Notes.

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In all my statements regarding the Convict System I am most anxious to be understood as not blaming the Masters individually, or charging them with cruelty or harshness; for on the contrary, the greater number of Settlers, I believe in both Colonies, but certainly in Van Diemen's Land, partly from natural disposition, partly, it cannot be doubted, from an instinctive and admitted feeling that more work is to be gained from the Prisoners by kindness than by severity, relax the strict Regulations of Government in their favour, and thus confer a certain physical benefit on them, and reap in return that reward from it, which is currently known and cited on the spot, as the result of treating and managing Assigned Servants well. Yet the general result, as I have depicted it, is not I am certain, materially altered, even by the great prevalence of such examples. The Indulgences so granted are uncertain; they vary in their amount; they are quoted as favours; gratitude is claimed for them; (see Note, p. 26.) they are occasionally withheld; and they are necessarily accompanied with a suspicionsness and ill-disguised contempt, the results of constrained service, which are most severely felt precisely by the best men. In no one instance, I am confident, do they thus materially lighten the sense of moral suffering borne, nor, (unless in very few cases indeed, of a peculiar, and chiefly religious character,) do they stay the down.
downward course caused by its long continued pressure. On the contrary, some of their effects are even morally pernicious. Their unequal, and as it were, capricious distribution, creates discontent among those who only partly enjoy, or are altogether denied them. Their illegality, for they are expressly contrary both to the letter and spirit of the regulations, brings the Laws into contempt. They increase the apparent uncertainty and inequality of punishment (see on this head Note B.) In a word, they merely substitute for the harshness of a cruel system, the weakness which also generally characterizes such; and though some individuals are thus physically relieved, the result, as a whole, is unworthy even to be compared with the benefit which would flow from the firm, unsparing uniform administration of a more benevolent Code.

It would not be difficult to maintain that the evils of the existing Convict System are thus, even in fact, aggravated by being disguised, and having their distribution arbitrarily interfered with. But I am unwilling to carry the argument quite so far; and am content to consider these exceptions, or rather resistances, to abstract principle as examples rather of that animadversion seipublicae, which we constantly see exercised in society, and which correct practically the harshness and crudeness incident to all human combinations.

I wish also to be understood as not either blaming the Magistrates individually. On the contrary, their task I admit to be a very hard one, and most of them feel it so. The system which they administer being
at once a harsh, and, (as involving unnecessary degradation,) a corrupting one, the pressure against it is such as can only be resisted by very severe punishments. But by so much that this exculpates them it the more condemns that system itself. Severe punishment is necessary under it; but it is itself unnecessary.


It has been suggested to me that either in this place above particularly referred to, or somewhere else in my Report, I ought to advert at greater lengths than I have anywhere done, to the uncertainty of the punishment inflicted by the existing convict system, and the greater certainty in this respect, which would be commanded by the change in it which I propose. And I have been assured, that this is an argument which would be more felt in England, where a strong example of certain punishment is believed to be much wanted, than many on which I dwell at greater lengths. I have been deferring from this, however, by these special reasons.

First. I consider, the uncertainty complained of in the present system, though undoubtedly a defect in it, to be, yet, more apparent than real. It chiefly occurs at first, when a Prisoner exchanges his fetters and hard fare on board-ship, for perhaps a library, or a comparatively easy Farm service, with abundance about him, and only
only a degree of labour and constraint, to which novelty at this moment sufficiently reconciles him. While thus circumstances, however, he generally writes home, and partly in all sincerity, though sometimes also partly in bravado, paints his situation in favourable colours, and thus undoubtedly often spreads an additional snare for others. But by and by, the talons of the system grip a little closer; and no uncertainty remains as to the character of its inflictions. The universal deterioration of character under its influence seems to me even to demonstrate this; but it is then too late to remedy the evil done; for by this time the Convict has ceased to write home. It is an undoubted fact that nearly all write, or procure to have written, letters to their friends within the first year, and not one in a hundred afterwards. Absence, distance, misery, and increasing degradation, all deal up the issues of the heart; and inflict virtually a second transportation.

Secondly. Supposing, however, the punishment during the first year to be as uncertain under the existing system, as it possibly can be called, and under that which I propose as certain; I venture to doubt the extreme importance usually attached to either quality in it, as operating on young Offenders at Home. It is true that some are even positively tempted by the existing system, as above explained, and it is no little aggravation of its other demerits that it thus seduces the unwary, as well as utterly destroys them when so caught. But the virtue to be gained at Home by an opposite system, appears to me to be neither in quantity nor quality nearly so valuable as is usually thought. There must be a considerable predisposition to value when
moral restraints have ceased to operate, and the balance between it and virtue is adjusted on so fine an edge as the greater or less degree of mere physical punishment annexed to it; and practically it may be doubted whether at this stage any amount or certainty of punishment which the culprit himself has never actually experienced, and which, when under temptation, his imagination may therefore clothe as it pleases, and will always undervalue, will prevent him from falling. It is well known that pockets are picked even at the foot of a gallows.

But, lastly — granting that I am even wrong in these views, this advocacy of opposite ones is not any business on this present occasion. I am here reporting the working of the convict system in the colonies; and about to address those on this subject who are better able than I can be to appreciate its operation also at home. My own field is quite sufficiently extensive, without encroaching upon theirs; and I ought rather to apologize to them for having been led to enter even thus far within their domain, than for not having incorporated any views regarding it with what I otherwise address to them.

Note C.
Note C. p. p. 15 — at passion

As proofs, and at the same time, illustrations of the progressive deterioration of character caused, even among the Free population in the Penal Colonies, by the existing Convict System, I here subjoin the result of several highly important and interesting Statistical Returns for Van Diemen's Land, prepared from Official Documents immediately before Col. Arthur's departure, and embracing the period of his Administration, viz. from 1824 to 1835, inclusive.

From No. 33 of these it appears that Convictive for Drunkenness were in 1824 as \(3 \frac{57}{290}\) to 100 of the whole population, and in 1832 as \(9 \frac{231}{290}\). Convictive of Free persons under Penal Statutes in 1824 were as \(5 \frac{45}{290}\) to 100, and in 1832 as \(7 \frac{99}{290}\); and general misdemeanours by Convicts in 1824 were as \(11 \frac{69}{290}\) to 100, and in 1822 as \(12 \frac{37}{290}\). After 1832 the Returns are differently made, and the several kinds of offences are multiplied; yet with few exceptions the same general fact is evident. Thus Drunkenness among the Convicts in 1833-4-5 was as \(4 \frac{3}{140}\), \(4 \frac{47}{150}\), \(4 \frac{4}{160}\), respectively to 100. Among Free people it was in the same years as \(11 \frac{32}{242}\), \(13 \frac{32}{175}\), \(14 \frac{1}{155}\) to 100, (while the tendency as is well known, in English society, unless in peculiar circumstances, has been rather steadily, during the last 10 or 12 years, towards sobriety.) Felonies disposed of summarily, were in the manner in 1833-4-5 as \(2 \frac{2}{140}, 4 \frac{109}{150}, 3 \frac{15}{175}\) to 100; Among Free people as \(1 \frac{12}{121}, 5 \frac{15}{152}, 3 \frac{27}{175}\) to 100; and what are called various offences not included under
Table 31 gives in like manner a return of the convictions within the same period, before the Supreme Court and Quarter Sessions; and exhibits certainly a singular want of general result as deducible from this source alone, there being no improvement, for on the contrary 1832-3-4 are among the lowest years in the whole series; yet as little is there a progressive deterioration, 1835 being again above the average. I subjoin the numbers as they stand, adding a column showing the population each year, to make them more intelligible.

