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R E M A R K S  
ON THE  
PRINCIPLES  
OF  
CRIMINAL LEGISLATION,  
AND  
THE PRACTICE  
OF  
PRISON DISCIPLINE.

BY  
GEORGE COMBE,  
AUTHOR OF  
“THE CONSTITUTION OF MAN CONSIDERED IN RELATION TO EXTERNAL OBJECTS,”  
ETC. ETC.

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“The Maker of the Universe has established certain laws of nature for the planet in which we live, and the weal or woe of mankind depends upon the observance or neglect of those laws.”—*Letter by Lord PALMERSTON to the Presbytery of Edinburgh, Oct. 1853.*

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## ADVERTISEMENT.

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THE substance of the following Pamphlet appeared as an article in the WESTMINSTER REVIEW for April, 1854. As now reprinted, it is considerably enlarged, and elucidated by reference to details and authorities which were necessarily excluded by the limited space that could be allowed to the subject in a periodical.

MEDICAL OPINION of the Principle on which the  
following Pamphlet is based.

Having been requested to state our opinion of the annexed pamphlet, we, without being understood to become answerable for the accuracy of all the facts, or the soundness of all the reasonings which it contains, have no hesitation in giving our opinion that the fundamental principle which pervades it—namely, *that Criminal Legislation and Prison Discipline will never attain to a scientific, consistent, practical, and efficient character, until they become based on Physiology, and especially on the Physiology of the Brain and Nervous System*—is a sound principle; and most strongly entertaining this conviction, we recommend Mr Combe's views to the consideration of all who take an interest in these momentous subjects.

- B. C. BRODIE, Bart., D.C.L., F.R.S., Sergeant Surgeon to the Queen,  
Surgeon to H.R.H. Prince Albert, &c., &c.
- JAMES CLARK, Bart, M.D., F.R.S., Physician in Ordinary to the  
Queen and H.R.H. Prince Albert, &c., &c.
- HENRY HOLLAND, Bart., M.D., F.R.S., Physician in Ordinary to  
the Queen and H.R.H. Prince Albert, &c., &c.
- RICHARD OWEN, LL.D., F.R.S., Professor of Physiology to the  
Royal College of Surgeons, London, &c., &c.
- JOHN FORBES, Knt., M.D., D.C.L., F.R.S., Physician to the Queen's  
Household, and Phys. Ext. to H.R.H. Prince Albert, &c., &c.
- JOHN CONOLLY, M.D., D.C.L., Consulting Physician to Middlesex  
Lunatic Asylum, Hanwell, &c., &c.
- WILLIAM B. CARPENTER, M.D., Examiner in Physiology and Com-  
parative Anatomy, University of London, Prof. of Med. Juris-  
prudence, University College, London, &c., &c.

LONDON, April, 1854.



## P R E F A C E.

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IN submitting this Pamphlet to the judgment of the public, the author would particularly request the consideration of its principles by the conductors of the periodical press. In conversing with Magistrates and Governors of Prisons, he has heard the remark frequently made:—"We are convinced by experience that the present system of prison discipline has great imperfections, and we should be glad to endeavour to devise and administer a better; but we have no power. The law is paramount and imperative; and, besides, we are paralyzed by the state of public opinion. At one time the press complains of prisons being rendered too comfortable, and thereby attractive to the criminally disposed, and then it calls loudly for increased severity; at another, it denounces our discipline as cruel and barbarous. We are thus placed in a state of constant embarrassment, and are greatly discouraged in attempting improvements." Two examples may be cited in illustration of these remarks. When the details of Lieutenant Austin's treatment of certain convicts at Birmingham were published in June and September 1853,\* there was a general revulsion in the public sentiment against it, and the press loudly denounced it as unnecessarily and unwarrantably cruel. But in a few weeks afterwards, a number of striking cases came before the police-courts of barbarous treatment of women by their husbands, and a large portion of the press then complained of the inefficient lenity of the law, and called for flog-

\* See the Medical Inspector's Report in the Appendix.

ging as an addition to the punishment of the men. Indeed, the press in general may be observed giving voice to the public *feeling* in its varying moods, as it happens to be excited at the moment by particular cases, rather than passing sound judgment, based on knowledge of principles and their logical applications.

Two principles are contending in the public mind for mastery:—*First*, the vindictive feeling which urges us to repay the transgressor after his own kind. There is an element in the nature of most men which approves of this mode of treatment; and should conscience occasionally whisper that this is *revenge*, they silence it by referring to its supposed advantages as a means of deterring others from crime. The *second* principle is that of humanity and love, which views the convict as an erring brother, the victim of an unfavourably constituted mind and evil circumstances, and which considers the protection of society through his *reformation* as the legitimate object of the law. Hence the wavering between severity and humanity, between *punishing* and *reforming*, which marks our opinions and the criminal code.

Great evils flow from our present inconsistencies. The public requires, that in order to deter others from crime, convicts shall be *punished*; being punished, however, and liberated, the public discovers that they are not *reformed*, and it drives them from every door. Its own treatment has stamped on them the prison brand, which it regards as the mark of dangerous vice. The consequence is, that wherever their history is known, they are treated as social outcasts, and driven back into the haunts of crime. It would be well to bring this state of things to an end. In the following pages an attempt is made to investigate both of these principles, and to discover whether or not it is possible at once to protect society and benefit offenders.

The influence of the offender's physiological constitution, as one cause of crime, is adverted to in the following pages ; and to bespeak a calm consideration of it from the public, proof copies of the pamphlet were presented to some eminent medical and scientific authorities, and their opinions solicited on the bearing of *Physiology* on the principles of criminal legislation and prison discipline. They have recognised and expressed their conviction of its importance as a guide in this department of public administration, and have kindly authorized the publication of their opinion. Their decision is confined to the general point, that the constitution and actual condition of the organism, and particularly of the brain and nervous system of the convict, should enter as a fundamental element into the consideration of his treatment. Differing, as most of them do, from the particular physiological views of the author, he considers it an important object towards securing a serious consideration of the subject on the part of the public, to have received their combined sanction of his fundamental proposition,—that no sound system of criminal legislation and prison discipline can be reached while the influence of the organism on the dispositions and capacities of men continues to be ignored.

One other explanation is offered: Some persons entertain the opinion, that the punishment inflicted on a convicted offender may legitimately be made more severe than his crime itself deserves, in order to operate as an example to deter others ; and they consider the author, on page 17, to advocate principles tantamount to recommending immunity from penal infliction ; but this is a mistake. He distinctly lays down the proposition, that in the treatment of each offender society has a right to employ *every degree of severity* that may be necessary to defend its own interests against his future inroads. It appears to the author, however, that the suffering which must necessarily accompany a criminal's reformation will produce

the *maximum* of deterring effect on the unknown persons who experience a proclivity to crime. An aggravation of that suffering, with a view to deter these persons, he considers not justifiable ;—*first*, because the sufferer is in no way connected with, or responsible for them ; and, *secondly*, because the prospect of mere suffering does not reach, and cannot remove the condition of the organism in which the proclivity to crime originates. If the author is in error as to the *causes of crime*, his conclusions fall to the ground ; but if his views in regard to the causes be correct, the conclusions appear to him to follow as logical consequences.

He is gratified to perceive principles closely coinciding with those here stated, advocated in a report on “The Treatment of Criminal Children,” by the Society for promoting the Amendment of the Law. No system of criminal legislation and prison discipline, however, will suffice to cut off the sources of crime : Only a thorough education and training of the whole people can be expected to produce this effect.

45 MELVILLE STREET,  
EDINBURGH, 1st May 1854.

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The following Titles were placed at the head of the Article,  
as it appeared in the WESTMINSTER REVIEW :—

*An Act to Substitute, in certain cases, other Punishment in lieu of Transportation.* 20th August, 1853.

*Results of the System of Separate Confinement, as administered at the Pentonville Prison.* By John Burt, B.A., Assistant Chaplain. London : Longman and Co. 1852.

*Penal Discipline: Three Letters suggested by the interest taken in the recent inquiry in Birmingham.* By Captain Maconochie, R.N., K.H. London : Thomas Harrison, 59, Pall Mall. 1853.

*Criminal Jurisprudence, considered in relation to the Physiology of the Brain.* By Marmaduke B. Sampson. Third Edition, revised. London : Highley and Son.

*Juvenile Delinquents: their Condition and Treatment.* By Mary Carpenter. London : W. and F. G. Cash, 5, Bishopsgate Street Without. 1853.

*Reports of the Directors of Convict Prisons on the Discipline and Management of Pentonville, Parkhurst, and Millbank Prisons; and of Portland, Portsmouth, and Dartmoor Prisons; and the Hulks; for the year 1853.* Presented to both Houses of Parliament.

*Eighteenth Report of the Inspectors of Prisons of Great Britain.* Presented to both Houses of Parliament.

*Farther Correspondence on the subject of Convict Discipline and Transportation.* Presented to both Houses of Parliament, July 18, 1853.

*Crime: its Amount, Causes, and Remedies.* By Frederick Hill, Barrister-at-Law, late Inspector of Prisons. 8vo, pp. 443. London : John Murray. 1853.

R E M A R K S  
ON THE  
PRINCIPLES OF CRIMINAL LEGISLATION,  
AND THE  
PRACTICE OF PRISON DISCIPLINE.

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"AN eye for an eye and a tooth for a tooth," embodies the principle of revenge. This has been called savage justice, and Johnson defines "revenge" to mean "return of an injury;" "the desire of hurting one from whom hurt has been received;" and "the wreaking of one's wrongs on him that inflicted them." Another authority has said, "Love your enemies, bless them that curse you, do good to them that hate you, and pray for them which despitefully use you, and persecute you." In a civilized country criminals are the great enemies of society: indeed, when we are not engaged in foreign war, they are our only corporeal foes. In dealing with them, then, on which of these maxims have we hitherto acted? What success has attended our efforts? And which principle shall we follow in future?

These questions are now brought home to our firesides. When our jails were periodically emptied on territories situated on the opposite side of the globe, from which few convicts ever returned, the British public treated convict management as a purely speculative, official, or philanthropic question, in which they had no direct interest. The Act of the 20th August last, by one single paragraph of five lines, has effected a complete change in this state of matters. By sect. I., it is enacted, that "after the commencement of this Act (*the 1st of September 1853*), no person shall be sentenced to transportation who, if this Act had not been passed, would not have been liable to be transported for life, or for a term of fourteen years or upwards; and no person shall be sentenced to transportation for less than fourteen years."

8      *Remarks on the Principles of Criminal Legislation,*

The Act substitutes "penal servitude" for transportation, according to the following scale:—

Instead of transportation for seven years, penal servitude for four years.

Instead of transportation exceeding seven years and under ten, penal servitude for not less than four, and not exceeding six years.

Instead of transportation exceeding ten years, and not exceeding fifteen years, penal servitude for not less than six, and not exceeding eight years.

Instead of transportation exceeding fifteen years, penal servitude for a term not less than six, and not exceeding ten years.

Instead of transportation for life, penal servitude for life.

Sect. VI. defines "penal servitude" to mean confinement in any prison in the United Kingdom, or in any river, port, or harbour of the same, in which persons under sentence or order of transportation may now be confined; or in any other prison in Great Britain, or in any part of her Majesty's dominions beyond the seas, as one of the principal Secretaries of State may direct, accompanied by hard labour and all other penal inflictions in force at the time of passing the Act. The Queen and the Lord-Lieutenant of Ireland continue to enjoy the power of pardoning offenders and mitigating punishments.

After four, six, or more years, then, spent in "penal servitude," the great mass of our convicts will be returned into the bosom of society. The reader will judge of their probable influence on the population when he is told, on the authority of Mr. Burt, that "the number of criminals yearly consigned to the prisons of England, Wales, and Scotland, ranges not very wide of 150,000. Of these, the number convicted of offences which render them liable to transportation, ranges somewhere about 30,000, and of these the number actually sentenced to transportation is (in round numbers) about 3000." In four years, therefore, from the 1st of September last, the prison gates will annually open and send forth these large numbers of convicted felons into the ordinary walks of life. Can any question be of graver importance to each of us than—How, during the years of confinement, shall these prisoners, consisting of individuals of each sex, be fitted to re-enter society? Two of the works named in our title are devoted to the solution of this problem; and to give an idea of the extent to which past experience has enabled the best informed official administrators of prisons to decide on the nature of the treatment which should be pursued to fit the convicts for civil life, we shall first advert to the suggestions offered by John Howard nearly eighty years ago, and then select a few passages from each of

these works, showing what advances have been made since his day.

In March, 1774, John Howard laid the result of his inquiries into the condition of English gaols before the House of Commons, and received a vote of thanks from the House. He brought to light deficiencies of the most distressing nature—in food, water, bedding, and fresh air; the total neglect of the morals of the prisoners; the demand of garnish; the permission of gambling; the use of irons; the overcrowding of prisons;—all concurring to produce the “gaol fever,” which spread its ravages from the prisoners to the courts of judicature, and to our fleets and armies. Howard not only brought these evils to light, but proposed remedies for them. “He considered that, among the inmates of a prison, there is every possible degree of moral demerit, from the mere inconsiderate violation of some hard, ill-understood, local law, to the deliberate breach of the most sacred and universal rule of action.” “He convinced himself that it was the duty of every society to pay due attention to the *health*, and, in some degree, even to the *comforts*, of all who are held in a state of confinement; that wanton and unnecessary rigour should be practised upon *none*: and that some were entitled to all the indulgences compatible with their condition.” He did not desire to render prisons attractive to the dissolute. On the contrary, “Whenever imprisonment was made the *punishment* of a crime, his idea of *reformation* became a leading principle in the regulation of prisons; and it was that which cost him the chief labour in collecting and applying facts. To accomplish this end, he showed that these things were essential: strict and constant superintendence—close and regular employment—religious instruction—rewards for industry and good behaviour, and penalties for sloth and audaciousness—distribution into classes and divisions according to age, sex, delinquency, &c.—and occasional and nocturnal solitude.” “He extremely lamented that the plan of *reformation* seemed, of all parts of his system of improvement, least entered into or understood in this country. The vulgar idea that our criminals are hardened and abandoned beyond all possibility of amendment, appeared to him equally irrational and pernicious. He scorned, through negligence or despair, to give up the worst cases of mental corruption; he fully believed that proper remedies, duly administered, would recover a large share of them; and he thought it the greatest of cruelties to consign a soul to perdition, without having made every effort for retrieving it. Merely to *get rid* of convicts by execution or perpetual banishment, he regarded as a piece of barbarous policy, equally denoting want of feeling and deficiency of resource; and he had not so much of English prejudice about him, as to suppose, that a

system not adopted in this country was therefore absurd or impracticable."\*

Let us now attend to the present state of the question of prison discipline, as represented by the two experienced authorities before alluded to, Mr. Burt and Capt. Maconochie.

The Pentonville Prison was erected for the purpose of submitting to actual experiment a new system of prison discipline, the "Separate System." Mr. Burt describes himself as "one of the very few personally acquainted with the important facts" of the experiment and of the changes in the system, and adds that he "feels it incumbent upon him not to withhold this information." This claim to accurate knowledge seems well founded, seeing that he was the assistant chaplain of the prison. Captain Maconochie tenders his opinion "with the more confidence because my opportunities of studying the subject to advantage have been very great. I served eight years in the penal colonies, during four of which I commanded in Norfolk Island, their most penal settlement; and I was, two years since, Governor of the Borough Prison of Birmingham, now so unhappily notorious. During the whole time thus spent, I took an especial interest in studying minutely the effect on society and on prisoners, of different forms and degrees of punishment." Let us hear, then, what system of treatment each recommends for adoption.

Mr. Burt says:—"It has been laid down by Archbishop Whately, the highest authority on questions of penal science, that punishment to be effective must be *severe*."—p. 90. "The Separate System at least satisfies, more than any other mode of imprisonment, this primary requirement of a sound penal discipline; it is *severe*."—p. 91. "The distinctive characteristic of the discipline," says he, "was the *combination of severe punishment with a considerable amount of instruction and other moral influences*. The elements relied on for severe punishment were—rigid separation, and a protracted term of eighteen months' imprisonment, followed by transportation. The moral or reformatory elements were—frequent visitation by superior officers, a considerable amount of moral and religious instruction, combined with industrial training, and a reasonable prospect of earning an honest livelihood in the colonies, upon the sole condition of steady good conduct." The italics are his own.

Captain Maconochie writes:—"We must altogether reverse the arrangements now in force in our prisons, and sanctioned by various Acts of Parliament. These having been organized without reference to reform, and looking only to coercion and example, are almost as if specially meant to be opposed to improvement in

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\* Dr. Aikin's "Character and Services of Howard." 1792. p. 66—77.

moral character—a comprehensive charge, but its justice will, I hope, appear incontrovertible, as I proceed to state the changes that I would suggest in them."

Mr. Burt, again, says:—"One end to be aimed at in dealing out punishment, is to impress the prisoner with the conviction that there is over him an irresistible power. The deterring efficacy of punishment depends in a great degree upon its producing this impression. The most direct mode of subjugating one stubborn volition is to induce the action of a stronger. Hence the error of those who deny the value of the penal element of prison discipline, and rest exclusively upon directly reformatory agencies."—p. 50. In illustration of this remark, he adds:—"Judicious punishment, *when severely felt*, has a powerful moral tendency to predispose for the reception of moral influence; if, therefore, the efficiency of the punishment is impaired, reformation must be diminished."—p. 52. "The moral effect upon a man rendered permanently honest by *punishment*, is not fully embodied in the resolution, 'Crime is what I *will* not do,' but the feeling, 'The punishment of crime is what I *cannot* bear.' In the absence of perfect moral *rectitude*, the only security against crime is this dread of consequences."—p. 56. The italics are Mr. Burt's.

Captain Maconochie, after four years' experience of the effects of the severest criminal treatment at Norfolk Island, declares, in another of his publications, that it fostered "a tendency to reckless daring;" a quality which, more or less, characterizes all prisoners. "As a feature in the criminal character, this daring is not, I think, sufficiently adverted to by those who advocate the attempt to deter from crime by severe punishments. *Tempers under its influence feel themselves only challenged, both in their own eyes and in those of their companions, by the recurrence of these.*" However strange it may appear to those unacquainted with the subject, "yet *crime thrives on severe examples*," and "most certainly in direct competition with them."

Mr. Burt says:—"The passions of the criminal, by which he is chiefly actuated, are usually excessive and malignant. Penal discipline finds the will vigorous, but vicious; propelled powerfully, but lawlessly. It is this *vicious* activity that is subjugated by protracted seclusion and wholesome discipline."—p. 80. "Separate confinement is the system of imprisonment under which it (punishment) can be administered with greatest *effect*. Not only is this discipline more reformatory—it is also, within equal periods of time, more severely felt."

Captain Maconochie continues:—"I do not approve of separation as a form of prolonged imprisonment, and have always opposed its being very strictly enforced. It excessively multiplies

conventional offences, and the temptations to commit them, and thus almost of necessity introduces undue rigour of punishment in order to check them. It is also, as I think, much opposed to manly, moral improvement. I can find no example in history of ascetic discipline producing this; and, on the contrary, by fostering unproductive musing and reflection, and occupying the attention solely with self, it has a directly opposite tendency." "I do not think that its tendency is so much to make mad as to make surly, selfish, and thus in small matters wicked. Man is born social, his relations are social, his duties social, and he may be best improved in well-regulated social habits. We might as well, I think, seek to train our admirals by keeping them constantly on shore, as our criminals by keeping them for a length of time shut up between four walls. Like handcuffs and straight-waistcoats, separation has a good special application, and, as medicine, is excellent for certain phases of moral disease; but it is no more fit for habitual diet than would be senna or ipecacuanha."

Both Mr. Burt and Captain Maconochie are evidently men of acute and energetic minds, both have had experience of the effects of the systems they describe, and both earnestly aim at the same object—protecting society and reforming the convict; yet can any series of principles and practical applications be more at variance than those they severally advocate!

It is astonishing and mortifying to consider how little progress the British Legislature has made beyond adopting tardily, partially, and in a vacillating spirit—the improvements suggested, seventy-nine years ago, by Howard. The punishment of death, as a means of "getting rid" of our criminals, is indeed much restricted; but the restriction is of recent introduction, and "perpetual banishment" has only now shared the same fate, not from conviction of its being "a piece of barbarous policy," but from necessity—our colonies having refused any longer to receive our convicts. It is to us a painful and fearful consideration, that after all that has been written, spoken, done, and suffered, in the matter of criminal legislation and prison discipline, we should still be on the threshold of our knowledge of the subject, and listening to contradictions such as these concerning it. What can be the cause of this discrepancy? And how shall any one without experience pretend to arbitrate between these authorities?

Two causes appear to us to have led to the failures which we deplore. First, vague notions of the *objects* which should be aimed at in prison discipline; the consequence of which has been constant vacillation in the public mind between the two principles of severity and humanity, or between *punishment* and *reformation*, as the chief aim in the treatment of criminals: and, secondly,

almost a total neglect of consideration of the *causes* of crime, in devising measures for its prevention.

The most enlightened and practical work on the whole subject in hand, which has appeared in modern times, is "A System of Penal Law for the State of Louisiana," by Edward Livingston, approved of by the General Assembly of that State, on the 21st of March, 1822. In regard to the *object* of prison discipline, the author says, in his Report prefixed to the Code:—"The law punishes, not to avenge, but to prevent crimes; it effects this, first, by deterring others by the example of its inflictions on the offender; secondly, by its effects on the delinquent himself; taking away, by restraint, his power, and, by reformation, his desire of repeating the offence. No punishments, greater than are necessary to effect this work of prevention, let us remember, ought to be inflicted; and that those which produce it, by uniting reformation with example, are the best adapted to the end."—p. 19. With one exception, these few lines contain a sound exposition of the principles of criminal legislation; but the exception is an important one. Are we entitled to prevent crimes by punishing in order to "deter others by example"? A right understanding of this question is of fundamental importance in criminal legislation. Mr. Burt quotes Archbishop Whately as delivering the opinion "that punishment, to be effective, must be *severe*." (The italics are Mr. Burt's). In our copy of Whately's "Thoughts on Secondary Punishments," we read:—"The points which most persons would look to, as important requisites, are, first, and above all other considerations, that it should be *formidable*: *i. e.*, that the apprehension of it should operate as much as possible to deter men from crime, and thus to prevent the necessity of its actual infliction; secondly, that it should be *humane*: *i. e.*, that it should occasion as little as possible of *useless* suffering—of pain or inconvenience that does not conduce to the object proposed; thirdly, that it should be *corrective*, or at least not corrupting;—tending to produce in the criminal himself, if his life be spared, and in others, either a moral improvement, or at least as little as possible of moral debasement; and lastly, that it should be *cheap*. \* \* \* \* This last point is of far less consequence than the others."—pp. 6 and 7. That there may be no doubt about his Grace's meaning, he repeats his opinion:—"That punishment should be *formidable*, is, as I have said, decidedly the first point to be looked to: that it should be *corrective* is another point of great, though far inferior consequence: that it should be *economical*, is, though by no means insignificant, a matter of only a third-rate importance."—p. 38. The italics are the Archbishop's. He once more reverts to these topics, and says:—"The infliction of just vengeance on the guilty is clearly out of man's province."

"The prevention of a repetition of the offence by the same individual, whether by his reform or removal, is clearly of incalculably less importance (desirable as it is in itself), than the prevention of crime generally, by the terror of example."—p. 60.

We have quoted these *dicta* at full length because great weight is attached to them by the public, and we find them adopted not only by Mr. Burt, but by the great majority of governors and chaplains of prisons, as the foundation of their opinions and practice. Indeed, they may be said to embody the spirit and aim of our legislative enactments and practical regulations on the subject. Nevertheless we are constrained to dissent from them, and to proclaim them fraught with pernicious errors. In his "Thoughts on Secondary Punishments," the Archbishop does not inquire into the causes of crime; and probably from a difference between him and us on this fundamental point arises our difference on the objects which may be legitimately pursued in the treatment of criminals. We shall subsequently state our opinion of the causes of crime; meantime we may advert to a view of the rights of society in dealing with offenders, which appears to settle the question of our right to punish one man in order to deter another. When we have caught somebody committing an injury on the property or person of another, and ask what shall be done with him, is the Legislature, with Archbishop Whately, entitled to say that "it strongly suspects that there are, or at least may be, other people disposed to a criminal course of action, and that it will be highly useful to society to inflict on this one such punishment as may deter them from committing crime?" To be able to answer this question according to reason and justice, we must obtain answers to a few preliminary queries. We, ask *who are* these other people? If they have transgressed and been punished, they know punishment by experience in their own persons, and do not require that another should be punished to warn them:—if they have not offended, we only *suspect* that they exist. Do these suspicions, then, warrant us in punishing the offender whom we have caught *flagrante delicto*, to deter unknown persons from doing what we only surmise they are disposed to do? We think not. What connexion is there between the convicted offender and them? None that we can discover. Is he responsible in any way for their conduct, as a parent is for his child, or a master for his servant? Certainly not; for not only has he no authority over them, but neither he nor we know who they are! Then why should even one pang of suffering be inflicted on *him* with the purpose of deterring *them* from crime? We cannot conceive a rational answer to this question.

We can understand society, through its legislature, prohibiting all its members from doing certain acts, and announcing that if

nevertheless any one shall perpetrate them, it will inflict on him a certain amount of suffering. This intimation would be calculated to act as a restraining motive on many individuals who might feel themselves secretly inclined to crime; and to produce this effect, society must suit its action to its word, and when any of its members, defying its authority and braving its threats, commits one of the prohibited acts, it must inflict the penalty. This is probably what is meant by deterring by example; but it is in truth quite a different thing. It is dealing with the offender simply for his own transgression. Society has prohibited and threatened; he has despised its authority and set its power at defiance. For its own protection it punishes him, to show him that it is in earnest, and to furnish *him* with motives to abstain from a repetition of his crime. If there are unknown persons at large who are disposed to do evil, the spectacle of his treatment *may* operate beneficially on them as a restraining influence, by showing that society is in earnest; but this effect will be contingent on many circumstances,—on their knowing the nature of his suffering, on the impression it will produce on each of them according to his own constitutional qualities, and on his calculations of the chances of escape. But in every point of view, the effect which may be produced on them is *extrinsic* to the question at issue between the convicted culprit and society. He is answerable for himself, but for none else. Society, therefore, in our view, has no right to add one iota of pain to his punishment, from any consideration of its effect on them. If they shall profit by perceiving in his person a proof that society is in earnest in threatening, so much the better for society and them; in this case his punishment operates as a practical demonstration of the evil which will overtake them, if they too offend; but if they should happen not to be moved by that example, this is no fault of his; and the proposal to render his example effective on them by dealing with him otherwise than we should have done if they had never existed (and in the eye of the law they *do not exist*, for they are still unknown as criminals) is sheer barbarism and absurdity. This conviction was first forced upon us by the following incident.

