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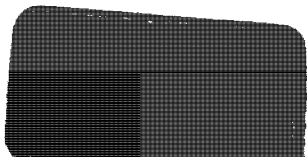
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CRIME
AND
PUNISHMENT.

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CRIME AND PUNISHMENT.

THE MARK SYSTEM,

FRAMED TO MIX PERSUASION WITH PUNISHMENT, AND MAKE THEIR
EFFECT IMPROVING, YET THEIR OPERATION SEVERE.

BY CAPTAIN MACONOCHE, R. N., K. H.,

LATE SUPERINTENDENT OF NORFOLK ISLAND.

“Our present punishments resemble every thing that is most deteriorating in ordinary life; and they deteriorate accordingly. If we would infuse into them those impulses, which under Providential guidance make other forms of adversity improving, we would make them improving also,” pp. 42, 3, *et passim*.

LONDON :

J. HATCHARD AND SON, 187, PICCADILLY.

1846.

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THE
PUBLISHED
234300B
ANTHONY &
TALLEN
R 1942

PRINTED BY G. WHITING, BEAUFORT HOUSE, STRAND.

P R E F A C E.

THE increase of crime and deteriorating effect of our ordinary punishments are admissions in the mouths of many, but would seem to be laid to heart only by few. They elicit frequent expressions of regret, but they do not lead to energetic acts of improvement. The individual corrupter of youth, or betrayer of comparative innocence, when brought to justice is ostentatiously censured ; but the wholesale process continues with little notice.

Many circumstances may be considered to account for this apathy, though certainly none can justify it. The rude justice of early times, retaliation, still complicates the subject ; and faint hearts sink under the difficulties thus alone created. We sow the wind, and suffer ourselves to be overborne by the whirlwind. We seek to overcome evil by evil, and think that good cannot be obtained because the result of this process is more evil still.

The present writer has enjoyed many peculiar facilities for observing and reflecting on this subject. He has recently concluded a service of eight years

Walden 9 Mar. 1843

in the Penal Colonies, during the four last of which he commanded on Norfolk Island, with from 1500 to 2000 prisoners constantly under his charge. He was unable to try his entire system with these men, partly from want of scope, partly from want of power. He could do little more than keep its principles in view ; and as a whole it was thus subjected to that most hazardous of all tests, a half trial. Yet even so, crime diminished with him on the Island to nearly one-half of what it had both previously been, and has since become. Of 920 doubly convicted men discharged by him to Sydney during his command only twenty, little more than 2 per cent., had been reconvicted up to January 1845. And of 527 first convicted men transferred by him to Van Diemen's Land on indulgence in February 1844, only fifteen, under 3 per cent., were under punishment (that is to say, had committed grave offence) in July last, after a period of sixteen months,—while, amidst all the difficulties of the colony, 454, or above four-fifths, were in private service, or otherwise respectably maintaining themselves. The proportion of 10,365 locally trained prisoners at the same time under punishment was 888, or no less than 9 per cent., and in service 6642, or something under three-fifths,—in both respects showing a striking inferiority ; though the men who had been under the Mark System had at first to contend with a strong prepossession against them as coming from Norfolk Island,—they had no friends to assist them in overcoming

this prepossession,—and no acquaintance with work peculiar to Van Diemen's Land otherwise to recommend them. These facts severally rest on returns laid before Parliament during the present session.*

There seems, then, here the strongest *prima facie* evidence that the plans of the writer deserve consideration. In the annexed pages they are otherwise exhibited in their most comprehensive yet succinct form, and are sought to be regarded economically, as well as morally and politically. In all these aspects they hold out a large promise; and this uniformity of result is another presumption in their favour. It is the exclusive employment of force in penal discipline that at present defeats its objects, and swells its expenditure; and the introduction of persuasion that would remedy the one evil, would equally abate the other.

The entire subject is of great importance, and ought also to excite great interest. Our committals are now nearly 200,000 annually within the three kingdoms, and greatly exceed this number within the empire. Above a tenth of them are of children, and almost a third of youths under twenty. We execute very few;—we transport under 5000;—even these last we turn to bad account in another hemisphere;—and the whole (if we believe that our

* See also Note, p. 53.

existing forms of punishment deteriorate, of which there can be no serious doubt), we may be thus said to train at great expense, and discharge, apostles of evil, graduates in its details, to corrupt and seduce their, perhaps still hesitating, friends and companions. In this proportion, then, we directly contribute to lower the tone of moral feeling in our population; and, while conducting this process, are we entitled to lament over the increase of crime, and bow before it as an unavoidable calamity?

And there is also another point of view in which the question may be placed, in the hope of drawing public attention to it. The improvements that have been made in this department within the last few years have all been in apparatus, not system. The abstract principles of punishment are just what they always were, vindictive and retributory, not corrective; and these improvements have also been nearly all in the machinery of *force*,—for with the single exception of increased means of religious instruction, the *materiel* of persuasion in our penal arrangements is not greater now than it always was,—or rather in many respects it is less,—for it is a melancholy rule that as the appliances of force are extended those of persuasion become neglected, if not otherwise directly contracted. While, then, in every other branch of administration our social movement has shown itself in extending the sphere, and confiding in the influences, of

persuasion, in this alone it is exhibited in perfecting the means of coercive agency ;—and if it be said that this is an incident inseparable from the subject, at least it should be observed that it is also coincident with failure. Crime increases ; and with this undoubted fact before us we may surely be permitted to doubt the reasoning which in this department alone retains us under the influence of old maxims, when not rewarded with success in it by their means.

To those who take an interest in the highest interests of man, the views thus taken will require no recommendation. Others may not at first regard them so favourably :—but of all they only ask consideration, and *action*, should conviction follow. If it be not rendered probable on examination that in this, as in many other instances, under the kind ordination of Providence our temporal prosperity is bound up with the discharge of our moral obligations, and is sacrificed through their neglect, then is the case, though still not to be abandoned, only half made out. But if, on the contrary, it is found that all interests concur there should be no delay in acting on the conviction.

To many, very many indeed, the least delay will be equivalent to no change. It is a common argument against death punishments that if inflicted erroneously they are irrevocable : but is a sentence to deterioration in an ordinary gregarious prison or

penal settlement more revocable? can any remission wipe away the knowledge of evil, and training in it, so given? It is by no means intended thus to insinuate an argument in favour of capital sentences: but they are not the worst parts of our existing penal institutions; and, perhaps, it might be argued even that they are the best. They slay the bodies of a few: but others create and disseminate a state of society which COMPELS thousands to plunge deeper and deeper into offence against Him who can slay both soul and body,—a state of society of which it has been impressively, but not too strongly, said in our highest legislative assembly, “that an angel from Heaven could not enter it without contracting pollution.” And it is of the result of our criminal jurisprudence in the nineteenth century, not aggravated by any intermediate agency beyond its control, but directly and inevitably proceeding from its arrangements, that this is said!

We have but to carry into this department the general maxims of our age—banish SLAVERY from our list of punishments,—rely on influence rather than on force,—and surround with motives, as well as walls;—the remedy will be found as certain as is now the evil,—and the benefit to humanity will not be inferior to any that has been compassed in modern times.

CRIME AND PUNISHMENT.

THE general facts regarding Crime and Punishment are probably known to most readers. The expense incurred on account of them is very large. The cost of prisons in the three kingdoms is not under half a million annually; and of the whole machinery of transportation it is as much more. Add the charges for constabulary and criminal courts; and the entire sum is probably under-stated at two millions, expended with little success, for crime increases, and second convictions in particular multiply. Moreover, the latter are even currently attributed to our own acts. Our prisons and penal settlements are held to deteriorate, not improve: they receive men bad, and discharge them worse. Many owe their moral ruin to having been early committed to them, perhaps innocent, but not so issuing. The lessons that they have there learned have not failed to bear after fruit.

Science, then, in this department is not merely

defective, but erroneous. It has not even the negative merit of doing no harm. It not merely fails in protecting—it directly injures. Yet how should this be? In other fields we are daily making progress. We now familiarly overcome other difficulties, which but to think of a few years ago would have arrested all speculation;—here almost alone, on the contrary, our outworks seem to recede. According to recent returns crime has increased among us 25 per cent. within the last five years. Of 51,434 criminals tried within the last seven years in Liverpool, 25,446, or 49 per cent., have been old offenders. The same results appear also in France. The proportion of relapsed to other criminals was there in 1826 eleven per cent.; and in 1843 it was 25 per cent. Of criminals discharged from the galleys during the last ten years 26 per cent., and of those from the central prisons 29 per cent., have been re-convicted, and generally within the first two years. Nowhere is the science of prison discipline thus *successful*. It is in different proportions defeated; but nowhere does it record triumphs. A clean bill of health would not be received anywhere at its hands as a testimony of moral character.

Is then moral evil incurable?—or have we merely not yet discovered the cure? The question is of

great importance, and is intimately connected with another :—Have we yet adequately sought the cure ?

Our penal apparatus is nearly all retrospective ; it is framed to punish the past, not guard against the future. In contending with crime it thus acts as a farmer would who should seek to drain his fields by digging a trench at their lower extremity, without cutting off the feeding springs ; and it has failed, and deserved to fail, almost exclusively through this mistake.

We are very liberal in our sentences of transportation ; yet practically we do not transport one in above thirty committed. All the others are discharged within the kingdom ;—and their influence on the movement of crime is what we thus make it. If our prisons corrupt, and no one doubts this, can we believe that the knowledge that a severe process has been undergone in them will counterbalance the boastings of those quitting them,—their obstinacy, their increased acquaintance with the details of crime, their continued purpose to persevere in it notwithstanding their past suffering, and their challenges to their companions to show equal hardihood ?

It is a common argument with those who object to the improvement of our penal arrangements on

the score of their corrupting effect on those subjected to them, that "the object of punishment is to protect society not to reform criminals ;" but even granting this, it is no answer to the argument here maintained. Reform is a highly worthy, a highly Christian, object to seek in our prisons even as an end ;—but it is yet more interesting when regarded as a means. For good or evil every discharged prisoner is an instrument by which to act on others ;—and, rightly regarded, it is a greater duty—a greater protection to society even—to reform, than to punish him.

It is by no means intended by these remarks to advocate lenity to criminals. On the contrary, it is most fully admitted that this, when injudiciously extended, injures rather than benefits them ;—and greater, or at least more certain, rather than less, severity would be desirable for them. But it should be anxiously made parental, not vindictive, a severity seeking to raise even while it chastens. There is no lesson more important in social science, nor more wanting at present in penal science, nor to which the perfection of both will be found more directly to tend, than that the common interest is the interest of each and all, not of any section merely ; and that when beyond all question individuals are sacrificed, the public also indirectly suffers.

