

which has been long perfect, beyond any memorials of our species in heathen writers, and is coæval with man, according to the testimony of scripture: is there any reason, I say, to suppose, that even *language itself* is the effect of *human ingenuity and experience*?

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*An ESSAY on CRIMES and PUNISHMENTS. By the  
Rev. WILLIAM TURNER. Read March 24,  
1784.*

FROM the original imperfection of Human Nature in general, and the different opportunities and talents of individual men, imperfect and different judgments will necessarily arise, some of which, at least, must consequently be errors. These will lead to the formation of different dispositions and habits; of which, those founded on right reason, and a proper judgment of things, must be good, while those founded on error, and a perverted judgment of things, must, in that proportion, be depraved. These different dispositions will lead to correspondent actions, which will be good or bad likewise; and, as far as they are the one or the other, will be proportionably useful or detrimental, to the



authors of them, and to the society of which they are members.

Since, then, our errors may produce so important effects to ourselves, and those with whom we are concerned, it is of the greatest consequence that we should early correct all such as may lead to hurtful actions. This will be best effected, by considering attentively our various relations with respect to other beings, the advantages we derive from such relations, and the duties incumbent upon us in consequence of them.

Now we shall find, that when man was first created, he was placed in a world so constituted, as that, by the practice of certain personal and relative duties, he might best promote his own happiness, and that of his fellow-creatures. He was thus made subject to a moral law, engraven, as it were, upon his mind, for the due observance of which he was left accountable to his Almighty Creator. But in process of time, as mankind multiplied upon the earth, and violations of this original rule of action increased continually in frequency and enormity, it became necessary for men to unite together, in distinct and separate bodies, for mutual protection and defence: and hence would arise the first forms of civil society.

Thus we find, that the human race are subject and accountable to a moral, and a political law.



At the head of the one, is the great C  
things, as the supreme eternal Leg  
Executor. At the head of the other,  
civil governors, who are appointed to  
these important offices in those tempora  
ties, into which men enter during thei  
nuance in this world.

Each of these constitutions of governm  
attended with many advantages, the one pro  
ting our moral, the other our political happine

With respect to the former, however, the eter  
nal laws of moral obligation, with the different  
degrees of moral enormity, are so deeply engraven  
on the human mind by nature, and so forcibly  
republished in the books of revelation, that they  
seem not so much the objects of speculative dis  
quisition: every good man is sensible of their  
obligation, and of the proper restrictions with  
which they are to be taken. But an attention to  
the rules by which actions are estimated in a  
political view, is highly necessary for all men,  
whatever be their moral character; since other  
wise, they may be misled by the idea, that the  
same general rules obtain both in the divine and  
human governments, under the political as well  
as the moral constitution; so that, if they be care  
ful to keep within the bounds of strict morality,  
they can never become amenable to the laws of  
civil society\*. This, however, is, doubtless, an

\* Compare Judge Forster's preface to his Reports,  
quoted in the last page of this essay.



I appear from the former part of the Essay, the proposed object of which is, to point out the difference between civil and political transgressions, with their respective punishments: so far, at least, as may serve to form some idea of the rules which a legislator should observe, in his attempts to remedy the disorders of society: And, secondly, To offer some remarks on the proportion of punishments to offences; and to enquire into the right, utility, and success, of *severe* civil institutions, particularly of capital punishments.

As we have divided transgressions, so we may distinguish punishments, into moral and political, and with respect to each of these may consider, the *end*, the *subjects*, the *nature*, and the *measure*, of punishments.

I. The *end* of *all* punishment seems to be the same, viz. the prevention of future crimes; which is effected, either by reforming or tying up the hands of the offender himself, or by deterring others from the imitation of his example. This is the only ground upon which punishment can well be justified; for barely causing the offender to suffer, without producing any further effect, besides that it is no proper satisfaction, seems to imply too much of a spirit of revenge or malice; which we cannot, without blasphemy, suppose to actuate the Divine Being, and which is disclaimed by every earthly judicature.

II. But



II. But in the *subjects* of punishment we shall find a much greater disagreement; and indeed the *purposes* of moral and political government are so different, that we may naturally expect it. The purpose of the former is, *to train up rational beings to the highest moral perfection*; moral actions, therefore, alone, must be subject to its laws, which are calculated to obtain their end, by holding out rewards for actions proceeding from a good principle, and punishments for those which arise from a bad one. The purpose of human governments, on the other hand, is merely *the preservation of its various advantages to the several individuals of the state*; and therefore, those actions which tend to interrupt the enjoyment of these advantages, by disturbing the peace and good order of society, are the *only* subjects of human laws.