<table>
<thead>
<tr>
<th>Years</th>
<th>Convictions</th>
<th>Population</th>
<th>Ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>1824</td>
<td>12.4</td>
<td>12,645</td>
<td>1/101.3</td>
</tr>
<tr>
<td>1825</td>
<td>15.2</td>
<td>14,372</td>
<td>1/95.9</td>
</tr>
<tr>
<td>1826</td>
<td>15.9</td>
<td>15,312</td>
<td>1/96.55</td>
</tr>
<tr>
<td>1827</td>
<td>16.4</td>
<td>17,133</td>
<td>1/104.152</td>
</tr>
<tr>
<td>1828</td>
<td>10.2</td>
<td>18,402</td>
<td>1/180.25</td>
</tr>
<tr>
<td>1829</td>
<td>19.1</td>
<td>20,265</td>
<td>1/106.12</td>
</tr>
<tr>
<td>1830</td>
<td>23.3</td>
<td>24,504</td>
<td>1/105.12</td>
</tr>
<tr>
<td>1831</td>
<td>22.3</td>
<td>26,930</td>
<td>1/120.12</td>
</tr>
<tr>
<td>1832</td>
<td>32.1</td>
<td>29,079</td>
<td>1/96.287</td>
</tr>
<tr>
<td>1833</td>
<td>36.3</td>
<td>34,350</td>
<td>1/144.121</td>
</tr>
<tr>
<td>1834</td>
<td>60.6</td>
<td>37,799</td>
<td>1/62.725</td>
</tr>
<tr>
<td>1835</td>
<td>38.1</td>
<td>40,283</td>
<td>1/103.322</td>
</tr>
</tbody>
</table>

In considering which numbers, however, several observations occur. 1. The Ratios, throughout, to the whole population, are enormous; convictions in England being scarcely 1 to 1000 inhabitants; and in Scotland only 1 to 1300. 2. The extreme vigilance of the Van Diemen's Land Police, tends to prevent the commission of great crimes, while the latitude given
given to its summary punishments makes it unnecessary to bring medium offences under the cognizance of the higher courts. 3. The pecuniary prosperity of Van Diemen's Land has unquestionably been on the advance within these years, and it is distress rather than mere dissipation, which prompts to grave offences.

It may be said, however, that the apparent increase shown in petty crime is in reality only an increase in its detection arising from increased vigilance and efficiency in the Police, or (in correspondence with the latter part of a previous remark) an increase in the number of crimes on its records arising from an increase in the extent of its jurisdiction. But, whatever weight may be attached to such considerations, they are very far from accounting for the whole facts. The excessive severity of the Police sentences in Van Diemen's Land, and the inconvenience which they frequently inflict on Masters, have together, on the contrary, a strong tendency to cause an increased impunity, rather than certainty of punishment, at least among the convicts, — a tendency consistent with my own observation, expressly stated in a Memorial lately addressed to the Lieut. Governor by the Agricultural Society of Richmond, confirmed by the butchers, Messrs. Backhouse and Walker, (Note & p. 47,) and agreeing with the very low proportion of drunkenness above stated as prevailing among the Prisoners compared with the Free Population. And the latitude given to the Police Jurisdiction, though certainly great, is not such, probably, as even to counteract this influence in keeping down the Lists of crime.

Taking these Lists, then, exactly as they stand,
and comparing these numbers with others, though the report the moral
condition of a mixed population of Agriculturists as well as
Town Residents, they will be found to contrast to extraordinary
disadvantage with those of even the most crowded capitals of Europe. In London for example, the state of petty crime in 1833 is thus reported in the Companion to the Almanack.

"The whole number of charges brought before the Metropolitan Magistrates by the New Police, during the last year (1833) amounts to 89,959, showing a decrease, compared with the previous year of 75,814 offences. A very large proportion of the charges are also of a very minor character. Out of the whole number it appears that no less than 27,000 have been dismissed by the Magistrates as unsupported by proper evidence. The largest items in the Catalogue of Offences are, Drunken Charges brought before the Magistrates, 11,393; Drunken Charges discharged by the Superintendents, 13,187; Disorderly Characters, 5,721; Disorderly Prostitutes, 3,427; Assaults, 3,721; Larcenies, 7,858; Suspicious Characters, 3,201; Vagrants, 6,757."

And in comparing these numbers with the Population of London (1,274,800 in 1831) and contrasting them afterwards with those found in Van Diemen's Land, several remarks should also be made. 1. Those committed for further trial in London, (who on average of recent years are elsewhere stated to be at present about 3,400) should be excluded, because they appear again in other lists both in the one Country and in the other. 2. Vagrants should also be excluded, for in a Penal Settlement there can be none such. 3. And in strictness all cases discharged should be
be included, the Table for Van Diemen's Land showing
convictions only. Yet waving all these exceptions, the
amount in London, every petty offence included, is little
more than 3 per cent of the Population; and allowing for
them it is under 2: while in Van Diemen's Land under
the head of Drunkenness alone it is above 14 per cent, even
among the Free Population.

There is, however, another way also by which the same
conclusion is unhappily arrived at. Table 29 of the same
collection gives a particular detail of all offences tried before
the Supreme Court between the years 1824 and 1835; and
as the proportion between crimes against the person and
against property is well known to constitute a sort of meas-
ure of civilization, England is justly proud that the proportion
of the first to the last is in her Judicial Records as 1 to 30.
In Van Diemen's Land it is as follows:

<table>
<thead>
<tr>
<th>Years</th>
<th>Crimes against Person</th>
<th>Crimes against Property</th>
<th>Proportion</th>
</tr>
</thead>
<tbody>
<tr>
<td>1824</td>
<td>42</td>
<td>82</td>
<td>1 to 2</td>
</tr>
<tr>
<td>1825</td>
<td>27</td>
<td>114</td>
<td>1 to 4</td>
</tr>
<tr>
<td>1826</td>
<td>33</td>
<td>118</td>
<td>1 to 4</td>
</tr>
<tr>
<td>1827</td>
<td>28</td>
<td>131</td>
<td>1 to 5</td>
</tr>
<tr>
<td>1828</td>
<td>14</td>
<td>86</td>
<td>1 to 6</td>
</tr>
<tr>
<td>1829</td>
<td>24</td>
<td>167</td>
<td>1 to 7</td>
</tr>
<tr>
<td>1830</td>
<td>35</td>
<td>131</td>
<td>1 to 4</td>
</tr>
<tr>
<td>1831</td>
<td>31</td>
<td>45</td>
<td>3 to 4</td>
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<tr>
<td>1832</td>
<td>45</td>
<td>93</td>
<td>1 to 2</td>
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<tr>
<td>1833</td>
<td>22</td>
<td>142</td>
<td>1 to 7</td>
</tr>
<tr>
<td>1834</td>
<td>22</td>
<td>144</td>
<td>1 to 7</td>
</tr>
<tr>
<td>1835</td>
<td>19</td>
<td>76</td>
<td>1 to 4</td>
</tr>
</tbody>
</table>
It is worthy of remark, moreover, that during the whole time thus referred to, but especially in the latter years, considerably above half the population has always been free, and of this amount at least a half more has consisted of Government Officers, wealthy Settlers and their Families, who have swelled the Population Returns but contributed nothing to these sad results. How great, then, must be the relative amount of Crime among the remainder! How severe must be the sentence of Transportation, especially to Young Criminals, and those convicted of slight offences, when it condemns them to such associations! How peculiarly hard is it on the lower classes of Free Emigrants that they should be thus placed in circumstances which seem almost to sentence them to yield to low temptation! And how imperative is the demand, for every one’s sake, to have these circumstances revised and, as far as may be, altered.