What is wanted, then, in our conflict with crime is to give due importance to the object of reforming our criminals, and to study every means by which we can make severity subservient to that end. Adversity, the discipline of Providence in society, is not deteriorating, but the reverse;—and if we study its forms there is little doubt but we may give our discipline the same character. But this is still only one branch of the subject, though it gives a clue to all the others. We must make our whole arrangements in arrest of crime prospective, rather than retrospective,—preventive, rather than merely remedial. And this position naturally conducts us to details.

I. The leading defects in our existing arrangements, which give them an opposite character, are the following :—

1. We want schools, and especially industrial schools for the children of our lower classes. We thus omit to give them systematically habits and powers of labour from an early period.

2. We inflict time-sentences, and frequently *short* time-sentences on our criminals when convicted. These by giving them a direct interest in idling, and whiling away time instead of employing

it, directly corrupt them, and destroy whatever little habit of industry they may previously have had.

3. The defective construction of most of our gaols associates criminals of every degree together; and in some yet remaining instances even debtors and untried prisoners are mingled with convicted felons. The result cannot be doubted.

4. Where improvements have been introduced into the construction and management of our prisons they have been applied chiefly to the treatment of mature criminals, destined afterwards to be deported, instead of to the treatment of beginners who might be recovered, and preserved from further offence. This may prove beneficial in individual cases, but as regards the whole it has little effect in diminishing crime; and it increases instead of saving expense. It is an especial example of injudicious drainage.

5. By a defect in the construction of the separate cells hitherto employed, and which may be said to involve even an erroneous principle in their employment, four-fifths of the time passed in them are lost to the instruction of the men imprisoned. They are so completely closed up that it is impossible to communicate with those confined in them without

entering and specifically addressing them. This, however, can only be done at occasional and comparatively distant intervals ; and during all the remainder of their time the men are left to their own thoughts, which are seldom in prisoners improving. Their recollections are vicious, and their anticipations can be little better. They can rarely read with such facility as to derive profit from books, and their minds, thus left to themselves, lie for the time as it were fallow. Some grains of wheat may arise in them, but many more weeds ; and in any case the opportunity afforded by their position for pouring in moral, intellectual, and religious instruction on them is much abridged.

6. The value of real hard labour as a punishment, both for deterring the criminally disposed, and improving the actually convicted, is not sufficiently appreciated among us. We allow the most insignificant considerations to deter us from inflicting it ; and without it our punishments operate neither as warning to the idle, nor preparation for the penitent to meet the difficulties which necessarily beset them after their discharge.

7. We also much undervalue the importance of using self-interest as a stimulant to prisoners to engage in such hard labour as we do impose. We

are content to issue commands, when persuasion through self-interest would be both more appropriate and effectual. We thus create a disgust towards labour, when it should be our object to produce an inclination for it; and we directly cultivate habits of deception and evasion, which would of themselves make our prisoners worse men from day to day, even were other circumstances in their position more favourable than they are.

8. Finally, in our machinery of transportation we combine nearly all these defects in our home administration with one peculiar to itself. We equally associate the men, good and bad, together without precaution to prevent moral injury; we equally neglect many opportunities for their moral and intellectual instruction; the labour that we impose on them is similarly enforced by a purely coercive discipline, calculated to create aversion rather than relish for it; the value of persuasion through self-interest in stimulating to it is equally underrated; and to crown all we keep men who have become transports interminably together afterwards, forming criminal communities of them, instead of promoting their eventual separation. It would be difficult to bring together a greater number of more grievous, or more expensive errors. The result of

the whole is to make bad men at a most lavish expense.

II. The remedies, then, should be nearly the reverse of all these steps.

1. To every workhouse should be annexed an industrial school to which the children of the poorer classes should be encouraged to come, and give their cheerful and active labour, by receiving marks exchangeable for a good, substantial, but coarse meal in the middle of the day, and a slice of bread to carry home with them at night. The employments should be as much as possible rural and agricultural, and in every case at least laborious, fitting those subjected to them to face hard-work in after life.

2. Instead of time-sentences on convicted criminals, fines, proportioned to each offence, should be imposed in marks to be earned in a state of punishment, a daily allowance of these being assigned according to exertion rendered, a charge made in them for food and other supplies furnished, fines levied in them for all misconduct, and only the clear balance carried to permanent credit.* And for the least offence the mark sentence thus imposed

* See, for further explanation, pp. 49—60.

should require not under two months to work it out. Where moral weakness has been shown, a shorter probation than this can scarcely be sufficient.

3. A strenuous effort should be immediately made to provide separate accommodation for all untried prisoners, and also for all convicted ones during two or three months after conviction. And even after this period, though brought out to work during the day, each man should sleep apart at night.

4. An improvement, the beneficial effect of which was strikingly exemplified on Norfolk Island, should, however, be made in the construction of all separate cells. This consists in the introduction of a sliding panel in the door, sides, or roof of the cells, as may be most convenient, so contrived as to make it impossible to see out, but by drawing or closing which the prisoner may, at his own choice, be either within hearing of a reader, reading aloud in an adjoining chamber, or quite alone, as his inclination or occupation may at each moment dictate. The same reading-chamber to communicate with as many cells as the voice (aided, if need be, by tubes laid for the purpose) can easily pervade, and a nearly constant stream of indirect

instruction and improving thought to be thus kept up in the neighbourhood of all. The effect of this was proved excellent, at once as giving a facility for acquiring instruction in this way, a relish for it, and filling and storing the mind with good images instead of bad.

5. Each cell should also be furnished with an apparatus requiring severe exertion to turn it, and indicating the turns made in it. If possible, also, it should be directed to a useful purpose, as in a hand-mill, or other similar instrument. Marks to be allowed in proportion to labour thus actually, or in some other prescribed way, rendered ; and they may be granted also for progress made in such instruction as may be given. But in no case should they be allowed except thus—as rewards for industry, with effort made and result realized. Other good conduct will be indispensable under the system, in order to preserve such as are already earned from being forfeited by fines ; but industry should alone obtain them.

6. Minor offenders thus treated then, will, if diligent and well-conducted, be able to earn all their marks in this stage, and be entitled at the end of their *minimum* term in it, whether two or three months, to their entire discharge. But if they have

not earned them, or if their offences have been so great, and their consequent sentences so heavy, that they cannot complete them within this period, they should next be brought out to severe labour out of doors, but still managed on the Mark System.

7. A strong prejudice exists at present in England against working criminals in sight of the community at home ; and certainly nothing can be productive of a worse moral effect than such labour as enforced in the penal colonies ; but a little consideration will show the difference between the two cases. In the penal colonies the bond bear a large proportion to the free, and they are worked under a strongly coercive discipline. The injury they inflict (the re-action of that inflicted on them) is thus very great ; and it is quite gratuitous, for they might even more easily and cheaply be subjected to hard labour in seclusion. But in England the proportion of prisoners thus worked, to free, would be small—they are here proposed to be managed on the Mark System—and there seems no other way by which the benefit of hard labour, stimulated by moral motives, can be brought to bear on minor offenders. The great, and otherwise unattainable, good seems thus fully to counterbalance the small unavoidable evil. My impression, founded on a long knowledge

of the character of criminals, is, that by no other means possible could we so effectually as by this scare idle and dissolute youth, or recover them when fallen, or fit them afterwards to maintain a better position, or thus prevent crime and re-convictions, and so diminish the number of those, whom, after all, we must transport. There is more virtue in hard labour, *stimulated so as to be willingly performed*, than in almost all other penal agencies put together ;—and yet it is less than the injury inflicted by it when sought to be obtained by a mere coercive process. The difference between the two cases is infinite ; and though fully recognised in ordinary comparisons between the moral effect of free and slave labour, it is for the most part overlooked altogether in penal science.

8. To every gaol, accordingly, a scope of severe out-door labour should be assigned, to which those whose mark sentences are either too heavy to be worked out within the time allowed for separation, or who have neglected that opportunity, should next be brought, and worked under the same system. If this cannot be furnished within the circuit of a great town or city, the gaol should be moved out of that circuit, or a supplemental gaol be built for the reception of prisoners in this stage.

Perhaps penal farms, removed from considerable highways, and cultivated by spade labour, would afford the best form of this punishment, but only the principle need be here asserted. No other punishment will, I am persuaded, produce so great and immediate an effect.

9. And transportation should be modelled on the same general principles. Its peculiar vice, that of convict communities, should be abolished. In its stead the principle of insular penitentiaries should be introduced, through which transported criminals should be made to filter, and deposit their vicious habits, acquiring industrial and other virtuous ones instead. To create these the management should be made the same as at home, viz. a certain small portion of the sentence passed in separation, to be followed by successive forms of severe out-door labour under the Mark System, and concluded by discharge, when the prescribed course of discipline is fully undergone, on conditional pardon, enabling the prisoner to go wherever he pleases, except return home, or to the place whence transported, till the full period of his banishment expires. In every case of discharge, whether at home or in the colonies, an opportunity should be previously afforded the individual of earning a small sum of money, by specific

extra exertion, besides all required to work off his sentence, to support him till he is enabled to obtain subsequent employment. Nothing is of more importance than that he should have this :—but it should not be gratuitously given, or the opportunity of earning it be *forced* on him. He should have the means, if the will, to earn it ; and if he wants the will he should be left to take the consequences. It is a great mistake to make early crime a plea for extraordinary favour, sympathy, or advantages. Once a prisoner, a man should be made to *work* both out of this position, and into the means of subsequently keeping out of it. He should early feel his fate to be in his own hands, and to the last find it so. This is strict justice, and it will be found also mercy. It will cultivate those habits of independent *voluntary* exertion which constitute at once the best proofs of immediately improved character, and the most likely means of retaining it.

III. It remains to consider the plan proposed economically.

1. The industrial schools recommended to be attached to the workhouses will at first cause some additional expense ; but it will not be great ; and it will be seed corn, destined soon to fructify. It

will be a present outlay with a large future return. Its efficacy in preventing crime can scarcely be doubted ; and the labour of the children, judiciously directed to gardening, agriculture, keeping cows, pigs, rabbits, poultry, &c., would soon begin to contribute largely to the expense. Combined with similar labour obtained from the other inmates of the workhouse, a still greater advance towards this might be made. With labour, land, and capital invested there seems no good reason for the returns being other than large :—and especially were the principle of relief in workhouses generally changed from that of giving food eleemosynarily to that of giving it only in exchange for such labour as can be rendered. The fundamental principle of the Mark System, abolishing fixed gratuitous rations irrespective of exertion made to earn them, would scarcely less improve workhouses than gaols, by greatly elevating the tone of character within them.

2. The abolition of *short* time-sentences would also appear at first sight calculated to add to the expense incurred on account of imprisonment. Roughly estimating the cost of men sentenced to less than two months at £1 10s. each, or thirty days at 1s., were the *minimum* term of imprisonment made two months their cost would be doubled,

and if three months trebled : but would the re-convictions be so many ? That is the real question, and it seems impossible to answer it in the affirmative. Moreover, the Mark System is so calculated to stimulate industrial exertion that it might be found possible to obtain a beneficial result from prisoners thus sentenced, even in separation, though certainly not to the same extent as in conjunct out-door labour.