About the year 1804, under the impulse of youthful curiosity, we happened to stray for the first time, into a court of criminal justice. The moment was a solemn one. We heard the verdict of a jury delivered, finding two men guilty of stealing a horse, value £18. The presiding judge put on the black cap, rose in awful dignity, and sentenced the two culprits to be hanged. Our heart sank within us, on hearing the doom. One of the men asked if he might be permitted to address the court and the jury. His request was granted; and in a firm but respectful tone, and

in good language, he said :—“My Lords, and Gentlemen of the Jury, we do not complain of your verdict or of the sentence, but we appeal to you for mercy! We are both married; we have between us nine children; we have never before appeared before a criminal court; we were pressed by want, and fell into temptation. The horse was worth only £18. In the name of heaven, do not take away the lives of two men, render two unoffending women widows, and nine children fatherless, and brand them all through life with disgrace, for the single offence of our stealing that one horse; we intreat you to recommend us to mercy from the crown.” To our young and unsophisticated nature, this appeal appeared irresistible. But the presiding judge rose in stern grandeur and said :—“You mistake the reason why you suffer. You are condemned to death, not solely because you have stolen a horse, but that horses may not be stolen. In the fields and on the hill sides, the law is their only protector, and this circumstance renders it impossible for us to recommend you to mercy. Prepare yourselves, therefore, for your doom, and do not deceive yourselves with hopes of a mitigation of punishment; it cannot be granted without inflicting on society whom you have injured, an additional wrong, by diminishing the influence of the law as the protector of their otherwise unprotected property.” The two men were subsequently hanged, and the judge’s speech met with general approbation: but our moral instincts revolted against it; we *felt* that the sentence was cruel and unjust, and although at that time our intellectual perspicacity could not unravel the web of sophistry in the speech of the judge, we left the court with the full impression that it was wrong in principle and unnecessary in practice. The whole scene was indelibly stamped on our brain: we still see the condemned men and the expression of their countenances; we hear the tones of him who addressed the court, quivering with terrible emotion, yet firm and respectful,—his manhood and good feeling bearing him up in the agony of a death doom, with desolate hearths, and degraded, destitute, and disgraced widows and children, before his mental eye. He uttered no word of complaint, but solemnly, earnestly, and beseechingly craved for that mercy as a boon, which our inner soul told us he was entitled to as a right.—We think that we now understand where the judge’s error lay: it was common to him and his age; but still it was a grievous mistake. These culprits were answerable only for their own transgressions; society, in hanging them to deter others, was guilty of infringing their rights; and as the safety of society cannot be based on the infringement of a right, it might have been concluded, *à priori*, that the forfeiture of the lives of these two men *was not necessary* to protect cattle from being stolen. Experience confirms this con-

clusion; for the punishment of death is not now inflicted for horse-stealing, and fewer horses are stolen now than when death was, inexorably, the penalty of that crime.

The true merits of a principle are tested by its extreme applications. If it be right in morals to punish one man in order to deter another, it must be right also to increase the punishment until the desired effect shall be produced. When society found that men still stole horses although it had hanged previous horse-stealers, it should on this principle have proceeded to torture the next offender in order to add greater efficacy to the example. If this too had failed, which assuredly it would have done, the conclusion would have been irresistible, that the principle was wrong and the whole practice founded on it barbarous; but the two facts, that society never dared, even in its fiercest moods, to carry deterring punishment to the length of torture, and that, in its more humane condition, it thought proper to abrogate the death penalty entirely for this and a hundred other crimes, is a virtual condemnation of the principle itself, and justifies us in discarding it altogether as a basis of criminal legislation.

If, then, we exclude from our principles the right to punish one man for the purpose of deterring another with whom he has no connexion, and for whom he is not answerable, we must deal with each offender on grounds applicable to himself and his own conduct. Society is clearly entitled to treat him in whatever way may be necessary to protect itself against *his future outrages*. No man, be his mental constitution and circumstances what they may, *has a right* to prey upon the property or to molest the persons of his neighbours. He cannot, therefore, justly complain of any measures the social body may use to insure its own safety, however painful these may be to him. But if there be *several* means of effecting this object, society is bound by every moral and religious principle, to employ that which, while equally beneficial to itself, is least injurious to the culprit. Thus, an offender may be effectually restrained from future crimes in one or other of three ways: by putting him to death; by locking him up in prison for life; or by completely reforming him. Banishing him for life, before he is reformed, is not justifiable on any principle; for it is only extruding him by force from our own social circle, and intruding him into another, to prey upon and outrage its members: a crime in itself quite equal to that of which he has been guilty.

To put a criminal to death, is to protect ourselves against his future felonies in a way entirely effectual and also very economical, in so far as society is concerned; and we have heard this punishment defended by the argument already stated, namely, that society, for its own protection, is authorized by reason and

morality to announce to all its members, that it will put to death every one who shall commit certain acts; that this announcement will arrest and deter many who are wavering on the verge of crime; but that to render the threat effectual, society has no alternative but to inflict the penalty on all who incur it. This is an intelligible and self-consistent argument, for it abandons the ground of punishing one man to deter another, and proposes to deal with each on the supposition of a kind of pre-announced contract binding on all the members of society. If the punishment of death thus threatened and inflicted stood in the relation of a natural means of removing the causes which lead to crime, then, as Archbishop Whately observes, it would be justifiable, because it would be effectual, and there would be no one to punish. But, unfortunately, when we examine into those causes, which we shall subsequently do, we shall find that it bears a very distant relation to them; besides, it is proved by experience that severe punishments do not deter, but excite and challenge to crime those who, through daring and reckless natural qualities, are predisposed to commit crimes of violence,—and none others are prone to this class of offences. Moreover, there are moral instincts in society which operate with irresistible effect without being clothed in legal forms and expression. Severe punishment outrages the public sentiment—society sympathizes with the offender, obstructs the action of the law against him, and regards him as a martyr; and the knowledge of this state of things acts as an incitement to the criminally disposed to defy the law and brave its terrors.

The point then at which we seem to have arrived is this: We cannot justify putting a criminal to death on the plea of protecting society from his outrages,—because confinement would be equally effectual; nor by the plea of reforming him, for this is excluded by his death; nor by the plea of taking vengeance on him, for this is generally disavowed; nor by that of deterring others from crime who are still guiltless, because he is not answerable for them, or in any way connected with them. From these considerations it appears to follow that, in dealing with offenders, we are bound to restrict ourselves to those punishments which, while they shall be equally efficacious in providing for the protection of society, shall be the least injurious to the criminal, and that these are only two in number, viz., confining a culprit for life; or, subjecting him to a temporary discipline sufficient to produce such a change in his dispositions, that, after undergoing it, he shall be fitted to return to society, cured of the inclination to infringe its laws.

It is gratifying to us to be able to cite the authority of the Hon. E. P. Hurlbut, one of the Supreme Judges of the State of

New York, a lawyer of great talents and experience, in support of the principles now laid down. In his work on "Human Rights and their Political Guaranties,"\* chap. iv., he says:—"It is unfortunate that our language furnishes no word which expresses the idea of that procedure which the State can rightfully take for the prevention of crime and the reformation of offenders. We call it *punishment*, which conveys to most minds a wrong idea. It imports vengeance, to answer the demands of human passions which have been excited by the offence—security from further wrong by disabling the offender—making his punishment a terror and example to mankind—and, in some cases, the reformation of the evil doer. But this latter is poorly provided for, and restitution to the injured party scarcely enters into account.

"This compound idea of punishment is altogether wrong, as well because of the false elements which enter into it, as by the omission of proper ones. The offender is endowed with all the rights of a man—he is one of the people composing the State, and can claim the perfect enjoyment of every right as against the State and every citizen thereof, except when security for the rights of others demands that this enjoyment by him shall be limited or restrained. By his offence he forfeits no rights whatever, but only incurs a limitation, a restraint of his enjoyment of them so long as the public safety may require. This is justified by the principle of self-defence; society has a right, for its security, to take into custody all persons who are shown by their actions to be at war with the rights of mankind. \* \* \* \* He must be taken into the custody of the State, irrespective of his sanity or insanity, for the State knows only that he is a dangerous man, whose restraint is necessary for the safety of society."

"This theory negatives, of course, all idea of vengeance in our dealing with offenders. It also leaves out another false element in the idea of punishment—that of the infliction of pain for example's sake; upon which I have simply to remark, that the whole power of society is exhausted when they have secured themselves from further harm from an offender; and that if the State go further and inflict pain upon him, which is not directed to his reformation and cure, it violates his rights: and it is no answer to say that its object was to inspire terror in others, since by doing it, a wrong is inflicted on the prisoner—and as the example is an outrage, it can scarcely be expected that any good can come of it. This theory also denies to the State the right to take the life of its prisoner." p. 76. Mr. Hurlbut allows that it is lawful to take life in a state of war, or when we are assaulted

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\* New York, 1845. Reprinted in Edinburgh in 1847, and published there by MacLachlan and Stewart, and by Simpkin, Marshall, and Co., London.

to the danger of our own life, as a measure of defence, but maintains that when the offender is captured and in prison, this necessity no longer exists, and killing is no longer justifiable.

First, then, let us consider on whom the punishment of imprisonment for life should be inflicted. In our opinion, on murderers and on incorrigible criminals. Murder means deliberately and feloniously taking away the life of another person. Any man who has shown himself possessed of such malignity of disposition, as this crime necessarily implies, is not fit to be afterwards trusted with liberty. Society is entitled to say to him that it cannot expose its members to the risk of his destroying another of them, however sincere his repentance and complete his reformation may appear to be; for absolute certainty in such a case cannot be attained. He should be confined, held to labour, and instructed; but cut off from all hope of ever again breathing the free air of social life. We should propose to place murderers in a prison by themselves; to have it surrounded by high walls, painted black, and "MURDERERS' PRISON" inscribed on it in large letters of flaming red. We are prepared to show, by reason and experience, that such a mode of treating this class of criminals, while justifiable and humane in itself, would, extrinsically to its own merits as between society and the offender, have a more powerful effect as a deterring influence on men of similar dispositions still at large, than the punishment of death; but we cannot now enter into this question.

The other class whom we should confine for life are incorrigible offenders. That such exist is acknowledged by all who have attended to prison discipline, and the history of the inmates of gaols. Mr. Burt admits that, among prisoners sentenced to transportation, individuals were found "who had evinced the last excesses of depravity, or *an invincible pertinacity in crime*."—p. 26. On p. 27 he informs us that "these worst classes among transports, after all, constitute *not one per cent.* of the whole prison population;" but on p. 49 he says:—"It is true that habitual and hardened offenders constitute only a portion of prisoners, but they are a *numerous class*." Which of these statements, in regard to numbers, is correct, we shall not now stop to inquire; but we believe him to be perfectly justified by experience in affirming that, "*It is the undistinguished diffusion of incorrigible criminals among the whole body of convicts that renders the problem of prison discipline at present almost insuperably difficult. If the amount of this incorrigible criminality were distinctly ascertained, and reduced within its actual limits, we might then more readily discover and apply the specific measures required.*"—p. 22. In order to treat successfully the other convicts the confinement of incorrigible prisoners in a separate prison is here

distinctly acknowledged to be indispensably necessary to the successful application of prison discipline; and, if this be assumed, the question will next occur, How shall the incorrigible be discriminated? We shall afterwards revert to this point; meantime, as the remaining class of convicts will be the corrigible, let us proceed to consider what kind of treatment should be administered to *them*.

It does not admit of dispute, that, at present, when a culprit is brought to the bar of a criminal court, it forms no part of the duty of the judge or jury to investigate the circumstances which led to the commission of the offence; and if the principle before contended for be well founded, this rule is practically right. Judge Hurlbut remarks:—"The law having pronounced certain acts" (such as murder, arson, rape, burglary, and theft) "to be so dangerous to society, as that the offender must be restrained of his liberty to prevent their repetition; if the issue is found against the prisoner, the judgment of the tribunal should be that he be lodged in a place of confinement, provided by the State for the detention of persons of the prisoner's description, there to remain, under appropriate treatment for his intellectual and moral condition, until he should be discharged by due course of law. Whether the prisoner in such a case be a wilful felon, or an insane man, in the common acceptation of the term, or a moral idiot, is not a question to be tried by the jury, or to be determined by the court. It is immaterial, since he has at any rate shown himself to be so dangerous a man that he ought not to go at large; and that is the foundation of the procedure of the State against him."—p. 68. The accused being convicted, and sentenced to confinement, the important question arises, How shall he be treated? Having disallowed vengeance, and deterring by example, from our principles of action towards him, the question is reduced to the simple points: What have been the causes of his offence? And how shall they be best removed? In our present criminal legislation, these inquiries are altogether omitted; our code is based on vengeance and deterring by example—its *main* object is *punishment*, and these topics do not concern it: but observe the consequences:—A young offender may have been trained by his parents to crime; or he may have been abandoned by them, caught up by thieves, and, under their auspices, put to an apprenticeship to stealing; or, although not absolutely insane, he may be weak in intellect, and wholly ignorant of all moral and religious duty; or he may be the victim of such a defective or ill-balanced brain as to render crime with him an instinct. It matters not to our present criminal law from which of these, or of any other, causes his offence arises; it ignores them all, assumes him to be a normally constituted, adequately trained, and favourably circumstanced human being,

and therefore fully responsible for his conduct. On this assumption it metes out to every offender, to whichever of these categories he belongs, the same *kind* of punishment, varied only in quantity according to the degree of injury he has inflicted on society. If there be any relation of cause and effect in the moral order of the world, nothing but failure can ensue from such a mode of action. What should we think of a physician who counted only the beats of the pulse of his patients, and administered one medicine to all of them, proportioned in amount to the rapidity of their circulation, but who dispensed with all inquiry into their age, sex, circumstances, and habits, and ignored all the causes of their different maladies, of which the different rates of their pulse were merely the symptoms? Such is the way in which the law deals with criminals; and should such a physician compare notes with one of our prison administrators, the cures in the experience of each would probably be pretty similar in number and duration.

One individual, for example, picks a gentleman's pocket of a handkerchief, and is sentenced to 14 days' confinement in a house of correction; another steals a loaf from a shop, and is sentenced to 30 days'; a third conceals himself behind a counter, and robs a till, and is sentenced to three months'; a fourth commits an assault of an aggravated kind, and is sentenced to two years' imprisonment. These appear to be moderate and just inflictions, when measured solely by the amount of injury each offender has done to society; but mark the consequences.

In 1825 the late Mr. William Brebner, governor of Glasgow Bridewell, framed a table, founded on an average of ten years' experience, to show the effects of first sentences for different periods of confinement, of which the following is a copy:—

Of prisoners sentenced for the first time to		
14 days' confinement, there returned		
	to gaol, for new crimes, about .	75 per cent.
30 ditto	60	"
40 ditto	50	"
60 ditto	40	"
3 months	25	"
6 ditto	10	"
9 ditto	7½	"
12 ditto	4	"
18 ditto	1	"
24 ditto	None.	

During the ten years (which ended on the 25th of December, 1825) 98 persons were committed for the first time for two years,

of whom not one returned. Mr. Brebner did not assume that all who did not return to *his* prison were permanently reformed, for they might have left the district and committed crimes elsewhere; but among those who did remain, the regular diminution in the number of re-committals, in proportion to the length of the discipline, indicates strikingly the effects of the different periods of confinement. Mr. Brebner adds, that when prisoners came back two or three times, they went on returning at intervals for years, and that many of those who were committed for short periods, for first offences, were subsequently transported or hanged. In that prison, strict discipline was maintained; but the prisoners were trained to industry, and educated with something like a paternal regard to their welfare after liberation; and he ascribed the effects of the prolonged confinement partly to dread of renewed punishment, and partly to the habits of order and application acquired under his discipline.\*

On one occasion, when the labouring classes in Glasgow were reduced to actual destitution by a commercial crisis, five or six young men, on a winter evening, knocked at the gate of Glasgow Bridewell, and asked to see the governor. They were admitted, and Mr. Brebner appeared in the yard. They informed him that some years previously they had been prisoners under his charge; that on their liberation he had found employment for them; that they had acted virtuously ever since; but that now they were destitute of employment, of food, and of shelter; and that, unless he would take them in as voluntary prisoners, they should be forced to steal, and be sent to him by the law. To test their sincerity, he said that he must lock them up each in a separate cell, and treat them in every respect like convicts. They answered that they were prepared for this; and he took them in and treated them accordingly. He laid the case before the magistrates, who consulted the law officers of the crown, and their decision was that he could not legally apply the prison funds to their maintenance. They were consequently thrust out; but not before, by appeals to the masters of the few works still in operation in Glasgow, he obtained employment for them. This was not an example of idle and profligate persons, preferring the comforts of a prison to the toils of honest industry; but of young men so thoroughly reformed that they were most anxious for work, and, not finding the opportunity of procuring it, preferred the painful discipline of a Bridewell to a fresh breach of the law, and to death by starvation.

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\* We have said "a paternal regard to their welfare," because Mr. Brebner really gained the affections of the better class of his prisoners, not by slackening the reins, but by administering the discipline with kind feeling, and convincing them that it would benefit themselves through life.

These facts throw light on the consequences of the disregard which prevails in our criminal legislation of every consideration except the two points—Who committed the crime? and what is its magnitude? If we had proposed to sentence the boy who picked a pocket of a handkerchief to two years', instead of fourteen days', imprisonment in a house of correction, the extravagance of the infliction in proportion to the crime would have so startled the public mind that it would have raised a cry of cruelty and injustice, and the culprit would have become an object of general sympathy. Nevertheless, if we look at the natural, and therefore the irreversible relation of cause and effect, the sentence to fourteen days' imprisonment for a first offence, when traced to its full consequences, proves actually more severe than a sentence for the same crime to two years' confinement. The short sentence serves to break down the offender's dread of the law, and to initiate him into the mysteries of a gaol. He goes forth with a ruined character, and without having acquired one virtuous principle or habit. According to Mr. Brebner's experience, he is enlisted for life into the corps of professional criminals, he renews his offences, and perseveres, until ultimately he arrives at transportation or the gallows. On the other hand, a sentence for two years, for the first offence, would, according to the same experience, have probably led to his reformation and his restoration to society, with acquired ability to act a virtuous part through life.

We have selected these examples from a remote, but perfectly authentic record, because the lesson they teach has never been appreciated. During the whole period between 1825 and 1853, we have proceeded in the old course, and the old effects have followed. Our punishments have hardened young offenders, and trained them systematically to transportation or the gibbet. The abolition of transportation gives us a fresh motive for reflection; and perhaps the annoyance that may be felt from the shoals of unreformed criminals who will shortly be let loose upon society, may at length dispose us to consider the relation of cause and effect in the production of crime, as well as in other departments of social interests.

Let us then proceed to inquire into the *causes* of crime: and first, Is there any peculiarity of mental constitution which predisposes certain individuals to criminal conduct? The solution of this question lies at the basis of all sound criminal legislation and prison discipline, and yet it has been, and continues to be, *ignored* by almost every writer and legislator on the subject. Dugald Stewart says: "It is not merely as a subject of speculative curiosity that the principles of the human mind deserve a careful examination. The advantages to be expected from a successful analysis of it are various; and some of them of such importance as to render it

astonishing, that, amidst all the success with which the subordinate sciences have been cultivated, this, which comprehends the principles of all of them, should be still suffered to remain in its infancy." "Education," he continues, "never can be systematically directed to its proper objects till we have obtained, not only an accurate analysis of the general principles of our nature, and an account of the most important laws which regulate their operation, but *an explanation of the various modifications and combinations of those principles which produce that diversity of talents, genius, and character, we observe among men.*" "There is," he adds, "*a science of legislation* which the details of office and the intrigues of popular assemblies will never communicate,—*a science of which the principles must be sought for in the constitution of human nature*, and in the general laws which regulate the course of human affairs."\*

If the external circumstances and natural qualities were, in every respect, the same in those who become criminals as they are in legislators, judges, and magistrates, crime should long ere this have been reduced to a *minimum*; for the terrors of the law do operate so powerfully on men of the middle and upper classes, that very few of them appear at the bar of criminal justice. That the external circumstances are not the *sole* cause of their exemption, is certain, because occasionally some members of the upper classes do become criminal; while there are millions of persons who have never stood at the bar of a criminal court, and yet have passed their lives in circumstances precisely similar to those which surrounded others who have been there arraigned. These facts indicate that there are natural peculiarities in some individuals which predispose them to crime. Yet it is more than fifty years since Dugald Stewart published the sentences before cited; and although he devoted his best talents to supplying the defect he pointed out, here we are, apparently not advanced one step towards a solution of the problem—What are the causes of the acknowledged differences between the natural talents and dispositions of different individuals?—causes, an insight into which might probably enable us to comprehend the real nature and condition of the minds of our offending brethren. Men have tried to solve this problem without considering the influence of the organism on the mental powers and dispositions; and, in our judgment, this grand oversight is the cause of so remarkable a failure. There is no lack of authority to support us in ascribing the greatest importance to that influence. Many years ago a distinguished physician (Dr. Conolly) wrote: "All this superiority (of man over

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\* Stewart's "Elements," part ii. § 1, 2, "On the Utility of the Philosophy of the Human Mind."

the brutes), all those faculties which elevate and dignify him, this reasoning power, this moral sense, these capacities of happiness, these high aspiring hopes, are *felt*, and *enjoyed*, and *manifested*, by *means of the nervous system*. Its injury weakens, its imperfection limits, its destruction (humanly speaking) ends them." We believe that few physiologists of eminence will now hesitate to subscribe implicitly to this opinion. But most of the cultivators of the exact sciences have stopped short at this admission, and refused to pursue the inquiry into the relations between the mental qualities of individuals, and the size of the different portions of their brains. They object that no method has yet been discovered by means of which the size of the different parts may be mathematically measured, and that without this precision all our observations must be worthless. Some of them have resorted to comparative anatomy for light; but have obtained none, in regard to the relation between the moral and intellectual powers, on which self-control depends, and particular parts of the brain. What is the cause of their failure? *Ex nihilo nihil fit.* If we ask them: Do you know the mental functions performed by the different parts of the hemispheres of the brain in the lower animals? The answer must be "No." Are you acquainted with the functions of those parts in man? Again they must reply in the negative, if they deny Gall's discoveries. What knowledge, then, can we expect to derive from comparing two objects, both of which are equally unknown to us? The functions of the different parts of the brain must be ascertained by observations made on individuals of the same genus, before such comparisons can be profitably made, with a view to gaining additional light on the functions. Men of science may compare the *structure* of the nervous system in man and animals; but structure, *per se*, never reveals vital functions. The form and structure of the spleen have been investigated for two thousand years; yet its functions are still obscure; and, according to scientific authorities, the brain stands in the same predicament. They justly boast of their knowledge of its anatomy, which they learned from Dr. Gall, but they deny the functions which he ascribed to its different parts. Do they not perceive that in doing so they confess the inadequacy of a knowledge of cerebral structure, *per se*, to throw light on the functions performed by it?

But the want of a mathematical method of inquiry\* does

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\* Various attempts have been made to measure the contents of the skull mathematically. See the Appendix to Morton's *Crania Americana*; "Contributions to the Mathematics of Phrenology," by James Stratton; "On the Importance to the Archaeologist and Ethnologist of an accurate mode of Measuring Human Crania, and of recording the results: with the description of a

not close the way to all ascertainment of truth in this department of knowledge. The size of no living organ can be measured mathematically; yet physiologists speak of large and small bones, large and small muscles, large and small lungs, and so forth, and they found the most important practical prescriptions involving health and life on their knowledge of the absolute and relative sizes of these different organs: but how do they acquire it? Simply by using their hands, eyes, and intellects in *estimating* the size of each. The brain forms no exception to this rule. After due instruction and practice we may, by direct observation, become as able to form a notion of the size and proportions of an average head as of an average nose or chin. By pursuing the same process we may learn to *estimate*, with more or less exactness, the size of the forehead, the coronal region, and the base of the brain; and, by increased skill and attention, to distinguish the size of particular portions of those regions. If we compare the size of these parts, when very great or very small, with the mental manifestations, we shall ascertain the special faculties connected with the special parts, and also the influence of the size on the power of manifestation. By this means we may arrive at a practically useful, although not a mathematically exact, physiology of the brain.

We take our stand on the proposition, that it is through differences in the size and condition of the brain and its separate parts, that the differences in the natural dispositions and talents of different individuals arise; and that *in extreme cases*—the *instantia ostentivæ* of Bacon—the differences both in cerebral development and mental qualities are recognisable by trained observers, for many valuable practical purposes. We emphatically repeat, that it is by observing cases in which single organs are extremely large, or extremely small, that the functions of the parts can be proved. The innumerable difficulties and blunders reported against Phrenologists, occur chiefly in cases of equal balance among the organs, in which instances the real phrenological conclusion is that none of the faculties is predominantly powerful. Our conviction is, that until, through the principles of physiology, the peculiar qualities of mind which predispose to crime shall be ascertained, and until the physical constitution of the convict shall be recognized as the principal consideration in determining his treatment, society will not have reached the

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new Craniometer," by John Grattan, member of council of the Natural History and Philosophical Society, Belfast. The cubic contents of the interior of the skull may be discovered by these methods, but not the size of the different cerebral organs; for mathematically exact boundaries of these have not been discovered.

28 *Remarks on the Principles of Criminal Legislation,*

commencement of a rational, self-consistent, and successful scheme of prison discipline.