In the prefatory Remarks appended to the Tables thus quoted from, the increase in Petty Crime is, indeed, admitted; but it is suggested that it is probably owing to the number of Convicts who now annually become Free, as the periods of their sentences expire, and who thus, exhibit, as belonging to the Free, vices which are peculiar to the Prisoners Population. But even granting this to be to a limited extent true, it is still but a mere analysis of the facts, and makes them in no degree less painful or alarming. The cause thus assigned is not a temporary one. It must continue while the existing Convict System continues; and if such are the necessary results, then, is it not imperative...
to re-examine the arrangements connected with this, and consider how they may be improved on, so as to avoid this consequence of them? Neither is the necessity for this a light one. The Australian Colonies are no children's toys. From their position and capabilities, they must eventually command, to a great extent, the whole Southern Hemisphere, India itself included; and surely the fact, that with their growth they are degenerating in social and moral virtue, deserves energetic attention and action, and is very inadequately met by a mere analysis. If the convicts are incorrigible on any system, and the period of their freedom must thus be but the period of their license, at least they should be now given another and less hazardous direction; but if, on the contrary, (of which I entertain not the least doubt,) it is possible under a better system of treatment to improve them greatly, then does the case cry for that improvement from every consideration both of policy and duty. It would be a crime to leave them as they now are; — "plus qu'un crime, ce serait une faute."
The Chief Police Magistrate of Van Diemen's Land lately gave me a fact, singularly illustrative, of the unfitness of the existing system to train up Free Men. He said that on comparing his Books he had observed that almost a fourth of all the Convicts who had arrived in the Colony served their sentences out without incurring additional punishment from the Police; but that these persons almost uniformly turned out among the worst subjects after liberation. Or, in other words, this experienced Magistrate thus testifies: 1. That about this proportion of those subjected to the system which he administers, (and administers, as I can most fully testify, as well as such an impracticable system can be administered by any one) are sufficiently pliable to submit to its requisitions and humiliations, but being in no degree morally improved by it, the instant they pass from under its pressure, they yield with equal facility to the impulses to evil amidst which they next find themselves. 2. That it is the more steady, earnest, and eventually, as it proves, the better principled, who are thus chiefly punished by it. 3. And that a fair Police character under its arrangements is no proof of individual merit, but, indeed, rather the reverse of a recommendation.

Nor have I any doubt of the substantial accuracy of this view of the subject, striking and painful though it be; nor even though it appears some statements given on my own authority (p. 29) where those who undergo their full measure of punishment without any indulgence at all, are quoted...
quoted as among the worst; — and again Note E. p. 51, where I give nearly the same character to such Free Immigrants as yield to the temptations around them, and enter the career of vice in competition with those already trained to it. Nothing is, in truth, more common than to find extremes of character thus meeting and blending in one common exhibition; and the particular fact which Mr. Foster's statements illustrate is beyond all question, namely, that the acquisition, under the existing Convict System, even of the virtues of a Slave, (implicit obedience) is not only no preparation for a state of comparative Freedom, but on the contrary is for the most part allied rather to an extraordinary measure of the vices of the same school.

Note E. p. 31, et passim.

Having at the place here referred to, as well as elsewhere, expressed strong opinions in favour of the possibility of effectually reforming the greater number of convicts, (by a change, among other means, in the system of treating them,) I feel called on to dilate somewhat on this subject, and the rather as it is really the point on which my whole argument turns. For if that merely contemplated the little better, or worse, treatment, while in the body, of a set of thieves and other felons, I, for one, would not attach much value to my speculations. But when I think of the far higher interests involved, it is impossible not to feel deeply regarding them. They are not merely the temporal and
eternal destinies of the existing race of poor Culprits, important as these must be to every humane mind, and awfully important as they are, in particular, to themselves; but future destinies of a like nature, and to an indefinite extent, are equally at stake. The thorns and scorns of the Australian colonies are those of young Giants; and on the success of whatever measures may be taken for the reform of individual Convicts must depend, in a great degree, the character, be it good or bad, of the vast majority of their future population. It is impossible for altogether vitiated parents to rear a virtuous offspring; and equally impossible for any amount of virtue in the Free population, to associate with successive generations of utterly unreclaimed Criminals, and their descendants, without a taint, the consequences of which it is almost frightful to contemplate. It is either possible, then to stem this torrent, (which seems only irresistible on the supposition that Convicts are irreclaimable,) or these fair Colonies must speedily become absolute Pandemonia; and when I see those who maintain that the Prisoners are irreclaimable, yet add acre to acre within the sphere occupied, and to be occupied by them, I cannot help thinking, either that they are more short-sighted than they would care to be called, or that they have an instinctive conviction that their position is unsound.

* Already the lower classes of Free Immigrants are considered among the worst individuals in these Colonies; on which head see an important observation p. 15. on the effect of the competition of gratuitous Convict labour with that of Free Servants. (See also Note C.)
And it is unsound, both the feelings of the heart, and the most deliberate conclusions of the judgment, alike condemn it. Convicts are men; and, fallen and degraded though they be, they yet possess the same faculties, and are in a measure accessible to the same motives, which keep the vast majority of other men at least within the decrees and moralities of ordinary life. It is true, that in youth, when the misery attendant on vice was unknown, and in a different state of society, where the temptations to it were rarer, they fell under the force of these temptations; and the great majority of those now in the Colonies have since long yielded to a different kind of them, even more imperative in their nature. Yet some have even struggled through these without vital injury; and of the remainder there is scarcely one that does not acutely feel his present condition, and who would not escape from it if he could. It is a gross mistake to consider Convicts as being generally insensible to their degraded position. They are not, it is true, and harden themselves against severity and contempt, but I have never talked to one with any thing approaching to kindness or sympathy, that he has not evinced deep emotion; and no one can dispassionately consider their general demeanour in Church without being convinced that they are still accessible to good impressions. The misery, (and it is indeed a heavy misery,) is, that the circumstances in which they are placed outside that sacred building, are such that scarcely any impressions made in it can be permanent or available. The seed is good; and the land under proper management, would not be unproductive, but the thorns are now so many that neither can yield their...
proper return. And how may these thorns be removed? and I proceed to answer this question. Assuming that it is possible by a strict undeviating severity for a given time at first, fully to punish each individual for his, or her, original offence; and that it is an object worthy the study both of Statesmen and Divines, anxious to endeavour afterwards to reclaim them, I submit an Analogy in their favour, suggested by Col. Arthur himself, which some may notwithstanding consider ludicrous, others inapplicable, but which I am persuaded will gain in interest and importance the longer and more attentively it is examined. (Fools may laugh at it but wise men will ponder.) It has been already employed in the management of Schools; and will be found of advantage wherever masses of human beings are to be influenced. For mind, is moist, however hallucinated; the weakest are but the easiest read; and youth and fatuity may thus be considered but as lympiesometers, by which tendencies may be made distinctly manifest which do not less exist, though their indications are less perceptible in mature years and what is supposed to be hardened vice.

Colonel Arthur prefaced one of his Convict Regulations thus: “There can be no doubt that the great majority of Prisoners are labouring under a species of mental aberration, therefore,”* and he proceeds to give some directions for their systematic restraint accordingly. The description which he

* On referring to the passage it seems fair to quote the exact words and the whole sentence. “It can scarcely be doubted that the main body of convicts are under mental delirium...
them, I accept, but not the treatment which he founded on it. On the contrary, the stratagem
which he prescribed, I am convinced, aggravates to this hour, the mental malady which he thus recognized; (on which
head see particularly Note p. 26;) and elucidates, in truth, in a peculiar and most striking manner, what appears to
me the fundamental error in his whole practice.

At the Middlesex Pauper Lunatic Asylum in
Hanwell, 600 patients are turned loose over 60 acres of ad-
joining garden and shrubbery, admirably kept, but very
imperfectly inclosed; and are guarded, tended, and engaged
to work in this, and every other department of labour both
within and without doors, by about 140 sane servants; who
can thus scarcely even be present with most of them at their
different tasks, though the amiable and excellent head of
the Establishment, Sir Wm. Ellis, and his not less admirable
wife, one, or both, are constantly on the alert, visiting all in
succession. The whole arrangement is most beautiful. It is
the most striking instance I ever saw, of what may be called
the
"delirium; they see and appreciate every thing through a false me-
edium; and as from long experience and close observation the
"Sic ut gesta," Government is confident that a firm and determined, but
"mild and consistent supervision is the very best treatment to be
"followed in order to remove the infirmity under which they labour;
"it is the treatment which he enjoins shall uniformly be observed."
And from some of these expressions it might be inferred
that the cure was thus seen as well as the complaint; though
to what extent will be best judged by the system founded
on the context.
the folly of man praising the wisdom of man, (as the wrath of man is said to be so overruled in general society as to praise the wisdom and goodness of God;) and it is important also to observe, that several of the poor creatures who were thus managed when I visited them, had previously been incarcerated elsewhere for years with the worst effect, and had attempted to commit murder, and other violent offences in consequence, though here they were quite orderly. The whole is brought about by gradations of trust and confidence, imposed in themselves, exactly as in the Monitorial System in Schools, which succeeds in some establishments and not in others; and in the Convict Constabulary system in Van Diemen’s Land, which gives almost universal dissatisfaction. But what causes this different effect in different instances from the same apparatus? It is to this that I wish to call special attention. It is obviously the wisdom or the folly, the benevolence or the harshness, with which it is directed. In Hanwell Asylum those in trust are charged to sooth and guide the others aright, and, proud of their task, they at the same time soothe and guide themselves. So it is in some Schools; so it is not in others. In Van Diemen’s Land the Convict Constables are employed violently to coerce their fellows; and they thus influence their own passions, while they irritate those around them. Can any demonstration in Evident be more conclusive?