3. And after passing the consideration of these earlier stages, the economy likely to accrue from the entire plan becomes at every step more obvious. It is first seen in apparatus. The separate accommodation, which when applied to mature offenders gives only 1000 men eighteen months imprisonment, would give 6000 men three months, and 9000 men two months. On the principle of mark sentences also, the massive and expensive construction of the present separate cells might be much abated. With a strong interest given to the men not to infringe prison regulation the physical barriers to their doing so are better weak than strong ; for the triumph of will over temptation in them is then greater and more improving. Where the outer walls and roof of a prison are constructed, £10 a cell would, on this

plan, cover the expense of such subdivision as would be required, and under £40 a cell would build from the foundation; while on the present plan gaols to be improved must almost be rebuilt—and if rebuilt the expense is enormous. And lastly, efficient labour out of doors could not but return even largely, if directed with ordinary skill and talent: and if superiorly conducted it might return more than its whole expense. In spade husbandry, the draining of morasses, the construction of harbours of refuge, military works, or other similar employments, the efficient labour of prisoners, now a quantity non-existing among our national resources, and available neither for strength nor reform, would be found powerful for both. And a measure which called it into existence would after a time be not less praised than that (of which the most successful of modern statesmen boasted) which called the Highlanders into service after 1745. The gain would not be less, and the opposition to be overcome perhaps greater.

4. And so in transportation. At present the country has never done with a transported criminal. He is again and again convicted, and when worn out by crime and suffering he is still to be maintained

as an invalid. Meanwhile heavy police, military, and judicial establishments are indispensable to preserve order in the community of which his class forms a large integral portion ; and directly or indirectly the expence he thus occasions is enormous. Were he filtered through a penal settlement judiciously selected for its agricultural capabilities, while there worked under a strong moral impulse, improved by it, and by the habits generated under its influence, and eventually discharged after not more than from three to five years detention, according to his original sentence and conduct under it, first of all he would more than defray the cost of keeping him while detained, and in nine cases out of ten he would, after discharge, never more be heard of. A second convicted man would become as rare in our Australian colonies as the class is now numerous and troublesome.

It is impossible, then, on this subject to come to precise figures ; yet there is here obviously a scope for both moral and economical benefit almost beyond expression by them. And it is easily within our reach if we will only distinctly contemplate, and steadily act on, the principle contended for, viz. that it is our *duty* to study to reform our

criminals (fitting them to return with improved capabilities to freedom), not merely as an *end*, but as a *means*—not merely as our obligation to them, but to *society*. At present we are at best indifferent about them, taking no effectual measures even to prevent their getting worse in our hands; and under pretence of discharging a painful duty, we too often gratify only our own careless or unfeeling tempers in regard to them. And we reap as we thus sow. By the injury we inflict on their characters, we at once corrupt them and the classes from which they spring, and to which, as already shown, they in great part return. We thus indefinitely propagate crime; and otherwise lower the moral character of our whole community. We also indefinitely increase the expense incurred; for besides repeated convictions, and every other source of direct expenditure, there is in every case to be added the loss sustained through crime, an unknown quantity, perhaps not much below all the rest put together. By reversing this process, then, (this destructive, deteriorating, unwise as inhuman process, by which all are losers and none gainers), we would gain even as we now lose. Crime would decrease. Early indulgence in it would be a trait in a man's history, but

not give a character to his whole life. Though early vicious, he may become maturely virtuous; and while the moral character of our lower orders would be raised, it would be easier to get discharged criminals re-absorbed among them. To all which results it is not unreasonable to add, that probably an economy, not under a million sterling of annual loss and outlay, might be thus realized.



SECONDARY PUNISHMENT.

THE MARK SYSTEM.

IF we consider the subject of Secondary Punishment attentively, we shall be surprised, I think, to find its science in so imperfect a state. Reasoners are not even agreed as to what ought to be its primary object. Some say exclusively example; others, exclusively reform; others qualify these extreme statements by saying example, with as much reform as can be subordinated to it—or reform, with as much example as can be combined with that; while others, again, contend that these two last expressions are synonymous and convertible.

And the same crudeness of idea seems to exist also in the notions usually entertained regarding the means to be employed in this department. These are, as yet, chiefly modifications of force, of which the injurious effect is either not appreciated at all, or it is disregarded, or it is considered capable of being counteracted by religious instruction. A balance is sought to be established between degree of offence on the one

hand, and degree of vindictive infliction on the other, as though these quantities were commensurable, or could be weighed one against the other with any other than mere arbitrary precision. Degradation is also largely resorted to. The principle of punishment being vindictive, this is found a convenient mode of inflicting suffering: it also gratifies, in many cases, the pride of inflictors; and it reconciles their consciences to the severities they impose—*de minimis non curat lex*. The object of gaining and guiding the human nature practised on is thus overlooked—that of subduing it is alone thought of; and every form of isolation and compulsion is resorted to, from the gag and fetter, to silence and the separate cell. And to reconcile the mind somewhat to the violence thus exercised, a mystical importance is attached to the one only persuasive employed, religious instruction. I would by no means be supposed to think or speak slightly of this: it is the highest impulse that can be applied to the mind of man; it elevates and purifies every other; and when duly conveyed and *received* it will, in individual cases, do all, or more than all, that is anticipated from it. But just in proportion to this its high abstract character is the facility with which its beneficial tendencies may be nullified by injurious

concurring circumstances. It has thus frequently been the pretext, and sometimes also the cause, of the worst crimes. We daily see that it does not preserve from these ; for, on the contrary, the worst members of society are usually those who, to evil purpose, add religious knowledge and hypocrisy. By sinning against a clearer light their consciences become rapidly more and more seared ;—and when all these circumstances are considered, how can religious instruction *alone* be expected, as a rule, to counteract the evil influences which we heap with it around the lot to which we condemn our criminals ?

No subject, then, seems more worthy of matured and comprehensive consideration than this of secondary punishment. In none are higher interests involved ; nor is there any in which so many new and important views appear to remain to be done justice to. I proceed to notice a few of them.

1. I very much doubt our power of, in any appreciable degree, deterring from crime by severity of punishment. On the contrary, I have often and often observed, almost as a rule, that there is a fashion in crime, as in much besides, and that a striking offence, visited by a striking punishment, is

usually followed by numerous examples of the same kind. It is not severity of punishment, but probability of detection that really intimidates. A good police is better than a severe judge.

2. On the other hand, there is a limited extent within which the principle does apply, though rather negatively than positively. It is at once the duty and interest of society to frown on crime, and in any case it should not be made a passport to social advantages. Yet, strange to say, amidst the rudeness which characterises our present systems of punishment this rule is substantially little regarded. We clothe and feed our prisoners, and otherwise provide for their physical wants, in a manner generally superior to that enjoyed by the class from which they usually spring. We thus favour, and even directly allure, them by attention to points congenial to their ignorant and dissolute minds, while we neglect and destroy them by indifference to those higher interests, regard for which need not wear any aspect of indulgence. And we are thus as unwise in our consideration for them as inhuman in our want of it.

3. The primary object of secondary punishment should, then, be *to reform by means of severity*. Nothing can sanction indifference to reform ; but, on the other hand, the idea of punishment should be

indissolubly allied with that of suffering; and, practically, it will be found that weak indulgence will, as a rule, both defeat the object of reform, and be attended with many other concurring disadvantages.

4. And, this being the object, the practical guide is, I think, to follow the type of adversity in ordinary life. We see this deeply felt,—abundantly deterring, in consequence, from imprudence, or other act likely to entail it,—yet, when manfully met, reforming. And every object that ought to be contemplated in punishment is thus attained by it.

5. The apparatus proposed in the Mark System is thus to be commended as closely copying such adversity: while it is further distinguished from everything previously suggested by its *aiming exclusively at the mind*. It is thus not to be compared with separation or any other form of mere imprisonment;—its province is above them. It must, no doubt, be allied with some one or other of them, in like manner as the skill of the watchmaker or jeweller is allied with the vice which keeps the object on which it is exercised steady under its operations. But this is the only real connection between them.

6. Being thus superior to them, also, its beneficial effect is not dependent on any distinctions between

them. Applied in separation it will stimulate the faculties there; and by giving a value to every instant of time it will rescue those subjected to it from that torpidity to which long seclusion, without a strong stimulant, necessarily conducts. And applied in congregated imprisonment, by giving a high value to good conduct, and making it the interest of the whole body to encourage and foster this, it will remove many snares otherwise inseparable from such a position—and powerfully support against whatever may remain of them.

7. It seems evident, then, that the introduction of the principles of this system into the science of secondary punishment would be the greatest single step that could be achieved in it; and they are equally applicable to the improvement of transportation and punishment at home. But fully to comprehend this, the system should be considered not merely as suggesting a form of apparatus, but as aiming to introduce a new object and spirit into our whole penal administration.

8. In the management of our gaols, and other places of punishment, we at present attach too much importance to mere submission and obedience. We make the discipline in them military, overlooking a distinction, specifically drawn in the Mark System,

and to which too much importance cannot be attached, between the objects of military and improved penal discipline. "The ultimate purpose of military discipline is, to train men to act together : but that of penal discipline is, to prepare them advantageously to separate." The objects being thus opposite, the processes should equally differ;—but we make them the same, and reap accordingly. A good prisoner, it has been observed, is usually a bad man ; and in the circumstances this result is sufficiently intelligible. Men kept for weeks, months, years, under a severe external pressure, and praised and encouraged in proportion as they submit to it, are in a direct course of preparation to yield to other forms of pressure as soon as they present themselves. They go in weak, or they would not probably be prisoners, and they come out still more enfeebled.

9. The whole organization of the Mark System, then, is directed to cure this defect in our present penal arrangements. It offers wages (marks) to stimulate to voluntary as opposed to compulsory exertion ; it imposes fines in the same currency to deter from, rather than otherwise prevent, misconduct ; it charges in them for supplies issued, in order to create an interest in voluntary moderation ;

and it promises the recovery of liberty only to a definite accumulation of them, over and above all that may be thus expended, thereby affording the strongest stimulus to systematic exertion, prudence, and self-command, the virtues best suited to sustain men against external temptation after discharge. The qualities of immediate obedience and submission are thus not sacrificed, for the absence of them may entail corresponding fines;—but they are obtained by means of the exercise of the higher virtues, not by these being placed in abeyance. They will become proofs of strength, not weakness—and will cultivate what they thus exhibit.