This distinction also necessarily arises from the different powers of the judges, as well as from the different ends of the institutions. For since all things are open to the Deity, so that he can discover not only the actions, but even the most secret thoughts of men, he is a proper judge with respect to the spring or principle of any action. But since the wisest human legislator cannot undertake to determine, with certainty, the motives which have led to the performance of any action, he must not pretend to punish according to their moral enormity; but he is an adequate judge of the political benefit or harm



harm to be expected from any particular action, or general course of conduct; and may therefore justly restrain and punish all such as he is convinced are inconsistent with the peace of that society over which he presides, without enquiring whether they proceed from a good or bad moral principle. The infatuated murderer of the Duke of Buckingham was probably influenced by the best motives to the commission of such an offence; but whether this was actually the case or not, nay, though the magistrate had been fully persuaded that it was, he would not therefore have been justified in acquitting him, since he would by that means have afforded an opportunity for every murderer (nay indeed for any offender) to plead the same excuse; which, as no plea of this kind can with certainty be contradicted, would make way for the introduction of every kind of licentiousness, and quickly bring on the total overthrow of civil society. He was therefore obliged, whatever his private opinion might be, to punish the delinquent *as guilty of an offence against the laws of his country*; and as for the rest, must content himself with the reflection, that it is in the power of the Divine Being hereafter to ratify or revoke his sentence; to reward Felton, as a lover of his country; or to recompense Villiers, for the misfortune he suffered as the devoted victim of blind party-rage.



We may from hence infer, by the way, that the *opinions* of men cannot, with propriety, come under civil jurisdiction; every man being accountable, in this respect, to his moral governors only, his conscience and his God. It is time enough for the civil magistrate to interpose, when opinions manifest themselves in the conduct \* of those who profess them; and then, if the actions they occasion are hurtful to society, he has a right to restrain *them*, without troubling himself to enquire (because he cannot determine) whether the principles which gave rise to them are true or false.

We may also remark, in a cursory manner, that this view of human punishments furnishes a strong presumptive evidence in favour of the doctrine of a future retribution, in which, all the apparent injustice of more imperfect courts will be rectified, and a society be established, whose interests will be more closely connected with the strictest principles of virtue. And though we should allow, to those who contend for it, that the *natural* arguments for a future state are not sufficient of themselves to afford full conviction of its certainty, yet when, since the promulgation of Christianity, we are convinced of it by another kind of evidence, it is not, surely, degrading Divine Revelation, to shew that its doctrines are consistent with right reason; since

\* Pudsey-Ordination-Service, Q. III. p. 60.



both are the gift of the same Almighty Being, from whom contradictions cannot arise.

III. We are now come to the *nature* of punishment. Concerning the nature of those punishments which will be inflicted by the Deity in consequence of immoral actions, it is impossible for us to determine, in what they differ from human punishments, and how far they extend. Only we may conjecture, that, as the moral government of the Deity is of a spiritual or mental nature, the punishments also will probably be mental; and may possibly exist as long as their subject, the mind. Human governments, on the other hand, being entirely of a temporary nature, the punishments they provide must be temporary also; such as may either *produce an amendment in the offender himself*, by laying before him such motives as may be sufficient to deter him from a repetition of his crime, or place him in such a situation, as shall take away from him all opportunity of doing further mischief. The first of these classes comprehends *finer, corporal punishments, imprisonment for a limited time, and temporary banishment*; the second class includes *perpetual imprisonment, or exile, and death*.

It is obvious that these sanctions carry with them different degrees of severity: which leads us to enquire into.

IV. The *rule or measure* of punishment.

The general rule of all punishments is, that  
the



the severity be proportioned to the enormity of the crime. But the difference between ethical and political virtue (if such an expression may be allowed) is no where more apparent, than in this article. The term enormity, when applied to crimes committed against the laws of morality, signifies the *moral depravity* of the action, which is diminished by any temptations there may be to commit it; since, as it requires greater fortitude to refrain from the commission of a crime, when it is recommended by numberless temptations, so these furnish an apology for the person, who has been so unfortunate as to yield to them. The *frequency* of the crime, particularly, operating as a temptation, furnishes an especial excuse for its commission. And in like manner, all other circumstances, which may tend to induce a man to commit any given offence, act like negative quantities in arithmetic, tending to diminish the sum of enormity, and consequently to lessen the punishment.