If we compare the tables presented in the annual reports of the Registrar-General in England, a striking coincidence will appear in the numbers of births, marriages, and deaths, occurring, in similar circumstances, in the different districts of the kingdom, within each year. It is almost certain that in England and Wales, of 1000 persons between the ages of 20 and 30, living on the first day of January in any one year, ten will die before the first day of January in the next year. These events obviously take place from causes that act in a regulated, and not in a fortuitous or capricious, manner. In a letter by William Farr, Esq., to the Registrar-General, printed in the twelfth annual report, we are informed that "it may be broadly stated that 27 in 1000 men of the population, of the age of 20 and under 60, are suffering from one kind of disease or other; that several of the diseases are of long duration, that others are recurrent, and that some are hereditary."—p. 8. If it be asked: How shall we discover the causes of these diseases? How learn to shorten the duration of those that are long, prevent the re-invasion of the recurrent, and, if possible, check the descent of those that are hereditary?—the only rational answer that can be given is: By studying the structure and functions of the human organism and the laws to which its action has been subjected. But, a similar uniformity in similar circumstances is found to prevail in the recurrence of crimes. Statistical inquiries into human conduct present the same striking indications of uniformity in results, as do inquiries into the prevalence of disease and the endurance of life. M. Quetelet furnishes the following table relative to crime in France:—

Years.	Accused and brought personally before the tri- bunals.	Con- demned.	Number of inhabitants for each person accused.	Number condemned out of each 100 accused.	Accused of crime		Proportion between these classes.
					Against the person.	Against prop- erty.	
1826	6988	4348	4457	62	1907	5081	2·7
1827	6929	4236	4593	61	1911	5018	2·6
1828	7396	4551	4307	61	1844	5552	3·0
1829	7373	4475	4321	61	1791	5582	3·1
Total	28686	17610	4463	61	7453	21233	

"Thus," says M. Quetelet, "although we do not yet possess the

statistical returns for 1830, it is highly probable that we shall find, for that year also, 1 person accused out of every 4463 inhabitants, and 61 condemned out of each 100 accused." We are not in possession of the later returns for France; but an instructive light is thrown on the same subject by a return to the House of Commons, dated 22nd May, 1846. It shows the number of persons committed for each of seventeen different denominations of offences, including robbery, house-breaking, arson, forgery, and rape, which were capital in 1830, but for which the punishment of death was afterwards abolished by statute, and for which it had not been inflicted for five years previous to the report. The return includes two periods of five years each, the one before and the other after the last execution for each offence. The result is the following:—During the five years ending with the last year of an execution, there were committed, for the crimes enumerated, 7276 persons, of whom 196 were executed. During the five years immediately following the last execution, there were committed for the same offences, 7120. Does not this show that these crimes arose from causes in themselves permanent, and which punishment does not remove? While the aggregate of offences in each period of five years is so nearly the same as to indicate the existence of similar causes acting in both periods, the only variation testifies against capital punishment as a preventive of crime, for there were fewer committals after it was abolished than when it continued to be inflicted.

"The possibility," says M. Quetelet, "of assigning beforehand the number of the accused and condemned which should occur in a country, is calculated to lead to serious reflections, since it involves the fate of several thousands of human beings, who are impelled, as it were, by an irresistible necessity, to the bars of the tribunals, and towards the sentences of condemnation which there await them. These conclusions flow directly from the principle, already so often stated in this work, that effects are in proportion to their causes, and that the effects remain the same, if the causes which have produced them do not vary."\* In the efforts made in our own country to discover the causes that impel individuals to the bars of our criminal tribunals, we have disregarded the influence of their organism on their talents, dispositions, and understanding. When so many of the other phenomena of life are positively ascertained to depend on the state of the organism, why should it appear incredible that the same influence may extend also to the causes of crime? Lord Palmerston, in an admirable letter, dated 19th October,

\* Sur l'homme, &c., tome ii. p. 168.

1853, addressed to the Presbytery of Edinburgh, on the subject of instituting a Fast-day to avert the Cholera, says:—"The Maker of the universe has established certain laws of nature for the planet in which we live, and the weal or woe of mankind depends upon the observance or neglect of those laws." Will his Lordship, in whose department, as Home Secretary, the arrangement of Prison Discipline lies, condescend to inquire whether, in this world, one of these laws does not make human talents and dispositions depend mainly on the size and condition of the different portions of the brain? In the year 1836, an earnest representation that this is actually the case, was presented by the late Sir George Stewart Mackenzie, Bart., to Lord Glenelg, then Secretary for the Colonies, accompanied by a request that he would take measures for applying the physiology of the brain in the selection of convicts to be sent to New South Wales, in order to avoid placing men of incorrigibly vicious and dangerous dispositions in remote establishments there, in which circumstances they endangered the lives and property of the settlers. Sir George was led to make the appeal in consequence of representations sent home to him, from Australia, by his sons, of the cruel injuries inflicted by individuals of that class, whose heads bore striking indications of their dispositions, on agricultural colonists, who had taken them as servants from the Government.

The object of the representation,\* in Sir George's own words, was to show that "independently of rank, education, or wealth, men differ from each other very widely in the amount and kind of their intellectual power, in moral feeling, and in their tendencies to indulge their propensities;" that these diversities are "the effects of differences in their organization;" that these differences are externally discernible, and that "hence we have the means of estimating, with something like precision, the actual natural characters of convicts (as of all human beings), so that we may at once determine the means best adapted for their reformation, or discover their incapacity for improvement, and their being proper subjects of continued restraint, in order to prevent their further injuring society. It is this," continues Sir George, "that for the sake of the future prosperity of the Australian colonies, and the security and peace of the settlers, and also for the sake of exalting them in the scale of morality, I wish your Lordship to put to the test of experiment, for your own satisfaction, and to enable you to classify the convicts, and to keep the most atrocious

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\* A copy of the Representation and of the documents which accompanied it, is printed in the Appendix No. V. to "A System of Phrenology," by George Combe. Vol. II. 5th edition. 1853.

in restraint at home, sending to New South Wales only the better disposed among them."

To protect the Colonial Secretary from the ridicule to which compliance with this request might have been thought at that time to expose him, and also to show that the suggestion was rational, Sir George not only referred Lord Glenelg to recorded cases in which this discrimination had been successfully made, but presented to him letters from upwards of forty individuals, of known talents and respectability, certifying to him their conviction that it was equally practicable and useful. To obtain this evidence, Sir George addressed circulars to the gentlemen alluded to, desiring to know whether it was their opinion and belief that "the natural dispositions are indicated by the form and size of the brain, to such an extent as to render it quite possible, during life, to distinguish men of desperate and dangerous tendencies from those of good dispositions." This question is answered in the affirmative, with more or less of detail, and specification of experience, by the late Richard Carmichael, President of the Royal College of Surgeons in Dublin, Corresponding Member of the Royal Academy of Medicine of France, &c.; S. Hare, Proprietor and Medical Attendant of the Retreat for the Insane, in Leeds; Hewett Cottrell Watson, F.L.S., author of "Geography of British Plants," &c.; Sir W. C. Ellis, M.D., Superintendent of the Lunatic Asylum at Hanwell; W. A. F. Browne, now Medical Superintendent of the Crichton Royal Institution for the Insane, at Dumfries; Dr. C. Otto, Professor of Materia Medica in the University of Copenhagen, &c.; Dr. John Elliotson, F.R.S., &c., London; Professor W. Gregory, of Edinburgh; Dr. R. Hunter, Professor of Anatomy, &c., in the Andersonian University, Glasgow; the late Lord Douglas Gordon Hallyburton; the Archbishop of Dublin; Dr. Wm. Weir, Lecturer on the Practice of Medicine, Glasgow; William Brebner, Governor of the County and City Bridewell, Glasgow; and many others. The Archbishop of Dublin (Dr. Whately), says, "I am fully convinced that the proposed phrenological experiment of Sir G. Mackenzie, Bart., is amply entitled to a fair trial." The letter of Mr. Brebner, Governor of Glasgow Bridewell, is as follows:—"About two thousand persons pass through this establishment yearly, and I have had the charge of it for upwards of twenty-five years. During that period, and long before I heard anything of phrenology, I was often struck with the extraordinary shape of the heads of most of the criminals. When Dr. Spurzheim visited this city, I attended his lectures; and although I do not yet pretend to have anything like phrenological knowledge, *I have no hesitation in saying that the most notoriously bad characters have a confor-*

mation of head very different from those of the common run of mankind. I may be allowed to add, that Dr. Spurzheim, Mr. Combe, and many others, professing and believing in the science, who have visited this prison, have described the characters and told the leading propensities of the inmates in a very remarkable manner." It may be added that the collections of crania and casts in the Phrenological Museums, enable any inquirer to satisfy himself, by ocular demonstration, of the truth of the facts certified by Sir George Mackenzie's correspondents. We must here, however, put in a caveat: we *do not propose* to determine the dispositions and capacities of convicts *by their heads alone*, but to supplement the indications thus furnished, from other sources of knowledge to be subsequently mentioned.

No attention was paid to the representation, but something was done with a view to check this evil.

In this country there are two kinds of prisons: first, county and borough prisons, in which are confined persons convicted of slight offences, and who will be restored to society in periods varying from one month to three years; and, secondly, Government prisons, for those convicted of more serious crimes. In 1837, Lord John Russell recommended to the magistrates to adopt the system of separate confinement, and in virtue of the Act 2 and 3 Victoria, cap. 56, passed in 1839, between fifty and sixty prisons have been erected on that principle. The Government prisons are the Pentonville, Parkhurst, Millbank, Portland, Portsmouth, and Dartmoor prisons, and the hulks, which are managed by directors, appointed under the Act 5 Vict. ch. 29.\* Lieut.-Col. Jebb is their present chairman. In July, 1843, an Act was passed, converting the Penitentiary at Millbank into a dépôt for convicts under sentence of transportation, and it was named Millbank prison. Into it, the convicts were received from the county and borough prisons, and individually examined. They were divided into classes, one class containing all those who had been sentenced to transportation for life, and also all those who had been sentenced for any of the crimes formerly punished with death, such as arson, burglary, rape, and other heinous offences. All these were sent to Norfolk Island, the penal settlement of the Australian colonies. Convicts sentenced for shorter periods were divided into two classes:—First, the more intelligent and those most likely to be benefited by discipline, were sent to Pentonville prison,—constructed on the separate system, and specially intended as a reformatory experiment. Secondly, the remainder

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\* Pentonville prison is the only one of these which adopts the separate system exclusively. Millbank has it partially in operation, and Parkhurst applies it to each prisoner in the first period only of his stay there.

were sent to Van Diemen's Land, excepting invalids and married persons, who were committed to a prison-ship connected with the arsenal at Woolwich. All boys under sixteen years of age, sentenced to transportation, were sent to Parkhurst prison, where they remained under training for several years, and were then sent out, generally to Swan River, with conditional pardon.

We shall direct our attention, first, to the reformatory model prison at Pentonville, which was opened in 1843. It was placed under special commissioners, and in it the convicts underwent seclusion in separate cells, were trained to industry, and received moral and religious instruction for eighteen months, previous to being shipped for New South Wales. At first, the commissioners of the prison were very earnest in watching the effects of the separate confinement, and frequently visited the prisoners, narrowly inspected their appearance, and questioned them about their feelings. The artful men seemed to evince mental aberration, but it was feigned. The *fourth report* of the commissioners of the prison states that, "The experience of another year, strengthened by the highly gratifying account which we have received as regards the conduct of the prisoners who have been sent abroad, both during the voyage and subsequent to their arrival in Australia, has more strongly than ever impressed us with the value of this corrective and reformatory system of prison discipline." "The conclusion of the *fifth report*," says Mr. Burt, "repeats these previous opinions, and contains the following remarkable passage: 'On reviewing these opinions, and taking advantage of the experience of another year, we feel warranted in expressing our firm conviction, that the moral results of the discipline have been most encouraging, and attended with *a success which we believe is without parallel in the history of prison discipline.*'" (The italics are Mr. Burt's.)

What, then, led to the success of the system thus highly extolled? And why, instead of being generally adopted, has it been modified, and latterly almost abandoned? It is a strong confirmation of the views which we are about to maintain, that the success was owing to *selection*. "At first," says Mr. Burt, "*care was exercised to secure a hopeful class of prisoners* for the experiment;" and he adds, "there are strong reasons for believing that, from the combined operation of punishment and instruction, a very large proportion of the early Pentonville prisoners was reformed. Towards the close of 1849, however, an important change took place in the assignment of prisoners to Pentonville. *The lightness of their crimes and hopefulness of reformation, were no longer made the grounds of their SELECTION;* all classes of convicts were admitted without distinction; in some cases prisoners were selected for this prison on account of the gravity

of their crimes, the length of their sentences, and some because they were found hopelessly incorrigible at other convict establishments. After this change, the prison became characterized by worse than an absence of reformation. For this change, as to the criminal character of the prisoners, took place concurrently with the changes in the system. Men guilty of most atrocious crimes, habituated to all the villainy practised at the hulks and worst prisons in England, and in many cases as ungovernable as they were depraved, were selected for Pentonville at the same time that the discipline was relaxed, the term reduced, and the amount of moral instruction diminished."—p. 36. Mr. Burt says also, "Formerly, there had been small parties of bad men, and the majority greatly improved; now, the proportions of the bad and the good were reversed; it was a small party of well-disposed men, and the rest unchanged or imperfectly reclaimed."—p. 24.

The circumstance which led to this change was the rebellion of the colonies against receiving more convicts, which forced the Home Government to crowd Pentonville with prisoners of every diversity of character, to shorten the period of their separate confinement, and to transfer them at the end of twelve months to Portland Island.

The following facts, then, seem to be established: first, the rejection, without trial, of a method which Sir George Mackenzie and forty other respectable persons recommended on experience, as calculated to enable the Home Government to select the best convicts to be sent to Australia; secondly, the trial of the Pentonville reformatory prison, as a means of preparing the convicts for the colonies,—its success when judicious selection was made, and its failure when this practice was abandoned; and finally, the failure of all the other methods of treatment, resulting at last in such a determined rejection of convicts by the colonies as compelled the Government to pass the Act quoted in our title, retaining them at home, and punishing them by penal servitude. If the colonists of Australia and the Cape of Good Hope could not endure the licentiousness of the convicts sent to them, how shall we support it? And if all our model and reformatory prisons have failed to fit convicts for being received into colonial society, will the future forms of "penal servitude" be such eminent improvements on these as to restore them *here* to freedom, thoroughly reformed? The gravity of these questions needs no eloquence to enhance it; and at this moment no greater responsibility lies on any minister of the Crown than that which attaches to the Home Secretary, in erecting new and re-modelling old prisons, and in drawing up a new code of prison discipline. At the risk of encountering many prejudices, we shall proceed to state our own views of the subject, founded on thirty years'

observation, on personal visits to the chief prisons in Great Britain and the United States of North America, and extensive communications with the governors of gaols and with magistrates in these countries.

We lay down, then, as fundamental facts in this question, that in dealing with criminals we are dealing with *mind*, and that in this world the mind acts by means of, and depends for its condition upon, the cerebral organism; and that it cannot be guided or controlled except by influences acting in conformity to the laws of that organism. It is true, no doubt, that in a state of health, from our not being conscious of the existence of our brains, their functions, which assume the form of desires, emotions, and intellectual perceptions, are ascribed by us to something which we call mind. But the moment the brain is injured, or seriously affected by external or internal disturbing causes, the most irrefragable evidence is presented that these mental phenomena are dependent, in this world, on its condition. M. Richerand had a patient whose brain was exposed in consequence of disease of the skull. One day, in washing off the purulent matter, he chanced to press with more than usual force; and instantly the patient, who, the moment before, had answered his questions with perfect correctness, stopped short in the middle of a sentence, and became altogether insensible. As the pressure gave her no pain, it was repeated thrice, and always with the same result. She uniformly recovered her faculties the moment the pressure was taken off.\* Many similar instances are recorded by medical authors; but the facts are so trite, and the cases so well known to physiological readers, that we forbear to enter further into details. Nevertheless, generally speaking, nearly all the thinking, and all the action, of the present generation continues to proceed on the hypothesis of an independent spiritual mind. The influence of the organism may be acknowledged by some in words, but by very few is it acted on as a fixed principle in the constitution of human nature. Mr. Burt, who appends B.A. to his name, may be cited as a specimen of the average state of knowledge of English gentlemen, educated at the Universities, on this subject. He writes:—"If the physical energies were undermined in separation, the system would be objectionable upon other grounds; there is, however, no proof that injury to the health is a result of the discipline. *But even if physical health were enfeebled, what connexion is there between robustness of muscle and sanity of will?* The most heroic fortitude is constantly exhibited by the delicate woman, by the exhausted captive, and by the invalid; and how often, on the other hand, does the man of

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\* "Nouveaux Eléments de Physiologie." 7th edition, ii. 195-6.

brute courage and giant strength, bear the brand of moral cowardice!"—p. 81. We shall discuss these phenomena at a later stage of our inquiry, and at present refer to the passage only as an example of the estimate formed by Mr. Burt, the Assistant Chaplain of a Model Prison, of the relation between the condition of the organism and the vigour of the mental powers.

This general disseverance, in most men's minds, of the mental phenomena from the living organism, may probably be explained by the extreme difficulty with which new modes of thinking enter practically into the understanding. At first the doctrine of the rotation of the earth excited intense and almost universal ridicule, and, for several generations after its truth was demonstrated, even educated men continued to feel, think, speak, and act on the old hypothesis of its standing still; and we doubt much if the slenderly educated portion of our people does not still believe that it is at rest, and that the sun, moon, and stars move round it. We have seen the first announcement of the functions of the brain treated in a similar spirit; and the generation is not yet born that will appreciate the full practical import of the simple proposition, that the mental powers are dependent, in this world, for their general strength or feebleness, their activity or inactivity, and their various degrees of relative strength and weakness in each individual, on the state of that organ. Being convinced, however, by observation and extensive experience, that this is the fact, we shall state certain results of ignoring it.

But before entering in detail into the evils which, *in the present state* of our law, flow from that source, we beg to observe that the whole judicial embarrassments arising, in criminal prosecutions, from questions of insanity, might at once be cleared away, simply by abandoning the vicious principle of *punishment*, or vengeance and pain inflicted to deter others, and resting solely on the object of *protection* to society against renewed outrages by each offender himself. Mr. Justice Hurlbut says:—"A jury can determine whether a homicide has been perpetrated—whether done by accident or design—whether in self-defence or not—and is not that enough? If done by design, and not in self-defence, ought the law to inquire further? It *must* inquire further if the prisoner is to be *punished* for the act—that is, if he is to have *vengeance* inflicted on him. It would be cruel, indeed, to inflict vengeance on an insane man; but it is not cruel to restrain him and to cure him, which is precisely what justice and humanity require in all cases. \* \* \* \* The verdict (of insanity) does not imply that he has not slain a fellow-creature—does not mean that he is a safe man to go at large; on the contrary, by reason of his mania, he is the most dangerous

of men. But what the jury mean by a verdict of acquittal is that he is not a proper subject for *punishment*—i.e., *vengeance* ought not to be inflicted upon him, because he is stricken of heaven and is not morally responsible for his acts.”—p. 67.

If the principle here recommended were adopted, the inquiry into the point of his sanity or insanity would commence after the verdict had consigned him to the public custody, and the sole object of it would be to determine the manner in which he should be treated. The persons to decide on his mental state would naturally be physicians skilled in cerebral-physiology. If they, after a solemn inquiry, found him sane, he should be remitted to the class for reformation; if insane, to a lunatic asylum for cure: and he should not be liberated until the same authorities had certified that society would no longer be in danger from his actions.

The difficulty, not to say impossibility, of defining insanity, arises from the nature of the affection itself. Most physiologists now regard the brain not as a single organ, but as a congeries of distinct mental organs, some manifesting animal propensities, some moral emotions, and others intellectual faculties. Each may become diseased by itself, or in conjunction with a group, or with the whole, of the other organs: and the disease may be structural, functional, idiopathic, or sympathetic. Assuming then the number of organs to be thirty-five, or even twenty, or ten, the problem is to draw up a definition of insanity which shall accurately embrace all diseases of single organs, also of groups, and also of the whole brain, with all the endless modifications arising from the disease affecting one or more animal, one or more moral, or one or more intellectual organs, and also arising from one, or from two or more combined, of the before-mentioned classes of disease. There is no cause for wonder, therefore, that lawyers, judges, and physicians, have failed to agree on a definition of unsound mind. In our opinion, the thing is impossible; and the only way in which the question of sanity or insanity in each particular case can be decided, is to call in physicians and cerebral physiologists, whose professional duty it has been to observe and treat the insane,—to produce the alleged insane person before them, and also evidence of his mental manifestations, and to constitute them a jury with power to return a verdict which shall decide the question. They must estimate the *condition* of mind of the person before them; for no other way is open. They should have the aid of a lawyer as assessor, to help them to give precision and form to their investigations and decision.

But we are still so far from arriving at this view of the

question of insanity that it becomes necessary to consider it in its existing form. In the first place, then, in consequence of the law ignoring the influence of the organism on mental action, it in many instances does not distinguish between crime and insanity at any stage of its action. We know that when the organs of hearing are inflamed, the mere abnormal excitement of the organic apparatus will make our hearing unusually acute, and even cause us to fancy we hear noises which have no real existence; while a sudden injury to the eye, by the stimulus it imparts to the nervous structure, simulates the impression of light, even in the dark. Similar phenomena occur in the case of the intellectual faculties. There are times when strains of music rush on our minds irresistibly, or when favourite ideas clothed in exquisite passages of prose or poetry, or when some ingenious contrivances in mechanism which we have devised, will absolutely possess us during our waking hours and haunt us in our sleep. These phenomena are owing to the excitement of certain cerebral organs from internal causes, and our inability to stop the current of them arises from our will having no command over the organic action that produces it. But the organs of our emotional faculties also are subject to the same law. There are instances of excitement, from internal causes, of one or more of the emotions which impel an individual to do some act for their gratification—to kill, for instance, or to burn, or to steal—as involuntarily, as we hear sounds, see flashes of light, or perceive music, without the operation of external causes. When the excitement of the emotional organs becomes excessive, it disturbs the action of the intellect; in some cases filling it with delusions,—in others, impelling it to act, without perverting it. The law refuses to recognise these facts and their consequences. It absolutely ignores insanity arising from overwhelming excitement of the emotional, unless the disease involves also the intellectual organs. And not only so, but when the intellect also is affected by delusions, arising from either this source, or idiopathically, it requires a strictly logical connexion between the subject of the delusion and the act done in consequence of it, to constitute insanity: in other words, it demands, first, that the intellect shall be unsound and possessed by delusions before the plea of insanity can be listened to; and, secondly, that before effect can be given to the plea, the intellect shall have acted with perfect logical sequence in following out the delusion into deeds. This is shown by the following legal authority.

In the case of *Regina v. McNaughten*, the House of Lords propounded to the Judges of England certain questions on the law of insanity in relation to crime, and among the answers returned was the following,—to the fourth question:—“The

answer to this question must of course depend on the nature of the delusion; but making the same assumption as we did before, that he (the accused) labours under such partial delusion only, and is not in other respects insane, we think he must be considered in the same situation as to responsibility as if the facts with respect to which the delusion exists were real. For example, if, under the influence of his delusion, he supposes another man to be in the act of attempting to take away his life, and he kills that man, as he supposes in self-defence, he would be exempt from punishment. If his delusion was that the deceased had inflicted a serious injury to his character and fortune, and he killed him in revenge for such supposed injury, he would be liable to punishment.\* The sole distinction between these cases is, that in the first the accused acted logically on his delusion; while in the second he acted illogically, because a sound mind, assuming the facts to be real, would have prosecuted the defamer for damages, whereas the accused killed him. The second instance indicates, if possible, a wider extent of mental disease than the first: in it the act done under the delusion is more abnormal than that committed in the first, and shows the man to be more insane. But the error in the opinion of the judges is elucidated still more forcibly by the following case, which actually occurred.

Robert Dean, a weak, but affectionate and religious young man, fell violently in love with a young woman, and proposed marriage to her. She declined his addresses; on which he resolved to kill her. Before finding a suitable opportunity, he met a little girl of whom he had always been fond, but who was in no way connected with the offending object of his love, and he killed *her*. He then gave himself up at a police station, confessing himself to be the murderer of the child: he was tried, found guilty, and hanged. A cast of his head may be seen in several Phrenological museums, and it shows large organs of amativeness, destructiveness, and veneration, with no want of benevolence, but a low development of the intellectual organs. The facts indicated that the excitement of the amative organ occasioned by his disappointment in love had extended to other parts of his brain, and produced the insane manifestations described. While under sentence of death, he explained the motives of his conduct in killing the child. He was of a very religious disposition, and thought that if he killed the young woman, she might go unprepared into eternity, and incur eternal perdition; while the soul of the child, from its innocence, would be safe; and

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\* "Archbold's Pleading and Evidence in Criminal Cases." 12th edition.  
By W. N. Walsby, Esq. p. 16.

therefore he killed the latter. All these facts were proved at the trial, and also that the young man was known to be weak in mind; nevertheless, as the law did not recognise an ungovernable destructive impulse as insanity, and as no delusion could be proved to exist in Dean's mind in reference to the child, which, if logically acted on, could have led to his killing *her*, he was held to be perfectly responsible, and treated accordingly. Analogous cases occur from time to time before our criminal courts, and no spectacle is more humiliating than the helpless confusion of ideas then exhibited by counsel, medical witnesses, and presiding judges, when all of them have agreed to ignore the physiology of the brain.

A second effect of persisting in disregarding the influence of the organism is, that though in many cases the coming event of violent injury casts its shadow before, this premonition is unheeded, because, be the indications what they may, if no intellectual delusion can be proved, the law will not interfere to arrest the evil, but will look on until it has been inflicted, and then *punish* it. One of our judges may be seen in solemn majesty, condemning to death an unfortunate patient whom, as well as his victim, a little physiological knowledge might have saved. We were consulted legally on a case of this kind. A gentleman in independent circumstances became destructively excited, made the poker red hot in the fire, and then issued into the high road seeking some one to kill. The inmates of his house found their own lives endangered when they attempted to arrest him, and came to us to obtain a legal warrant for restraining him. But he had manifested no intellectual delusion. He possessed a powerful intellect and spoke rationally on all ordinary topics, and no magistrate would risk prosecution by granting a warrant against him. We at length found a physician of eminence who had studied phrenology and seen similar cases, and had been convinced that they involved real insanity; and he induced another physician to join him in granting a certificate, under which the patient was placed in a lunatic asylum. In three months he recovered, and his intellect had all along been so perfectly clear that he recollects the whole circumstances, shuddered at his propensity, thanked us for the judgment we had displayed in his treatment, and remained in the asylum for three months longer, after he was at liberty to leave it, in order to confirm his cure. He lived for several years afterwards at large, and never had a relapse. If he had been allowed to kill some one, he might then, according to the existing state of the law, have been hanged; a result which would have involved death to his victim and himself, and poignant grief to the families of both; while no earthly good could have been derived from the execution, because the fact of his having been hanged

could not have prevented the organism of any other person from becoming similarly affected. This species of excitement frequently leads to self-destruction, and we refer the reader to Mr. Sampson's small but most instructive work mentioned in our title, for an overwhelming array of actual cases of this nature, in which a reasonable knowledge of the physiology of the brain might have enabled the relatives or neighbours, under a rational state of the law, to avert great calamities, instead of ignorantly disregarding the symptoms of their approach, allowing them to occur, and then *avenging* them as crimes. Mr. Spencer Perceval fell a victim to John Bellingham's madness, which had strongly indicated itself in his conduct before he slew his victim.\*

We are now prepared to answer Mr. Burt's question—"What connexion is there between robustness of muscle and sanity of will?" Precisely the same that there is between vision and the *great toe*; a sprain in the great toe does not derange vision, because the eyes and not the toe are the organs of this sense. In like manner, the muscles are the organs of motion, while the brain is the organ of the mind; and the question should have been—What connexion is there between *robustness of brain* and sanity of will? We answer, "The closest possible." If Mr. Burt will produce even one living example which we can see and investigate, of a woman with a *feeble brain*, who yet exhibits "heroic fortitude;" or of a captive or invalid whose nervous system is undermined and greatly weakened by disease, who, nevertheless, continues to manifest great firmness; or of a man of "brute courage and giant strength," who, having a healthy brain, largely developed in the organs of the moral sentiments, and of self-esteem and firmness, nevertheless justly bears "the brand of moral cowardice,"—we shall then surrender our whole argument to him at discretion. Meantime we observe that this series of absurd propositions, confidently propounded by a man of ability and education, on a grave and practical subject, strikingly indicates not only his own limited knowledge, but his estimate of the state of the public mind which he addresses.