10. But this is not all. The preparation to separate advantageously is only half completed by practising thus on the mind; the same care should equally be extended to the body;—so argues the Mark System; and yet our present penal arrangements are here lamentably deficient. No care is now taken systematically to strengthen the sinews by exertions so varied as to employ the whole body. Our tread-wheels slightly exercise the back sinews of the leg, the least important, perhaps, of any; and our oakum-picking scarcely employs even the fingers. Crank wheels or capstans would be better than the first—almost anything would be better than the

second—and useful labour in the open air, in employments in which improved skill would facilitate the subsequent earning of honest bread, would be best of all. There are difficulties, no doubt, in the way of obtaining this ; but were it recognised to be the proper object of prison discipline to prepare men for discharge, in a department so important, in which religion and morality are so much interested, these difficulties would be encountered and overcome. Even if increased expense were to be the necessary consequence, this would not be grudged—the recovery of thousands of criminals now sacrificed would be considered to repay it. But improved management in this respect would, on the contrary, be found to curtail expense. Penal farms attached to our several district gaols, and required to be worked by prisoners (if necessary, with the spade), would pay in pence as well as virtue. And many similar works would be contrived were the object distinctly contemplated.

11. By returns recently published in France, it appears, that of men discharged in ten years from the *Bagnes* (hulks) twenty-five per cent., and of men discharged from the central prisons twenty-nine per cent., had been re-convicted within five years, and the majority within two. The discipline and

organization of the French bagnes are proverbially among the worst possible, while those of their central prisons are a fair average of what is found in most gregarious prisons ; yet the hard out-door labour in the first, strengthening both mind and body, is thus shown to make their moral effect not so bad as that of the elaborate sheltered trifling in the second, enfeebling both ; and the same result would equally be found here, were the experiment made. Of lads discharged from the Agricultural Penitentiary of Mettray (near Tours), in which both good management and severe out-door labour are combined,* only seven, up to July last, had been re-convicted of 144 discharged, also in five years. It is impossible to set the effect of different systems in stronger antithesis, unless by quoting some details from a petition to our own legislature, recently agreed on by the Municipal Council of Liverpool. In this is stated the number of criminals sentenced by them during the last seven years, with their classification according to the number of times they had been re-convicted, and details regarding fourteen young offenders, given as a specimen of the career of many more. The respective figures are as follows :—

* See p. 69.

SECONDARY PUNISHMENT.

33

Total convicted, 31,822 males; 19,612 females.....	51,434
Of whom there were under 17 years of age	5,588
“ once convicted	25,988
“ twice	8,056
“ three times.....	4,173
“ four times	2,847
“ five times, and upwards.....	10,874

Ten of the fourteen young criminals, of whom details are given, at the date of the petition had been transported, after having been, on an average, ten times convicted each; one was dead; one was in custody; one at large, but known to be sunk in vicious habits; and one was lost sight of. The total expense of their several trials and convictions, so far as known, had been £848 8s., averaging £60 12s. each, to which sum were to be added the losses occasioned by their several crimes, and the cost of their ultimate transportation. Compare this with the Mettray results—compare it even with returns from our penal colonies. According to these, as printed and laid before Parliament in February last, of 10,365 males and 2,371 females who had within the previous two years obtained probation passes, having completed the penal portion of their several sentences, only 888, or about 9 per cent. of males, and 321, or about 11 per cent.

of females, were under renewed sentences in July preceding. In the present condition of Van Diemen's Land, scarcely anything but the severe active toil which accompanies sentences there can account for this superiority over the mother country ; and it is not impossible that the fewer relapses among the men than among the women may, in part, also be founded on a difference between them in this respect.

12. But the principles of the Mark System, and in particular that fundamental position in it, that a special object to be pursued in regard to prisoners should be to prepare them to separate advantageously on discharge, also furnish a guide to the circumstances in which, and into which, they should be then dismissed. They are now sent away either penniless, or with a small eleemosynary gratuity bestowed on them, or with a proportion, fixed by authority, of their earnings while in gaol ; and proposals have recently been much in vogue to provide asylums also for them, in which they may be received on discharge, and fed, worked, clothed, and lodged, till they are able to procure independent employment. It requires little reasoning, however, to show that there is much gratuitous temptation involved in every one of these positions.

Those who have once been criminal, and especially whose moral energies have been weakened, as already explained, by a long subjection to exclusively compulsory rule in gaol, are almost helpless against the seductions of renewed destitution ; they are as little likely to administer wisely what they may have received in charity, or through compulsory economy in which they have taken no direct part : and asylums for their reception would impede rather than promote their subsequent separation, and would thus be found directly pernicious in proportion. The wages and voluntary principle of the Mark System suggest a different course from any. They recommend that either when the men have fully undergone their sentence, or while they are yet enduring it, the means of extra exertion be afforded, *but not forced on them*, for which they shall be credited with money, instead of mark, wages. The willing, well-disposed, and really destitute will thus be enabled, if they choose, to accumulate by voluntary patient industry what may be requisite, according to their circumstances, to enable them to glide out of sight, and begin the world again with improved habits and experience, and without known blemish on their character. While earning this money, they will be under the same

strict discipline as when undergoing their sentence ; they will be sequestered, to the latest moment of their association with the consequences of their early crimes, from farther vicious connection ; they will be protected from the temptations which, in a large city especially, must inevitably group round a house of call for discharged prisoners ; and when they depart they will carry their best asylum with them in the form of money, the fruit of previous voluntary labour,—and prudence, the result of previous moral, instead of mere coercive, training. Their preparation, and consequently position, will be thus in every respect more favourable. The habits and principles which, under the operation of this system, will have procured their discharge from gaol, will continue to support them when out of it.

13. And the same views bear on another question of our day of much interest and importance, viz., the expediency of maintaining communities of prisoners, as in our existing penal colonies, or of dispersing them, unknown and unrestricted, at their own free will, so soon as their penal service under their respective sentences has been duly rendered. Upon the principles of the Mark System, there can be no hesitation between these courses. Convict communities are just convict asylums, which pre-

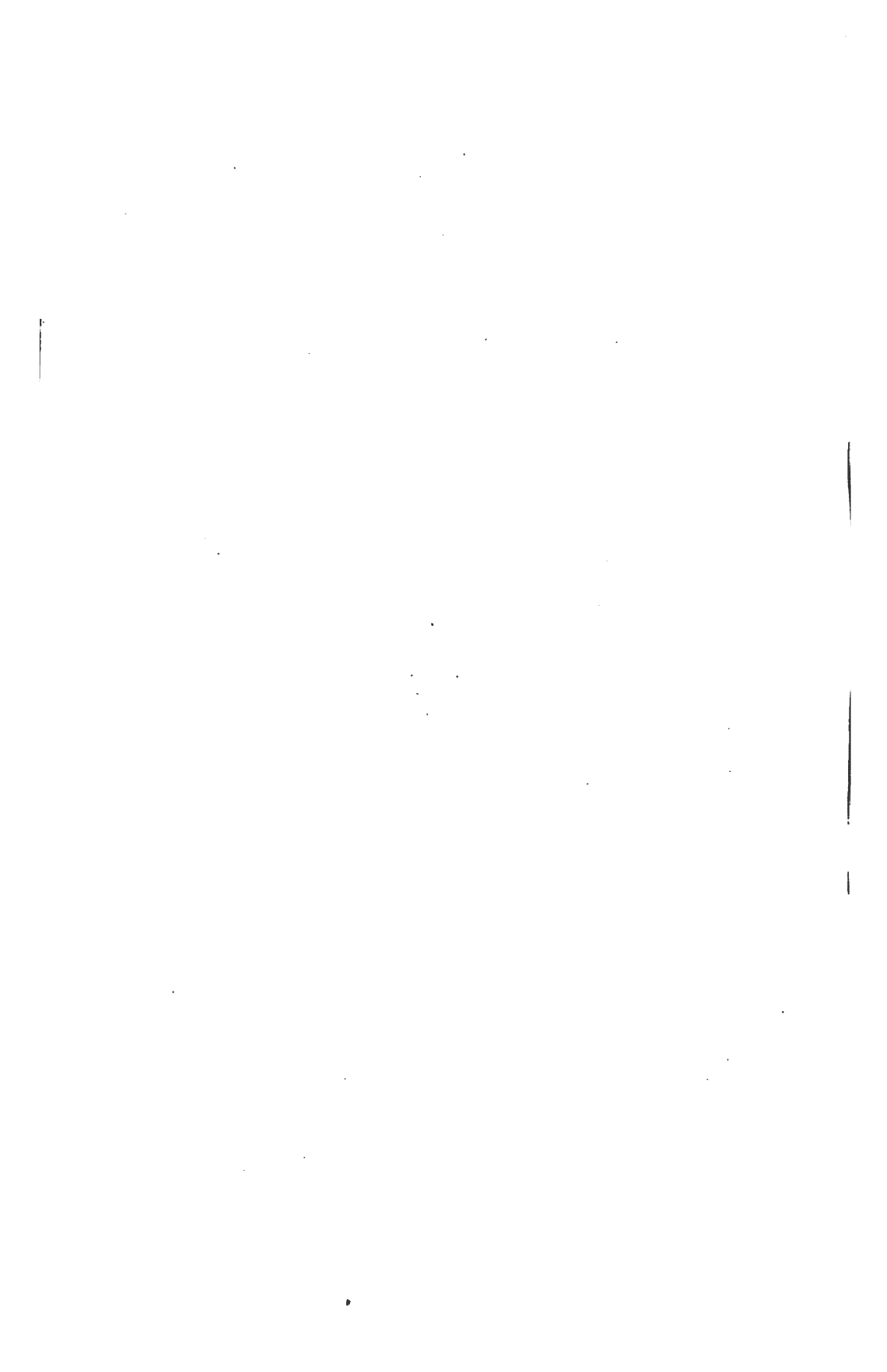
vent, instead of promoting, separation. The reasons which oppose the one equally oppose the other ; and few things, perhaps, more clearly show the imperfect views of penal policy as yet generally entertained, than that there should at the same moment be a question regarding both before the British public.

14. The subject, then, might easily be pursued further. The views recommended in it are favourable to short periods of separate imprisonment, on first apprehension or conviction, in order to humble the mind, bring it to repentance, and place it in the best position for receiving and laying to heart whatever instruction is conveyed ; but they seem opposed to very long periods of it, which appear calculated, on the contrary, to enfeeble against discharge. It seems unnecessary, however, now to say more. The collateral views opened up are endless and most captivating. The language recommended by the Mark System to be addressed to prisoners is the language of Providence to man in general society. "*Aide toi, et le ciel t'aidera !*" Exert, and you will succeed : continue, or become, supine, and you will sink deeper and deeper in calamity ! Every man's fate being thus placed in

his own hands, the most indolent would soon be roused to exertion—the most sensual to self-command. The ordinary instincts of competition, which now too often in convict communities make the best men the worst, would take an upward tendency—the *esprit de corps* of the body would be directed to improvement, instead of to deterioration. The labour rendered, the physical hardship endured, would be far greater than at present, when in truth between gratuitous lodging, food, and clothing, gaols are not unfrequently sought as refuges, and moral destruction is the only punishment really inflicted in them. But while the labour and hardship thus imposed would continue to be dreaded by the criminally disposed outside, and thus operate on them as a deterring example,—to those enduring them they would become eventually blessings,—and the interests of all parties would be thus reconciled. Instead of disregarding the circumstances, coincident with our social growth, which condemn too many of our brethren to early crime, and selfishly sacrificing them, when they do fall, to our other supposed interests, we would use, but not abuse, the power given us over them. While we employed, we would not recklessly

destroy them ; and justice and mercy would be combined in such policy,—for while it struck it would save.