But when any actions are considered as offences against human laws, the term enormity is not used in a moral sense, but signifies *the degree of detriment any particular action may occasion to the state*. And, by this rule, actions, in themselves of little or no moral turpitude, may be punished with the greatest severity, as is frequently the case with the crime of high treason; while, on the other hand, the vilest and most complicated  
acts



acts of villainy, may, through a necessary defect of foresight in the legislator, not only pass unpunished, but even, in some cases, be rewarded. I am enabled to produce a case, which will greatly illustrate what has been said: it comes from an authority, which will readily be acknowledged to be unquestionable.\* In one of the midland counties of England, not many years ago, an unnatural son hired a bravo to murder his father. In consequence of the old man's death, a proclamation was issued out, offering a reward to any one who would discover the offender, and a pardon to any accomplice *who was not the immediate murderer*. The son informed against the person whom he had himself hired, and, upon his conviction and execution, claimed and obtained the pardon and the reward. Now we cannot, if we wished it, conceive a more glaring instance of moral depravity; and yet, by human laws properly constituted, this most atrocious of all persons was not only indemnified, but rewarded, for that very action, in which his villainy was most eminently apparent.

In this view of the term, the *frequency* of any crime increases, instead of lessening, its enormity.

\* Dr. Aikin (a man never to be mentioned by his pupils but with gratitude and veneration) produced this instance in his Ethical Lectures, as a case which happened in Leicestershire, during his residence at Kibworth.



For all crimes being hurtful to the state, their frequent commission ought to be carefully prevented, and the increase of them is an alarming symptom of political decline. When, therefore, any crime is often repeated, its punishment must increase accordingly, in order to counterbalance the additional temptation, which its general commission might otherwise occasion. Thus in the year 1748, his late Majesty issued a proclamation, setting forth, that in consequence of the great frequency of high-way and street-robberies, he would pardon no person convicted of this crime for the space of a year to come; which was, in effect, an increase of punishment, as it took away the chance of escaping. \*

For the same reason, all other temptations to the commission of crimes, are to be counterbalanced by such additional punishments, as may furnish sufficient motives to refrain from them. Among these temptations, *difficulty of detection* is one of the most powerful, † and is on that account most generally and strictly guarded against. Thus, in cloathing countries, to cut off, and take away a *part* of a piece from the tenter-hooks is a *capital* offence; but to steal the *whole* piece only subjects the delinquent to

\* A similar measure was pursued, in the year 1783, with respect to robberies attended with murder, or cruel usage.

† See the note on footpads, page 323.



the punishment of *transportation*. The reason of this is, that if the whole piece be taken, it may easily be known by the marks of the maker, but if the piece be cut, the marks are lost, and the theft cannot be so easily discovered. And this principle was formerly carried so far in the Isle of Man, as Judge Blackstone informs us, \* that “stealing a horse or a cow was only  
 “prosecuted as a trespass, on account of the  
 “difficulty of conveying them out of the island, or  
 “of secreting them in that small territory; while  
 “stealing a pig or a fowl was made a capital  
 “crime, as so small an animal might easily  
 “be devoured or concealed.” This last instance is adduced, only to shew how far a principle which is good, when moderately applied, may be stretched into absurd severity.

Thus we see, that whereas the frequency of any crime, and the other temptations to its commission, *lessen* its *moral* enormity, and consequently diminish its punishment; these circumstances, on the other hand, *increase* the *political* enormity of an offence, and consequently increase the punishment also.

At the same time, it must be acknowledged, to be a very difficult part of the province of the human law-giver, so to *proportion punishments to offences*, as to keep clear, on the one hand, of

\* Comm. Book IV. C. 1.



the inconveniences, of too *lax* a sanction to the laws, and to avoid, on the other, the evils of too *severe* a one.—In order to do this with exactness, it is requisite that there be previously obtained a full and perfect scale\* of offences, classed according to their *political enormity*,† which perhaps is impossible; and we must afterwards be able to apply the several kinds of punishment which it is in the power of the civil magistrate to inflict,‡ in a due proportion to the *degrees* of enormity marked down in the scale. He who approaches nearest to this ideal perfection, is the wisest and most perfect legislator: he who falls short of it, must, in that degree, labour under great disadvantages.

For if the *evil consequences* of the punishment he appoints be less than the *probable advantages* of the crime it is meant to restrain, it will, in effect, be worse than no punishment at all; for then, what is gained by the crime, is gained not only securely, but *legally*. The article of smuggling will afford us a striking example. The *political enormity* of this offence seems not to have been sufficiently attended to. || It ought to be remembered, that other offences, without the

\* Beccaria, C. VI.

† See above, I. 4.