Let us, however, assume the accused to have been sane, and to have been justly condemned, and to be committed to prison for restraint and reformation: What does reason demand that we should do with him? We should first inquire into the causes which have led him to infringe the law, and secondly, use the means naturally fitted for the removal of them, in order to qualify him for returning to society. Whatever may have been his external circumstances, as we know positively that there have

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\* See Phrenological Transactions, p. 339. Remarks on the Case of John Bellingham, by Sir Geo. S. Mackenzie.

been, and are, hundreds of thousands of similarly situated persons who have not become criminal, we are forced to infer that there must exist in him some peculiarity or defect of mental disposition, which has made him an exception to his class; and the discovery of this peculiarity appears to lie at the foundation of all rational action in his treatment. It is the discovery of the constitutional moral malady under which he suffers. We seek for this information in the condition of his brain. We look to see whether the case is one in which a defective general endowment of mental power is concomitant with general small size of brain; or whether, no such general weakness existing, the organs of particular tendencies preponderate so much over the other parts of the brain as to give a special proclivity to vice. A criminal in whom, for example, the organs which lead to aggression and violence are small, but in whom those of acquisitiveness and cunning are large, is widely different in his nature from one in whom the proportions of these organs are reversed. The one may commit thefts, and the other violent assaults, attended with danger to life, and both may be sentenced to four, six, or eight years of penal servitude; but their dispositions will be different when they enter the prison, the same discipline will produce different effects on them, and when they are liberated, if this fact has been neglected, they will return into society without having undergone any discipline specially related to their defects.

We could fill pages with specifications of mental endowments, all depending on the size, proportions, and condition of the brain and its parts, on which any given discipline, when applied indiscriminately, would produce the most opposite results; but as we are stating only principles, this enumeration must be omitted.

Since the cerebrum is a portion of the general organism, and subject to all the laws which regulate its action, the *condition* of the brain, and of the mental powers, will at all times depend on the state of the blood; which again depends on digestion and respiration for its efficiency as the fountain of nutrition. As the blood affords nourishment and stimulus to the brain, equally with all other parts of the body, it follows that if the food be deficient in quantity or quality, or ill-digested, or if the air breathed be impure, the tone of the brain will be lowered and the mental functions impaired, precisely as the muscular power will, at the same time, be enfeebled. The capacity of the convict, therefore, for labour, instruction, and improvement, depends fundamentally on the condition of his organism, and this on the state of his nutrition and respiration. But by the law of our nature, both digestion and respiration depend on the due exercise of the bodily and mental organs, on cleanliness, cheerfulness, activity, and hope.

When, in order to *punish* a convict we place him on insufficient diet, deprive him of exercise, bodily and mental, surround him with depressing circumstances, and place before him gloomy anticipations, we bring into action a series of influences, all naturally calculated to *diminish* his capacity for efficient and productive labour, for acquiring vigour of mind, and consequently for reformation. In vain shall we hope to succeed in any system of treatment which contradicts the fundamental laws of mind and body applicable to the case.

When, therefore, an individual is condemned to punishment for crime, reason demands that his organism should be examined by persons skilled in its structure and functions, and that the effects of the proportions and conditions of its different parts should be recorded, in order to bring clearly into view his physical and mental endowments and defects; and that his classification and treatment should be such as the results dictate. To doom a prisoner possessing a large brain, but small bones, muscles and lungs, to the same extent of bodily labour as another having a small or moderately sized brain, and largely developed bones, muscles, and lungs, would be to inflict torture on the former, if the latter were fairly tasked. To shut up a prisoner with a sluggish lymphatic temperament, small lungs, and small brain, in a cell, and there to feed him well, give him easy work, and cheer him by regular visits from the schoolmaster, chaplain, governor, and doctor, would not prove to him a very trying infliction, unless protracted for an inordinate length of time; while to place another individual having large lungs, a sanguine temperament, and a large brain, (the natural sources of much bodily and mental strength and activity,) in precisely the same circumstances, would be to visit him with a terrible retribution. The one, naturally feeble and listless, would dream away the time, at ease in body and mind; the other, by nature active, energetic, and fiery, would writhe under restraint; and these qualities, left without scope and employment, would recoil upon himself, and become sources of torture. Probably, the former, from his quiet, unresisting, and uncomplaining disposition, would become a favourite with the governor and chaplain; while the latter, chafed by confinement and goaded by suffering, would grow irritable and sulky, and when reprimanded for his bad temper might commit a breach of prison discipline, entailing fresh inflictions and augmented moral deterioration. Yet, under a rational system of treatment, the latter culprit might present the higher capabilities of improvement.

In dealing with crime, an officer is wanted analogous to the Registrar-General. This officer publishes annually a report of the "Marriages, births, deaths, and emigrants from the United

Kingdom," "Relative rates of mortality in the several quarters of the year," "Deaths from different causes and at different ages," and so forth; with highly instructive deductions from these data, calculated to enable the legislature and individuals intelligently to adapt their sanitary measures to the laws of man's nature. The events of birth, life, and death, belong to what is generally considered the moral department of this world's economy; that is to say, they depend, within certain limits, on the voluntary agency of man. But a higher power has placed the organism through the instrumentality of which they are effected, under regulations which man can neither alter nor evade. Certain definite qualities have been imparted to the human organism, which, being put into action by volition, produce the events in question; successfully and happily, when the action is in harmony with the laws of the organism; unsuccessfully and unhappily, when it sets them at nought. Crime is a moral phenomenon of an analogous nature. It is the result of an abnormal conformation, or an abnormal action, of the organism; a fact which could be demonstrated, were the necessary inquiries made. The human organism is the means by which the *moral government* of the world proceeds, exactly as the physical government of the world is conducted through the qualities and powers of action of physical substances. Physical phenomena, which are now understood and reduced to the category of science, were long inexplicable, and the change has been accomplished only by observing and drawing sound deductions from their qualities and modes of action. Whenever the human organism shall be recognised as the instrument by which the moral government of the world is conducted, and its qualities and modes of action observed and reflected on in the same spirit, innumerable *moral* difficulties will be cleared away, and evils be avoided or mitigated, which have long perplexed legislators and practical philanthropists. The legislature of Massachusetts has taken one instructive step in this direction. It named a commission to inquire and report on the subject of idiotism in that state. Dr. Howe, one of the commissioners, was a well informed physiologist, and also thoroughly acquainted with phrenology. In his investigations he embraced every cause, moral, physiological, and physical, which he could reach, capable, according to the state of his own knowledge, of producing idiotism; and a more instructive document than his Return never was penned. Bad air, dark and damp dwelling-houses, imperfect nutrition, drunken and filthy habits in the parents, marriages of near relations, hereditary predisposition, intemperance in sexual gratification, and many similar causes, filled the ghastly columns. The legislature was astounded by the revelations, and immediately granted funds to erect a proper asylum

for the unhappy victims of these infractions of the laws of the human organism. If a scrutiny of the same extensive and searching kind were made into the previous history and circumstances of criminals, our own experience as well as the analogy we have mentioned, warrant us in expecting that a similar extent of highly instructive facts and principles for the guidance of the legislator and philanthropist would be disclosed. While these are ignored, they are dealing with moral phenomena in the same darkness which clouded the perceptions of the dairy-maid who, when the dirt of the churn spoiled the milk, and prevented the formation of butter, instead of cleaning the churn, threw in a crooked sixpence as a charm to counteract the witchcraft to which she ascribed her bad success. The English public has lately been shocked by the number of brutal assaults perpetrated by husbands on their wives, and a statute was passed last session to authorize the imprisonment of such culprits for six months on summary conviction. One man had killed his wife outright, and then cut his own throat. He recovered, and to deter others he was hanged. Nevertheless, wife-beating proceeds as before, and now several of the London papers are calling aloud for *flogging* as the only means of deterring these men, who seem callous to every other infliction. One paper, however, (*The Leader*,) remarked that it would probably be more conducive to the public safety to send the physician than the hangman to such culprits. There was much wisdom in the suggestion. The offenders in general appear to reside in the most dirty, ill-aired and debased portions of the metropolis, and probably they are ill-fed and drunken. Such causes will keep their organism in a constant state of painful irritation, and if the organs of the combative and destructive propensities be large in the individuals, and those of the moral emotions deficient, their barbarity will be the natural result of these causes, to which may probably be added the exasperating conduct of a wife, similarly constituted, and placed in the same circumstances. Flogging such men would do little towards removal of these causes, but the advice of a skilful physician, who had knowledge and sagacity enough to discover them, might, if backed by sufficient authority and supplied with the necessary means, arrest them, or greatly circumscribe their influence. It is not weak sentimentality which dictates this argument, but a conviction that those evils will continue to afflict society, in spite of imprisonment, hanging, and flogging, until their natural causes are removed.

Generally speaking, men may be divided into three classes; the first being those in whom the anterior lobe of the brain, devoted to the intellect, and the coronal region, which is the seat of the moral emotions, is small; while the base of the middle and posterior lobes, manifesting the animal propensities, is large.

In persons thus constituted, there is a predominance of animal desire, and a feebleness of moral and intellectual power, which render them incapable of resisting the temptations to crime, presented by the social condition of the class to which they belong. They are, moreover, generally untrained and uneducated; and that they should fill our gaols is simply a natural consequence of their mental condition and external circumstances. They form the class recognised by intelligent governors and chaplains of gaols as incorrigible, and are really moral patients rather than criminals. An instance of one of them may be cited. In the Richmond Lunatic Asylum, Dublin, in presence of the officers and physician of the establishment, George Combe examined the head of a patient who belonged to the middle class of society, and said,—"This is the worst head I ever saw ; the combination is worse than Hare's,—combativeness and destructiveness are fearfully large, and the moral organs altogether deficient. I am surprised that the man was not executed before he became insane." Dr. Crawford the physician, previously to Mr. Combe's arrival, had written a description of the man's character, which was not opened until the opinion now cited had been pronounced on his head. It contained the following words. "Ten years since first admission. Total want of moral feeling and principle, great depravity of character, leading to the indulgence of every vice, and to the commission even of crime. Considerable intelligence, ingenuity and plausibility; a scourge to his family from childhood; turned out of the army as an incorrigible villain; attempted the life of a soldier; repeatedly flogged (at different times he had received 2000 lashes), has since attempted to poison his father." The most instructive part of the case remains to be stated. Dr. Crawford, writing subsequently to Mr. Combe, says:—"You observe in your own notes, 'I am surprised he was not executed before he became insane.' This would lead to the supposition that he had been afflicted with some form of insanity in addition to a naturally depraved character. Such, however, is by no means the case; he never was different from what he now is; he has never evinced the slightest mental incoherence on any one point, nor any kind of hallucination. It is one of those cases where there is great difficulty in drawing the line between extreme moral depravity and *insanity*, and in deciding at what *point* an individual should cease to be considered as a responsible moral agent, and amenable to the laws. The governors and medical gentlemen of the asylum have often had doubts whether they were justified in keeping E. S. as a *lunatic*, thinking him a more fit subject for a bridewell. He appears, however, so totally callous with regard to every moral principle and feeling—so thoroughly unconscious of ever having done anything wrong—

so completely destitute of all sense of shame or remorse when reprobred for his vices or crimes, and has proved himself so utterly incorrigible throughout life—that it is almost certain that any jury before whom he might be brought, would satisfy their doubts by returning him *insane*, which in such a case is the most humane line to pursue. He was dismissed several times from the asylum, and sent there the last time for attempting to poison his father, and it seems fit he should be kept there for life as a *moral lunatic*; but there has never been the least symptom of *diseased* action of the brain, which is the general concomitant of what is usually understood as insanity. This, I consider, might with propriety be made the foundation for a division of lunatics into two great classes; those who were *insane* from *original constitution* and never were otherwise, and those who had been sane constitutionally, but had *become insane* at some period of life from diseased action of the brain either permanent or intermittent."

—*Phrenological Journal*, Vol. VI. p. 147. When we compare these remarks with the account of incorrigible offenders given by Mr. Burt, and quoted on p. 16, it is obvious that they belong to the same class with E. S.; and when Mr. Burt assures us that "it is the undistinguished diffusion of incorrigible criminals among the whole body of convicts, that renders the problem of prison discipline, at present, almost insuperably difficult," we ask: Why should the means here proposed of discriminating these individuals be rejected? Nature never changes her course. We now in the year 1854 appeal to the Home Secretary and Legislature to listen to her voice, and to consider whether they are prepared to undertake the responsibility for all the misery which shall be inflicted on malformed convicts, and all the injury which these unhappy men shall be permitted to inflict on society, until the magnitude of that suffering shall at some future day compel them, or their successors, to do what we now beseech them to attempt, namely, to institute a serious inquiry whether the course of action now recommended is not calculated to mitigate the evils complained of; and if it is, to adopt it.

A *second* class of men possess brains in which the region of the animal propensities is large, and those of the moral sentiments and intellectual faculties are less, though fairly developed. This class furnishes the most numerous inmates of our gaols.

A *third* class consists of individuals in whom the moral and intellectual regions predominate in size over the region of the animal propensities. When the persons thus constituted are free from cerebral disease, and educated even to the extent of the instruction usually given in our parish schools, they rarely appear at the bar of criminal justice, charged with offences implying malice and defective moral principle. They may occasionally be

found implicated in breaches of the game laws, or riots connected with strikes or political excitement; but very seldom indeed are they charged with acts usually regarded as crime. As thousands of this class are exposed to all the social temptations of poverty, bad example, and intoxicating liquors, which hurry the first class and many of the second into crime, and nevertheless resist them all, is it not a fair inference that the *natural proclivity* to crime must be stronger in the first and second than in the third; and if so, why should we not inquire into the probable causes of the differences of their natural tendencies?

But natural dispositions may be trained and directed to good or evil courses of action, and the next inquiry should be—What kind of training and instruction has the prisoner received before infringing the law? If he belong to the first class of defective brains, moral and intellectual instruction will be found to have had extremely little effect upon his conduct, while instruction by precept and example in vice will have been received with avidity and energetically acted on. If he belong to the second class, whose brains are considerably developed in all the three regions, his present condition will most probably be found to have been actually determined by his previous training and instruction. If these were vicious, the ascendancy in activity will have been given to the animal portion of his faculties; whereas, if the training had been moral, the higher and controlling powers would have been raised into permanent supremacy in action.

If the training and instruction have been good, the third class will so rarely be found in our gaols that we may omit them altogether in our future consideration. As no training and instruction will, in our opinion, render the first class safe members of society, such as it now exists, we drop them also, and consign them to restraint for life as moral patients, and this leaves only the middle class to be dealt with.

The grand characteristic of this class is an approach to an even balance in the animal, moral, and intellectual organs, and as it is an ascertained physiological law that wholesome exercise of the structure tends to strengthen the function, we may, by exercising one of the regions and leaving the others habitually unemployed, raise the former into preponderating force and activity. By the terms *training* and *instruction*, we mean all the social influences, and all the ideas, from whatever source they proceed, that are presented to an individual from his birth, to his full developement in middle age. The domestic hearth, the street, and the workshop, educate and instruct as effectively as the school and the pulpit.

A defective or ill-balanced brain is thus, according to our view,

the *primary*, and a defective or vicious training and instruction is the *secondary* cause of criminal action. Governors, chaplains, inspectors, and visitors of prisons, testify, almost with one voice, to the general want of previous moral, religious, and intellectual training and instruction, which characterizes convicts. The exceptions belong to the class of men in whom the organs of the propensities, and those of the intellect, are large, and the moral organs deficient. The work of Miss Carpenter, on Juvenile Delinquents, quoted in our title, affords touching and irrefragable evidence of this deficiency of moral training. The previous history of a criminal is the only key to the *secondary* causes, and until these be removed his reformation cannot be accomplished.

We have here attempted to elucidate the causes of crimes, and having found them to consist of unfavourable natural dispositions and talents, acted on by adverse circumstances, we have endeavoured to show how the incorrigibly ill-constituted may be distinguished, and how they should be disposed of. We proceed to offer a few remarks on the mode of treatment adapted to reform the reclaimable class before described.

In this class there are strong natural propensities to animal indulgence, possessing inherent activity, and coming spontaneously into play whenever external circumstances permit. There are also moral and intellectual powers available for virtuous action, but their native energy being less than that of the propensities, and the social condition of the lower orders being less calculated to train and educate those powers than to stimulate the propensities, their relative feebleness and inactivity allow excessive and ill-directed action to ensue in the lower group of faculties, whence proceeds crime. The first object in prison discipline, therefore, should be to reverse this state of activity in the cerebral organs, and to give the ascendancy to the moral and intellectual group. To accomplish this object, we must withdraw external excitement from the propensities. Of all methods of doing this, placing the individual in a solitary cell is the most effectual, for there no external influences can reach him, except such as we choose to admit. But let us thoroughly consider the nature and effects of this mode of treatment. The effect of solitude and confinement on the organism is to lower the tone of the bodily organs, by withdrawing their natural objects and stimulus; it diminishes the vigour of the digestive, respiratory, circulating, and motory systems, and through them that of the nervous system; it renders the brain more feeble, and, through weakness, more susceptible of receiving, but less capable of retaining, external impressions. The absence of the objects to which the faculties are naturally related de-

prives these of external stimulus, and increases the feebleness and inactivity of brain, produced by lowering the tone of the other portions of the organism.

Let us, then, suppose this treatment tried on one of the convicts described by Mr. Burt, and consider its natural effects. "Habitual criminals," says he, "with few exceptions, enter the prison in an attitude of moral resistance. They encounter religious or moral reproof, as all bad men encounter it, with a feeling of aversion. They know that you mean to reform them if you can; they mean not to be reformed if they can help it." — p. 49. It is evident that the solitary cell, by weakening the brain, will subdue this resisting power; but how does it produce this effect? Not by diminishing the energy only of the propensities which led to crime, and strengthening the faculties calculated to restrain them; but by enfeebling *all* the faculties. The convict thus treated becomes more impulsive, the stubborn will is subdued, probably despondency ensues, and the chaplain considers him altogether in a hopeful way. By diminishing the quantity or quality of his food, the depressing effects of solitude may be greatly increased; by adding to these, it may be retarded, or even a state of excitement may be produced. In the Eastern Penitentiary of Philadelphia we saw prisoners in this state, in their solitary cells. Provisions being plentiful and cheap in Pennsylvania, the working classes are accustomed to a full diet, and this was continued to the convicts in prison according to the general standard of their class. In healthy individuals it produced a degree of animal strength which there was no adequate means of expending, and they became excited and irritable. They petitioned for a tea diet, that is, for tea and bread, in place of soup, beef, potatoes, and bread, for dinner, and were thus relieved. In such as had weak digestive organs, this excess of food produced gastric disorders, attended with bodily suffering and increased mental depression.

Here, then, we have in solitary confinement, a most powerful instrument for depressing the whole physical, moral, and intellectual powers of man, and in the diet we administer the means of increasing and diminishing its influence within certain limits. But let it never be forgotten that every consequence which flows from its administration arises purely from depression; and that a human being, lowered in all his vital energies, is not fitted to re-enter a social circle in which vigour of action and powers of resistance are indispensable to success. We must, therefore, avoid depressing the animal propensities too deeply, for they are necessary to man while he is an inhabitant of this world; and we must strengthen the moral and intellectual powers, on which the proper direction of these, and also all correct and profitable

action, depends. How is this to be accomplished? By exercising the moral and intellectual faculties, and directing them to their proper objects. In no other way is it possible to communicate that moral strength and intellectual perception which are indispensable to virtuous conduct.

Mr. Burt advocates the Pentonville system as the most conducive to punishment and reformation, while Captain Maconochie condemns it, and all similar systems, as noxious and nugatory. We shall now bring these systems to the test of first principles, and try their merits by this criterion.

Mr. Burt does not propose any consideration of the natural qualities of the convict, which depend on the state of his organism. Apparently according to him, large lunged, strong limbed, large brained men, are to be subjected to the same discipline as men reversely constituted in all these particulars. Captain Maconochie proposes a physiological examination.

But neither of them proposes any inquiry into the previous history of the criminal, with a view to found on it any modification of his treatment. They agree, therefore, in ignoring the *secondary causes of crime*.

Mr. Burt has, however, favoured us with his views of the qualities of the criminal mind; and for this we commend him, because, until these are known, we have not an iota of sound principle to direct us in prison discipline. "The depraved passions and lawless aims," says he, "which possess the habitual criminal are legion, and he enters the prison in an attitude of moral resistance against being reformed." We are next told that "want of reflection is pre-eminently the characteristic of the criminal. The *habit is always wanting; often the capacity for it is defective.*"—p. 64. In confirmation of this, he states that, "in fact, *criminality is in many cases the direct result of this combination of excessive passion with defective intelligence.*" "The returns from lunatic asylums," he continues, "show in how large a proportion of cases insanity is the result of moral causes—of drunkenness, of reverse of fortune, of grief, of domestic unhappiness, and of other evils, all closely resembling, if not identical with, either the *causes or the effects of imprisonment and transportation.*"—p. 90.

In the same strain he afterwards proceeds to state that, "in ordinary life, there are persons frequently met with who, without being treated as insane, are eccentric, fanciful, or easily impressed with false conceptions, whether received from others, or generated by a distempered imagination. This class of persons is most numerous among the idle, the unmanageable, the reckless, habitual drunkards, and those whose intellect is naturally not strong; and these are the characters of which a large portion of the criminal

*class is composed. It is generally admitted that there is, in many cases, a near affinity between crime and unsoundness of mind; and while the gaol returns show that criminals are not unfrequently found on their trial to be completely insane, there can be little doubt that there are others whose minds are bordering on an unsound condition, are deficient in vigour, and are very susceptible of delusive impressions.* In private life, this class of persons *is more numerous than is supposed* by those who have not had their attention directed to the subject; while among prisoners, especially *among transported convicts*, to whatever system of discipline they may be subjected, *it is to be expected that this class of prisoners will be more numerous than among the general population.*"—p. 102.

These are highly important facts, and the more valuable that they are certified by a clerical functionary, who possesses the best means of observation; but, as this description does not apply to all the members of the rank from which convicts chiefly emanate, we ask him what are the *causes* of the difference between the criminal and non-criminal portions of it? He denies all connexion between robustness of muscle and sanity of will, and as in his whole book we see no proposal to use the lights of physiology as guides in prison discipline, we are forced to conclude that he denies the influence of the brain, and of the whole organism, in producing the phenomena in question. Apparently he does not know that *moral*, are also *physiological*, phenomena, and hence the inextricable confusion of his ideas. For instance, when he states that, "in fact, criminality is, *in many cases*, the direct result of this combination of excessive passion with defective intelligence," we ask him if he ever thought of observing whether, in these individuals, the base and posterior regions of the brain bore a larger proportion to the anterior and coronal regions than in docile, quiet, and intelligent offenders? Again, when he remarks that in a large proportion of cases, *insanity* and *crime* are equally the results of "*moral causes*—of drunkenness, of reverse of fortune, of grief, of domestic unhappiness, and of other evils," why does he not propose, in the case of each convict, to ascertain *which* of these moral causes has led to his offence, and to modify his treatment in relation to it? The enlightened physician does so in cases of insanity: and if the governor of the prison is dealing with a human being in a closely analogous condition, why should the cause of his irregularities be ignored?

We beg the reader to peruse Mr. Burt's description, above quoted, of the mode of treatment pursued in Pentonville prison, of the men whose minds are bordering on an unsound condition, who are "*deficient in vigour, and are very susceptible of delusive impressions*," and to judge how far it is

adapted to their condition. But Mr. Burt, in his anxiety, apparently, to meet the public demand for severity, scarcely does justice to himself and the Pentonville system. Many persons confound solitary with separate confinement, as if they were the same thing; but they differ in some important particulars. *Solitary* confinement consists in locking up a criminal in a cell by himself, and leaving him there without employment, books, or communication with any human being, even his food being presented to him in silence. This treatment depresses the whole organism so severely that it is very apt to produce insanity. *Separate* confinement certainly implies that the criminal shall be locked up in a cell by himself, apart from vicious associates, and to this extent it may be regarded as solitary; but under it, says Mr. Burt, the prisoner is supplied with work, books, and instruction. He is, more or less, educated in knowledge and virtue, and trained to industry. He is visited daily by the schoolmaster, chaplain, warders, and governor, who hold social converse with him, cheer him in his solitude, and encourage him to enter on a course of industry and honesty, as the only one calculated to promote his own permanent well-being. Under this system, the means of action for the body and mind are to a certain extent provided; and the isolation is resorted to in order to separate him from vicious companions and temptations to immorality.

The effect of this treatment necessarily varies with the mental and bodily constitution of the individual. If he is weak, it renders him weaker in all his functions. If he is robust in body and has large organs of the animal propensities, it soaks and quiets him, and renders him impulsive. When applied to this class, the eulogiums generally pronounced on the separate system are intelligible. When thus administered, and not too long continued, we believe it to be not at variance with the laws of the human organism, farther than all imprisonment within the walls of a gaol must necessarily be so. If the cell is dry, well ventilated, and kept at a proper temperature, and if the food is sufficient for wholesome nutrition, all the functions of animal and moral life may, for a certain length of time, be successfully performed in such circumstances. The stimulus of external objects and vicious companions being withdrawn, the first effect is to subdue the mind of the convict to seriousness and reflection, if he be capable of them; perhaps to sadness and melancholy. The second stage, however, is soon reached. The mind and body become accustomed to the new circumstances, and relief is found in labour and mental exertion. Moral desires, now awakened and encouraged, give hope and energy; and the prospect of an improved position in society when the prison doors shall be opened, renders perseverance in duty agreeable.