But the statistics of Hanwell Asylum are also otherwise instructive. The class of patients admitted into it are of the worst description, born and bred near London, frequently addicted to intoxication, and in a word, just such individuals as constitute the Prisoner Population of the Penal.
Colonies, or even inferior to them, for their minds being weak, the range of moral motives applicable to them is consequently much restricted. Yet what is the fact regarding them? The success of their treatment at Hanwell has been progressive, so it has gradually become more and more perfect; but in recent cases, as I find in an account of it published in 1834, and re-published in the Hobart Town Courier of 28th April and 5th May 1837, it is now estimated at 90 out of every hundred. And very many of the poor creatures thus restored to their friends and families, retain such an affectionate recollection of the process by which they were recovered, that they visit the Asylum again and again after their discharge; and it is almost painful, though most pleasing, to witness their expressions of attachment to their benefactors.

The analogy, then, thus developed, seems to me quite irresistible. The object in view in both cases is much the same; for surely the task is not dissimilar to training weakness of intellect up to strength, and training weakness of moral principle up to strength also. And the same tenderness of feeling may surely be engaged in leading vice to virtue, as in conducting infancy, whether of years or intelligence, to manhood in either. If asked, then, now, when such a result may be expected of our penal treatment of criminals in the Colonies as is given of the Hanwell treatment of Lunatics at home, I am prepared most confidently to reply, that it will be whenever their treatment shall be modelled on similar principles, whenever the lights of true benevolence and moral science shall be brought to bear on both alike.
Moral ends can, in truth, only be obtained by Moral Means. The legitimate object of punishment is example; and when it is steadily, systematically, and above all benevolently inflicted, with this view chiefly, but also with a regard to the future interests of the Criminal himself, it has the further effect of interrupting individual evil habits, and giving a strong desire to act right in future, if only to avoid its renewed infliction. The soil is thus, however, merely prepared; and it would be as reasonable to expect a crop from the process of turning over the ground, as to anticipate substantial or permanent reform from merely this operation. The seed of moral and religious instruction must be also sown: (for the reception of which is peculiarly fitted when under suffering and rebuke;) and all the arts of moral husbandry, the weeding, the tending, the training, the cutting in, and sometimes even the cutting out of weak or rank shoots, must be expended afterwards to secure the desired harvest.

The recovery of Crime to virtue never has been systematically subjected to such treatment, and until it be, we might as well, I think, pronounce on the culturable properties of our Garden Vegetables by considering their wild types in the forest, as deduce the impossibility of success in it from any examples yet given.
Note F. p.

Since my Paper was written it has been suggested to me in the highest quarter, that it ought to be more explicit with regard to the means alluded to as above in the text, by which the transition advocated in it may be effected, and the new system made afterwards to work. My own judgment led me at first to an opposite conclusion; and I thought that as, if my principles were approved of, it was clearly possible, with more or less care and caution, to carry them into operation, I should do wrong to hazard their abstract value, by connecting them, as of necessity, with any set of arrangements. Nevertheless, I bow to the Authority referred to; and here sketch a plan, begging at the same time, distinctly to premise, that I am not wedded to it; and am by no means even unwilling to believe that it may be improved on.

To effect the transition, then, I would arrange nearly as follows. 1. As stated in the text, I would begin by anxiously endeavouring to impress the Community, both Free and Bond, with the conviction that the change would be advantageous to them. Nor should this, I think, be difficult. For the impression is general in the Penal Colonies, that Convict Labour as now given is expensive, and if my argument be good for anything it shows great injury otherwise inflicted by it or all.

2. When thus prepared I would fix a day (which if thought desirable, might be a different one in different Counties or Districts,) when all Masters should declare,
which, among their assigned servants, they chose to retain on wages, with their reasons for selecting them, and rejecting others. And the reports thus made I would carefully collate with the police characters of the several parties—desirous generally to decide in conformity with the masters' wishes, but not holding myself bound to do so at this first moment in all cases.

3. On another fixed day, also varying in different districts, I would next separate the two parties, leaving the hired servants with their respective masters, and bringing the others into barracks. All the arrangements regarding the former I would insist on being binding on them for some definite period, (which might vary according to circumstances of character or situation,) so that the first agitation arising from a change of circumstances might have leisure to pass off quietly. In every case also, the parties should be warned that, in the beginning especially, the slightest irregularity would be severely punished, and might even involve complete (temporary) forfeiture of indulgence, on which head, moreover, I would, for a time, be very strict indeed.

4. The parties turned into the barracks would next demand attention. On the face of circumstances, they would either be bad characters, or lazy, stubborn, or worn out, and in bad health. I would very anxiously, therefore, classify them, and act accordingly. If of the very worst I might send to a penal station, though I would be unwilling to do so unless on a strong necessity, as it would be virtually increasing a man's punishment without his committing any immediate fresh offence. On such
such a point therefore I would be scrupulous, but not in the
case of a very bad character, incommutably so. (The value
of previous character might even thus in some instances be
advantageously impressed.) The better I would employ at
piece-work on the Roads, warning them that their charac-
ter as Labourers, and consequently their chance of procuring
service on hire, depended on the quantity and quality of
the work so done by them; consequently, that diligence,
industry, and orderly conduct might essentially serve them,
while the opposite qualities would condemn them perhaps
even to a Penal Station, but at least to remain for life, or
during Sentence, where they were. The old, infirm, and
sickly, I would distribute to light works under Govern-
ment, of which there must be always many.

The transition then, might, I feel confident, with more
or less ease, but with perfect security, be made as above.
The next enquiry relates to the ordinary working of the System.
To give unity and harmony, and above all, perhaps,
continuity of purpose, to the new arrangements; an Officer
should I think be appointed (to be called, perhaps Super-
intendent General of Convicts) with a seat in both Counci-
els; and whose mind should be strongly impressed with
a sense of the importance of both the objects committed to
his

* The Moral improvement of a growing Prisoner Popu-
lation now amounting in Van Diemen's Land alone to 1200
men, would seem to require one influential persons undivi-
ded care; and the interest concerned is one which ought
also to be specifically represented in both Councils, where
the attainment of the object contemplated may be much aided
his care, viz: first the infliction of exemplary punishment, in order to satisfy the claims of justice at home, and prepare the mind of the criminal for his own reform, and next, the arrangement of circumstances around him as he progressively returns to society, so as to foster the good, and check the bad principles then still remaining in him. (Much would at all times depend on the selection of this officer; but the race of those who would adequately discharge the duties required is not probably even now extinct, and as the machine by practice acquired steadiness of movement, a lower grade of talent than at first, would be fully competent for the office. In its own school indeed it would, probably, soon rear up worthy successors, or superiors, to the first appointed.)

2. Under this officer, both departments, for punishment and encouragement, should be placed, and as their chief, he should be subject only to the Head of the Government. The police should not be under him; because its legitimate function being the protection of the community against injury, from whatever quarter proceeding, it should for this be responsible directly to the Head of the Government also; but it might and should, be directed usefully and subordinately to co-operate with him, in particular as regards an effective knowledge of where every prisoner under Reform lived, and how characters in any degree suspicious earned their means of subsistence.

3. The apparatus for punishment and encouragement, or impeded, by the result of occasional deliberations. With such an appointment also, whatever the other arrangements at the beginning, improvement would be progressive.
ment should be infinitely graduated from the utmost extremity of labour and coercion, up to very considerable amounts of trust and confidence; and as a general principle, admitting perhaps, of some exception, (at the discretion of the Superintendent General, whose authority on such points should not be much fettered,) each individual should pass thro' the whole. Thus a certain amount of good behaviour, through successive duties at a Penal Station, might qualify for the Roads, where the restraint cannot be so strict, and the temptation must be greater, and on the Roads themselves many shades of confidence might be dealt out, before at length a Criminal was reported fit for private service on hire. And thus also two advantages would accrue. The men for private service would be distributed all over the Country, not accumulated at any given point; and their real character and intentions would be better and better known, and might with more certainty be eventually confided in, as they were found to rise superior to greater and greater latitude of temptation. At every step, the whole course run, in any part of it, might be lost by irregularity or insubordination; and the habit of self-command would be thus confirmed, before the period arrived for entirely relying on it.