‡ See above, I. 3.

|| Except by Dr. Franklin. See his admirable paper on smuggling in his Miscellaneous Pieces.



exception even of murder, *immediately* affect *individuals* only; whereas, in this case, an immediate, open, and violent attack is made upon the property of the whole community, by endeavouring to defraud the state of those duties, which make a part of its just revenues. One should therefore expect, that even the severest punishment would be provided against a crime, of this nature: whereas we find, that all the ill consequence that generally arises to the offender, is the seizure of those goods, the duty upon which he thus illegally avoids the payment of; \* and, in some cases, a small pecuniary fine. Now if it be a chance of six, or ten to one, that such a seizure will not be made, is this sufficient to *deter*, nay is it not enough to *encourage* the smug-

\* This Judge Blackstone asserts (I. p. 317.) is the only natural and reasonable punishment for smuggling; but at the same time laments its inefficacy, and the necessity of greater severity, in order to the restraint of a crime, “which, says he, is no natural, but merely a positive offence.” But if this were a sufficient reason for lenity in the case of *smuggling*, it would be so likewise for *high-treason*. This admirable writer seems not to have attended to the distinction between moral and political enormity.

If it be objected, that all *forcible* acts of smuggling, resistance to custom-house officers, &c. are declared by 19th Geo. II. C. 34. to be *felony*, it may be replied, that other crimes are here involved with smuggling; of which *shooting at*, or *murdering*, any one, is felony by itself; and resistance to the officers appointed to execute the laws, is a kind of treason. So that it is not smuggling, but *murder* and *treason*, that are punished by this statute.



gler to persist in, a practice so highly detrimental to society?

If, on the contrary, the punishment be too severe, as is the case, at least, whenever it is more than adequate to the prevention of the crime, the following pernicious consequences must necessarily ensue.

1. As human punishments cannot rise beyond a certain height, if the severer ones begin to be inflicted too low in the scale of offences, the highest punishments will be brought into use long before we reach the highest offence; the necessary consequence of which must be, that crimes of different degrees of enormity will be punished equally. From hence it will as necessarily follow, that such crimes will be looked upon as indifferent with respect to each other. Habitual offenders are accustomed to estimate crimes by their consequences, and not by their moral turpitude: whenever, therefore, the civil magistrate makes no difference between the *punishment*, they will be apt to make as little difference between the *commission*, of one, two, or more of them; according as it may suit their present convenience, or occasion less danger of detection.\* Thus, if both robbery and murder

\* Can there be a better reason given, why footpads more frequently accompany their depredations with cruelty than highwaymen on horseback, than that, as they are more easily pursued, it is their business to render the sufferers incapable of pursuit?



are punished equally, the highwayman will naturally argue with himself thus: "I shall be liable  
 " to the same punishment whether I rob this man,  
 " or whether I rob and murder him too; but  
 " if I rob him only, I leave an informer, who  
 " will endeavour to bring me to justice; my  
 " safest way, therefore, is to put an end to him  
 " at once, and so place an effectual bar to all  
 " information, at least from that quarter." This is the reason which Judge Blackstone assigns, though there may probably be others, why in France they seldom rob but they murder also, whereas in China, where murderers only are cut to pieces, they often rob, but never murder.\* And he at the same time answers the question "why does not this principle operate  
 " in England, as well as in other countries?" by shewing, that though the same punishment is provided both for robbery and murder, yet the robber has many chances of escaping, while the murderer is almost sure of having his sentence strictly executed: besides that a difference is made, both in the expedition and solemnity of the execution, and in the subsequent disposal of the body.

2. Again, if the same punishment must serve for different crimes, and the highest punishment is an adequate satisfaction for the highest crime,

\* Comm. B. IV. C. 1. p. 18.



for many crimes it must be *more* than a satisfaction, and therefore worse, that is, more detrimental to society, than the crime itself. The laws of Draco, we are told, were made on a different principle: he conceived *that the least offences merited death*, and he could find no greater punishment for the highest. But however those divines may determine on this subject, who contend, *that every sin, being an offence against an infinite being, is deserving of an infinite and eternal punishment*,\* yet certainly no politician will admit this law-giver's principle. And we need not wonder that his dreadful code, emphatically, but properly said to have been *written in blood*, was not suffered to continue long in force.

But this evil is of still greater consequence, as it leads to another of much more fatal tendency. For,

3. The too great severity of punishments *hinders the execution of the laws*, especially of those which have for their object crimes of a less atrocious nature. In this case, † either the party injured is induced to neglect a prosecution, rather than cause the delinquents to be so heavily punished; or, if he brought to a trial, the jury

\* Is it not at least as plausible to say, that every sin, being the action of a *finite* being, may be corrected by, and therefore is only deserving of, a finite and temporary punishment?