In the course of time, however, these influences, partly by becoming familiar, and partly by fulfilling their objects, lose their salutary effects. Whenever they cease to stimulate, to cheer, and to sustain the prisoner, the limit of their remedial influence has been reached: a condition of painful excitement supervenes, which the ignorant designate as impatience and insubordination, but which in truth is the re-action of the organism now suffering under artificial restraint, too long continued to be endurable. The prisoner has passed through the first and second stages of his mental disease; and if the discipline has been effective, he is now convalescent; *i.e.*, his animal propensities, by the absence of stimulus, have been so weakened, and his moral, intellectual, and social faculties have been so awakened, strengthened, and directed to proper objects, that his whole nature longs for a field of more extended action—in short, for a natural social position. At this stage, separate confinement ceases to be useful.

It was the object of those who instituted the Pentonville system to send the convicts at this stage of their probation to the colonies, in the belief that they were reformed; and if a selection had been made of individuals whose brains and physical constitution promised permanence in their reformation, the plan might have succeeded: and it may still succeed, for one portion of Australia is even yet willing to receive them. We observed the following paragraph in the *Northern Whig* newspaper of 15th September, 1853:—"Advices from Perth, Western Australia, to the 8th of June, contain satisfactory accounts of the progress of the colony. Public meetings had lately been held, at which the desire of the inhabitants to continue to receive convicts from England was strongly and unanimously expressed. The number of convicts in the colony at present was about 2000, and it seemed to be the general wish that fresh arrivals should take place to the extent of 1000 a-year. It appears that a less severe system has been enforced for their treatment than that which has prevailed in the other colonies, and the result is alleged to have been so favourable as to render offences, especially those of a violent character, extremely rare." But no such selection continued to be made, and the experiment failed. We cannot wonder at this result, when we consider the effect of suddenly transferring the feeble-minded and half insane, and also the strong-bodied, large-brained and animal-minded convicts, indiscriminately, from their separate cells, in which temptation had been withdrawn, and reforming influences daily administered to them, into each other's society in a prison preparatory to embarkation, and in a ship during a voyage of four months. What security could we have that such men,

placed in such circumstances, should land undeteriorated, and be capable of resisting the temptations presented by the rude society into which they were thrust in the colonies? The laws of the human organism enable us to answer this question. Separate confinement does not give vigour to the weak, but the reverse: when *they*, therefore, are again exposed to temptation, they will assuredly fall before it, through their very feebleness of intellect and moral resolution. In the case of the strong, again, it does not eradicate the animal propensities from them: it only renders them quiescent by withdrawing exciting causes. Colonial life presents all those excitements anew. Separate confinement does not impart additional development to the moral and intellectual organs: it only makes them more active by presenting to them influences calculated to excite them. In the colony, these are no longer supplied by zealous guardians analogous to the governor, chaplain, and visitors who administered instruction and encouragement to the convict in his cell: hence, even the strong man, in his new circumstances, will be liable to fall away; and thus only individuals possessing the best constituted brains and bodies to be found in the convict class will have a chance of continuing in the paths of virtue and rising in the social scale, and none but such should ever have been transported.

The colonies, however, may now be considered as finally closed against convicts, and we must consider what should be done with them at home. Assuming that they have undergone the reformatory discipline of separate confinement until it has ceased to be useful, what should next be attempted? Again the laws of the organism enable us to answer. The problem is to render the weak in mind and body sufficiently strong, and the naturally energetic, but viciously disposed, sufficiently quiet, self-restraining, and intelligent, to be capable, at their discharge from prison, of taking their places in society without relapsing into crime. To strengthen the functions, their organs must be exercised in conformity with the laws of their constitution, and those laws require that each function should be employed on its own objects. Thus, to give muscular strength, and habits of industrious application, to the criminal of weak organization, he must be supplied with nutritive food in proper quantity, and be employed in a way that will exercise without painfully fatiguing his corporeal frame. To deny him adequate food, or to exhaust his strength by fatigue, for the sake of punishing him, is to use direct means to *unfit* him for returning to society a reformed man. Again, to strengthen the moral and intellectual functions in the weak, and also in the viciously disposed, they must be employed on moral and intellectual objects; that is to say, the labour enjoined must be calcul-

lated to exercise the observing and reasoning faculties, and the social circumstances of the convict must be framed so as to call his moral emotions into habitual action, and to avoid rousing his propensities. Let us inquire, then, to what extent these natural conditions of reformation are complied with in our existing systems of prison discipline.

The tread-mill and the crank-wheel are two forms of labour greatly in vogue with a large portion of the public. On the former the convict is compelled continually to mount the steps of an ever-sinking wheel, which, in many instances, drives no machinery and executes no work; it is simply a *punishing* apparatus. The latter is an instrument of a similar description. The convict, by sheer muscular effort, turns the wheel, the axle of which is tightened by a screw, so as to render it difficult to move, so many thousand times a-day. It also is applied to no useful purpose, and ginds only the air. The convicts are sentenced to so many hours mounting or turning per diem, without the least reference to their muscular strength; so that what is easy to one is torture to another. The only part of their frames exercised, are their bones and muscles, and these are *designedly tasked* to such an extent as to produce *painful fatigue*, the *pain* being regarded as the most valuable element in the treatment; it is the *punitive* portion which is relied on as the means of deterring persons outside the prison, still innocent in the eye of the law, and with whom the convict has no connexion, from committing crimes, and of forcing the criminal himself to exclaim, "I must not offend again, for this is what I *cannot endure*." But what says Nature to this view? She declares that this process converts labour into severe suffering, in some instances into torture, and that it diametrically contradicts our true aim, which should be to render labour *so agreeable* (and under proper regulations this may be done), that the convict on his liberation shall from experience *prefer it* to profligate idleness. Again, Nature declares that labour shall be sweetened by the rewards which she attaches to it when intelligently applied and diligently prosecuted. But here also the tread-mill and the crank-wheel strenuously conflict with her authority: for they impose labour, deliberately excluding intelligence in its execution, and also every shadow of profitable result to sweeten it as reward. Are these the best modes which the science, religion, and morality of the nineteenth century can devise, to induce the convict, when his sentence is fulfilled, spontaneously to prefer industry to crime?

Further, exhaustion of the muscular system by hard labour, uses up the whole nervous energy of the body; and when the task is done, it is nearly in vain to introduce the schoolmaster and the

chaplain to the prisoner: his brain is too thoroughly exhausted to be capable of attending to them. If the prisoners are locked up in separate cells after such days of exertion, sleep is their only consolation, and it is indispensably necessary to enable them to answer the next day's call on their strength. If they are allowed to associate, they meet when their whole frames, corporeal and mental, are irritated by suffering, and unsolaced by one benefit achieved, one idea gained, or one moral impression communicated. By a law of nature, pain inflicted without a beneficial object rouses all the inferior passions: we hate our tormentors, rebel against their authority, thirst for revenge upon them, and consider it meritorious to deceive, thwart, and baffle them by every device which our ingenuity can invent. Need we feel surprise, therefore, when Mr. Burt informs us that in the second stage of discipline, after liberation from their separate cells, "with the great bulk of the prisoners the conversation is represented to be, what the conversation of such men ever has been—profane, licentious, and criminal."—p. 73. The convicts confined in the hulks are employed in labour ashore during the day, but congregate at night in their floating prisons. There, says he, "it is notorious that every kind of villany is practised, and even unutterable abominations. It has recently been admitted in Parliament, upon the highest authority, that they are *as bad as they can be.*"—p. 74. We again ask: Is this a rational preparation for re-entering society when the sentences are expired?

In the different Government prisons there are considerable differences of treatment. MILLBANK prison is used "not only as a prison for convicts in separate confinement, previously to being sent to public works, but also as a dépôt for the temporary detention of those who are subsequently removed to Pentonville, of juvenile convicts, preparatory to being drafted to Parkhurst, and of invalids." Hence many of the prisoners remain only a few weeks, or even days. In 1852 it had contained, of old and new prisoners, 2909: of whom 1550 were transferred to other prisons; 390 to the hulks; 156 others were otherwise disposed of, and 740 remained on 31st December of that year. The prisoners were employed chiefly in making clothes and shoes, in cooking, baking, washing, &c. On 31st December, 1852, the PORTLAND prison contained 812 convicts, who were employed chiefly in labour for the breakwater; in summer nearly nine hours, and in winter above seven hours a day. A few are employed as carpenters, painters, blacksmiths, &c., for the maintenance of the prison. About one-sixth of the whole prisoners is, practically, not available for labour. In the DARTMOOR prison there were, on the 31st December, 1852, 1133 convicts, who were

generally employed in fencing, draining, reclaiming waste land, making roads, &c. during spring, for 9h. 15m.; summer, 10h. 15m.; winter, 7h. 15m. per day. Men of exemplary character here receive special treatment of a mild and more respectful kind, which has an excellent effect. On 31st December, 1852, the PORTSMOUTH prison contained 941 convicts whose labour is applied under the following heads: "Admiralty," "Ordnance," and "Prison." The "Admiralty" labour consists of removing, stacking, unstacking, canting timber, landing hemp, hoisting ballast, and similar work. The "Ordnance" labour consists of shipping and unshipping stores, clearing mud from moats, levelling ground, &c.; and the "Prison" labour includes excavating the foundation of officers' houses, blacksmith and carpenter work, tailoring, shoe-making, bookbinding, cooking, washing and cleaning. The hours of labour are similar to those before stated. "Evening prayers and lecture (including time for unlocking, &c.), half an hour;" "cleaning shoes, shaving, hair cutting, and reading in cells," in summer one hour and in winter one and a half hours a day. The Governor says:—"My experience and observations on the industry of the convicts here, during the nine months that the prison has been in operation, confirm me in my opinion, that, under the present system of discipline and management, very favourable results may be obtained, wherever any number of able-bodied convicts shall be employed on suitable works, such as those already alluded to in this report."\* The Governors of the other prisons give similar accounts of the success of their several systems of discipline, and we shall revert to this point after noticing the two remaining Government prisons, which are more directly of a reformatory character.

The PARKHURST prison, on 31st December, 1852, contained 536 convicts, and is devoted to the reception of boys under sentences of considerable duration. Reformation is aimed at as a direct object. The in-door employment of the prisoners is making and repairing the prison clothing, cooking, baking, and washing. "The out-door labour has comprised the various trades of carpenters, bricklayers, masons, sawyers, painters, and glaziers." To instruction in these trades is added moral, intellectual, and religious teaching. After a period of probation, the lads were formerly sent to Australia, but they will now be transferred to the prisons for public works before described.

In the PENTONVILLE prison, there were, on the 31st December, 1852, 521 convicts. During the year, it had contained altogether 1278, of whom 757 were removed to the prisons before described,

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\* Reports of the Directors of Convict Prisons, 1853. p. 239.

to the colonies, or died. The average period during which each had undergone separate confinement was ten months and twenty-three days. During 1852 the convicts were engaged in trades, as follows:—212 as tailors, 113 as shoemakers, 109 as weavers, 68 as mat-makers, and 24 as bricklayers, &c.—total 526 engaged in trades. Three deaths only occurred during the year. There were five cases of insanity. In other prisons, in which the separate system existed, but was less stringently enforced, no cases, and in others very few cases, of insanity occurred. “The difference,” say the directors, “though not very striking, was still sufficiently marked to confirm us in the opinion we had formed, that any excess of mental disease at Pentonville was due to a difference in the administration of the system, as compared with other prisons; in fact, that there was an absolute relation between the amount of mental disease and the rigour with which the separate system was carried out. Arrangements were made by which the advantage of increased and more invigorating exercise was obtained, and from the period when this change took place a marked improvement was observed in the health of the prisoners”—p. 13–14. Intellectual, moral, and religious instruction is given, but its *quality* may be judged of from the following words of the Rev. J. Kingsmill, the chaplain:—“To confer the advantages of a superior education on criminals, I hold to be wrong in principle.” If, by “a superior education,” he means Greek, Latin, and mathematics, we agree with him. “A superficial one is worse than useless.” In this also we agree. “What such men want is *principle*, and not mere intellectual development”—p. 24. Right again; but he concludes with the propositions that learning to read, and the Bible, are sufficient, with the aid of the ministers of religion, to communicate principle. We shall take the liberty to controvert this opinion in a subsequent stage of these remarks.

The question now presents itself, what relation do these systems of prison discipline bear to the *causes of crime*? for until *these* are removed or modified, the convict is not fit to be restored to society. We shall indirectly answer this question by stating the mode of treatment which, according to our views, is best adapted to attain the only legitimate object of prison discipline—the protection of society from inroads on property and person. Every convict is an *individual*, and individuals differ from each other in physical and mental qualities, through the whole range, from the Aztec idiots, to Socrates or Napoleon Bonaparte. It would be as rational to treat all patients, whatever their ages, sexes, constitutions, and diseases might be, in one and the same way, with a view to their cure, as to treat all convicts alike with a view to their reformation. When, then, an individual is con-

victed of crime, at whatever age, we propose that he should be sent to a reformatory prison, and the first inquiry should be into the state of his organism. Persons competently skilled should examine him, and draw up a record of his age and stature, and of the proportions which his abdominal, respiratory, and circulatory organs, and his brain bear to each other. The size of the brain is important; because dangerous criminals, such as Rush and the Mannings, also the leaders of bands of robbers and pirates, have generally large, while feeble individuals who fall victims to external influences have small brains.\* These observations would show whether we were dealing with a feeble, average, or powerfully constituted character, an indispensable element of information in judging of his treatment.

Public knowledge has advanced so far as to lead most persons to admit the connection of the frontal, coronal, and basilar regions of the brain, with the intellectual, moral, and animal faculties; and we ask, why should this knowledge not be acted on? The next thing, therefore, should be to state the size of these different regions and their relative proportions, according to the best *estimate* that can be formed; for it is impossible to ascertain the dimensions with mathematical precision. This would go far to show the absolute and relative power of the intellectual, moral, and animal faculties with which we had to deal. Next, the predominating, the medium, and the deficient organs in each region might be estimated and stated. This would show, for example, whether the individual was naturally violent and cruel; mild but covetous, deceitful, and inclined to theft; or perhaps merely the jovial, reckless, and daring victim to sensual pleasure,—and so forth; also, whether he was naturally insensible to justice, to religious emotion, to benevolent feeling, or the reverse; also, whether his intellectual powers were feeble or strong, whether these were deficient in the observing department, and in the reflecting department, or in both.

In the reports of governors and chaplains of prisons, frequent mention is made of the great power of simulation exhibited by some convicts, who pretend to be reformed in order to gain favour. I can state from experience that, by a skilful examination of the head, such individuals might be distinguished from others of sincere dispositions.

These particulars of the constitution would prepare the way for

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\* To prevent misapprehension, however, it is proper to state that a brain, although slightly under the average size, if chiefly developed in the moral and intellectual regions, may be found associated with highly useful, and amiable mental qualities. It will be deficient in impressive force, but not necessarily in soundness of judgment or activity.

estimating the temperament, which should next be observed and recorded ; whether it be nervous, sanguine, fibrous, or lymphatic, or a combination of these. This also is an important article of knowledge for our guidance in the treatment, since it indicates largely the activity and power of resistance of the organism generally, and particularly of the brain.

This record of the bodily system being completed, the next inquiry should be into the *history* of the individual. Who were his parents ? Were they sane or insane ? drunken or sober ? What kind of employment were they engaged in ? What training and instruction did they give the convict ? What trade was he taught ? What does he now know, and what can he do ?

Answers to these questions, considered in connexion with the record of his corporeal constitution, would present a tolerably precise view of the real nature and condition of the being on whom we intended to operate. They would reveal the causes of his crime; whether it arose from a feeble mind and body, inherited from diseased or drunken parents ; from strong natural vicious dispositions ; or from neither of these, but from sheer misdirection, ignorance, and unfavourable circumstances. Convicts, who had become such from these different causes, would require very different modes of treatment. When once possessed of this information, we should be able to classify prisoners more successfully than has hitherto been done, and to apply a mode of treatment to each class suited to the natural qualities and circumstances of the individuals who compose it. It is impossible to read the reports of the governors and chaplains of gaols and not to be struck by the confused and contradictory representations given of the characters of the prisoners, without even an attempt being made to *throw light* on the causes of the differences described ; and, in consequence, the results are equally heterogeneous and disappointing. Again, from ignoring the organism and its effects, and the natural laws to which it has been subjected, the most absurd and barbarous methods of treatment are resorted to, according to the temper and imaginations of individual governors of prisons. We have seen that to give a man a relish for labour, and to induce him to use his intellect in applying it, Nature attaches rich rewards to his efforts when rationally directed ; but that our legislators have established tread-mills and crank-wheels, which require great muscular efforts on the part of the convict, and *designedly* contradict nature, by excluding the application of intelligence and the attainment of any beneficial result either to himself or others. Lord Stanley, now Lord Derby, when Secretary for the Colonies, gave an explanation of the views under which the order of nature is reversed by the British Parliament. Captain Maconochie had urged on his

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Lordship that we "cannot err in taking that model (viz., 'the discipline to which we are all subjected by Divine Providence') for our guidance in our attempts to elevate the characters of our guilty, but yet more unhappy brethren." To which his Lordship replied:—"I do not understand that it is permitted to us thus to constitute ourselves imitators of the Divine government under which we live; or that, in this respect, the march of infinite wisdom is to be followed by beings of so contracted a range of knowledge and foresight as we are."\*

With all due deference to his Lordship's piety and philosophy, we submit that when God enabled us to understand our own faculties and their relations to the external world, and the consequences which He has attached to our acting in conformity with, or in opposition to these relations, He *did* permit us "to constitute ourselves imitators of the Divine Government under which we live." In uniting suffering and disappointment to our neglect, and happiness and success to our observance of these relations, and in giving us intelligence to perceive the connexions thus constituted, He has supplied us at once with a rule and a motive of conduct.

The law of nature, then, is that the labour by means of which convicts are to be reformed must be such as will require the exercise of their moral and intellectual faculties in its performance; for it is only by exercise that the faculties can be strengthened, and until they be rendered so vigorous as to be capable, *from their spontaneous action*, of restraining the propensities and guiding the conduct to virtue after liberation, the man is not fitted for freedom. As this view is fundamental to a sound system of prison discipline, we beg to be allowed to elucidate it farther. Governors and chaplains rely on *fear*, and on *religious instruction*, as the means of inducing criminals to abstain from crime after liberation. In illustration of the effect of *fear*, Mr. Burt, as before mentioned, says, the offender must by "*judicious punishment severely felt*" be brought to the condition of saying not that "crime is what I *will* not do," but that "the punishment of crime is what I *cannot bear*." There is a whole series of radical errors in these sentences. By a most benignant law of our nature, physical suffering fades from our recollection more rapidly and more completely than almost any other kind of experience. As men in general, and the criminal classes in particular, are little accustomed to extend their thoughts beyond the present time and place, the convict's recollection of severe punishment, when he is restored to the temptations of

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\* Parliamentary Paper on Van Diemen's Land, ordered by the House of Commons to be printed. 9th Feb., 1846. p. 11.

social life, is, like the recollection of an uneasy dream, quickly dispelled by any strong present interest or excitement. Moreover, as formerly mentioned, pain inflicted for the mere purpose of producing misery in the recipient, is naturally calculated to rouse all the inferior and selfish faculties into rebellion against it, and even to enlist the moral emotions on the same side. Again, *fear* is only one and that not a moral emotion, and in relying on it and neglecting the really available means of reformation, we are leaning on a broken reed, and cannot escape disappointment.

It is on the increased activity of the moral and intellectual faculties that we must chiefly rely. When once systematically trained to act in their legitimate spheres, their tendency, by nature, is to continue, or, to resume that mode of action during our lives; and it is only after the substitution of spontaneous activity in these directing powers for the external restraints of the prison, that the individual can be safely trusted to encounter the temptations of ordinary life.

The threat of pain may indeed indirectly excite the emotion of fear, and this is the solitary ground on which its advocates can logically defend it. But persons in whom the emotion of fear is naturally strong very rarely become criminals; and those in whom it is constitutionally weak are so insensible to it, that they are rarely governed by its influence. Experience of the effects of severe punishment in the army supports these views. In the beginning of this century soldiers were sentenced occasionally to receive 1000 lashes; 750 were a frequent sentence; and 500 almost a minimum; and these were actually inflicted. But offences did not diminish in proportion to the severity of these barbarous tortures; on the contrary, the men were brutalized, their moral emotions were outraged and enfeebled, or directed *against* the law which they defied; the same individuals returned again and again to the halberts, undeterred by experience of the sufferings of the lash, and yet military officers continued to declare that by no other means could discipline be maintained. When the public sentiment at last forced the lash out of their hands, and compelled them to use their own moral and intellectual faculties as governing influences; and when, under the dictates of humanity and justice, great improvements were made in the soldier's condition, the discovery was arrived at that all the previous torture had been worse than useless; it had been deteriorating in its effects, while the system of humanity had improved equally the officers and the men, and led to a higher state of discipline than had ever previously been attained. The same laws of nature hold good in the treatment of criminals. Gaolers deficient in the moral faculties will maintain to the last;

that *severity* is the essence of prison discipline; but let such men be removed; let their places be supplied by others naturally moral and intellectual, and trained to their duties; let even these be deprived of the power of severe inflictions, and thrown on their own moral and intellectual resources, and we predict a similar result in the reformation of convicts.

But chaplains rely on communicating moral and religious principles to convicts as the means of their reformation. Mr. Burt says truly:—"It is most important to bear in mind, that with habitual offenders there is, from the very fact of the habit, a superinduced, and, therefore, double depravity. He is *accustomed* to do evil. If ever a moral revolution is to be effected in the character of such men, there must be time allowed for its completion. *Their heads and hearts are filled with licentious ideas and criminal passions.* These springs of crime must be dried up by degrees. There must be continued cessation from doing evil before the excessive action of these propensities will subside, and those deep traces of habitual indulgence be obliterated. And when this negative reformation is effected, but half our work is done. There must be *infusion of virtuous principles*; and when the transgressor has ceased to do evil, he must learn to do well. If an enduring change is to be effected in the lives of bad men by moral means, it must be by frequent inculcation, *by continued reflection*, and after repeated internal struggles, that the rules and sanctions of virtue will acquire their hold upon the affections and the mastery of the will."—p. 58-59. At first sight, nothing appears sounder than this view; Mr. Burt, however, has here forgotten what he has elsewhere let us know, namely, that "want of REFLECTION is pre-eminently the characteristic of the criminal. The *habit* is *always wanting*, often the capacity for it defective."—p. 64. Then what does he mean by the "infusion of virtuous principles?" Apparently, addressing moral and religious truths to the always untrained and often naturally defective intellect of the convict. As the first step in the process of reformation, after the excessive action of the propensities has been subdued, we must certainly address ourselves to the intellect; but how shall we address *such an intellect* effectually? We must begin by rousing it by objects related to its different capacities, instructing it in *things, agents, results, and combinations*; abstract ideas of duty are the last items of information that it will become capable of comprehending and appreciating. The existing system omits nearly all the former and begins with the latter. Moreover, ideas of duty, even when lodged in the intellect, if they never go farther, remain uninfluential on conduct: they must be woven into the texture of the moral and religious *emotions* to render them

fruitful, and this cannot be done by mere "frequent inculcation," or "continued reflection." The evil passions arose from the influence of *internal and external stimuli which trained the propensities to habitual action*; and we must devise a mode of treatment that will stimulate the *moral and religious emotions* into habitual spontaneous action, before we shall succeed in placing them in a condition resembling that in which the propensities existed during the reign of vice. The propensities depend on one, the moral and religious emotions on a second, and the intellectual faculties on a third set of cerebral organs, all distinct, although closely connected; and it is impossible to establish practical and habitual action in any of the groups, except by exercising them directly on their own objects and in their proper spheres. Moral and religious instruction, therefore, addressed to a human being locked up in a separate cell, cannot, except in very favourably constituted individuals (who are not the usual inmates of gaols), practically excite, exercise, and strengthen the moral emotions. The cell affords no sphere for their action. How can a convict there *exercise* his benevolence, except perhaps by sparing the rats and fleas that are the sharers of his solitude? Or his sense of justice, in respecting the absent property and persons of others? At a subsequent stage of the discussion, we shall point out the application of these remarks to practical arrangements.

Having thus endeavoured to show that labour inflicted merely as punishment, and performed without the exercise of reflection on the part of the convict, cannot improve his moral and intellectual faculties, and that neither fear, nor mere intellectual communication of moral and religious truths, suffices for this purpose, we proceed to remark that *that kind of labour will produce the best effects which exercises directly the greatest number of the intellectual and moral faculties*. If we apply this criterion to the kinds of labour before-mentioned, as exhibited in the different prisons (see page 53), we shall have no difficulty in deciding that the labour in trades, such as those of blacksmiths, shoemakers, tailors, gardeners, and similar occupations, will be more beneficial than that of casting huge stones into the sea, loading and unloading timber, making ditches, and performing other acts demanding little more than muscular effort for their accomplishment, which are the employments of convicts in the Portland, Portsmouth, and Dartmoor prisons. There are convicts possessing great bodily strength and very low intellectual capacities, for whom these are appropriate employments; but it is an error to condemn men differently constituted to the same tasks, irrespective of their capacities for better things. Further, we must repeat that the convict whose nervous energy is daily exhausted by ten hours' hard labour in the open air, is

not in a condition to profit by intellectual instruction when his task is done. Repose is then the demand of his brain as well as of his wearied muscles. To expect, therefore, to eradicate or permanently diminish vicious propensities by such labour is chimerical. It might, perhaps, be beneficially resorted to, for two or three days in the week, employing the other days in teaching trades and promoting mental culture. The present system *punishes*, and this is what it is chiefly intended to do; but it has few inherent relations to reformation.