Lastly, Once out on hire, however, I would not be too rigorous to mark petty failings. No man can be constantly on his guard. In crimes I would be inexorable, but not to weaknesses, unless often indulged in. I repeat here what I have said elsewhere, that to teach the virtues of Free Men, real liberty, and not its mere semblance, must be introduced into the School. And the distinction is far more important than is usually imagined.
In the above sketch I have not noticed Schools and other apparatus for religious and moral instruction. These are included, of course, in every system even pretending to Reform. And I desire also to repeat that it is but a sketch, and a hasty one, that is here offered, which may illustrate the facility with which, as I think, all practical difficulties might be overcome were the principles of my paper otherwise approved ; but which ought, in truth, be condemned from beginning to end, without affecting the real merit of the principles themselves. For an object may be both excellent in itself, and easily attainable, to which I may not yet in a moment see the best and surest way.

It may be important also here to anticipate a remark, that the change thus proposed would, for a time at least, increase the expense of maintaining the Convicts, by bringing a greater number of them into the immediate charge of Government. But, 1. If the alteration would be otherwise beneficial, this ought to be no consideration. The closest economist in England would scarcely bargain where such important interests are concerned ; and the people who but lately voted Fifteen Millions to redeem their Black Slaves, would not, if it were necessary, refuse a few thousands, even out of their own means, to regenerate, (on incontroversial principles, each of which is familiarly recognized in the political science of the day,) their Penal Settlements.

2. The actual circumstances of these Settlements, however, make such an effort, in truth, desirable at this moment, even on other grounds, and without expense to the Mother Country. The Moral condition of New South Wales, I am assured, calls loudly for a systematic effort to Reform it.
it, and the Treasury there, as in America, overflows, the ordinary expenditure being unable to distribute the Revenue.

In Van Diemen's Land, it is true, this is not the case; but a vigorous effort is there also much wanted in the Road and Bridge department, and would conduce at once to the benefit of the existing Settler, the encouragement of new Immigrants, and the improvement, in value, of the remaining Crown Lands. Not only, therefore, ought such an effort to be charged to the Land Revenue, but it would be a most advantageous investment of it; and in a few years would be repaid manyfold. 3. Within the same time, also, the demand for extra expenditure would progressively cease, and the actual economy which would arise from it would also begin to be felt. The number of Prisoners in Government employ would not be permanently greater. Animated by hope, and improved under steady judic.*

* Not having yet visited New South Wales, I am not entitled to say this on my own authority; but it is universally stated in Van Diemen's Land; and may, I think, be easily accounted for. The Convict system is the same, in principle, in both colonies; but from a variety of circumstances (in particular the great extent of New South Wales, its frequent change of Governors, and perhaps stronger Emancipist interest) it has been much less systematically followed out there than in Van Diemen's Land. In it, accordingly, are exhibited the evil consequences of a loose, as in the other, those of a consistent Administration of an equally bad system in both. (Note G. D 40.)

1974 Prisoners were landed last year in Van Diemen's Land;
judicious treatment, their productive labour would be doubled. (See Note, p. 16.) Under the influence of moral motives the conduct of all would be better, and the number of Colonial offences would be diminished. The expense of the Police would be thus reduced. The Public Offices would be relieved of the mass of petty business under which they now groan; and their clerical strength would be proportionately reduced. In a word, the economy of a free and uniform system of Government would be substituted for the necessarily large expenditure of a despotic and arbitrary one; the difference between which can scarcely be placed in a more striking point of view than by stating that the expenditure of Great Britain last year, excluding the interest of the Public Debt, but including the cost of her whole Military, Diplomatic, Colonial, and Monarchical establishments, was considerably under £1 per head of her population, while that of Van Diemen's Land, including her Commissariat and Colonial Expenses (£167,608 and £138,380, respectively,) was almost £7 per head of her numbers; and this year it must increase, rather than diminish.

In a

Land; and taking these as an average, and considering the chances of slight original offence, and of rapid reform, under uniform judicious treatment, in such cases, it may be computed that in three years all would pass, under the proposed system, into private service; or in other words, that three times this amount, 5,922, would be the maximum number which, under it, would at any one time, lie on the hands of Government. And the number maintained last year by the Public, under the existing system, including, of course, those under various sentences, was 5,670.
In a note (p. 29) I have said, that in weighing so grave a question as that of Convict Discipline, more difference of expense should scarcely be noticed. Yet when I look at such numbers as these, and consider the economical temper of the age, I am not so certain of this. And at all events, I cannot but rejoice at thus finding, what appears to me the cause of justice and humanity, to lie that also of economy; and that the application of the most elevated principle may, on this point, be considered as in harmony with more common, but yet, in their sphere, also perfectly proper and justifiable considerations. For although it would, no doubt, be impossible to attain in Van Diemen's Land all the requisite economy which prevails in England, (its smaller numbers and peculiar character essentially forbidding this,) yet it is plain that the road to it is by an assimilation of the general principles of society in it, to those of the parent state, thereby enlisting the minds of its population as well as their mere bodies, in their respective services.

Note G. p. 6 to 64. of passing.

The well known and highly respectable Quakers, James Backhouse and George Washington Walker, who have been above five years in the Penal Settlements, observing closely the operation of their existing constitution, not only cordially agree with the views which I have here attempted to explain regarding it, but also with those I entertain.
for its amelioration. They have, accordingly, given me a testimonial in this effect, which I subjoin, and also placed their M.T.C. Journals and Reports in my hands, that I may select whatever passages I may find in them to my purpose. I feel extremely indebted for this kindness, and avail myself of it gladly, accommodating my extracts to the distribution of topics in my own paper, and numbering them (for convenience) of reference. The first is the general testimonial.

FR. I. "James Backhouse and George Washington Walker desire to express their obligation to Captain Macnochie for allowing them to peruse his Manuscript Essay on the Transportation system and its influence on the Penal Colonies, which they have read with intense interest and very great satisfaction, for much as they consider the present system of Penal Discipline pursued in these colonies superior to that of the Jail system of England, for reasons which they thought it their duty to specify in their Reports to Colonel Arthur, yet these Documents sufficiently convey their strong sense of its many radical defects, and they are fully convinced that the plan devised by Captain Macnochie is very far superior to either.

"This superiority they conceive consists essentially, in the bringing of Moral principles to bear upon the Prisoner population for the promotion of their own reform at the same time it promises to act reciprocally upon the Moral character and well-being of the Free Inhabitants by whom these unhappy men are employed; in removing those cruelties and oppressions which are inseparably connected with..."
"with the present System, and which are irreconcilable with Christian principle, and consequently with sound policy; and in placing both the Prisoner and Free Population in a much more favourable position than they at present occupy for the reception of Religious principle, which in the existing state of things is rarely to be found among either of these classes."

"If I may add, that they see no formidable difficulty in the way of carrying into effect the plan proposed by Captain Maconochie."

Hobart Town
24/4 Nov. 1837

SP. II. (See page 6.) "We arrived in Van Diemen's Land with the prepossession, so common in England, that Transportation is little of a punishment beyond the circumstance of exile. This impression which has probably had its origin in the circumstances of the earlier times of the Australian Colonies (Appendix A;) and in the wilful and interested misrepresentations of Prisoners (Appendix B;) as well as in the superficial observations of Travellers and other persons who have had little intercourse with Prisoners (Appendix C;) was soon removed from our minds by observation and frequent conversation with Prisoners; and a further and more intimate acquaintance with the subject has greatly increased our estimate of the severity of the punishment to which Criminals are subjected by Transportation; and also of the advantages of Colonial Transportation as exhibited in Van Diemen's Land, contrasted

Sect. III.