† Blackstone, B. IV. C. 1. p. 19.



are led to violate their oath, and perjure themselves to procure his acquittal; and if all this is not sufficient to save him, the judge contrives to avail himself of some palliative circumstance which may justify a respite: so that it is a pretty certain fact, that of all the criminals convicted in England upon capital indictments, scarcely one in three really suffers the punishment appointed by the laws.\* Now it is wisely observed by one who well understood human nature, † and the observation is confirmed by constant experience, that crimes are more effectually prevented by the *certainty*, than by the *severity*, of their punishment. For ‡ every offender, when he reflects upon the very small proportion of convicts that really suffer for their offences, naturally encourages himself with the reflection. “Why should not I escape as well as others?”—And if, contrary to

\* See the *table of executions* at the end of Howard on Prisons.

† Beccaria. C. VII.

‡ Blackstone has expressed this sentiment so much better, that I cannot resist the temptation to copy his words:

“Among so many chances of escaping, the needy and  
 “hardened offender overlooks the multitude that suffer;  
 “he boldly engages in some desperate attempt, to relieve  
 “his wants or supply his vices; and if, unexpectedly, the  
 “hand of justice overtakes him, he deems himself pecu-  
 “liarily unfortunate, in falling at last a sacrifice to those  
 “laws, which long impunity has taught him to contemn.”

Vol. IV. p. 19.

his



his own expectations, and to general probability, the punishment should, in the end, fall upon him, he does not so much consider it as the just recompence of his crimes, as lament his misfortune, it being marked out as the victim of an unjust and unreasonably severe institution.

Further, the severity of punishment *retards* its execution, even in the case of those who actually suffer.

Nulla unquam de *morte* hominis cunctatio longa est,

is a wise sentiment of the poet, \* which may be extended to *all* severe institutions, and ought to have its due influence, as long as they continue in force: though, if it were merely on this account, all such institutions stand greatly in need of a reform. For the minds of the common people cannot easily, at such a distance of time, connect the punishment with the action that has occasioned it, and are tempted to consider an execution, when it takes place long after the offence committed by the sufferer, rather in the light of a cruel and terrible exhibition, than as the just consequence of a particular violation of the laws of society. †

These observations are intended to have a particular reference to capital punishments, which, however defended by some politicians, appear

\* Juvenal.

† Blackstone, B. IV. C. 31. Vol. IV. p. 397.



to have been opposed of late by all the most respectable writers on government; \* and indeed are certainly in most cases, if not universally, absurd and impolitic.

Every wise and benevolent man will consider with himself, that as life is a blessing which he cannot give, so it behoves him carefully to examine his right to take it away. He will consider, that when mankind entered into society, they only gave up such a portion of their natural liberty, and submitted to only such a measure of restraint, as was essentially necessary to secure to its members the *advantages* of society; and, therefore, that if this important end can be answered without having recourse to the punishment of death, there is no right belonging to the magistrate of inflicting such a punishment.†

\* Sir Thomas More, Grotius, La Coke, Beccaria, Montesquieu, Blackstone, Voltaire.

† This seems to be a better argument than the excellent Marq. Beccaria's upon the subject, viz, "that no man has a right to take away his own life in a state of nature, and therefore cannot give up any such right to the magistrate." (And Considerations on Crim. Law. p. 186.) For, admitting that no man has such a right, it must be observed, that his *right over himself*, in a state of nature, is not what he gives up, but his *right over others*, when he enters into society. And it will bear a dispute, whether a man, entirely free from controul, has not a right to estimate his loss by an injury, at what value he pleases.

Now



Now that, so far from being necessary to answer this end, capital punishments are exceedingly impolitic, and, as far as they operate, tend frequently to prevent it, the observations already made on *severe punishments in general* might be sufficient to shew.

But to these we may add, further, that the use of capital punishments argues a want of capacity in the legislator. It is rather an *expedient to get rid of* certain inconveniences in society, than an *attempt to remedy* them. It is easy enough, indeed, for the magistrate to *extirpate* mankind, but it is his business to amend them, and make them happy. “It is *quackery* in government,” says Blackstone, “to apply too frequently the same universal remedy, the *ultimum supplicium*: and that magistrate must be esteemed both a weak and a cruel surgeon, who cuts off every limb, which, through ignorance or indolence, he will not attempt to cure.” \*

The idea of capital punishments would naturally suggest itself in the infancy of a state. When any one had committed an offence, and disturbed the peace of society, the question would then first arise “How shall we prevent these things?” And the answer most likely to occur to a set of barbarians would be, “Extirpate the offender, and give yourselves no further trouble about

\* Blackstone, B. IV. C. 1. p. 17, 18.