If we keep the principles now stated steadily in view, we shall be able to judge of the real value of the separate cell in prison discipline. It effectually excludes all external stimuli to the animal propensities of the convict, and this is the first step towards reducing them to quiescence. It does not remove the *internal* sources of action, and if the organs be large, and have been long trained in indulgence, and the temperament be active, the imprisoned solitary criminal will long continue to riot in iniquity in his imagination, after all means of external gratification have been removed. Convicts have confessed this fact to us in conversation, and we have seen evidence of it in writing, effected with a pencil, or when this was withdrawn, with a pin, and when this also was taken away, with the nail of one of the fingers, cut or bitten to a point,—all applied to the whitewashed surface of the cell. This internal activity is subdued by the general lowering of the tone of the whole nervous system, which ensues from solitary confinement and the absence of external stimuli. But it must never be forgotten that the same causes are lowering the tone also of the moral and intellectual organs, except in so far as this effect is counteracted by direct excitement applied to them. Labour requiring skill supplies this directly to the intellect, and in some degree also to the moral faculties, because there is a certain excitement of conscientiousness in prosecuting a useful task till it is well executed. The intellect acting under the compulsion of fear, or even of pure self-interest, will never produce the same quantity and quality of skilled work, as if fear were banished and self-interest elevated and directed by the sense of duty. Oral instruction also in useful knowledge, morals, and religion, if supplied in its living spirit, by a powerful, active, high-minded, and sympathetic teacher, will prove a powerful stimulus to these faculties; but if it be communicated by a small-brained, dogmatic, literal man, it will fall dead on the hearer, if it do not provoke him to resistance and contempt. Not a little of the reported obstinacy of criminals and their repugnance to reformation, arises from this source. The convicts who show this spirit are generally men of large and active brains, which give a consciousness of

power; and when they are addressed in a tone of authority and oracular wisdom by a small-headed pragmatical person, they intuitively feel their own natural superiority: contempt for their instructor is excited by his feeble qualities and manner, and resistance is enjoyed as a means of manifesting the natural superiority which is felt. This state of things occurs in schools as well as prisons; and in both, the instructor, utterly unconscious of his own deficiencies, resorts to punishment as the only means conceivable by him of overcoming what he regards as the wilful contumacy of the prisoner or scholar. We have visited many prisons, lunatic asylums, and schools, and wherever we found in authority a man with a large and active brain, not deficient in the animal region, but more largely endowed with the moral and intellectual organs, we saw that he commanded his prisoners, patients, or pupils, by words of kindness, sympathy, and reason, under the influence of which, criminal passion, diseased excitement, and petulant mischievousness, vanished like phantoms under the radiance of a powerful sun. They were not *extinguished* in a single day; but the ruler thus constituted was a moral power fitted by nature to abate them, and one which, if assiduously and continuously applied in favourable circumstances, would ultimately call the higher powers of the inferior or diseased minds into a state of permanently healthful activity, to the full extent which their development of brain rendered possible. Mr. Brebner, of the Glasgow Bridewell, was such a man; and a woman of like nature may be seen in Mrs. Caroline Chisholm, who commands, as if by a spell, many wild and untrained emigrants to the Australian shores.

Having this experience before our eyes, we cannot read without pain such sentences as those of Mr. Burt, which are too frequently reproduced in the reports of other prison authorities. "By some," says he, "this (the separate) system of imprisonment will be borne long—to many it will be excessively irksome at first;—they will then become somewhat habituated to it; but in a third period, a feeling of uneasiness will supervene; and towards the close of a sufficiently protracted term the punishment will, in a large proportion of cases, tell with great effect; the power of endurance will have been expended, and the stubborn will bent or broken. *And then the punishment will have done its work.* But for an extensive development of this *exhaustive* power, for the great bulk of hardened offenders, nine or twelve months are not sufficient. This is proved by the results at Pentonville."—p. 54. The real physiological import of the representation here given is that the nervous system has been reduced to such a state of feebleness that the faculties are no longer capable of acting with energy; and despondency and extreme nervous

sensitiveness have been produced: we state this from positive observation and unquestionable testimony. When introduced unexpectedly into the cell of a prisoner in this state, we have seen him fall into a state of nervous agitation by the mere impression which a stranger's presence produced on him, exactly resembling that which may be observed in a recluse nervous woman, when a visitor unexpectedly intrudes. The Governor of the Eastern Penitentiary of Pennsylvania informed us that certain prisoners, after long separate confinement, become so nervous and so feeble in mind, that they dread the day of liberation, and are painfully excited as it approaches. They feel themselves no longer fit to encounter the struggles of a liberated destitute prisoner's condition in ordinary society.

On the same subject, the Rev. J. Kingsmill, chaplain of Pentonville Prison, in his tenth annual report (p. 28), says:—"I had my misgivings that the reformation effected under such complete separation from the temptations of life would not prove to be of a permanent character." In this he was quite right, because as soon as the weakened organism was strengthened by restoration to liberty, the state of depression mistaken for reformation, would vanish. He proceeds: "I feared the long continuance under a system of restraint, physical and moral, would be followed by a reaction, where there was not a real change of heart by the Holy Spirit." If he means that the Holy Spirit, invoked by the chaplain, overrules and sets aside, by supernatural operations, the laws which the same Spirit has impressed upon the organism of man, we dissent from the conclusion. Mr. Kingsmill continues:—"However this might be, I thought I saw distinctly marked effects of separate confinement of such a character as to put out of the question the idea of its exclusive application for a lengthened period, as a sole or the greater part of a convict's treatment. Among the convicts of the first years—most carefully selected as they were in matter of general health, age, crime, and sentence—there was an undue proportion, as you (the directors of the prison) are aware, of mental disturbance and excitement, from insanity downwards to a sort of indescribable nervous or hysterical condition, which was partly observable in the prison, but much more so on board ship, where a large proportion were seized with convulsions. This was the case in the *Sir George Seymour*. In the *Stratheden*, which next sailed with our prisoners, as many as twenty out of one hundred were so affected, but none of the convicts on board from other prisons (in which separate confinement was not the rule), as I reported at the time to the board."—p. 28.

Here, then, are the chaplain and assistant chaplain apparently contradicting each other regarding the sanitary and reformatory

effects of the Pentonville discipline; but if, instead of confining ourselves to the principles of theology, we call in the aid of physiological science and experience, we shall at once give the preference to the testimony of Mr. Kingsmill.

These facts show that separate confinement can be beneficially applied only sparingly, and under certain important alleviations, and moreover that its effects will be very different on differently organized convicts. It should be administered, therefore, in conformity with the laws of physiology, and by persons instructed in these laws, and trained to observe and comprehend their operation in the case of the mental functions.

To prepare convicts for liberation, they must be trained to act virtuously, from their internal emotions and convictions, under the temptations of social life. At this stage of the problem innumerable difficulties present themselves, which have been, and we venture to predicate will continue to be, absolutely insurmountable while the physiology of the brain is ignored. These will be better understood when we have considered the sources from which they spring. Convicts having an active temperament and strong animal propensities, which they have been accustomed to indulge, constitute magazines of moral contamination in a prison. Their moral and intellectual organs being relatively smaller, and the cultivation of these having been superseded by that of the inferior feelings, they have no emotions and no ideas except those related to obscenity, fraud, violence, debauchery, and depredation. Their brains, from their native energy, act even in solitude; they revel in the conception of objects and scenes calculated to gratify their propensities; and while in the social circle of their fellow-convicts they pour out torrents of descriptions of their vicious enjoyments, and incite their own faculties, and those of the listeners, to seek in these narratives a pleasing stimulus and a consolation amidst the severities of their lot. Most truly does Mr. Burt say that "their heads and hearts are filled with licentious ideas and criminal passions," and that "these springs must be dried up by degrees." But all criminals are not vicious to this extent. There are many who have fallen victims to neglected education, bad example, and unfavourable circumstances, whose natural qualities are still respectable, and these should be saved from the pain and demoralizing influence of listening to the confirmed blackguards. In the great majority of cases the development of the brain, and the previous history of the individuals, would furnish the means of discriminating and separating these classes. With both, the separate cell should be used as a means of subduing the over-activity of the propensities, wherever that over-activity exists; but when this

is accomplished (and very different periods will be required in different cases), the culprit should be introduced into a social circle, and there his instruction in knowledge, and his training in a useful occupation and in virtuous actions, should proceed. The great difficulty is to discover a social circle adapted to the purposes of reformation. The systems of the Dartmoor and Portland prisons seem framed with very little regard to the principles here insisted on. The men live and labour in each other's society, but there is no adequate provision to prevent the contamination which we have described; moreover, the labour is in a very slight degree calculated to improve the moral and intellectual condition of the prisoners. Every movement and effort is regulated by strict discipline, and Colonel Jebb certifies that this is effectual in maintaining order and industry in the gaols; but the question in which we are chiefly interested is—What will supply the place of this external force when the convicts are restored to the temptations of common life? The various systems of prison discipline which have been tried in this and other countries have been attempts to solve this question. We shall briefly advert to a few of these.

In 1816 a great State prison was commenced at Auburn, a beautiful small town in the western part of the State of New York. It was built on the plan of a hollow square, inclosed by four walls, each 500 feet long. During day the convicts labour at trades in large workshops, under the close inspection of officers specially appointed to prevent them from conversing. They breakfast and dine in a large hall, and march to and from it and their cells and workshops, in the lock-step, which prevents them stopping or communicating. After working-hours they are locked up in separate cells, where they receive some degree of moral, religious, and intellectual instruction. We visited the prison, accompanied by Mr. Seward, the Governor of the State of New York, inspected all its details, and saw 650 convicts dine in the hall. They sat at narrow tables, arranged like the seats in the pit of a theatre, the convicts at one table looking on the backs of those seated at the table before them. The officers of the prison were stationed in the open passages, looking them fully in the face to watch them and prevent communication. Not an audible word was spoken: Governor Seward, however, mentioned that all the efforts of the officers to prevent communication were expended in vain; the ingenuity of the prisoners baffled them; and he said, "You perceive our position at this moment; we stand where not one of the convicts can see us; we speak so low that they cannot hear us, and we came into the hall after they were all seated, so that they cannot have observed us as we entered; nevertheless

every man in the hall knows that the Governor of the State is present; I discover it in their agitation and in the efforts which the officers are making to suppress communication; *how* they acquire and convey the intelligence I cannot discover; but the officers confirm my conviction that they do know the fact of the Governor being present." Mr. Seward pointed to this occurrence as an example of the difficulty of preventing communication, and all prison authorities acknowledge that, wherever it exists, a corrupting influence is present. The convicts appeared healthy, and no mention was made of nervous diseases affecting them.

This prison, therefore, combined the elements of instruction in trades requiring intellectual skill; of association under a rule restricting communication, to obey which required a certain exercise of moral self-control, calculated to strengthen the moral faculties; while, by entire separation during night, and by rigid discipline, it excluded, as far as possible, objects calculated to excite the propensities. It professed to give also moral and intellectual instruction. The points in which it failed were,—reliance on physical in place of moral means of governing; and the preference given to the *punitive* over the *reformatory* principle, in fixing the *object* of the treatment. The discipline was maintained by the lash, and the restraint on communication by the superintendence of officers, who acted not as moral guardians, but simply as detective police, whose duty it was to observe faults and hand over the offender to the punishing authority. The system pursued here, and also at Sing-Sing, the other great convict prison of the State, had been devised by Captain Lynds, a brave officer of the army, who was appointed to carry it out, as superintendent, at Auburn. His leading principle was the same with that advocated by so many prison authorities in England,—that convicts are sentenced to be *punished*, and that severity and suffering are the grand means of reformation, or at least of deterring others from crime. He acted so energetically on his own convictions, that, just before our visit, public sentiment had rebelled against his severities, and he was dismissed. The discipline of this prison, therefore, never has satisfied the public demands in preventing crime either by deterring or by reforming offenders.

We have already mentioned the Eastern Penitentiary of Pennsylvania: in it complete separation for the whole period of the sentence, frequently two, four, and up to ten years, or for life, was enforced; the convicts were instructed in trades, in reading, writing, and arithmetic, and in morals and religion. The consequence was, that although softened, instructed, and apparently improved, yet after these long periods of confinement the prisoner returned to society with his whole nervous system, including

his mental organs, animal, moral, and intellectual, increased in *susceptibility*, but *lowered in strength*, and so far was this effect carried that after long isolation, the individual shrank from liberation, feared the contact of society, and recoiled from the efforts which it required. When, in this condition, he met with old associates, their influence was rendered irresistible by acting on an excitable and enfeebled frame; he returned to vice, and thence proceeded anew to crime, undeterred by all the suffering he had endured. This description applies only to men of the worst class of brains. Under every system, many of the best class are permanently cured. Here again severity proved ineffectual to protect society from renewed offences, in cases where their consequences were most to be dreaded. The causes of the failure are obvious to every observer who understands the physiology of the nervous system, and the relations instituted by God between the brain and the external world.

We have visited a prison conducted on widely different principles,—that called the Rauhe Haus, near Hamburg. It is a House of Refuge for young persons who have either been condemned by the courts of law for crimes, and suffered punishment in the House of Correction, and who afterwards, by the consent of their parents, come there for reformation,—for delinquents apprehended for first offences, whose parents, rather than have them tried and dealt with according to law, subscribe a contract by which they are delivered over to this institution for improvement,—and for children of evil dispositions which have threatened to overwhelm them and force them into crime, and whose parents voluntarily apply for their admission into it for their amendment. We saw one youth of high rank in this latter class; he had been sent by his noble parents to the institution as a last resource to save him from a disgraceful career. When we visited it, many years ago, it contained fifty-four children, of whom thirteen were girls. It was then supported by subscriptions, and the annual cost was 10*l.* 4*s.* 10*d.* for each child, beyond the produce of its labour. It was conducted by Candidat Wicher, an unplaced clergyman, and his wife. He had unlimited authority, and was the soul of the institution. He was born in the lower ranks of society, and thus knew intimately the feelings, circumstances, and manners of the people; but, endowed with a large, active, and very favourably developed brain, he was one of Nature's nobility, and was refined, intellectual, and gentlemanly in his manners and appearance. The children were taught reading, writing, religion, and a trade, and *there was a master for every twelve of them*, who never left them night or day. The establishment consisted of several distinct buildings, none of them ornamental or expensive, placed in

a field of a few acres. There were neither walls nor fences to confine the inmates, and they were restrained entirely by moral influence and surveillance. When they behaved ill, they were punished by deprivation of food, by confinement, or flogging; but always moderately, as a judicious parent would chastise his children.

This institution, we have heard, continues to flourish to the present day, and is enlarged and improved. Its success was reported to us to be complete in relation to a large number of its inmates, partially so with a smaller number, and unsuccessful with a few. As an example of the last sort, Mr. Wicher mentioned that several of the boys had laid a plan to burn the whole buildings when his wife should be confined, and when they expected that his attention would be engrossed by her. Their scheme was revealed by one of themselves, and defeated. Mr. Wicher was no phrenologist, but he was an acute observer, and mentioned that he had been struck by the flatness of the upper (the coronal) region, and the roundness of the lower region of the head, in children who were most remarkable for depravity; but he made no use of this fact in his classification or treatment.

Here, then, were elements in operation which are not generally found in English prisons. The idea of using punishment, either to deter others, or as a means of reformation, was not entertained; the chastisements inflicted were merely for breach of rules or negligent performance of duty. The children were placed at ease in mind and body, a condition indispensable, by the constitution of human nature, to all moral improvement. We cannot too often repeat, that a state of suffering, when it is induced designedly and for the sake of making its victim miserable, tends to excite the animal propensities, and even to enlist the moral sentiments in rebellion against the tormentor, but never can become the basis of moral reformation. The suffering connected by Nature with a wound or a broken limb has a totally different character and object. It is calculated to induce the patient to avoid disturbing the healing process commenced by her in the injured parts; the condition of rest being indispensable to its success. The pain is not introduced simply to *punish* him for the offence of damaging his body, although incidentally it gives him a motive to avoid such catastrophes in future. In like manner, if, as was done here, we succeed in impressing the offender with the moral conviction, that the treatment to which he is subjected has for its sole aim his own subsequent well-being, he will not feel the restraints, self-denial, and efforts, however great, which it may cost him to work out his reformation, as *injuries* or *gratuitous inflictions of suffering*; but will view them as the conditions attached by

Nature to the process of his restoration. The pain felt by the drunken convict when the stimulus of alcohol is withdrawn is severe and crushing: but place him in a moral institution; convince him that the pain is the commencement in his organism of a process of recovery from countless injuries inflicted on it by his evil habits; encourage him to bear the suffering bravely; mitigate its severity by all salutary means; and give him confidence that Nature will remove it when the cure is accomplished, and will replace the pain by the positive enjoyment of a healthy action of the now aching organism,—and this discipline will cure his drunkenness, and with it his tendency to crime, by improving at once his physical and moral nature. But the English gaoler addresses his prisoner virtually in this language:—“ You have broken the law, and my duty is to inflict on you a certain amount of pain, in order to frighten ill-disposed people outside the prison from offending, and to make you feel by suffering that it is a very hazardous thing for you to break the law and come here, so that when you go out of prison, you may recollect this ever afterwards when disposed to do evil. In order to subdue your stubborn spirit, to overcome your resistance to being reformed, and to prepare you to fall in love with religion and virtue, I shall make you thoroughly wretched; the treadmill and the crank-wheel shall exhaust your strength till you ache all over with fatigue; and to add to the bitterness of your punishment, your labour shall be wasted, you shall grind only the air; you shall live in a solitary cell for years, you shall have painful tasks prescribed to you, and if you fail to perform them, or if your human nature rebel against this treatment, you shall be stinted in food, be deprived of your bed and forced to lie on the floor, be flogged, and be strapped to the wall in a strait waistcoat and high stiff collar.\* By these means we shall, in spite of yourself, convert your wicked heart into one of Christian love, your idle habits into those of industry, your hatred of the law into dread of its terrors, and your contempt for courts of justice, magistrates and gaolers, into profound reverence for them, excited by your experience of the wisdom displayed in effecting your reformation; and you shall learn to love us all for the merciful severity with which we have dealt with you!” This is a strong but essentially just representation of the principles of English Prison Discipline as embodied in the work of Mr. Burt, and practically exemplified in the great majority of our prisons. It is, in our opinion, fundamentally

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\* See the Reports of the late inquiry into Governor Austin's management of the Borough Gaol of Birmingham, in the “Daily News” of September, 1853.

wrong, and springs from a certain degree of barbarism which still lingers in the public mind, rendering it unconscious and incredulous of the superior efficacy of moral over animal force as a means of attaining the objects aimed at in criminal jurisprudence.

In the next place, in the Hamburgh institution now described, not only were objects and circumstances which are calculated to rouse the animal propensities, sedulously removed, but an adequate stimulus was continuously applied to the moral and intellectual faculties, so as to keep them habitually active. The organism was kept in health by wholesome food, cheerful exercise, and useful labour, performed with the will of the individual; and the motive power to all this series of beneficial evolutions was supplied by a master devoted to every twelve of the inmates. These teachers were men possessing brains of large or full size, well developed in the moral and intellectual regions, and of active temperaments; men whose hearts were in their work. They were attracted to it by inclination, and not by the love of mere pecuniary emolument. Here, then, was provided that desideratum which is generally wanting in English prisons—external moral stimulus, furnished by the constant presence of a moral and intellectual instructor and guide, whose influence supplied that which is the characteristic want of the criminal mind, namely, internal spontaneous action of the moral and intellectual faculties. Until this action shall have been established and become habitual, there will be no security for reformation; and, by the laws of our organism, it cannot become so in ill-constituted brains, except by the long-continued application of an external stimulus, directly related to the organs on which it depends.

Reformatory institutions similar to that now described, have long been in operation at Mettray, in France; in the canton of Berne, in Switzerland; at Valencia, in Spain; and, we believe, in other places on the continent; and they have all been attended with a far larger measure of success than the English prisons can boast of. Captain Maconochie, in his "Penal Discipline" says:—"Our Government, strong and wealthy, has adopted force as its principle, in dealing with its criminals—built magnificent prisons for them, organized costly systems of separation and other nullities, and been defeated; crime having not relatively diminished under its rule, and the re-committals to its best prisons averaging, as already stated, from 30 to 35 per cent., and in two remarkable cases, of men from Perth and boys in Liverpool, rising to 60 and even 70 per cent. While Spain, weak and poor, has, perhaps accidentally, confided its criminals at Valencia to a man of true practical genius and humanity, and given him only an old

convent to keep them in—which he has almost rebuilt with prison labour alone—introduced into it above forty different trades, from among which he allows each prisoner, on entering, to choose his occupation, as taste or supposed interest, or capacity, can guide him—reformed and discharged in nine years, from 1840 to 1849 (to which last period alone I have his returns) 8596 prisoners, of whom, in the same period, only 16, who had served their complete time with him (*Reincidentes que extinguieron sus condenas en este establecimiento*) appear to have been re-committed to him.\*

"Let us compare this result with the late exposures in Birmingham prison, in which, in two years, there were as many attempts at suicide, many of them successful, as in nine years there were here re-committals. The contrast is too painful to dwell on; but it cannot fail to strike even the most superficial reasoner, and inspire him with a wish to trace such opposite effects up to their respective causes. There seems no doubt whatever that the difference arises from the great use of force in the one case, and of persuasion in the other; as also the little importance attached in our English prisons to the interesting of criminals in their labour, and the great value so much more wisely set on this object by Colonel Montesinos, the governor of the prison."—pp. 8 and 9.

Capt. Maconochie quotes largely from one of his reports; but we must confine ourselves to a few sentences. "I have sought, by every means, and at any cost," says Colonel Montesinos, "to extirpate in my prisoners the lamentable germ of idleness, and to inspire them instead *with a love of labour.*" "Repeated experiments convinced me that what neither severity of punishments nor constancy in inflicting them could exact, the slightest personal interest will readily obtain. In different ways, therefore, during my command, I have applied this powerful stimulant; and the excellent results it has always yielded, and the powerful germs of reform which are constantly developed under its influence (*desarrollan se á su impulso*), have at length fully convinced me, that the most ineffectual of all methods in a prison—the most pernicious and fatal to all chance of reform are punishments carried the length of harshness."—p. 10.

We are glad to perceive that the system of humanity has been tried at least in one instance in England, and that it has also been in some degree successful. Mr. E. Carleton Tufnell, one of the Government Inspectors of Schools, in a Report, dated

\* We doubt the possibility of thoroughly reforming so large a proportion of criminals, and suspect that some may have reappeared before the criminal tribunals in other parts of Spain.

July, 1853, addressed to the Committee of Council on Education, describes an establishment conducted by the Philanthropic Society, for the reformation of juvenile offenders. In 1849 the institution was removed from London to Redhill, a farm of 133 acres, situated near Reigate. "Two main objects," says Mr. Tufnell, "were contemplated by the removal of the institution to the farm at Redhill. First, it was thought that agricultural work afforded more likely means for the reformation of habits and for implanting an industrial character, than manufacturing occupations, in which the children must necessarily be massed together in considerable numbers. Secondly—and this was by far the most important part of the scheme—it was intended, instead of keeping them in one large undivided establishment, to separate them into distinct families or households, each under one head, who should be responsible for all the members of the family. It was thought that more *individual superintendence*, and more *kindly domestic influence*, might thus be substituted for the ordinary mechanical and formal discipline that necessarily prevails when large numbers are congregated together."

"The boys who compose the school, 178 in number at the date of my visit, may be divided into three classes. First, there is the voluntary class, who come entirely of their own free will, consisting of youths tired of a life of vice and crime, and wishing to reform. Secondly, there is the compulsory class, being boys who have been sentenced to transportation, and have received a pardon conditional on their submitting to the regulations of this establishment. Thirdly, there is the class sent by their parents or immediate relatives for reformation, and who may be said to be compulsorily detained, so far as the parental control may be considered compulsory. For this latter class a payment, usually 5s. per week, is asked; but in the case of poor parents much less is taken. Every youth received is criminal, and has been convicted, except a few received as children of convicted parents; and in two or three instances boys have been admitted simply to save them from the consequences of a course of criminality, to which they had become addicted.

"The inmates are divided into four separate households, which are in a great measure kept distinct, each under a superintendent, responsible only to the resident chaplain, who is supreme director of the institution, subject of course to the committee, who meet every fortnight. Two of these households consist of fifty each; one embraces sixty of the older lads, and the fourth contains twenty lads employed in the stable, cow-house, and farm-yard, who are changed for others at the beginning of each month. The class of sixty is considered too large, and it is intended to diminish it, and to add to the farm-yard class of twenty.

"As it is considered that the chief cause of the past offences and immorality of the inmates is the want of steady habits of industry, by far the greater portion of their time is devoted to hard work, in which they are generally engaged from nine to ten hours daily. Each lad receives for his labour a payment varying from 1*d.* to 3*d.* per week, according as his work is well or ill performed; but, wherever it is possible, he works by task. This latter mode appears by far the best for implanting industrious habits, and I can bear testimony to the energy and good will with which the labour appears to be performed. Many of them during my visit to the school were engaged in brickmaking, which is one of the most laborious occupations to which a labourer can be put, and I never witnessed a heartier exhibition of unremitting industry. While at work they are scattered over the premises in small parties under industrial superintendents, it being deemed an important object to prevent the congregating in large numbers, which, with this class, often leads to immoral conversation. Every boy attends school for three hours *on five mornings in each fortnight*, in addition to the evening reading, and to the extra schooling of very wet days, when the usual employments on the farm are interrupted.

"The punishments consist of confinement in light cells, and of flogging, which last, however, is very rarely inflicted, not oftener hitherto than once in five or six months, and only for disgraceful offences.

"I attended the schools during the hours of instruction, which is imparted directly by the masters, with no aid from monitors or pupil-teachers, which are inapplicable to schools of this description. The masters appear competent to their work, but, owing to the neglected state in which most of the lads enter the institution, the standard of acquirement is very low. *Of 150 who were admitted last year, fifty could neither read nor write, seventy could read and write a little, and only thirty could read and write well.* There are a few youths of superior education; but these are by no means the best conducted; and all the teachers concurred in opinion that those whose INTELLECTUAL capacity was the highest were not those who gave least trouble, or were most trustworthy, but rather the contrary.\* On this subject the chaplain writes:—

"Judging from the boys received into the Philanthropic, their

\* If the heads of these boys were examined, it would be found that their *intellectual* ability was concomitant with a pretty well developed forehead, probably in the lower region, and their moral deficiency with a low or narrow coronal region.

*criminality does not arise from the want of school instruction.* I have had as many good scholars as bad ones, and most of those unable to read and write have been at school, or rather have been sent to school, and put in the ordinary paths of what it has been the fashion to call education. But there has been no restraining or impelling force even to keep the boy to school, far less to regulate his habits and associations during the hours when the school is not opened to him, and when his parents are mostly employed and absent from home.'

