit of change in place and name; and the colonists sent out with authority to effect this may then be selected on the principles which I have recommended for the foundation of an entirely new colony. And it might be worth while to bestow, at first, a labour and expense on this new portion of the colony more than adequate to its *intrinsic* importance; because it would be destined to serve as a nucleus of honest industry, civilization, and general improvement for the rest of the colony,—a scion, as it were, grafted on the wild stock, and designed to become, in time, the whole tree.

But these measures, if carried into effect at all, must be taken in hand soon. Time,—no distant time, perhaps,—may place this "foul disnatured" progeny of ours out of our power for good or for harm. Let us count the years that have passed since we first scattered emigrants along the coast of America. It is but as yesterday,—and look at the gigantic people that has arisen. Thank heaven that in morals and in civilization they are at this day what they are. But can we look forward, without a shudder, at the appalling spectacle which a few generations hence may be doomed to witness in Australia? Pass by as many years to come as it has taken the United States of America to attain to their present maturity, and here

will be another new world with another new people, stretching out its population unchecked; rapid in its increase of wealth, and art, and power; taking its place in the congress of the mightiest nations; rivalling, perhaps, ruling them; — and then think what stuff this people will have been made of; and who it is that posterity will then curse for bringing this mildew on the social intercourse of the world; who it is that will be answerable for the injury done by it to human virtue and human happiness at a tribunal more distant, but more awful even than posterity.



THE END.

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Thoughts on secondary punishments : in a letter to Earl Grey

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