15. And it should be well observed, also, that in penal arrangements such as are here suggested, the religious instruction given would be in harmony with the secular acts with which it would be combined, instead of being, as now, in direct opposition to them. It would thus give life to the temporal exhortations with which blended, instead of being apart from, and in many cases even opposed to them. Much existing hindrance to its reception would be thus removed, with not a few anomalies in the abstract character of the exhortations addressed.



PRINCIPLES OF THE MARK SYSTEM

NOW SOUGHT TO BE INTRODUCED INTO

TRANSPORTATION, IMPRISONMENT, AND OTHER FORMS
OF SECONDARY PUNISHMENT.

THE constituent elements in secondary punishment are labour and time. Men are sentenced to hard *labour* for a given *time* :—but the time is here made to measure the labour,—and the first proposal of the Mark System is, that instead of this the labour be made to measure the time. This idea is not peculiar to it. In his letter to Earl Grey the Archbishop of Dublin uses these words : “ The best plan, as it appears to me, would be, instead of sentencing men to imprisonment for a certain time, to sentence them to render a certain amount of labour. A fixed daily task may be imposed on them, but with power to exceed this at their own discretion, thereby shortening their period of detention. The effect would be, not only that criminals would thus acquire habits of labour, but of attaching an agreeable idea to labour. By each additional step they took on the tread-wheel

they would be walking out of prison,—by each additional cut of the spade they would be cutting a way to return to society.”

It would be difficult to express the direct primary effect of the system in happier or terser terms ; and even when only thus stated the improvement contemplated on existing practice appears immense. But much more when the ulterior consequences are also considered. By substituting a powerful internal stimulus to exertion for that physical coercion which must ever be at best an imperfect external one, while all necessary bondage and suffering as the consequences of crime would be retained, direct “slavery” would be banished from among our secondary punishments. The tendencies of our management would be to good, whereas those of the existing system are “to evil continually.” Men would improve under it, instead of becoming worse. And the administration of public justice would acquire a place among the Christian agencies of our land : it is painful to think how far it is at present removed in operation from any such character.

But another view may be also taken of the question thus involved not less interesting. If we look abroad into ordinary life we cannot but be struck with the resemblance which our present forms of

secondary punishment bear to everything that is in this most enfeebling and deteriorating, and how directly opposed they are to those forms of adversity which, under the influence of Providential wisdom, reform character and invigorate it. Slavery deteriorates ;—long seclusion deteriorates ;—every condition, in a word, more or less deteriorates, which leaves no choice of action, requires no virtue but obedience, affords no stimulus to exertion beyond this, supplies the wants of nature without effort with a view to them, and restores to prosperity, through lapse of time, without evidence that such restoration is deserved. Yet this is our present system of secondary punishment. What improves, on the contrary, is a condition of adversity from which there is no escape but by continuous effort—which leaves the degree of that effort much in the individual's own power, but if he relaxes his suffering is deepened and prolonged, and it is only alleviated and shortened if he struggles manfully—which makes exertion necessary even to earn daily bread—and something more, prudence, self-command, voluntary economy, and the like, to recover prosperity. To this as yet secondary punishment bears no resemblance ; but were our sentences measured by labour instead of by time—were they to the performance of

certain tasks, not to the occupation of a certain time in evading any,—the approximation might be made indefinitely close.

Labour being a vague term, the system next proposes that it be represented by marks,—the earning of so many thousand of which, in a prison or penal settlement as the case may be, to be made the punishment of all offences according to their degree. A proportion of these marks to be credited to individuals daily, according to the exertion made in whatever labour is allotted them,—all supplies of food and clothing to be charged in them,—all misconduct to be punished by fines in them,—and only the clear balance to be carried to account towards liberation. By this means both wages and savings' banks would be introduced into prisons—wages to stimulate labour, and give an interest in it,—and savings' banks to give a similar interest to habits of economy and self-command. To make the resemblance to ordinary life still closer, and at the same time promote kindly and social, as opposed to selfish, feeling, it is further proposed that during a portion of their entire period of detention criminals be distributed into parties or families of six, with common interests and accounts, rising or falling together, and thus all interested in the good conduct of each.

By this means a strong physical check would be laid on crime in prisons, with a yet stronger moral one ; and an apparatus would be gained by which good conduct and exertion would be made popular, and offence unpopular, in the community, and all would be interested in promoting the one, and keeping down the other. My experience on Norfolk Island—(which was imperfect, because my views were not then sustained, as I trust they yet will be, at home, my powers and apparatus were consequently imperfect, and my results rather indicated tendencies than gave precise conclusions)—yet leads me to attach great value to this, as to several other details explained in other papers. But I regard them all only as they seem to me to carry out the principles laid down. If these are right, when once established, the best details to found on them will soon become of themselves apparent. With a near tangible end, like individual reform, in view, no mistakes, however at first great, can be long persisted in.

Severity, then, with a directly benevolent purpose,—modelled with a view to recover criminals as well as punish them,—controlled and guided by the enlightened pursuit of this noble end,—made as great, for the benefit both of the individual and the

community, as is compatible with it,—but neither greater nor other than strictly subordinate to it,—this is the guide here sought to be introduced into secondary punishment; and unless it is attentively considered, it will be found difficult to believe the number of new views that it will open up, of interest and promise. It will adjust the controversy between harshness and lenity which has long divided reasoners on the subject,—the one impulse having authorized the most distressing cruelties, while the other has occasionally led to indulgencies scarcely less injurious in their ultimate consequences to both the criminal and society, enfeebling the one, and leading the honest labourer in the other painfully to contrast his own position with that of the convicted felon. It will thus solve many preliminary difficulties, and conduct to many important conclusions. It will give a new spirit to punishment by giving it a new direction. By raising its object it will raise its administration. It will be difficult to be either cruel or careless with such an object as individual reform in view, and *while wielding an agency offering a reasonable probability of attaining it*. (The last point is of great importance:—we become indifferent in spite of ourselves when engaged in a hopeless task). It will assimilate this branch of our

administration to those ways of Providence to men which must always be our surest guides when we seek to influence them. It will thus imitate the highest wisdom, and thereby enable us to obey the highest precept. We may love while we chasten,—and be substantially kind even when enforcing the strictest commands of punitive law. It will succeed with little effort, because it will study the human nature implanted in us, instead of trampling its impulses under foot. It will further conduct to great economy as well as efficiency, partly through this cause, partly because the virtues of industry and self-command which it will be its great aim to foster will equally bring about both results. The practical change may be thought a small one on which to found such anticipations—the change from measuring labour by time to that of measuring time by labour—or, in other words, from giving our criminals time-sentences to allotting them tasks :—but the one course is the direct reverse of the other, and the difference may be thus the whole difference between right and wrong—success and failure. It seems, indeed, even impossible to follow out the chain of reasoning suggested without coming to this conclusion. When men are smitten with adversity in ordinary life, and thus *punished* for previous follies

or misconduct, they are not condemned to this adversity for a certain *time*, but until they can retrieve their position. They suffer under this *task*, they sorrow over it (but without resentment), they struggle with it, their characters improve under the various efforts and emotions called out by it, (both deepened if they have others to care for as well as themselves), frequently they rise even higher than before,—and society is instructed by such examples in every way, it shrinks from the preliminary sufferings exhibited in them, and emulates, in due proportion as its own case may require, the manly struggle that has at length overcome them. And so it might be with our punishments, if we would model them on the same type. They are now for the most part barbarous in every sense, in their want of skill and adaptation to high purpose, and in the crime and misery they thus gratuitously produce. We might make them beneficent in every sense, merely by copying the wisdom that is around us;—and when this is fully understood, it is not to be imagined but that every lover of his kind will take even an eager interest in bringing about the change. The real difficulty is to influence to the enquiry.

SOCIETY FOR PROMOTING
THE
AMENDMENT OF THE LAW.

COMMITTEE ON CRIMINAL LAW.

The following reference was made to this Committee :

“ To consider the propriety of recommending the adoption of the plans of Captain Maconochie for the management of transported and other criminals.”

REPORT.*

A plan of secondary punishment, proposed by Captain Maconochie, R.N., late Superintendent of Norfolk Island, called by him the Mark System, and necessarily involving a change in our criminal law, having been referred to this Committee by the Council to consider and report on, we beg to state as follows :—

1. Captain Maconochie's plan had its origin in his experience of the evil tendency of sentences for

* Chiefly drawn up by M. D. Hill, Esq., Q. C., Recorder of Birmingham.

a time certain, and of fixed gratuitous gaol rations of food. These he practically found opposed to the reformation of the criminal. A man under a time-sentence looks exclusively to the means of beguiling that time. He is thereby led to evade labour, and to seek opportunities of personal gratification, obtained, in extreme cases, even in ways most horrible. His powers of deception are sharpened for the purpose, and even when unable to offend in act, he seeks in fancy a gratification by gloating over impure images. At the best his life stagnates, no proper object of pursuit being presented to his thoughts. And the allotment of fixed gratuitous rations, irrespective of conduct or exertion, further aggravates the evil by removing even the minor stimulus to action furnished by the necessity of procuring food, and by thus directly fostering those habits of improvidence which, perhaps even more than determined vice, lead to crime.

2. In lieu of sentences to imprisonment or transportation, measured thus by months or years, Captain Maconochie recommends sentences to an amount of labour, measured by a given number of marks, to be placed to the debit of the convict in books to be kept for the purpose. This debit to be from time to time further augmented by charges

made in the same currency for all supplies of food and clothing, and by any fines that may be imposed for misconduct. The duration of his sentence will thus be made to depend on three circumstances: *First*, the gravity of the original offence, or the estimate made by the judge of the amount of discipline which the criminal ought to undergo before he is restored to liberty. This regulates the amount of the original debit. *Second*, the zeal, industry, and effectiveness of his labour in the works allotted to him, which furnishes him with the means of payment, or of adding from time to time to the credit side of his account. And, *Third*, his conduct in confinement. If well conducted he will avoid fines, and if economical in food and such other gratifications as he is permitted to purchase with his marks, he will keep down the amount of his debits.