"On these grounds it is obvious that little or nothing is to be learnt from an ordinary school-examination of the youths in this institution. *The school-teachers are all industrial and moral* rather than intellectual superintendents; and their time is chiefly engaged not in giving literary information, but *in managing the tempers, reforming the habits, and generally regulating the dispositions and behaviour of those who are placed under them;* in other words, their duty is to impart education in its highest sense; and on this, dependence is, as it appears to me, very properly placed for attaining the object of the society—the reformation of juvenile offenders.

"It appears that the number of boys maintained on the average throughout the year 1852 was 117; and the net charges of maintenance and management amounted to 3191*l.* 19*s.* 6*d.* Hence the cost per head for 1852 was 2*7l.* 4*s.* 7*d.* In the previous year, 1851, when 93½ boys on the average were maintained, the cost per head was 3*2l.* 2*s.* 8*d.* This shows that, by increasing the number of boys, the cost has been reduced nearly 5*l.* per head; and it is the opinion of the society that if the number of lads were increased to 300 or 400, the cost per head per annum for each boy might be diminished to 20*l.* or 21*l.*

"The number of youths that have been received at Redhill since the school was opened in 1849 is 461, up to the 1st June, 1853. Of these 289 have been discharged in the following ways:—157 have emigrated either to Australia or America; one has been sent to sea; seventy have been apprenticed or assisted to employment in England; and sixty have been discharged at their own request, or as unimprovable, or have deserted. Of this latter class, however, several have been ascertained to have subsequently reformed, the good seed sown in them while within the walls of this institution having at a later period produced its fruits. The success that attends the operations of this society may be epitomized as follows:—Of the whole number of criminal boys received, seventy-five per cent. are reformed, and become honest and industrious members of the community; twenty-five per cent. relapse into their former courses, at least for a time, though several of these eventually shake off their evil habits, and

turn to the paths of honesty and respectability. Minute inquiries are continually made after those who leave, especially those who emigrate, mainly through agencies established in the colonies; and all who depart are encouraged to correspond with the resident director of the school. I have perused several letters that have been thus received from emigrants, and they are generally of the most interesting and hopeful character.

"The experience of this institution at Redhill, as well as of all foreign institutions for the reformation of criminal children, many of which I am acquainted with, seems to establish with moral certainty this principle—that *to bring back erring children to the paths of rectitude, they must not be massed together in large numbers as in ordinary schools*. They may be collected into one establishment under one head, but while there they should be divided into small separate households, each under its respective teacher and matron. *The object should be, to bring to bear upon them a home influence and domestic organization:* that they should be always under the eye of an intelligent superior, ready to advise and direct them, and that all congregations of numbers, during work or leisure hours, should be especially avoided.

"In sending the lads out to the colonies, it is still more requisite to observe this principle of division, and to send as few as possible in one ship. Several mishaps have arisen from inattention to this precaution. In 1852 twelve lads emigrated in one ship, of whom three relapsed; and at the end of last year, sixteen being allowed to go in one ship, and encountering very stormy weather at starting, seven of them absconded. The conclusion appears to be, that when a number of youths, nursed in crime, meet together without any superior guidance, they begin to talk of their former lives and crimes; this quickly leads to boasting of their daring exploits and narrow escapes, and thus by an easy transition they are led to imitate what they hear held up to praise and admiration.

"This necessity of division makes the essential distinction between a reformatory and all other schools, and accounts for the apparently large expense which must be incurred if such establishments are to be efficiently managed. Hence, too, arises the chief difficulty that has been encountered in conducting the Philanthropic School, as *it has been found almost impossible to obtain fitting superintendents. On the continent there are institutions for the training of such persons, but no such institutions exist in England.*

"If I might be allowed to criticise the arrangements of this establishment, I should say that the household plan was not sufficiently carried out, and that *forty or fifty are too many to*

*place under one teacher.* The two most noted institutions in Europe for the reclamation of juvenile offenders are the school at Mettray, in France, and the Rauhe Haus, at Hamburgh. In the former one teacher is allowed to every twenty boys, and in the Rauhe Haus one to every twelve. I have inspected the Hamburgh school, which has been very successful, not only in reforming those sent to it, but in training teachers for the business, who are in great request for similar establishments in other parts of the continent. The Mettray reformatory school is of world-wide celebrity, and in both, the principles that ought to govern such institutions have been so long studied and practised that I should hesitate to doubt the correctness of the conclusions to which they have arrived. Perhaps it is owing to this variation of management that the number of those who relapse into crime is two or three times less at Mettray and Hamburgh than at Redhill."

We have printed in *italics* certain passages to which we solicit particular attention, as confirmatory of some of the principles before expounded. The measure of success here described has been attained by substituting kindness for severity, and by supplying an external *moral force* in place of that which is wanting in the culprits, and thus by direct stimulus cultivating whatever portion of moral power they naturally possess. Physiology is not applied in treating or classifying them, nor is the instruction given altogether such as their natures require; still this institution is a great improvement on ordinary prisons. It will, perhaps, be objected, that although well suited to the case of juvenile offenders, it is inapplicable to adult convicts; but this is a mistake. An adult convict is an overgrown naughty child who has gone astray, through inherently vicious dispositions, defective instruction, or evil example; his organism is not changed in its nature from what it was in youth, it is only grown larger and stronger, and every natural law to which it was subject at 15 applies to it equally at 25 or 35 years of age. It will be morally impossible, therefore, to reform adult criminals by a method different from that by which young offenders are reclaimed, and still more so, if that method be reversed. We are glad to see that a conference of philanthropic prison reformers was held at Birmingham, on the 20th of December, 1853, for the purpose of urging on Government the necessity for instituting reformatory prisons for young offenders, after the model of those before described, and that the *Times* cordially and powerfully supported the movement. We wish them every success, but we beg of them not to limit their efforts to the young. What scheme, then, do we recommend to be adopted in regard to adults?

More than thirty years ago, Mr. Edward Livingston, whom

we have already quoted, recommended the institution of a Penitentiary on the system of separate cells, each cell having air, light, and warmth, duly supplied, and a small yard attached to it. He proposed also to institute *voluntary* labour, and to prohibit all *direct and positive* infliction of pain or suffering, at the hands of the officers of the prison. The convict here introduced would receive a supply of coarse food, but have no occupation. As soon as he requested, *as a favour*, to be allowed to work, the means would be afforded him. The kind of work would be suited to his capacities or previous habits. His diet would be improved with his industry. Through idleness, or any other abuse of the *privilege* of labour, he would forfeit his claim to it, and return to idleness and coarse fare. During this term of his confinement he would receive moral, religious, and intellectual instruction, and be visited, consoled, and encouraged by the officers of the prison, and by religious teachers and visitors. When he had been steadily industrious and moral in his deportment for as many months as appeared sufficient to render him trustworthy, he would be permitted to work and take his meals in the society of other convicts in his own stage of improvement, the number not exceeding ten, and at night each would return to his separate cell. When together, their intercourse and demeanour would be narrowly watched by a competent instructor and superintendent, and the least attempt at mutual corruption, the first symptom of abusing the indulgence, be followed by its cessation; and the convict would find himself sent back to the stage of solitary labour, in his separate cell, from which he had shown that he was not yet fit to be advanced. If he fell still lower, he would be returned to idleness and the coarse fare from which he had started at first. In the social state, while his conduct was correct, his fare would be improved, and he would be allowed, if capable, or willing to be taught, to work at employments involving the application of skill, and to receive a small remuneration, which he might expend on books, tools, or other gratifications, save food and drink, or put by in order to purchase his liberation. His liberation would be hastened by his attainments and good conduct; and the impression would never be allowed to be weakened, that this final consummation depended on himself alone, and that favour and indulgence were equally out of the question.\*

Captain Macnochie subsequently proposed a mode of treat-

\* See an able article on "Criminal Legislation," by the late James Simpson, Esq., in the "Phrenological Journal," Vol. VIII., pp. 488—1832—4. It was subsequently published in the Appendix to the first edition of his "Philosophy of Education."

ment called the "mark system" carrying out the general plan of Mr. Livingston. "Criminals," says he, "instead of being sentenced to prison for a fixed time, should be sentenced to earn in a penal condition, a given number of marks (or other denomination of prison currency) according to their offences, over and above all those that they may expend for maintenance in prison, or forfeit them through misconduct. To give full scope to the plan they should have no other allowance of *right* than bread and water, with a bare floor to lie on; but work being provided for them, they should be enabled to earn marks, at reasonable rates, by performing it, and of these marks be allowed to expend, day by day, what they please for improved fare and other comforts."

To carry this system into practice, Captain Maconochie proposed that time-sentences should be either commuted into marks, at the rate say of 1000 for each year of the sentence, or be passed in marks, increasing with the magnitude of the offence, to be earned in a penal condition before discharge. A certain number of the marks should be earned in the state of separation, not to exceed from a twelfth to a twentieth of the whole sentence. He concurs in the effects, good and evil, of the separate system, which we have before ascribed to it. After preliminary preparation the prisoners should enter a social circle, and be subjected to two species of classification: the first to be their distribution, by the superintendent and surgeon jointly, and to be frequently revised, into classes, *according to their physical powers or other ability*; the second, their distribution by themselves into mutually-responsible parties. The object of the first is to make the penal imposition as nearly as possible equal to both strong and weak. He suggests a method of doing this practically, into which we do not now enter, but which seems sound. The object of the second is to generate uniform purpose and that to good, in the body of men thus combined; to make good conduct popular, and misconduct unpopular among them, and to create a generous and social, as opposed to a selfish and egotistical, spirit in all. He recommends that two-thirds of every man's probation on the public works should be passed in such a party, and that he should stand alone only during the last third. During the two-thirds he should not be eligible for any employment giving him authority over his companions, but during the last third, he should be actually invested with it. Captain M. considers that with a right spirit infused into a body of men, by far the most valuable assistants in carrying out the details of discipline among them, are the more advanced of their own number. "And they, in their turn," says he, "are much benefited by the charge and confidence placed in them." He proposes that when a certain amount of marks is earned within a fixed minimum of time,

the convict should be entitled to his discharge in this country; that when they are earned within a longer period, he should have the choice of the particular Australian colony to which he would prefer being sent, and that when they are earned only in the longest period permissible, he should be sent with a ticket of leave to Van Diemen's Land. He would make extreme offences committed in a home party subject the offender to forfeiture of all marks previously earned and to the full execution of the original sentence. He next suggests regulations about diet, clothing, and lodging, the quality and quantity of each of which should depend on conduct; but he would diminish the present rate of physical comfort to all. He recommends that the hours of labour should be quite equal to those of hard-working free men, and that on no account any remission of them should be allowed for instruction or other purposes. "Properly improved," says he, "the evenings and Sundays should be sufficient for this purpose." Captain M. has a great dislike to corporal punishments, and thinks that in general they operate injuriously, yet he doubts if they can be altogether avoided. He therefore allows, for minor offences, or infractions of discipline, flogging, irons, fine, imprisonment, or two or more of these together. He allows wages for labour in the shape of marks; in certain cases the payment may be by the piece. Shamming sickness, or malingering, is a common and most injurious practice among prisoners, and should be met by suspending marks during sickness. By thus retarding liberation, we should render it the *interest* of every man to be well. In cases of severe, protracted, and unavoidable illness, some alleviation of this rule may be admitted. This rate of wages, when paid by the day, should vary a little according to skill and value.

The prisoner's discharge should never be granted, except on proof of innocence, or error in the sentence, until he has earned all his marks and thus fully paid his debt to the country; and he should then have a certificate of his conduct and character in prison, as evidence of his reformation. To prevent his being thrown directly on society without the means of subsistence, he should have the option of continuing to labour in the prison as a free man, on money wages for six months after the expiry of his sentence, but under the prison discipline and fare.

Captain Maconochie finally describes the staff of officers necessary to carry his system into effect, but into this we need not enter, it being a question of mere detail. It is only justice to him to remark that his system has never had a fair trial. At Norfolk Island, and at Birmingham, where he attempted to carry it into practice, he was baffled by the existing state of the law. It did not sanction his proceedings, and the officers attached to the old rules and methods of prison discipline,

represented his efforts as breaches of the government rules, and he was removed from his situations before he could possibly work out his own views. Besides, the want of legal authority to grant the rewards promised to the convicts for good conduct, necessarily impaired their confidence in him; so that, altogether, his method is unscathed by its falsely reputed failures.

The schemes of Mr. Livingstone and Captain Maconochie appear to us to be great improvements on those now in practice; but still they fall short, in some important particulars, of our standard. By proposing a physical examination of each convict, Captain Maconochie may, or may not, include a record of the dimensions and proportions of the different parts of his brain. This, in our eyes, is a fundamental requisite to understanding the natural character of the man. He does not propose any inquiry into the previous history of the convict. This we regard as an important omission. Again, he makes too slender a provision for the moral and religious improvement of the convicts. Hard labour for ten hours a day incapacitates the brain for serious mental application at night. The proposed bands of mutually responsible convicts are intended to act under the guidance of their own faculties alone, prompted by their interest to do right, and restrained by fear of falling back in their condition from doing wrong. These are certainly the chief motives which animate men in general society in their conduct; but as these failed to restrain the individuals who became convicts, it is obvious that there must be some defect in their minds or circumstances which led to that failure, and that we must remove or palliate it before we can safely trust them again with freedom. His plan will directly exercise their intellectual and selfish faculties, but only indirectly their moral powers. It seems better adapted, therefore, to prepare convicts for the colonies than for a return to home society; and as the latter alternative has only recently been adopted, Captain M.'s scheme could not be expected, in its details, to bear direct reference to it. We consider nevertheless that a staff of officers, capable of acting at once as moral instructors and as superintendents of labour, in the proportion of one officer for every ten or twelve convicts, who should never leave them night nor day, is necessary for success in reformation.

We remarked that we should not pronounce an individual to be incorrigible on consideration of the size and proportions of the different parts of his brain alone. The system now proposed, under which each convict would enjoy a certain extent of independent action, would supply an additional test of his dispositions and capacities. He could never accomplish the conditions of his freedom by earning the marks under continuous good

conduct, unless capable of a considerable degree of self-control; and by repeated failures he would in fact declare himself to be incorrigible, and unfit to be again trusted with freedom. But it would be necessary to establish a tribunal before which such relapsed prisoners should from time to time be brought, and which should, through a properly qualified officer, closely investigate the circumstances under which he had forfeited his right to liberation, so as to protect him against injustice, caprice, or ignorant mismanagement on the part of the prison officials.

The following instructive table, extracted from the Governor's Report of Pentonville prison, p. 17, throws some light upon the mental dispositions of the convicts subjected to its discipline.

### *Prisoners.*

*Numbers*—561 prisoners were in custody on 1st January, 1852.

717 were subsequently admitted.

1278 was the total population.

757 the entire number removed (deaths included).

521 the number remaining on 31st December; and,

550·62 the daily average number in confinement.

*Ages*—1 was under the age of 17 years.

170	were between	... 17 and 20 years.
262	" "	20 " 25 "
108	" "	25 " 30 "
115	" "	30 " 40 "
48	" "	40 " 50 "
13	" "	50 " 60 "

717

### *Prison Offences, Punishments, &c.*

#### NUMBER OF REPORTS, ADMONITIONS, AND PUNISHMENTS.

Reports ...	... 601
Admonitions ...	... 65
Dismissals ...	... 48
Not punished on special grounds...	27
Punishments ...	... 461—601

#### *Offences*—

Class I. Communicating and attempting to communicate by writing	... 66
verbally or by signs at exercise	39
in school or chapel	... 70
by knocking on cell wall	... 20
through the water traps	... 7
Attempting clandestinely to send a letter out of prison	... 1
Having tobacco in possession	... 1

—204

II. Dancing in chapel, mimicking chaplain, and other misconduct during divine service	6
Misconduct in school, and insolence to school-masters	9
	— 15
III. Obscene communications, and drawing obscene figures on books, stools, &c.	17
Disfiguring their persons by cutting off their hair	2
Disobedience, insolence, refusing to work, &c.	57
Disturbing the prison by shouting, whistling, and singing obscene and other songs	24
Boring holes in cell windows and ventilators	11
	— 111
IV. Using threats, swearing at and assaulting fellow prisoners, while working in association	10
Using threats, oaths, or obscene language, or attempting to assault officers while on duty	37
Wilfully spoiling work material and cell furniture, cutting their clothes, shoes, &c.	56
Insubordinate conduct, breaking open cell in trap-door, cursing medical officer, and assaulting warden	1
Projecting a written plan of escape, and attempting to escape	2
	— 106
V. Misappropriating prison property	12
Purloining and exchanging provisions while employed in bakehouse	10
	— 22
VI. Attempting suicide by hanging	2
Refusing to take food	1
	— 3
	— 461

*Prisoners Punished*—

	No. of prisoners.	No. of punishments
Once	192	192
Twice	51	102
Thrice	19	57
Four times	15	60
Five "	3	15
Six "	1	6
Seven "	3	21
Eight "	1	8
	285	461
Not punished	993	
Total population	1278	

*Nature of punishments—*

Close confinement, own cell, ordinary diet	...	...	...	...	20
"                " and secular books withdrawn	4				
"                " and punishment diet	2				
"                light cell	5				
"                dark cell—1 day, 8; 2 days, 59; 3 days, }	404				
332; 7 days, 1; 13 days, 2; 14 days, 1; 15 days, 1					
"                and withdrawn from association	10				
Withdrawn from association	...	...	...	...	11
"                school	2				
"                chapel	1				
Restraint in leather sleeves	...	...	...	...	2

461

There is nothing to indicate that the 993 convicts not punished during the year are dangerous or irreclaimable.

We have classified the offences for the sake of remarks:—

- Class I. Includes offences which *might* spring from the best feelings of our nature—the social affections, suffering under deprivation of their accustomed stimulus, and which do not *necessarily* indicate a depraved nature.
- II. Indicates a light and merry disposition in some, and bad temper in others.
- III. Implies stubborn and insolent dispositions, combined with a degree of depravity, and in some individuals strong sexual passion.
- IV. Implies depravity of disposition attended with violence of temper.
- V. Indicates the propensities of acquisitiveness and secretiveness predominant, with deficient conscientiousness.
- VI. Indicates morbid action of the brain.

The number of *repetitions* of punishment on the same individual affords an index of the degree in which he is corrigible. Those here punished 4, 5, 6, 7 and 8 times within the same year would probably never regain their liberty, under the system of voluntary labour in association. The men who deserved 3 days, 7 days, 13 days, and 14 days in a dark cell, must by nature be highly stubborn, determined, and probably dangerous characters, who would be a scourge to society after being four years in such prisons as Portsmouth or Dartmoor, in habitual association with men of their own stamp; unless, indeed, what is not improbable, some of them were men of strong minds barbarously treated, who defied their tormentors by an obstinate endurance of their inflictions. An examination of their brains, taken in connexion with the

details of their offences, would throw the light of day on the causes of that obstinacy.

Did we not know the deplorable state of psychological science, and the inveteracy of established ideas and practices, we might feel surprise that such tables as these do not lead to an attempt at discovering the real nature of the men who are thus dealt with, and the causes that have led them into crime, with a view to adapting the treatment to their individual natures and circumstances. Even on the principle of vindictive punishment, nothing can be more cruel, unjust, and unnecessary, than to inflict on the man, probably of fair average dispositions, who has been exposed by neglected education and adverse circumstances to fall into crime, the same extent of suffering which is considered due to the convict of depraved and violent propensities, manifested in a long career of guilt; yet a time-sentence to Portland or Dartmoor, consigns both individuals to the same fate. It is the same ignorance of psychological and physiological science which allows the mistaken notion to prevail, that good conduct manifested under rigid military discipline in a prison and in isolation from social temptations, affords any index of the degree in which self-command and the power of moral restraint from internal motives and convictions have been acquired, which last alone can fit a convict to return to society. Mr. Tufnell justly remarks, that in England there are no men to be found systematically trained to the moral management of convicts, such as are found in Germany and other countries. It is the bane of the English system of government throughout, that it does not render the public service, in its various civil departments, a series of professions, for which men must be specially educated and trained; and the great English universities, in consequence, do not educate young men for any pursuits on earth except those of a gentleman or a scholar. In a speech delivered at Winchester, on 16th December, 1853, Lord Ashburton gave a true and graphic representation of the state in which English education has left the English people. "In this *progressive* country," says his lordship, "*we neglect all that knowledge in which there is progress*, to devote ourselves only to those branches in which we are scarcely, if at all, superior to our ancestors. In this *practical country*, the *knowledge of all that gives power over nature, is left to be picked up by chance* in a man's way through life. In this *religious country* the *knowledge of God's works forms no part of the education of the people*—no part even of the education of a gentleman." If, at this moment, the Home Secretary, desirous to try the experiment, even in one prison, of a reformatory discipline, founded on the physiological-psychological principles here recommended, should address a circular

to the heads of each of the universities, containing the following questions, we should be curious to see the answers :—

*Question First*—Do you recognise, in your academical instruction, any connexion between the mental functions and the bodily organism? and what is the nature and extent of the connexion?

*Second*—Do you teach that the size and condition of any particular portions of the organism, influence the natural power of the mental functions? And if so, will you specify the special portions of the organism and the particular mental functions thus connected?

*Third*—Could you name to the Government, young men of good character and ability whom your instructions have rendered practically familiar with the connexions before stated, to such an extent that they could undertake to apply the principles of physiology and psychology, in classifying prisoners, in selecting employments fitted to their several capacities, and in modifying, within prescribed rules, their treatment, in conformity with their bodily and mental qualities?

If the science of man's nature has attained a practical development in the universities, these questions could be triumphantly answered. If not, the Government will do well to inquire into the cause of the uselessness of the mental science there taught.

In the naval and military departments of Government service, a degree of preparatory education has been required. The engineer officer must possess scientific knowledge to direct him in the practice of his art, and even officers of marching regiments must undergo educational examination; but to treat a human being who has infringed the criminal law, no special education is considered necessary. The persons selected as governors of prisons, are generally military men, chosen on account of their ability to preserve discipline, and force compliance with prison rules, irrespective of their possessing any knowledge of physiology, psychology, or moral and social science. We beg to be excused for again introducing Lieut. Austin's conduct at Birmingham as an illustration of the practical consequences of this ignorance in the governor of a prison. When Lieut. Austin was not satisfied with a convict's work and behaviour, he tightened the axle of his crank-wheel, and condemned him to turn it an additional number of times; and because he failed to do so, he diminished his food and nearly deprived him of sleep, hoping by these means to force him to execute the task in future. He apparently contemplated subduing a stubborn will, when the thing he had to contend with was a feeble body. The deprivation of food and sleep would increase the weakness; but when on the next day the task was not accomplished, the governor resorted to strapping the man to the wall for many hours, and keeping him

erect by a high stiff collar round his neck; thereby increasing his suffering, but again diminishing his strength, and this as a means of compelling him to work out his prescribed amount of labour. Apparently he was wholly unconscious that his own treatment was rendering it physically impossible for the convict to perform what he required. This case affords an example of the evils of appointing a man of a stern nature (for such Lieut. Austin's conduct bespeaks him to be), ignorant of the plainest principles of physiological science, and apparently equally so of other branches of knowledge bearing on the nature of man, to the government of a prison. A proper education of prison officers alone will afford a guarantee against the recurrence of similar outrages on prisoners. The mind and body of a man are certainly as complicated, delicate, and important objects, and at least as difficult to train, as the body of a horse or a sheep; and yet what lord of the turf would commit his race-horses to the management of untrained grooms, or what farmer his flocks to shepherds drafted from the ranks of the army or navy, who had never seen a sheep except on its way to the shambles?

Capt. Maconochie exposes forcibly the error of the notion which leads to these military selections. The object of military discipline, says he, is to sink all self-reliance and individual action, and to produce out of discordant elements, a compact, powerful, homogeneous instrument, which the commanding officer may wield at pleasure; whereas the object of prison discipline is to discover the minutest elements of individual character, to develope the good and suppress the evil, to direct the whole towards beneficent objects, and thus, as far as possible, to produce self-reliance and the capacity of virtuous individual action. The military officer trains the recruit to rely on his officers for food, clothing, lodging, and rules of action, sinking his whole individual soul in obedience; whereas the aim of the prison officer should be to enable the convict to acquire the skill and conduct necessary to provide these for himself, and to act wisely and beneficially for himself and others, when no counsellors are present except his own conscience, judgment, knowledge, and experience. How skill in the former system of training should qualify a person for best conducting the latter, we cannot discover. When combined with the other necessary requirements, a capacity for maintaining discipline would be a valuable addition to the qualifications of the governor of a prison, and we object only to its being viewed as the grand desideratum in such a functionary.

The other chief officer of a prison is the chaplain; and if we ask how his education has fitted him for his duties, we shall find, as a general fact, that at the University he has been taught Greek, Latin, mathematics, and theology; but that physiology,

psychology, social science, and the art of training men, were not considered necessary for his vocation. In reading the reports of chaplains, we see the natural character of the individual, and his peculiar theological creed, shining through every page of his descriptions of prisoners and modes of treatment. Mr. Burt, for instance, says : "The Divine Master of the human heart has not disdained to deter from vice by the revelation of the *impassable gulf and the unquenchable fire*. With the imprisoned criminal, in default of higher motives, the repression of the lawless passion is aimed at by the severity of penal inflictions, and of that severity duration will be a most influential element; only the discipline which constitutes the punishment, while lasting, must be *effective*."—p. 56. Here, then, we have hell fire and its endless duration proposed as an example to instruct us in prison discipline. In Birmingham gaol Lieutenant Austin carried this example into practice in the most efficient manner, and the result was the suicide of some of the prisoners. When we contrast the spirit which characterizes this principle of prison discipline with that which pervades the inestimable reports of the Rev. John Clay, the chaplain of the Preston House of Correction, how widely different the two appear ! Mr. Clay, in his Report for 1851, gives a table of recommitments, and observes that "recurrence to disorder and crime is almost inevitable, when corrective means are applied for such short periods as seven or fourteen days;" and he adds, that "*within that year*, recommitments, connected with *Sessions* cases, *happen* to be more numerous than they have been since the introduction of better discipline,—five persons having been twice tried within the year: but here, again, due investigation will too clearly show that *nothing better could have been expected*. My '*prisoners' character book*' contains the following minutes of each case." Here succeeds an exposition of the cases: "J. S., aged 10 years, is described as a child infamously neglected by his father," &c. "R. S., aged 18, grossly ignorant, and apparently incapable of any moral perception," &c. "R. C., aged 20, extremely ignorant," &c. "J. R., aged 30, a discharged soldier; miserably ignorant, and associated with the worst characters in the neighbourhood." "J. H., aged 43, an incorrigible drunkard, whose first felony was committed in 1836; all his offences being the direct result of intoxication."—p. 10. Mr. Clay's reports are highly expository of the *causes* of crime in so far as these consist in the ignorance and unfavourable circumstances of the accused. He gives us the following table, "as the result of a careful examination of each man and boy committed to this prison." It is "*intended to show the ignorance of male prisoners on the commonest subjects, as compared to their knowledge of the exploits of celebrated robbers* —the centesimal proportion being calculated on the 286 Session cases and 1353 summary convictions."