The punishments of Transportation are many and considerable. Among the more grievous may be enumerated, the privations to which every Prisoner is exposed during a tedious voyage; the annoyances he has to experience after his arrival during his sojourn in the Penitentiary; if assigned as a Bond Servant, he has no choice in the selection of a Master, yet he must yield him implicit obedience to all lawful commands; he has not even the choice of an occupation; he receives no wages for his daily labour; his comforts are very few, and for these he is entirely dependent upon his Master, who is not bound to allow him anything beyond the bare rations of food, clothing and bedding prescribed by the Government; he is constantly liable to suffer summary punishment on conviction before a Magistrate, whether for intemperance, absence without leave, insolence, or any other species of insubordination, as well as for more flagrant breaches of the law; for repeated misconduct he may be sent to a Road-party, Chain-gang, or Penal Settlement, where his privations will be greatly increased; he must have for his companions such other Prisoners as happen to be associated with him in servitude, however degraded their character and disagreeable their company may be; and in the midst of all these trials, he is continually reminded by numbers around who are free, of the sweets of liberty, and by contrast of the wretchedness of his bondage; and with reference to Prisoners sentenced to seven or fourteen years, should also be mentioned the fact, that few ever attain the means of return.
returning to their native land, so that to them Transportation for a limited period generally proves banishment for life."

(3dem 168-169)

IV. (See page 5.) "Neglect of work, insolence to overseers, disobedience of orders, and petty thieving, are the most common causes of complaint at the petty sessions, held twice a week, by the Commandant in conjunction with the other resident Magistrate." (Repotón Norfolk I. Vol. 1. 293)

V. (See p. 7 & 18.) "Nothing can afford more convincing proof of the estimate Prisoners form of their punishment, whether in Assigned Service or in the Public Works, than the universal anxiety they exhibit to obtain a Ticket of leave; and when by this indulgence they have been enabled to avail themselves of their own earnings, their solicitude to obtain a Conditional Pardon, by which they may be at liberty to travel any where in the Colony without a pass, and be exempted from summary punishment for being out after eight o'clock, or before sunrise, being too far from their residence, being absent from muster, or for other trivial matters which are a constant restraint on the liberty even of a man possessing the indulgence of a Ticket of leave." (Repotón I. D. Land. Vol. 1. 167 & 168)

VI. (See p. 7.) "Of latter time flagellation has seldom been resorted to [at Macquarie Harbour] solitary confinement on bread & water being substituted in its stead with evident good effect. The period of solitary confinement has also frequently been shortened on the appearance of contrition, and promise of amendment of conduct. This kind
of treatment has had a softening effect on the Prisoners, and from the evident reluctance of the Commandant, [Major Baylee, 63rd Regt.] to inflict punishment, and his readiness to admit it on any reasonable ground, and the temperate appeals he makes to the convictions of the parties as to their desert of it, on their trial, no ill-will appears to be excited against him in the discharge of his duty: he goes about the Settlement unattended, with perfect confidence.

The general conduct of the Prisoners is considered much improved. The Commandant attributes this improvement to the encouragement afforded by so many Prisoners having been removed from the Settlement on account of good conduct [before the expiration of their sentence] and to the Missionary labours exercised there, which, though the Divine blessing have been crowned with encouraging success", etc. etc. (Report on Macquarie Harbour. Vol. I. pp. 10, 11.)

S. VII. (See page 7.) "In reference to the general improvement in the conduct of the Prisoners, it is but justice to state our conviction, that Major Baylee's discreet and humane conduct towards them has greatly disarmed them of that desperation of character which prevailed under a more rigorous discipline, and has helped to prepare the way for the usefulness of the Missionary." (Idem Vol. p. 13.)

S. VIII. (See page 10.) "Most Prisoners have a dread of Flagellation and of Rock parties and Chain-gangs till they have once suffered such punishments; after this, the generality of them exhibit decided deterioration of character. Flagellation, especially, is degrading and excites revengeful feelings.
feelings. Solitary confinement has a much better influence when properly carried into effect. Settlers, however, generally prefer flagellation, because it occasions less interruption to the work of their servants. We have often observed that the most strenuous advocates for flagellation are given to the practice of wearing. (Report on V. D. L. Vol. I. p. 277.)

S. IX. (See page 7.) “A prisoner may be convicted of insubordination or insolence, and receive punishment, when some angry speech of his master or mistress may have temporarily excited his passion. And this punishment may be flagellation, solitary confinement, or even sentence to a Road-party. In the latter case, if provoked by an unreasonable overseer (such as Prisoner Overseers often prove) so as to be induced to abscond, it may bring him to a Chain-gang or Penal Settlement, absconding from the latter of which brings him under sentence of death.” (Appendix to Report on V. D. L. Vol. I. p. 202.)

S. X. (See page 7.) “Copy of a Letter to Wm. Lyttleton, Police Magistrate, Launceston, from a Prisoner in Nottman’s Road Party.

Honoured Sir,

I trust the liberty I have taken by troubling you with this: the unfortunate writer appeals to Your Worship’s humanity as a last resource. I was sentenced to twelve months to Nottman’s Party, which expired on June 17 last: consequently I had finished my sentence when I received six weeks in irons before you for neglect of work; and now being without...
"Shoes, and having been crippled before by working in the Gang without shoes, (I have had but two pair of shoes and one suit of slops during thirteen months,) I am thereby rendered by punishment incapable of doing what I could when I first entered the Gang; for that reason I am continually coming before you for not doing work enough. Your humble Petitioner would take it as an act of humanity if your Worship would sentence me to some other Gang or Settlement. By so doing, Honoured Sir, you will spare me from destruction or an untimely death.

Mr. Fawns, the bearer, applied for me, which has caused a vindictive spirit to be shown towards me; and I shall continually be brought before you, unless you will send me to another place, as I have done my Sentence to the Party where Your Worship sentenced one in Irons."

"Wm. Johnson. (Ship) Lord Lyndoch."

"Mr. Lyttleton states that he is continually receiving applications of a nature similar to the above from the Prisoners in Wattman's Road Party." (Idem. Vol. I. p. 114, 115)

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"FL. XI. (See page 7.) "Flagellation has been much less resorted to of late than formerly, and its diminution has had a good effect. The men were rendered callous by the frequency of the punishment, and at last learned to regard it with comparative indifference; and it still serves when inflicted to provoke a spirit of emulation among them who shall evince the greatest contempt for the punishment by enduring it with most firmness. This circumstance alone militates against its efficacy. A tread-mill, and a sufficient number of cells, so
constructed as to admit of confinement combined with labour, in solitude and silence, are much wanted.” (Report of Visit to Norfolk Pr. Vol. 1. p. 296.)

S. XII. (See page 9)  “Penal Discipline may be regarded as a medicine for the remedy and removal of moral evil, its paramount objects being the good of the community and of the individuals subjected to its operation.” Report on V. D. Land. Vol. 1. p. 159.)

S. XIII (p. 9)  “When a man has broken such of the laws of his country as have been instituted in strict justice for the protection of persons and property, and for the preservation of good order in society, these things appear requisite: 1. That he be rendered incapable of doing further mischief by being placed under restraint: 2. That he be compelled to make restitution: 3. That endeavours be used for his reformation. The use of means adapted to promote these ends, though they may involve a large portion of suffering, are yet strictly in accordance with the Divine precept: “Be not overcome of evil, but overcome evil with good.” Ye. (Idem Vol. 1. p. 159.)

S. XIV. (See page 9)  “‘Old hands’ is a term in frequent use to designate prisoners who have been long in the Colony; it especially those of notoriously bad character.” (Appendix to Report on V. D. Land. Vol. 1. pp. 203-4.)
S. XV. (See page 9.) "I have not found the Penitentiary to permanently reform any of the men confined within it; in some few cases the wish to be restored, or to obtain some other indulgence, has occasioned more a temporary caution in their conduct than a reform; and I think, generally, the Penitentiary has rather a tendency to make the men worse, from the majority of its inmates being so very bad." (Gunn's Answer to Queries &c. Vol. I. pp. 117-118.)