3. By these means Captain Maconochie contends that a term of imprisonment may be brought to bear a close resemblance to adversity in ordinary life, which being deeply felt is carefully shunned, but which, nevertheless, when encountered in a manful spirit, improves and elevates the character. All the objects of punishment will be thus attained. There will be continued destitution unless relief is sought by exertion, and hence there will be labour

and suffering—but with exertion there will not only be the hope, but the certainty of recovery—whence there will be improvement in good habits and right thinking. And the motives put into operation to produce effort and economy being also of the same character with those existing in ordinary life, will advantageously prepare the prisoner for their wholesome action on him after his discharge.

4. The only other very distinctive feature in Captain Maconochie's system is his proposal, that after the prisoner has passed through a term of probation, to be measured, not by lapse of time, but by his conduct as indicated by the state of his account, he shall be advanced from separate confinement into a social state. For this purpose he shall become a member of a small class of six or eight; these classes being capable of being separated from each other just as individuals are separated from individuals during the earlier stage. The members of each class to have a common interest, the marks earned or lost by each to count to the gain or loss of his party, not of himself exclusively. By this means, Captain Maconochie thinks prisoners will be rescued from the simply *gregarious* state of existence which is in truth a selfish one, now incident to imprisonment in those gaols to which the

separate system is not applied, and will be raised into a *social* existence. Captain Maconochie is convinced by observation that much good feeling will be elicited among them in consequence of this change. Indolence and vice, which either prevent the prisoner from earning or compel him to forfeit his marks, will become unpopular in the community, and industry and good conduct, as enabling him to acquire and preserve them, will, on the contrary, obtain for him its approbation. On much experience, he asserts that no portion of his *modus operandi* is more effective than this,* by which, even

* It is remarkable that this portion of the plan has been more opposed by some, and more willingly received by others, than any other part of it. In the Report of the Transportation Committee of the House of Commons (1838), while the remainder is specifically recommended, doubt is expressed as to this feature in it;— and in a recent dispatch laid before Parliament, Lord Stanley, while directing the qualified use of marks in the machinery of transportation, considers the distribution of prisoners into parties at their own choice inapplicable to a state of bondage, and objects to it accordingly. On the other hand, Sir George Gipps, in 1839, tried it with his road-parties near Sydney with complete success;— and last year Mr. Forster, late Comptroller General of Convicts in Van Diemen's Land, who was otherwise strongly opposed to the system, tried it to the letter, even to distributing the men in detached huts and giving them the choice of their associates, in.

in the depraved community of Norfolk Island, he succeeded in a wonderfully short time in giving an upward direction to the public opinion of the class of prisoners themselves.

Having now stated generally what Captain Maconochie's views are, your Committee proceeds to notice some of the objections that may be made to them, with his answers to such of these as, having occurred to the Committee, have been pressed on him.

1. It may be said that a labour-sentence necessarily gives an undue advantage to an able-bodied criminal over the weaker man. To this Captain Maconochie replies, that this advantage is in some degree inherent in the nature of things. It exists

one of his districts, with the same results. The Rev. Mr. Ewing, a clergyman recently returned from Van Diemen's Land, who furnishes me with the statement, himself inspected the parties so managed, and testifies to their superior conduct. The settlers had been afraid that the plan would lead to idleness, combination, and sheep stealing; but, on the contrary, more work was done, and fewer offences of every kind were committed. Being tasked and trusted collectively, not individually, each man laboured and refrained for others, his chosen comrades, as well as himself, and became half virtuous under the impulse. The fact is valuable in itself, but much more as exhibiting the operation of a general principle.—See also article METTRAY, p. 69.—A.M.

under time-sentences also, the tread-wheel, for example, being much more severe to some than to others. Where large bodies of criminals are worked together, it is sought at present to be remedied in some measure by distributing them into light and heavy gangs, who are required to perform different tales of work : and the same principle may equally be applied under his system. On Norfolk Island he had three classes, to which the same amount of wages was given for different degrees of mere physical exertion : but a greater sub-division would meet the difficulty still more effectually. Further, marks may be given for other than mere physical tasks, as reading aloud, teaching reading, writing, handicrafts, &c., attending the sick, and so forth. Finally, the grouping men together in small parties, with common interests, further overcomes the difficulty, the strong being thus led to assist the weak, and the intelligent to bring forward the dull, or less advanced in acquirements, even for their own sakes. It is impossible to make any human system quite perfect, but practically he did not experience difficulty on this score ; the men who earned the most marks with him on Norfolk Island, not having been the strongest, but the most intelligent and well-conducted. And it is for the benefit even of the dull,

or intellectually weak, themselves, that they should have to struggle in gaol against such impediments to their advancement as must exist in ordinary life : the desire to improve the intellectual faculties will be thereby stimulated.

2. Another objection is that the arrangements under a labour-sentence being necessarily much under the controul of the officers enforcing them, both as to the kind of work imposed, and the reward given for it, uncertainty will be thus necessarily introduced into the amount of punishment in each case awarded. A time-sentence is definite, but the degree of a labour-sentence must depend on the will of those carrying it into effect. To meet this difficulty Captain Maconochie recommends a *minimum* of time, to be imposed with the labour-sentences, but not a *maximum*. He also recommends fixed tables of wages and fines to be suspended in all gaols under the direction of their Inspectors, from which no deviation should be permitted by inferior authorities ; and other minor regulations of the same kind may be made, limiting discretion as much as possible. Further he observes that the distribution into parties, which equalizes the chances of the strong and weak, equally protects both from favour or prejudice. It would be difficult, almost impossi-

ble, signally to serve or disserve any one man, when he must share his advantages and disadvantages with five or six others. And, lastly, the publicity attending the whole accounts would be an additional protection. It would be difficult to incur a charge of corruption in the conduct of the plan here proposed, when the proofs would be patent, drawn from public records.

3. A certain degree of injustice seems, however, it may be alleged, to be involved in the principle of the partnerships of which the beneficial operation is here contended for :—the innocent must be made, in many cases, to suffer for, and with, the guilty ;—and however plausible the object proposed, a system of criminal punishment should be free from such imputation. To this Captain Maconochie answers, that in ordinary life the same objection may equally be urged. We suffer for, and with, the several members of our family, for example,—and for, and with, the several members of our mercantile partnerships. It is a condition inseparable from all social existence, and yet is not held as an argument against society as contra-distinguished from mere gregarious association. Criminals, above all others, can have no right to complain of it. They have voluntarily placed themselves out of the pale of society :—and

it has a right to impose its own conditions before it agrees to receive them back again. One of the most just and natural of these is, that they should go to school, and acquire practice in those relations which are inseparable from society itself, and which constitute the root of nearly all its virtues. Their neglect of these hitherto, and the selfishness generated by such neglect, have been the probable causes of their fall; and while the least corrupted will gain more than he will lose by being compelled to recognize them,—the very worst are fettered by such a course. Experimentally, Captain Maconchie found on Norfolk Island that precisely the men most truculent and refractory under ordinary discipline, were least able to face the unpopularity arising from their misconduct injuring their companions as well as themselves. He would wish to diminish the hardship by allowing the men, as far as possible, to choose their own companions; but there is practical inconvenience in making this a rule, and he does not think it by any means indispensable.

4. Other objections have been suggested, but of a minor character. Allowing men to choose their own scale of diet, instead of receiving a fixed allowance, it has been alleged would lead to abuse, some

might take too much, others too little. Captain Maconochie proposes to meet both difficulties by fixing a *maximum* and *minimum*,—as a rule, however, not fettering too much the discretion of the men. It is of great importance to call the prudential virtues into voluntary exercise in each individual, especially as regards food and other articles of maintenance. Some inconvenience has also been anticipated to the gaol authorities by extra trouble that may be thus given, or some abuse by irregular accounts being kept. “Provide against both as far as possible,” Captain Maconochie replies, “but do not, for their sakes, give up the pursuit of a great object.” Too much comfort will be introduced into our gaols, it has been again observed, if they are made thus closely to resemble ordinary life. *Physically*, Captain Maconochie replies, they will not be so comfortable as now. With a strong motive to industry and self-denial in them, they will neither be such haunts of indolence, or other indulgence, as they are at present; but *morally*, doubtless they will be much improved, and this, though the very object desired, will not recommend them to evil disposed men. Both morally and physically, therefore, they will be regarded with greater fear by misdoers.

This Committee, on the whole, think the plan highly deserving of notice. The principles appealed to in it are among the most powerful of our nature, and next to religious motives, though still more in combination with them, the most suggestive of social virtue. The form of appeal is also powerful, for nothing is usually more dear to a man than his liberty. This Committee, therefore, strongly recommend the further consideration of the proposal to the Society. They could wish to see prisons set apart for its adoption, and a short Act passed empowering criminal courts to impose labour-sentences to be carried into operation in such prisons. By these means the complete change in the Law, which it contemplates, would be only gradually and conditionally introduced. If the experiment should be successful, its application would rapidly spread; if otherwise, any mischief that it might occasion would be of the most limited kind.

RECOMMENDATIONS
OF
THE MARK SYSTEM,
AS A
NATIONAL SYSTEM OF SECONDARY PUNISHMENT.

1. It can be combined with any other system. Marks can be earned in a separate cell ; and the prospect of their gain or loss will more effectually, less cruelly, and otherwise less injuriously enforce the requisitions of the silent system than any other means by which obedience to these can be compelled.

2. It can be employed also in any gaol. Marks can be earned by men (together or apart) being set to gather straws or seeds scattered in a cell or courtyard, if no better employment can be found for them ; though useful robust labour, where it can be procured, is in every point of view preferable.

3. It is especially suited for bridewells, houses of correction, juvenile and female penitentiaries, and other prisons for minor or first offenders, in which the reform of the individual is confessedly a primary object. The habits of voluntary application and

self-command, which must be formed before discharge under its regulations can be obtained, will give thousands both the ability and inclination to lead honest and industrious after lives, who at present, under time-sentences, proceed systematically from bad to worse.

4. It is not less especially suited for hulks and penal settlements. These, under time-sentences, are known manufactories of crime ;— under the Mark System they would become filters, in which the most ensnaring tendencies of criminals, those to sloth, deception, and self-indulgence, must be deposited, and much good habit and principle substituted, before they can be discharged.

5. Freeing, after conviction, only through diligence and self-denial, it will be more dreaded by hesitating criminals, thus in their tastes idle and self-indulgent, than when sentence is merely to a loss of time, the value of which they seldom properly appreciate.

6. It will be healthful,—for while compulsory labour, by depressing the spirits, enfeebles, even when supported by generous food, and prisoners, when employed, must thus at present be better fed than many honest labourers outside, thereby impairing the example set by their imprisonment,—labour

stimulated by an adequate motive has the contrary effect.