	SESSIONS.		SUMMARY.	
	No.	Per cent.	No.	Per cent.
1. Unable to name the months . . .	151	52·6	914	67·5
2. Ignorant of the name of the sovereign . . . . .	159	55·4	958	70·8
3. Ignorant of the meaning of "virtue," "vice," &c. . . . .	144	50·2	985	72·8
4. Unable to count 100 . . . . .	16	5·5	421	31·1
5. Acquainted with the exploits of Turpin and Jack Sheppard . . .	206	71·8	365	26·9

Mr. Clay also quotes Scripture:—"If," says he, "severity is justified by showing that rulers are appointed by the Almighty 'to execute wrath upon him that doeth evil,' it ought also to be remembered that 'HE is not willing that any should perish, but that all should come to repentance.'" So confident is he of the efficacy of a rational system of prison discipline in producing reformation, that he assures us: "There is good reason to hope that when more earnest attention is generally paid to the treatment of criminals, the number of those who may be restored to liberty, after having been subjected to proper discipline at home, but who, under other circumstances, might have been transported, will scarcely equal the number of convicts *now returned* into the population from abroad. In fact—instead of receiving yearly from the hulks, and the colonies, a certain number of dangerous and hardened '*returned convicts*,' about the same, or a less number of *corrected* offenders would be discharged from well-ordered prisons in this country."—p. 21.

Mr. Clay is a strenuous advocate of an improved system of national education as the only rational preventive of crime, and of moral appliances in prison to supply it where neglected.

After noticing the decrease of crime among the working population of the mills, he adds: "But the most striking fact to the credit of the 'mill hands' comes into view when we observe that the greatly reduced rate of committals from their class coincides with the operation of an Act which, shortening the hours of labour, secured some hours for mental and moral improvement to every wise and well inclined mill-operative."—p. 20.

Both Mr. Burt and Mr. Clay draw their principles from the Bible; both earnestly desire the reformation of the offenders; and both to some extent recommend the same means of treatment, yet the spirit which pervades their views appears to us to be widely different. While Mr. Burt apparently sees in hell fire and its endless duration an instructive lesson for the management of convicts, Mr. Clay finds a rule for his imitation in the text, "God be merciful to me a sinner." We look for the source of these dif-

\* Chaplain's Report on the Preston House of Correction, 1852.

ferences in the natures of the men. If their brains were compared, (and we have never seen or heard any report concerning the head of either,) we venture to believe that a perceptible difference in the development of certain organs in the base and top of the brain would be discovered between them. But be this as it may, can it be compatible with the public welfare that this great department of civil administration should be characterized by severity or humanity, in a great measure according to the temper of the individual who happens to be selected as governor of each prison? Should prisons not be managed rather by men educated in the sciences (physiology and psychology) which bear directly on the duties to be performed, and trained to the application of those sciences in practice? It may perhaps be objected that there is no evidence that the governors of the successful prisons before described were skilled in science and trained to their offices; and we admit that such is the fact. But those officers appear to have been men of a peculiar genius, which qualified them, as if by natural intuition, for the duties they undertook. Such men are capable of arriving, by direct perception, at results which ordinary persons can reach only through instruction, or can discover for themselves only after long processes of experience and reflection. No national system of administration can proceed safely on the *intuitive* perceptions of average men, and geniuses do not so much abound as to insure the nation an adequate supply of them. Hence arises the indispensable necessity, first, of fixing the *object* of the treatment; secondly, of ascertaining the *principles* on which it shall be conducted; and, thirdly, of training officers to carry these into practical effect. Moreover, as no stream can rise higher than its fountain, until the Government shall not only require a proper amount of knowledge, but select from those possessing it the individuals characterized by the highest physiological development of body and brain, they will not have done their complete duty to the country and the convicts.

By the Act 4 Geo. IV., c. 64, § 31, in England every prisoner has a right to be visited by a minister of his own persuasion, if he object to the gaol chaplain; and by a rule, certified by the Secretary of State, Jews who may be sentenced to hard labour are not compelled to labour on their Sabbath. It is proposed to extend this rule to Scotland. This is all that can be desired by prisoners on the head of freedom of conscience.

When convicts are liberated on tickets of leave, and restored to society, they should be placed under the *surveillance* of a *special* police till the expiry of their sentences. The convicts residing in towns should be compelled to report themselves monthly, if not oftener, before a police-officer established specially for this duty, and if employed in the country, before the nearest magistrate or clergyman, and he should explain how he

is employed and where he resides. Failure in making such reports should forfeit the ticket of leave. The country magistrates and clergy should be furnished with printed schedules, bearing the questions to be answered; and these should be transmitted by them to the nearest police magistrate charged with the superintendence of convicts. A special officer devoted to this duty would be necessary in the chief town of each district of the country, and he should be bound to act as the friend, adviser, and moral supporter of all convicts who were anxious to do well, and not as the mere legal spy over their conduct. The well-disposed should see in him a humane and enlightened friend, and not an enemy and a tyrant. The better class of convicts, thus treated and supported, would serve as valuable auxiliaries to the preventive, as well as the detective, police. They would know more than any other class of the haunts and habits of the criminal population, and, by their explanations of the sufferings of a prison, and their moral suasion, might exercise a salutary influence in restraining them from crime. They should not be induced to become spies and informers: but they might be legitimately encouraged to give information in occasional circumstances, when by so doing they could prevent a great evil by enabling the public authorities to ward it off.

We do not present a plan of detail for carrying our *own* principles into effect, because the public mind is still too far from acknowledging their soundness to render this necessary. But we shall conclude by offering a few practical remarks. The judicial sentence might continue to be recorded *in time*, in proportion to the offence, but rendering the minimum not less than one year, and subject to the condition of fulfilling the requisites of the prison discipline, without failure, until the expiry of the sentence. Certain acts of omission, or commission, in prison, should cause the term of the sentence to commence anew, or to have a certain number of months or years added to it, by which means the incorrigible prisoners would condemn themselves to perpetual imprisonment. Of course, only serious, repeated, and unmistakeable offences, should have these consequences attached to them. The classification, employment, and instruction of the prisoners, which we recommend, has been already sufficiently indicated; but we may add, that we should propose to instruct them in cerebral psychology, that they may know specifically their own mental defects as abnormal individuals, which most of them really are, without in the least being conscious of it; and social economy, that they may comprehend the relation in which their own qualities and attainments stand to the natural laws by which all social interests are regulated. No one who himself understands these subjects, and has conversed with prisoners, can doubt the importance of teaching them these branches of instruction. A convict,

like most other people, believes his own mind to be a normal type of that of the rest of mankind; he believes his powers of perception, feeling, and judgment, exactly to resemble theirs; and he is unconscious that he is actuated by some desires, views, and judgments, which are widely different from those of normal men. We conversed with an intelligent criminal in prison, awaiting his trial, who was subsequently executed; and he stated that in his thefts and robberies he was only bringing the lofty down, and equalizing the gifts of fortune, and that he succoured the poor out of the wealth that he plundered from the rich. The gaoler said he believed that this last statement was substantially true, because the prisoner really was generous in assisting the destitute out of the produce of his crimes. Mr. Clay says:—“The amount of that every-day knowledge, which, to ordinary minds, seems indispensable, and which, it might be thought, would certainly be gathered by every individual, however humble his condition, in his intercourse with others of his class—if from no better source—I have shown in former reports to be deplorably low criminals. I must again parade this mental destitution; again endeavour to bespeak attention to the barbarism, or worse, which yet exists in this civilized country. I say worse—for with *incredible ignorance of what is useful, there co-exists an equally incredible knowledge of what is demoralizing in itself, and calculated to operate most injuriously on society.*” He refers to the table quoted on p. 89, in illustration of these remarks, and adds—“I have already given examples of young criminals who had been taught to regard Turpin and Sheppard, not merely as bold, cunning, or skilful, but as *meritorious!*—as entitled to the sympathy and gratitude of the poor, for whose benefit they exposed themselves to the danger of the gallows! and I cannot help thinking that the 71·8 per cent. of felons, whose knowledge of biography has been limited to that of Turpin, and such like, as almost a proof of their practical recognition of Proudhon’s notorious maxim—‘*La propriété est un vol.*’”—pp. 12, 13.

The mere teaching of catechisms and scripture does not reach the sources of this evil. When an individual in whose brain the organs of the animal propensities are large, and those of conscientiousness and benevolence are deficient, reads the descriptions of the corruption of human nature in the pages of these books, he recognises himself in them unmistakably; but he is led to the conclusion, also, that as they are there given as general characteristics of mankind at large, all other men are at bottom as wicked as himself, only playing their parts, in reference to the police and the law, a little more skilfully and successfully than he has done. We have heard convicts describe trading as legalized cheating and thieving; the profit being regarded by them as so much money quietly plundered by the seller from the buyer. On conversing

with a man of this low form of brain, moving in the middle rank of life, who had committed great immoralities, although screened by his position in society and the leniency of his victims from criminal prosecutions, on the discordance between his practical conduct and his religious profession, we met with the following acknowledgments:—"It is quite true that I have done all these evil deeds," (by artful misrepresentations, he had ruined his own father and brother, and also another family which implicitly relied on his moral and religious character); "but you know 'the heart is deceitful above all things and desperately wicked:' this is my case; 'my own righteousness is as filthy rags;' did I rely on it, I should lean on a broken reed; but my 'trust is on the rock that is higher than I;,' 'he to whom much is forgiven loveth much;'" and so he went on, drawing consolation from the gospel, apparently without feeling a shadow of either shame or remorse on account of his misconduct, and believing that these texts and doctrines were designedly given for the support and consolation of all mankind, and especially of such characters as himself. It is in vain to answer that this was a gross abuse of the gospel: grant that it was so; still it was the interpretation and application of these passages of scripture which naturally occurred to a man whose brain was deficient in the moral and reflecting organs. To render such persons conscious that this is an abuse, we must show them, first, that these defects exist in their own faculties and produce unsound perceptions and judgments; and, secondly, that the external social world is governed by natural laws adapted to faculties of normal power and proportion, and that the action of the natural moral forces which constitute the springs of social life, will inevitably crush *them* if they persist in following the impulses of their *own abnormal desires*.

Two objections will probably be stated to the adoption of our views in practice. The first objection is, that by converting prisons into schools of reform we should render the convict so much happier than the free labourer, that the working classes would be tempted to infringe the law, in order to acquire a title to the benefits of our gaols. On this point we have the opinion of Mr. Frederic Hill, a most competent authority, who acted for many years as a Government Inspector of Prisons. In his work on "Crime," he states his conviction that it is unnecessary and therefore unjustifiable, in the treatment of criminals, to resort to measures that are merely punitive; because those which are required for the reformation of the offender carry with them an ample amount of punishment to make the condition of a convict less eligible than that of an honest and peaceable member of society. He regards punitive measures as not only unnecessary and unjustifiable, but in other respects bad; because it is difficult to make a prisoner

believe that punishments which do not naturally arise from the offences committed are awarded from any other than vindictive feelings; and this non-belief in the purity of the motives with which they are administered (which attaches more or less to all artificial punishments) has, in Mr. Hill's opinion, a strong tendency to excite angry and revengeful passions, almost incompatible with moral improvement.\* We so thoroughly concur in Mr. Hill's views, as to anticipate that an avowed change in our system of convict treatment from the revengeful, vindictive, punitive principle, to that of humanity and reformation, would operate more effectually in *deterring* the ill-disposed from crime than our present method. As things now stand, the criminal law may be personified by imagining a figure of a giant form standing astride over the Island, armed with a halter in one hand and a lash in the other, supported on each side by solitary cells, tread-mills and crank-wheels, on whose countenance no trait of human sympathy or pity could be traced, but only stern and inexorable severity. Such an image would naturally excite terror and loathing in the good; but in the eyes of the naturally ill constituted, it would be invested with a strange and incomprehensible interest. Being in itself the personification of all the low, harsh, and unamiable elements of human nature, it would be a reflex of their own consciousness; and seeing it assume an attitude of threatening, they would feel this as a challenge, and their instinctive impulse would be to defy it. Let the criminal law, on the contrary, be such as would be fitly represented by a similar gigantic figure, resplendent with physical strength and moral dignity and beauty; show it diffusing beams of compassionate benignity on suffering offenders; stretching forth its arms to rescue them from misery and crime, and to train them to happiness and virtue; and we venture to predict that the whole effect would be reversed. Such a spectacle would address itself directly to whatever spark of good feeling existed in the wavering population, and turn the balance in favour of virtue and not of crime; it would not incite or defy them to a contest, by exhibiting their own passions in its features and action; the individual who braved it would be reckoned not a hero, but a fool, even by his own class of minds, and by the favourably constituted as a moral lunatic, whom it was the interest and the duty of all to restrain. A change like this would form an epoch in the history of civilization. Whenever the physiology of the brain shall have become part of the education of the people, high and low, it will inevitably follow; meantime ignorance must take its course, sowing error, and reaping suffering and disappointment.

We repeat, that men deficient in the moral and intellectual

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\* See Mr. Hill's chapters "On the Principles of Punishment."—pp. 145, 185-90, 281-3.

organs, and untrained to reflection, are not capable of apprehending objects and consequences distant in space and time, with sufficient force to be able, from such considerations, to curb their strong present appetites and passions. If, therefore, we aim at effectually protecting society, we have only one of three expedients presented to us: to reform the criminal thoroughly; to confine him for life: or to put him to death. All other means are mere delusions and make-shifts; they have hitherto ended in disappointment, and we predict that they will continue to do so, however much they may be varied in form and appliances.

We deny that by converting prisons into schools of reform we should deprive them of their terrors, or render residence in them an object of desire to the virtuous poor. The solitary cell, the floor for a bed, and bread and water for food, which, with Captain Maconochie, we propose as the commencement of the reformatory process, would present few attractions even to the idle and vicious, and much fewer to the industrious and moral. The steady labour, the confinement, the rigid discipline, would all prove sufficiently irksome to men of the criminal stamp, to render their prison experience one of so much dreariness and suffering as not to be desired by themselves or others for its own sake, while the total absence of all unnecessary or vindictive infliction of pain, and its professed and real object—that of reformation—would remove from it its irritating, hardening, and debasing influence.

A prison, although ten times more comfortable than we propose to make it, would still be a prison—a place of social degradation and disgrace; and the humblest of the poor, if normally constituted and virtuously trained, would shrink from it on this account alone. Many kept mistresses and prostitutes live in a condition of material comfort, and even splendour, far beyond that which falls to the lot of the industrious poor; but do we find well-constituted and virtuously-trained women competing for the advantages of such a station? The moral degradation and deep disgrace inseparable from these positions turn such persons from them with intense disgust. The victims of temptation are individuals in whom passion is strong, or the moral and intellectual faculties feeble, and who from these defects do not realize, in their own minds, the conviction of the disgrace and degradation which the normally constituted and virtuously trained instinctively attach to the character.

Another objection will probably be founded on the expense which the conversion of prisons into reformatory schools would entail upon the nation. We have seen statements made that such establishments would prove positively cheaper; but, having no experience on this point, we meet the objection thus. Given, a certain per-cent-age of individuals in society afflicted with natural proclivities, or placed in circumstances that tempt them

to crime—in other words, to injure their fellow-men in person or property—Queritur: Which method of averting the evils they occasion will be the least expensive—that which accomplishes the end most effectually, or that which leaves it half attained, and the evils ever recurring? Our answer would be: That which is most effectual. If our method *be not* the most effectual, we do not wish it to be adopted; but if it *be* the most effectual, although still short of perfection, it seems to follow as an inevitable conclusion, that, whatever be its cost, it will really be cheaper than a more imperfect system. An article deficient in quality, or in adaptation to the purposes to which we design to apply it, may be *low* in price, but it *is not cheap*. One *double the price*, that was *efficient*, would be *cheaper*; and so it will prove in the case of *methods* of prison discipline. Look at the millions we expend in armaments and preparations for war. As the happiness of society should be the object of all government, if the Governments of Europe would establish schools and teach the young the functions and objects of their mental faculties, the natural laws to which they have been subjected, and the objects to which they should be directed, in order to attain purity, refinement, and rational enjoyment, and train each generation as it appeared in the field, to act on these principles, they would lay the foundation of a social condition which would render both armies and prisons far less necessary than they now are, and solve the problem of prison discipline, greatly to the advantage of their subjects. Until they shall do this, they will never reach the sources of evil; and, in our opinion, the expenses of police, criminal courts, prisons, and the maintenance of convicts, will greatly exceed the charges necessarily attendant on a thorough remedy.

The world does not yet know that it has been placed under positive moral laws, to the action of which the human organism is the key, and that it is impossible to attain well-being except by acting in conformity with these laws. It resists instruction in them; denounces their advocates as infidels; and pursues its own course in prison discipline, guided solely by its own wisdom and experience, or its one-sided interpretations of Scripture. We wait, then, patiently, for its next movement. Every failure exhausts one or more errors; and if the misery of thousands of our fellow-creatures, and the security of society itself, were not involved in the results, we should watch its future evolutions simply with calm and philosophic interest. But, as the records of the past fill us with distress, and the prospect of the future excites in us apprehension and anxiety, we have been led to publish these remarks from a sense of duty, trusting to the force of any truth they may contain, for their ultimate effect on the public mind and the Legislature.

## A P P E N D I X.

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THE following Article appeared in the "Daily News" of 30th June 1853. It led to a full inquiry by commissioners appointed by the Government, whose report bears out its representations. It is presented here to shew the consequences of a want of knowledge of the principles of Physiology in the Governor intrusted with the administration of the borough gaol of Birmingham, and in elucidation of the remarks made from pages 89 to 95 of the preceding pamphlet.

### **CHARGES OF CRUELTY AGAINST THE GOVERNOR OF THE BOROUGH GAOL AT BIRMINGHAM.**

In consequence of the circulation of rumours that cruelty was practised towards prisoners in the borough gaol at Birmingham, an inquiry has been instituted by Mr Perry, the Medical Prison Inspector for England, and reported by him to Lord Palmerston, the Home Secretary. The rumours on the subject first arose two or three months ago. About that period a prisoner, named Andrews, a youth, hung himself in the cell of his prison, making the third suicide, in addition to several attempts of a like character, since the present governor, Lieutenant Austin, R.N. (who succeeded Captain Maconochie less than two years ago) has filled the situation. This unfortunate youth, who was in a state of great debility, had imposed upon him the labour of turning a five pound crank wheel 10,000 times in a day ; he was dieted on bread and water, and finally strapped to a wall ; and when this punishment had been repeatedly inflicted, exhausted nature gave way, despair followed, and the youth destroyed himself in the manner described.

The following is Mr Perry's report :—

“ 12 WESTBOURNE STREET, May 24, 1853.

“ SIR,—With reference to my letter of the 14th inst., I beg leave to state, for the information of Viscount Palmerston, that I have made inquiry into the facts stated on the coroner's in-

quest held on the body of the prisoner Edward Andrews, who committed suicide in the borough gaol of Birmingham, in the course of which I have examined the several officers of the prison, from whom I thought it likely that I should learn the circumstances which might have led to that act, as well as the particulars relating to the general management of the prison, which were glanced at in the newspaper report.

" In the course of this inquiry facts have been brought to my knowledge which warrant me in stating that the governor is in the habit of inflicting on the prisoners, especially on those of the juvenile class, punishments not sanctioned by law, which, while they are not even effectual in repressing disorder, are in their nature repugnant to the feelings of humanity, and likely to drive the prisoners to desperation.

" By the Act of the 4th Geo. IV., cap. 64, sect. 41, the governor of the prison is empowered to punish certain offences, therein enumerated, by ordering any offender to close confinement in the refractory or solitary cells, and by keeping such offender upon bread and water only for any term not exceeding three days; and, by section 42 it is further enacted, ' That in case any criminal prisoner shall be guilty of any repeated offence against the rules of the prison, or shall be guilty of any greater offence than the gaoler or keeper is by this act empowered to punish, the said gaoler or keeper shall forthwith report the same to the visiting justices or one of them,' who, after inquiry, on oath, may order the offender to be punished by close confinement, for any period not exceeding one month, or by personal correction, in the case of felons or others sentenced to hard labour. It is generally held that a governor possesses no power to punish any prisoner a second time for any offence of a similar character to that for which he has once awarded punishment, and that neither the governor nor the visiting justices possess any right of devising punishments of a nature different from those defined by the act above cited.

" Upon this assumption, I proceed to describe the various punishments which I have ascertained to be inflicted upon the prisoners for neglect of crank labour, whistling, or talking in their cells, and other offences of a more or less serious character, including attempts (especially by boys) to converse with others in neighbouring cells—a breach of the prison rules to which the defective construction of the prison offers peculiar facilities and temptations.

" The first to which I feel it necessary to call attention is the strait jacket, which is not only put upon prisoners who are thought to require restraint to prevent them doing injury to themselves or others, or from damaging the prison property,

but also as a punishment for ordinary prison offences or shortcomings. It is not, however, to be understood that the strait jacket, here employed, is merely (as in lunatic asylums) a jacket with long sleeves to be tied round the waist, so as to confine the arms without causing pain ; there are adjuncts contrived, by which this comparatively harmless instrument is converted into a means of considerable suffering. A stiff leather stock is buckled round the neck of the prisoner, his arms are pinioned behind him by means of a tight leathern strap, which exerts an antagonistic power to the sleeves that hold the arms forward over the chest, and in this cramped condition the sufferer is held by another strap, standing against the wall of his cell, for varying periods, amounting in some cases proved before me to twelve hours. I find, as might be anticipated, that this proceeding has often been attended with serious consequences, by causing ecchymosis of the arms, and pains and numbness of the arms and hands, that it has caused faintness, and in some cases actual syncope ; and that it has not unfrequently occurred, that when prisoners, after punishment, have refused to work or declared their inability to do so, buckets of water have been thrown over them by order of the governor. In one case, proved before me, three buckets of water were thus thrown by the governor's authority, and in his presence ; and he has acknowledged that it has even been done with his own hand.

" Another punishment, which is very common in this prison, consists in sentencing a prisoner to be deprived of his bed for two hours beyond the usual bedtime, for terms varying from one to fourteen nights, with or without the privation of gas-light in his cell. When it is considered that this is used as an exaggeration of the punishment last described, and in the cases of the prisoners who are also suffering under bread and water diet, it will readily be seen that it must add greatly to the harassing nature of the other punishments, more especially in winter, when it has often happened that prisoners have been kept with famished stomachs for four or five hours in the dark before they were allowed to forget their sufferings in sleep ; frequently, also, being strapped to the wall in the strait jacket during the whole of this period : for it is the custom to accumulate all these punishments at once upon a single offender.

" Another mode of punishment resorted to is the deprivation of exercise, sometimes for a week together, by confining the prisoner to his cell, in which I conceive that the governor exceeds the power given him by law, and risks the health of the prisoners. On such occasions it is not usual to call upon the surgeon to see the prisoner daily, as provided by the rules

in all cases of punishment attended with close confinement, so that the security to the prisoner's health provided by law is neglected.

"The imposition of bread and water diet, as a punishment, for three days, and its re-imposition after a day's interval, by which the prisoner is deprived of the ordinary food of his class for six days out of seven, is generally considered unlawful, even when inflicted for different offences, and is obviously so when inflicted for a repetition of the same, and is stated to be of common occurrence. It has also been proved that the governor is in the habit of ordering, as an aggravation of this privation, that it shall be inflicted on the three following Sundays, instead of three consecutive days, which is contrary to all usage elsewhere, and I believe quite illegal.

"In some cases the governor has desired the steward to reduce the quantity of oatmeal in the gruel in the case of prisoners sentenced by the magistrates to protracted confinement for prison offences under the 42d section of the Gaol Act, below the amount sanctioned by the Secretary of State—a mode of aggravating the punishment for which there is no legal sanction. The frequent repetition by the governor of punishment for the same offences in the same individuals is plainly at variance with the 42d section of the Gaol Act.

"It is very difficult, after much time has elapsed, to prove that punishment of which there is no record has been inflicted, but many such instances have come to my knowledge. It is needless to remark that this want of accuracy in the misconduct book must lead to falsification of the return made to the Home Office; for example, in the return of punishments ending at Michaelmas last, after stating the number punished by whipping, confinement, and refractory cells, and stoppages of diet; the "other punishments" are set down at thirty-eight, whereas my inquiries would lead me to believe that number would not represent a tenth part of the instances in which the miscellaneous punishments referred to have been inflicted.

"Another deviation of very serious importance from the rules of the prison is, that the surgeon does not always visit and examine prisoners under punishment—a precaution instituted to prevent the infliction of severity beyond the strength of the offender. I have found great difficulty in properly assigning the blame of this neglect; but I have met with unquestionable proof that prisoners have undergone the severe punishment of the jacket, combined with bread and water diet, for days together, without having been once seen by the surgeon. Had this humane precaution been adopted, it would have been impossible for many of the severities which I have

ascertained to have been exercised upon mere children for the several days together, to have been permitted for a single day. It would also have been impossible, had prisoners been properly inspected by the surgeon, for a whole week's bread to have been allowed to accumulate in a prisoner's cell before the discovery was made that he was too ill to eat it, which occurred in the case of one man, who, it is lamentable to add, expired a day after the discovery. With a knowledge of the facts briefly alluded to in this report, I find it impossible to disconnect the large number of suicides and attempts at suicide that have occurred in this prison, including that of the individual who last formed the subject of the coroner's inquiry, from the extreme severity and irritating nature of the discipline pursued in it. The number of such cases recorded since the opening of the prison, in July 1850, has been no less than fourteen, twelve of which have occurred in the last sixteen months, including three fatal instances. After making every due allowance for those cases which might have been feigned, there will still remain a fearful number, far exceeding, according to my experience, anything recorded elsewhere. "I am," &c.

JOHN G. PERRY,  
*Inspector of Prisons.*











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