“him.”



“him.”\* But, as civilization increased, it would soon be found a wiser method, to provide such expedients as might effectually induce the offender himself not to repeat his offence, deter others from its future commission, and, at the same time, preserve an useful member to society. And though I will not undertake to determine universally, that in proportion as political governments have advanced towards perfection, substitutes for capital punishments have been more frequently introduced; † yet I think it may be

\* So the Hottentots have no fixed laws to direct them in the distribution of justice, and consequently, when any offence has been committed, there is no form of trial, or proportion of punishments to offences; but the *Kraul* (village) is called together, the delinquent is placed in the midst, and without further ceremony, demolished with their clubs, the chief striking the first blow.

† Feudal times will furnish us with a striking exception. Every one will acknowledge the imperfection of this form of government; and yet, under it, almost all crimes were restrained (or more properly *licensed*) by pecuniary mulcts: and few *capital* punishments were in use, except, most absurdly, for breaches of the forest law. The legislators of those days seem injudiciously to have followed, in regulating a society of which they were *properly* the governors, the example of that cotemporary hierarchy, which succeeded in its attempts to persuade mankind, that it could controul the distribution of punishments under a constitution of government, of which *its* chief directors were likely to be ranked among the most unworthy members.



be asserted with perfect safety, that government will never arrive at the perfection of which it is capable, till some very essential reform is obtained in our treatment of criminals.

And as frequent capital punishment is an argument of the want of a regular police, and a relique of barbarism in the constitution of any society, so its being still obstinately continued in use among us tends to retain among the common people those barbarous manners, from which this kind of punishment originally took its rise, and to check the progress of that humanity of spirit, which, happily for mankind, has of late been making such rapid advances in our part of the world. Let then the spirit of our punishments correspond with the spirit of the times, in order that we may sooner attain that perfection of universal charity, which ought to be the governing principle of the human mind.

Indeed the advocates for capital punishments seem now in general to be aware of the weakness

As *these* held forth a regular bill of indemnity for *sins*, with prices proportioned to their enormity; so *those* published a similar list of prices for licence to commit *crimes*: and whereas, *spiritually*, you might blaspheme against the Almighty for a trifle; so, *politically*, for a stated price, you might purchase the life of the king. A curious constitution, it must be confessed, where the *supreme magistrate* might be murdered with *safety*; but where it was *death* to shoot a *partridge*!

of



of their ground, and at present seldom attempt to maintain it, except in cases of murder and high treason. Perhaps in the latter case it may, sometimes, be necessary: and in the former, scripture is brought in upon us, and requires, it is asserted, the rigorous infliction of death. Now with respect to the institutions of Moses, it is to be considered, that they were made for the regulation of a very peculiar people, for very particular purposes. Their whole civil constitution seems to have been admirably adapted to the progress then made in political advancement; but to have been at the same time so contrived, as to keep them where they were, till the opening of a more perfect dispensation. All, therefore, that we can fairly conclude from the instances of capital punishments, prescribed by the law of Moses, seems to be, that such punishments are not, in their own nature, absolutely and universally, unjustifiable; for the God of nature, we may be assured, would never contradict and overthrow the established *laws* of nature. But I can no more conceive that we are obliged, in this instance, to copy the Jewish code, than that we ought to have retained the law of retaliation, \* or that we are wrong in not adopting the whole scheme, without alteration, reserve, or addition.

\* Ex. xxi. 24. Lev. xxiv. 20.

But



But the punishment of murder by death, it is said, does not appear to have deduced its origin or obligation from the law of Moses alone, but to have been required by the precept given to Noah and his posterity, \* “Who so  
“ sheddeth man’s blood, by man shall his blood  
“ be shed,” and consequently to be obligatory upon all the descendants of that patriarch. I hope I shall not offend any one, by taking the liberty to put my own sense upon this celebrated passage; and to enquire, why it should be deemed a precept at all. To me, I must confess, it appears to contain nothing more than a declaration of what will generally happen; and in this view, to stand upon exactly the same ground with such passages as the following. †  
“ He that leadeth into captivity shall go into  
“ captivity: “ He that taketh up the sword  
“ shall perish by the sword.” The form of expression is precisely the same in each of these texts; why then may they not be all interpreted in the same manner, and considered, not as commands, but as denunciations? And if so, the magistrate will be no more *bound* by the text in Genesis, to punish murder with death, than he will, by the text in the Revelations, to sell every Guinea captain to our West India planters.