7. It will be thus economical in two ways:—a more sparing diet will equally support strength—and useful labour, when it can be procured, will be made more productive. It will thus collaterally be also more deterring.

8. By occupying the men's minds while in gaol, and throwing their thoughts forward, whether alone or several together, by near as well as remote interests, it will be more moral in its tendency than any system that leaves them comparatively unoccupied, and free to wanton over past scenes of vice or indulgence.

9. It will also be otherwise moral in its tendency by giving an immediate high value to industry, self-command, and other moral qualities, in the cultivation of which the first step is always the most difficult.

10. It will be highly educational. Marks can be earned by reading aloud, teaching to read, write, &c., learning the same, and so forth. There will be no end, indeed, to the moral and religious apparatus that may be thus set in motion. Tuition, and "mutual tuition," will have here their widest scope.

11. Of all known systems it relies most on moral

influence, and least on mere physical agencies, whether brick and mortar, or any others. It is thus best adapted to the different condition of different gaols, and most in harmony with the tendencies of the age, which are towards persuasion in all departments, preferably to direct coercion.

12. Thus variously recommended, then, it will be at once honourable to England, and characteristic of her high moral position, if she first adopt and bring it forward. As the *English* system it will contrast favourably with both Belgian and American. And if it realize anything like its apparent promise, and others consequently copy it from us, (of both which there seems no reasonable doubt) how vast, how endlessly ramifying, the benefit to humanity that may be so effected!

ON
ASYLUMS
FOR
DISCHARGED PRISONERS.

It is a fundamental principle in the Mark System that the *first* object of prison discipline should be to reform prisoners, and thus prepare them to *separate* with advantage both to themselves and to society after their discharge. It is thus essentially opposed to the plan of keeping them in asylums after release, where the evils of their aggregation and association must continue unimpaired, and the discipline calculated to check these evils cannot be so vigorous or efficient. In no case, then, with regard to adult male prisoners, should an exception be made to this rule. A little money in their pockets, the fruit of their own *voluntary* exertion before release, is the only asylum that can possibly do them real good as a class.

The principle is not quite so clear when applied to females and very young prisoners. To them money may not always be sufficient protection, and though it is desirable that in their case also it should be made to go as far as possible, and that more should only be given in extreme cases, yet as

such cases will of necessity occur sometimes, and the kindness of the humane may often be inclined to multiply them, it may be well to point out a few precautions by which the general evil tendency of asylums may, in relation to them, be mitigated.

1. The establishments thus contemplated should not be exclusively for prisoners, but for destitute generally. By this means the prison character may be lost, although shelter is temporarily provided. Too much importance cannot be attached to this rule.

2. They should not severally be large establishments. By being kept small they will be much more easily managed, and their inmates will maintain the fewer associations of a doubtful character.

3. The precise purpose of each should be very distinctly specified. If to give education, the arrangements for education will be thus kept sedulously in view,—if merely to afford temporary shelter, a knowledge of this will prevent unreasonable expectations, and it may be, some heart-burning.

4. They should be all industrial establishments, and made as much as possible self-supporting. The Mark System would thus be beneficially employed in them to stimulate industry; and a money value, made payable on discharge, and given in a fixed

proportion to accumulations of marks over and above any lost through misconduct, will be a wholesome instrument in maintaining discipline, and be also a judicious continuation of that prudential training which, it may be hoped, will ere long prevail in all prisons.

5. Much convenience will be found in classing establishments of this kind very strictly according to the age of the inmates they receive. Thus, one house should admit only from 12 to 15, another only from 15 to 20, a third only from 20 to 30, and a fourth only above this age. Discipline, where it cannot be otherwise made vigorous, is much simplified by the ages of those subjected to it nearly agreeing.

6. A very considerable advantage will also be derived from fixing rigorously a *maximum* period within which alone the advantages of the establishment can be extended gratuitously to the same individual. It is costly charity to lodge, board, clothe, and at length pay wages, on the score of mere destitution; and it is not right to allow one person to engross such advantages for an undue length of time, to the exclusion, perhaps, of another equally deserving object. Besides which, advantages known to be temporary are more highly valued, and in par-

ticular where education is the object, this stimulant to a careless temper will be found of great value.

Under these, or similar arrangements, then, asylums for females, and other very young discharged criminals, may be made useful institutions; but without attention to the first of them in particular, it seems very doubtful if they can. And although under peculiarly benevolent and judicious management a recent example to the contrary is said to have occurred in Worcestershire, it is certain that for adult males they will as a rule be found positively injurious. It is a very great object indeed to get discharged criminals re-absorbed, without reproach, into the community; but asylums will rather impede than promote this object; and it will, besides, be to lower the tone of moral feeling even in themselves, and to give much unnecessary bitterness to honest destitution in others, to attempt to accomplish it by a public apparatus, manifesting peculiar interest and sympathy for their condition. Their difficulties should not be made insurmountable, but on their own heads mainly they should rest. As a class, they will be the better for the task thus devolved on them.

METTRAY.

(FROM THE ATHENÆUM, 21ST MARCH, 1846.)

IN discussing the subject of Juvenile Reformatories reference has been repeatedly made lately to the French Institution of this description at Mettray, near Tours. It may gratify our readers, therefore, if we communicate to them a few particulars regarding this, which we have obtained from an intelligent and benevolent friend recently returned from the continent, and who devoted two days to its inspection.

The "*Colonie Agricole et Pénitentiaire de Mettray*" was founded in 1840, chiefly by private subscription; one individual, the late Count Leon d'Ourches, having bestowed on it no less a sum than 140,000 francs in his own lifetime. The King, the Royal Family, and the principal public boards and officers also contributed. Its object is to receive youth who have committed offence, but been discharged from the central prisons under a benevolent law which, in France, places criminals below a cer-

tain age, not under punishment, but under what is called "*discipline correctionelle.*" It is thus only one of many similar institutions ; but it has become remarkable by certain peculiarities of construction and discipline, and by extraordinary success in attaining its object. It is calculated to receive 400 boys ; who are not housed in one great building but are distributed into ten small ones,—the inmates of these being further divided into four parties of ten each, who are trained together, and taught by every means possible to consider themselves members of a family, and interested in the conduct of their companions equally with their own. It is to the "social," or it may be also called the "domestic," principle thus involved that M. Demetz, the benevolent director of the establishment, who, we believe, also originally suggested its plan, attributes his great success ; but its other arrangements seem equally judicious.

The object aimed at being to give especially a rural education, a considerable extent of land is annexed to the establishment, which is entirely cultivated by the "colonists," as they are termed ; and while they are thus taught husbandry practically, their minds are opened to its theories by lectures on all its principal departments. Workshops are also

maintained, in which all the principal rural trades—common, shoemaking and tailoring included—are taught and exemplified. Reading, writing, arithmetic, and linear drawing are superadded ; and the whole is crowned by very careful religious instruction.

The forms of discipline are, as much as possible, persuasive, not coercive. There are no walls,—no stripes ; but a list of honour is kept, into which continued absence of offence for three months gives a title to admission ; and cells are attached to the chapel, and thus specially within the persuasive influence of the priest, for the refractory. The whole influence of the families is further enlisted in the cause of order and punctuality. These vie with each other in having the names of their partners exhibited in the approving list ; and offence is found to be more checked by being thus rendered unpopular in the community than by any form of restraint proceeding from superiors.

These are the general principles of the Institution at Mettray ; but let us now mark their results. According to its last Report, now before us, 521 boys have been admitted into it since its foundation—of whom 105 were received in the course of last year. Twelve, having been found incorrigible, have been

returned to the central prison from whence they were transferred; seventeen have died—of whom six, strictly speaking, never joined, having been originally received into the Infirmary and never left it; 144 have been discharged to places; seven of these have been re-convicted; nine are but indifferently conducted; but 128 are without reproach, and promising to do well.

In the interior of the establishment, the success and, by consequence, the excellence of the management are not less manifest. During the last year, three-fifths of the inmates maintained their names on the list of honour; and the religious feelings of all appear powerfully developed. According to the rites of the Catholic Church, a greater degree of solemnity is given to the religious exercises even of the very young, at different seasons of the year; and a considerable diminution of petty offence is always found to precede these occasions and characterize the preparation for them.

The object being to rear labourers, not scholars, only one hour per day is given to instruction purely intellectual:—but, possibly through this very circumstance, the progress made is very rapid. Of the entire number who have been received 137 were previously able to read, and eighty-four to write;

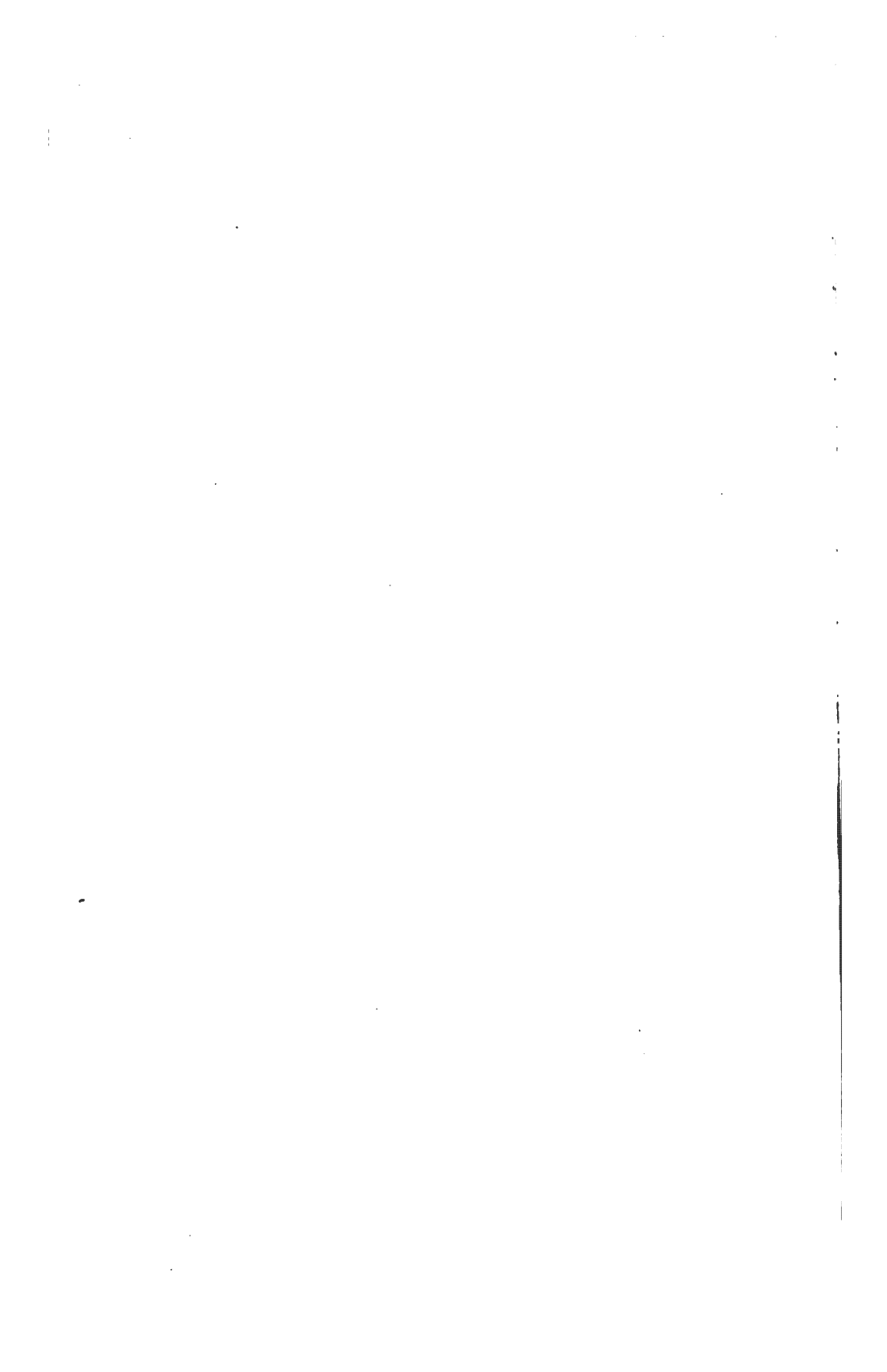
but in a very short time after entering, all are made to read, write, and cipher easily and readily ; and in mental arithmetic especially their proficiency is even remarkable. Very many draw well, and all study music as a recreation. In church music they are especial proficient. An air of intelligence and good purpose pervades the whole establishment ; with a remarkable look of trust and affection towards their benevolent chiefs, M. Demetz and Viscount Bretignères de Courteilles,—the latter of whom originally bestowed the ground on which the establishment stands, and residing in its near neighbourhood, shares the labours of M. Demetz as resident director.