S. XVI. (See page 9.) "The practice of sentencing men to work in chains, as a punishment apart from the mere purposes of restraint, appears to be contrary to the sound principles of penal discipline. It is a practice, beyond doubt, borrowed from a barbarous age, when these principles were little understood. It has no direct tendency to promote reformation, but on the contrary, is calculated to increase desperation of character; and it is a part of that system of abstract vengeance, which man is not authorized to inflict upon his fellow man. While such punishments fail to deter from crime in the mother country, their tendency decidedly is to increase it in the Colony. We cannot therefore but lament the promulgation of the late regulations, by which numbers of men have been sentenced to work for long periods in chains, from their first arrival in Van Diemen's Land, without having committed any offence subsequent to conviction in England. We cherish the hope that no chain gang will long exist." (Report on V.D. Land. Vol. I. p. 179.)
Sec. XVII. (See p. 17 & 18.) "The accommodations of
assigned servants are usually far removed from comfort.
They generally live in huts constructed of logs, apart
from the dwellings of their masters, having wooden shut-
ters instead of windows, and inferior to the commonest
stables in England; they are frequently so open to the
weather as only to be rendered habitable for human-
beings, even in the mild climate of Van Diemen's Land,
by means of large fires of wood, with which the island
so universally abounds; they are generally untidy and
dirty; and the sleeping accommodations are of the mean-
est kind." (Appendix to Report on V.D.L. Vol. 1, pp. 200-1)

Sec. XVIII. (See page 19.) "The right of man to separate
married couples by transporting one of the parties, and
thus exposing both to a temptation to commit adultery,
appears to us extremely equivocal." (Report on V.D.L. Land.
Appendix, Vol. 1, p. 197.)

Sec. XIX. (See page 19.) "Though we have no doubt
but the moral state of the Colony is improving, yet we
have reason to believe) the prostitution of female children
at a very early age, is by no means unfrequent in decla-

Sec. XX. (See page 19.) "In the transfer of Female Pri-
soners from place to place, throughout Van Diemen's
Land, under charge of Constables, etc. an exposure to pros-
titution exists demanding the most serious attention of the
Government. The difficulty of applying an efficient
S. XXI. (See page 19.) "If separate cells could not be provided for each prisoner, we should have been glad to have found that they were to be furnished with hammocks; this would have a much more decided tendency than partitions of boards nine inches high upon platforms, to prevent those immoralities which are acknowledged to exist to a grievous extent among this class of men, but of which they can seldom be so convicted as to be restrained from by punishment. (Report of Port Arthur, Penal Sett. Vol. 1. p. 233.)

S. XXII. (See page 9.) "No one can remain long at the Settlement without being forcibly impressed with the conviction of the extremely depraved condition of this portion of our race, which is strikingly evidenced by the dreadfully prosane language with which the ear is assailed, especially when the prisoners are not aware of the presence of a stranger. On a more intimate acquaintance with their state this conviction is confirmed by observing the frequency of crimes, often involving plans of perjury to avert the punishment due to offences committed, or contemplated; but more especially by being rendered aware of the commission of crimes most revolting to nature, which nevertheless but seldom meets with direct conviction in consequence of the reluctance to give information that exists, but which, by the acknowledgments of the prisoners themselves, is extensively prevalent amongst
amongst them. For the prevention of this shocking vice, separation by means of solitary sleeping cells, is highly necessary; but doubtless, the only effectual remedy for any of these evils is, the substitution of better principles."

(Report of Visit to Norfolk P. Vol. 1, pp. 292, 293.)

§. XXIII. (See page 19) “The arrangements for sleeping in the Penitentiary for Males in Hobart Town, are very objectionable. The men lying side by side upon platforms of wood, though with separate bedding for each individual, an opportunity is afforded for profligate men greatly to annoy those who yet retain a sense of decency, and who may chance to sleep next them. This annoyance is hardly capable of being prevented by the Prisoner appointed to preserve good order in each room; and the men that feel this annoyance most are such as rarely dare to complain, lest they should excite the animosity of the other Prisoners. This remark is applicable to the arrangements for sleeping in all the prisons for Men in the Colony, including those at Port Arthur, the Huts of the Road-parties, &c. and there is reason to suppose that way is thus made for grievous immoralities which might in great measure be prevented by lodging the men in hammocks.” (Report on V. D. Land. Appendix, Vol. 1, pp. 295-6.)

§. XXIII. (See page 19) “In spite of the Government Regulations, many of the Prisoners both in Chain-gangs and Road-parties and in other situations continue to obtain money: This, in a penal system like that of Van Diemen’s Land, in which the Prisoners often come necessarily in contact with the Free Population, it appears to
Dr. XXV. (See page 25.) "The powerful influence of the hope of [early] indulgence on the Prisoner Population is strikingly exhibited at Port Arthur in the effects consequent on the allowance of a little tea and sugar to the most deserving. There are upwards of eighty individuals who have gained this privilege, not one of whom has yet forfeited it through misconduct." (Report on Port Arthur, Vol. 1, p. 29.)

Dr. XXVI. (See page 18.) "Some of the provisions of II. VIII. William IV. Chap. 62: intituled, "An Act for Abolishing the punishment of death, in certain cases, and substituting a lesser punishment in lieu thereof;" if carried into operation would have a very detrimental influence upon the reformation of the Prisoners. To prohibit those from holding property who had by good conduct obtained Tickets-of-leave, would have a great tendency to drive them to spend their earnings in profligacy and drunkenness. To extend this prohibition to those whose sentence had expired would be to make transportation for seven or fourteen years confer a disability for life, which would be opposed to every principle of justice. To preclude Prisoners holding Tickets-of-leave from suing, or being sued, is on the one hand to expose them to be robbed of their wages and otherwise imposed upon, in a way that might render a Ticket-of-leave more of an evil than a benefit, and on the other hand to enable them to commit fraud with impunity. And to deprive the Governor of a Penal Colony of the power of conferring Indulgence on a Prisoner..."
Prisoners for special service, in peculiarly meritorious conduct, until after the expiration of a prescribed and lengthened period, is to render nugatory one of the most powerful means of preserving order in the Colony." (Report on Van Diemen’s Land: Vol. 1. pp. 182, 183.)

II. XXVII. (See page 22.) "The very general disposition on the part of persons transported to regard themselves as aggrieved, is greatly to be regretted, because such a feeling is hostile to reformation. But when the severity of the punishment is taken into account, and contrasted with many of the comparatively trivial offences to which it is attached, it cannot be denied that there are cases in which some ground for such a feeling exists. These cases afford convincing proof that a punishment disproportionate to the offence, and which is consequently a violation of justice, tends to frustrate its own object. This remark also applies to many of the Colonial punishments." (Idem. Vol. 1. pp. 176, 177.)

II. XXVIII. (See page 23.) "As regards punishment on an extended scale, every thing seems to be effected on Tasman’s Peninsula that restraint & compulsory labour can effect, short of the silence imposed in the Auburn System." (Report on Port Arthur Pen. Sett. Vol. 1. p. 241.)

II. XXIX. (See page 23.) "There is necessarily great variety of character among the Settlers to whom Prisoners are assigned, and consequently, they are exposed to an equal variety of treatment. But few Masters attend to
"Their moral and religious instruction; many treat them with some degree of kindness, combined with judicious firmness; a larger proportion treat them with disdain and harshness; and a few are still more unreasonable and severe." (Appendix to Report on V.D. Land. Vol. I. p. 198.)

S. XXX. (See page 32.) "It must however be admitted, that the incitements to moral reformation are very unequally brought to bear upon Prisoners in Assigned Service, from the varied character of their masters. While some endeavour to improve their Servants by imparting moral and religious instruction, and by holding out hopes of recommendation for Tickets of leave, or by rewarding the well-conducted with additional clothing, tea, tobacco, &c. others chiefly aim at keeping them in subjection by threats, and bringing them under summary punishment by complaints to the Magistrate." (Report on V.D. Land. Vol. I. page 166.)

S. XXXI. (See page 72 & 33.) "Some complaints are made of Settlers bringing frivolous complaints against men who are not very efficient servants; and of some Magistrates for listening to expressions of desire that such may be committed to Road-Parties; and for acting upon such suggestions rather than upon the merits of the respective cases." (Report on Chain-gangs, &c. Vol. I. p. 110.)