\* Gen. ix. 6.

† Rev. xv. 10. Matt. xxvi. 52.

And,



And yet, however just and proper such a proceeding might be, I suppose no one will assert, that the magistrate is *bound* to it by either that or any other text in the scriptures; or that *that alone* would be admitted, as a *sufficient reason* for so extraordinary a measure. \*

But in considering the punishment of murder by death, upon the footing of *political advantage*, which alone has any thing to do with the question, may it not justly be asked, what natural reason can be given, why the loss of one member of society should necessarily be followed by the loss of another! And, if none *can* be given, whether the present practice, on such occasions, is any thing more, than a barbarous expedient to get rid of a difficulty, than hastily *cutting* a knot, because a little dexterity is requisite to *untie* it?

It would surely better become a wise politician, to enquire, what are the springs which lead men to the commission of crimes; and so to suit his punishments to particular offences, as that they shall in their own nature tend to prevent them, and correct their evil influence; and not to inflict random punishments, merely to make the delinquent suffer.

\* Let it also be observed, *by those who will quote scripture upon the occasion*, that when Cain murdered Abel, God only *set a mark* upon him, that is, rendered him infamous. *This is a scripture precedent!*

Now



Now it will not be difficult to shew, that the principal springs of evil actions are, *pride, luxury, and idleness*, assisted by the influence of *bad examples*. To correct the ill effects of these things, we at present confine our prisoners in a state of *absolute indolence*, in the company of the *most detestable* of their species, who *encourage*, instead of *shaming* them, *with free access to the means of intemperance*, the goaler being generally a publican, and after five or six months of *this kind of discipline*, we *whip, banish, or hang* them. In other words, we *cherish*, as much as we are able, those *principles*, and *confirm*, beyond the possibility of amendment, *those habits*, which are the *foundations of all vicious conduct*; and then inflict upon them a momentary punishment, which, if they survive, they return into society prepared *by ourselves* to become its most detestable members; and if their punishment be the conclusion of their present existence, we have been *doing them an injury which we cannot repair*, by contriving for the last months of their lives such a course of conduct, as was sure to confirm their vicious principles and habits.

Is all this rational and wise? Does it manifest sound judgment, or good policy? Surely not. Right reason would suggest a very opposite proceeding. To counteract the effects of idleness and luxury, and prevent the influence of bad company, it would shew, that it was  
much



much more eligible, to apply the punishments of *shame, hard labour, \* coarse diet, and solitary confinement*; and these in different degrees, according to the different enormity of the offences committed, and in proportion as they have arisen from one or another of these causes.

Many advantages seem likely to arise from this mode of punishment. That the *certain* infliction of *hard labour* would have more influence upon the mind of the offender, than the present *bare probability* of death, may naturally be supposed, and indeed has been frequently experienced. And the duration of the punishment would make a much deeper impression upon spectators, than the *instantaneous execution* of a criminal, and would therefore tend to deter more effectually from the commission of crimes in future. In suffering this kind of punishment also, the offender is compelled, in some degree at least, to support himself by his own labour, as long as he remains under confinement; he will also form habits of temperance and industry, and thus be prepared for usefulness in the world, when the term of his punishment is elapsed. And that the reformation of the offender will be very much promoted by some portion of

\* Diodorus Siculus tells us, that Sabaco, king of Egypt, changed capital punishments, with much success, into stated kinds of labour. Whose example Grotius recommends.



*solitary* confinement (affording him opportunities of reflection, breaking him from the society of his old companions, &c.) has been sufficiently shewn by the excellent Mr. Howard, in his *State of the Prisons in Holland*. \*

But the best method, where it can be done, of amending our penal code, is to take away all occasion for its severe institutions, by preventing, as much as possible, the crimes they restrain from being committed; or in other words, by having recourse to such previous expedients, † as shall remove every prospect of advantage from their commission. Thus, while no other precautions were used to prevent the *coining of gold*, than the making it a capital crime, the offence grew every day more frequent; but, as soon as the late regulations respecting gold coin took place, which entirely preclude every

\* See particularly his story of the *shoe-maker*, who always drank the health of his friends, the masters of the Rasp-house, for teaching him sobriety and industry.