The revenues of the institution proceed partly from private subscription, partly from an allowance made to it by Government of what each boy would cost per day were he detained in prison ; and, exclusive of the cost of new buildings and other permanent improvements, the expense, we are assured, does not very much exceed this latter sum, and is *likely to fall below it when the land attached to the institution is brought into full cultivation.*

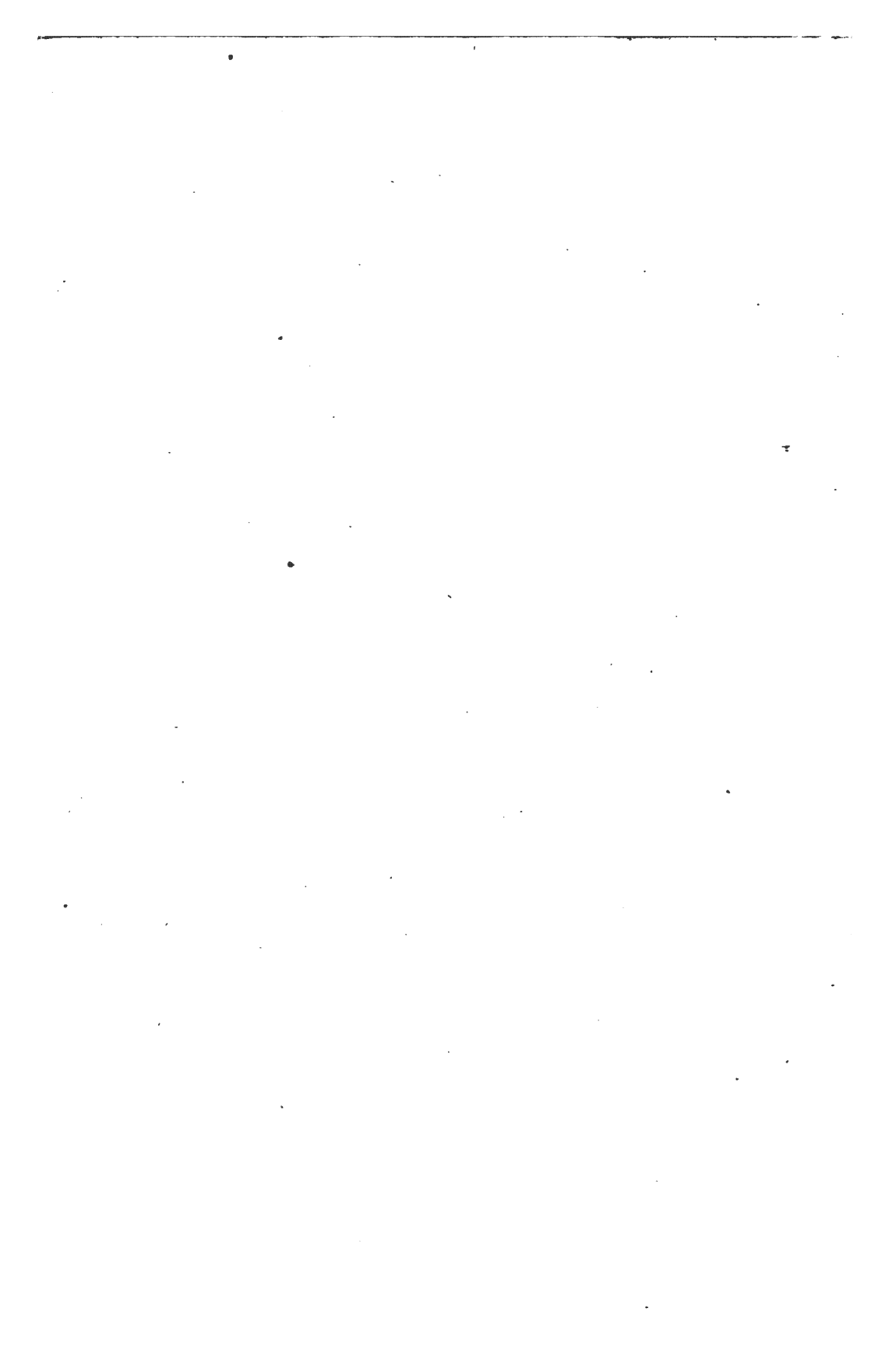
There is a striking resemblance between some of the principles which M. Demetz has here so happily exemplified and those contended for by Captain

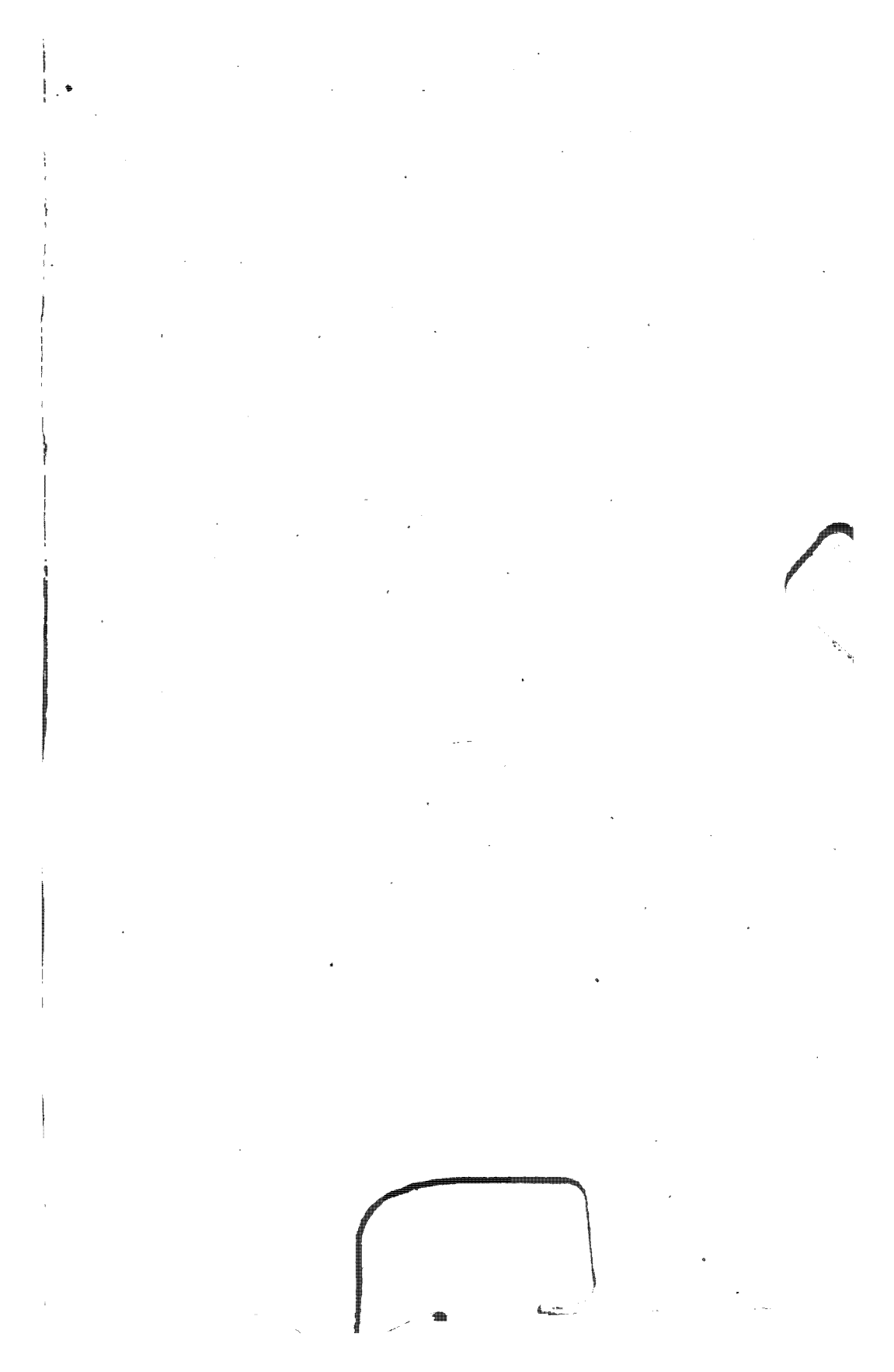
Maconochie in his various writings on secondary punishment ; and the combined testimony of two men who have been each so favourably placed for observation, and who could neither have borrowed from the other, is otherwise valuable than from its mere intrinsic weight. We are obviously on the eve of a great change in the whole tendencies of our criminal treatment. Everything seems to point to this, even to the errors made in regard to it :—and we may observe, in reference to that branch of the subject in which Captain Maconochie is a labourer, that the prejudice against the prisoner's return to society will be half removed, and the efforts of those who are seeking to promote it greatly assisted, when the prison shall, under a system of judicious discipline, have become a place in which men are supposed to be made better, instead of worse.

THE END.









MARK
SYSTEM.