† Laws which only take effect *à posteriori*, and propose the prevention of crimes by cutting off the delinquent, will never reform; whereas prudent provisions to correct the morals, and proper punishments to counteract the principles of criminality, will have sure and lasting effects. Without such provisions, we may be making perpetual alterations, but shall in vain expect any salutary effects; we shall resemble those patients who are always taking physic, but will not alter their bad diet, and intemperate modes of living. Crim. Law, p. XIX.



prospect of advantage from this practice, the offence died away of itself; and we now scarcely ever (I believe I may say *never*) hear of a single offender in this respect.

These are the expedients which have hitherto been used in those countries, where attempts have been made to substitute other punishments in the room of capital ones, and otherwise to reform the penal institutions; and they have, I believe, been almost universally attended with success. The governments of China, Russia, \* and Prussia have been foremost in these experiments, while other, perhaps more perfect, states, have not pursued this laudable measure so far as might have been expected. Even in England, this excellent work has not hitherto been entered upon with proper spirit. Our penal laws have too frequently been the work of a few, influenced by various improper passions, and not directed by that coolness which legislators ought always to possess. They have too often been made *upon the spur of the occasion*, as Lord Bacon expresses it, and when so made, their revival has been afterwards neglected; † or we should

\* Grand instructions for forming a code for the Russian Empire. § 210.

† If Lord Ashburton really was engaged, as we were told, in the revival, amendment and digestion of our code of penal laws, his death is much to be lamented by every friend to humanity.



not, in the eighteenth century, \* have had reason to acknowledge with shame, that stealing a swan, <sup>1</sup> breaking down a cherry tree, <sup>2</sup> letting out the water of a fish pond, <sup>3</sup> being seen in the company of gypsies, <sup>4</sup> with upwards of a hundred and fifty other actions which a man is daily liable to commit, <sup>5</sup> are declared, by English Acts of Parliament, *crimes worthy of instant death!*

Is not this a fact at which Englishmen should blush? And ought not our legislators to undertake, without delay, the great but necessary work of reforming these sanguinary and impolitic statutes? Our country gloriously led the way in the abolition of torture; let us not be ashamed to follow the good example which others have set us in return, and still further

\* Blackstone. vol. IV. p. 4.

<sup>1</sup> Dalt. Just. C. CLVI.

<sup>2</sup> 31st Geo. II. C. XLII.

<sup>3</sup> 9th Geo. I. C. XXII.

<sup>4</sup> 5th Eliz. C. XX.

<sup>5</sup> Ruffhead's Index to Statutes.

After this, will not any one acknowledge that Judge Forster, in the preface to his Crown Law, recommends its study with singular propriety, as a matter of universal concernment? “For,” says he, “no rank or elevation  
“in life, *no uprightness of heart, no prudence or circumspection*  
“of conduct, should tempt a man to conclude, that he  
“may not, at some time or other, be deeply interested  
“in it.”



humanize our civil institutions. We shall then have performed a work for which posterity will regard us with gratitude ; and our age will then stand a chance of still acquiring the same reputation for humanity and public spirit, which it justly merits for the encouragement it affords to improvements in the arts and sciences.

*To conclude ;* It has been the object of this discourse to prove,

That the *end* of all punishments is, not to torment a sensible Being, but to prevent the future commission of crimes ;

That those only can be deemed proper *subjects* of human punishments, who have been proved guilty of offences against the peace and good order of society ;

That the *political enormity* of offences, or that which fixes the proportion of their punishment, is to be estimated by the degree of detriment they occasion to the state ;

That the *nature* of all punishments should be so suited to their respective offences, as that they shall naturally tend to prevent their future commission, by correcting the principles which gave rise to them :

That the magistrate has no right to inflict punishments *unnecessarily severe* ;

That he ought to be very sparing (if he have recourse to them at all) in the use of *capital punishments* ;

And



And that in every instance he ought to appoint only such sanctions to his laws, as shall be *adequate*, and *no more than adequate*, to prevent the *crimes which* are the objects of them.

If, in the course of this slight Essay, any thing has been offered in the least degree worthy the attention of this respectable Society, and more especially, if it should be the means of furnishing agreeable and useful topics of debate, its end will be answered, and its author satisfied.

Mem. The rule, "That the measure of punishment  
" shall be such as may be adequate to the prevention of  
" the offence," must only be extended to such offences  
as it is in the magistrate's power to prevent without  
occasioning a greater evil than will arise from its permission. Judge Blackstone happily observes, "The damage  
" done to our *public roads* by loaded waggons is univer-  
" sally acknowledged, and many laws have been made  
" to prevent it, none of which have proved effectual."  
*But it does not therefore follow that it would be just in the  
legislature to inflict death upon every obstinate carrier who  
defeats or eludes the provisions of former statutes.*  
Vol. IV. p. 10.





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