S. XXXII. (See page 17.) "In many instances where Settlers have tried to increase the comfort of their Assigned Servants by cooking for them, they have been very ungrateful for
"for the attention, and have appeared to regard it as an attempt to save something from their nations. Prisoners generally refuse to eat Kangaroo, or other provision which they think costs their employer nothing; and though they often take Kangaroos themselves for the sake of the skins, which they sell or exchange for tobacco, and too often secretly for Spirits, etc: they rarely cook the flesh when in Assigned service; but when they have obtained Tickets of leave, and in consequence of receiving wages for their labour, have to maintain themselves, they frequently live almost entirely on Kangaroo flesh." (Appendix to Report on N.D. Land. Vol. 1. p. 201, 202.)

S. XXXIII. (See page 8.) "Prisoners frequently represent their situation to be much better than it really is, by letters they contrive to get conveyed to their friends. This is often done to induce the latter to emigrate, in the hope that they may be a benefit to the writers." (Idem. Vol. 1. p. 193.)

S. XXXIV. (See page 22.) "But an idea is extensively entertained, especially by some Members of the British Legislature, as may be inferred from their frequent observations on Penal Discipline, that severity toward convicted offenders has a reformatory tendency, and particularly, that it has a powerful influence in deterring from crime through the excitement of fear. This we conceive to be a sentiment radically erroneous, and if practically adopted, would lead to acts of vengeance toward criminals, opposed to sound reason and to the Christian religion. The comparative effects of the Penal Discipline
"respectively adopted in England and the United States of America show, that the increase of crime in those countries has uniformly kept pace with the severity of the Penal Code: a strong presumption that mere severity is ineffectual to restrain from the commission of crime." (Report on V. D. Land. Vol. 1, p. 160.)

St. XXXV. (See page 22.) "The prevention of crime is not to be expected in any great degree from the dread of punishment, but rather from counteracting the causes that lead to the commission of crime. By extending the means of education; by discouraging the sale and use of ardent spirits; by removing juvenile thieves, as well as older adepts; by stimulating Magistrates to suppress houses of ill fame, and to remove profligate women from the streets; by promoting a due observance of the sabbath; by discountenancing every species of gaming; and by remedying those evils by which the labouring poor are oppressed in their wages, the principal avenues to vice would be closed, and the benefit would be incalculable in the prevention of crime." (Idem. Vol. 1, page 163, 164.)

St. XXXVI. (See page 22.) "Every species of suffering that is inflicted merely as a punishment, on the principle of retaliation, and with a view to strike terror into the culprit, or into the minds of others, tends only to excite feelings of resistance, if not of revenge, in the individual subjected to it, and will certainly produce obduracy of heart rather than amendment, both in the culprit and in the evil disposed part of the Community. The propensity to commit evil origi-
originates in a vitiated state of mind; and when men are morally diseased, they need a moral remedy." (Idem Vol. 1, p. 161)

SP. XXXVII. (See page 25) "It is worthy of observation, as a well-known fact, to those acquainted with School discipline, that the receipt or forfeiture of a single ticket, a certain number of which entitles the possessor to a specific reward of insignificant value, has a far greater influence in exciting good conduct than the old, and now nearly exploded, system of corporal punishment. And, Prisoners, generally, are but children in point of moral attainments, or true understanding of their own interests. If a plan, therefore, on a somewhat similar principle to the foregoing, were to be adopted, with reference to them, we are of opinion it would be attended with happy effects. The Tickets might be dispensed at the Monthly Musters, every Prisoner having no offence recorded against him for the past month to be entitled to a Ticket; and on the other hand, being required to forfeit one or more for misconduct, according to the nature and number of the offences that might have been committed. If every Prisoner were to be thus continually reminded that three Tickets would shorten his period of servitude, for a Ticket of leave—say one month, whilst the forfeiture of the same number would lengthen it for a like period; and that so long as possessed of no Tickets he had no chance of obtaining a Ticket of leave, a certain number of the former being the price of that indulgence, we conceive that it would operate as a powerful incentive to self-control, and would be more influential than the present mode of holding out inducements for good conduct. A modification of the
"Some principle might be adopted in dispensing a conditional, or free pardon, or in removing from a Road-party, Chain-gang, or penal Settlement; for it is equally applicable to the various conditions of the Prisoner." (Idem. Vol. I. pp. 195, 196.)

DXXXVIII. (See page 7.) "The idea that persons transported are so depraved that they cannot be at large without danger to the public, must be received with much limitation. The safety of persons and property in Van Diemen's Land affords collateral proof of this position, and of the justness of the sentiment, that many of them are criminals rather from the peculiar circumstances under which they have been placed than from their own confirmed depravity. The attentive enquirer will be led to take this view by an acquaintance with their history.***

Through the Settlers are surrounded by persons in the state of domestic, agricultural, and other descriptions of servants who have been convicted of nearly every species of violation of the laws, they live among them in comparative safety, generally greater safety than when in England. There are exceptions.*** Yet, taking all these exceptions into account, it must still be acknowledged, that many of the Prisoner class do not exhibit greater depravity than the unconvicted public of Great Britain." (Idem Vol. I. pp. 170, 171.)

[page 52] DXXXIX. "The Prisoners under charge of the Government, wherever we have visited them, have uniformly conducted themselves with decorum on these occasions, appearing to receive such

SP. XL. (See page 61.) "Being convinced, that how prosperous soever in general the population of a colony such as New South Wales may be in the acquisition of property, nothing can secure the stability of the Government, or the true well-being of the Community, short of the Divine blessing; and that there is no ground to expect this blessing where the morals of the people are generally bad; we cannot but regard with mournful interest the low tone of morality, and necessarily consequent defect of religious principle of the generality of the Inhabitants of this Colony, and look upon them as demanding the serious attention of an enlightened Government.

"The prevailing immorality of the population of New South Wales is, no doubt, to be attributed primarily, to their neglect of the fear of God: many secondary causes however contribute to foster, if not to induce a state of reckless impiety in the Community.

"Foremost in the name of these, we apprehend, is the encouragement given by the Government to the consumption of Spirituous Liquors, by the licensing of so many houses for their sale." (Report on the state of New South Wales. Vol. II. p. p. 39, 40, 41.)

SP. XLI. (See page 61.) "The pernicious influence of evil example in regard to the use of profane language may, perhaps, rank next to that of drunkenness, in the promotion of bad morals in the Colony. It is a subject
"that calls loudly for magisterial interference, both as respects the Free and the Convict Population." (Idem. pp. 41, 42. Vol. II.)

S. XLII. (See page 64.) "Other evils also exist to a great extent in New South Wales, to which it is desirable the attention of the Government should be directed, that it may adopt such measures as may tend to suppress them. Among these evils may be enumerated a want of regard to the sanctity of the marriage bond, and other immoral intercourse of the sexes; as well as an avaricious disposition which would compass its own ends at the expense of what is strictly honest, especially if the dishonesty be of a character not easily cognizable by law." (Idem Vol. II. pp. 42, 43.)

S. XLIII. (See page 66) "The more we have seen of the state of Prisoners in these Colonies, the more fully we are satisfied that Transportation is a severe punishment. The state of the Prisoner is in most instances one of privation, and, to him, of painful restraint, as well as of separation from his connexions and country. And if he be a disorderly man, and in consequence be sent to an Iron-gang, we can scarcely conceive a situation more miserable. To be locked up from sunset to sunrise in the Caravans, or Boxes, used for this description of Prisoners, which hold from 20 to 28 men, but in which the whole number can neither stand up, nor sit down at the same time (except with their legs at a right angle with their bodies,) and which in some instances do not afford more than 18 inches in width for each
each individual to lie down upon, on the bare boards; and to be marched out and kept to a monotonous employment, under a strict military guard, during the day; and also to be liable to suffer flagellation for even a trifling offence, such as an exhibition of obstinacy that might be excited by the capricious conduct of an Overseer, is truly a miserable state, and one to which death itself would be greatly preferable were it not for the eternal consequences that await the unprepared. And although the Convict population of New South Wales are thus kept under a considerable degree of subjection and discipline, yet the measure of reformation among them evinced by the adoption of better principles is exceedingly small. Nor need this excite surprise, when the paucity of the means employed for their reformation is considered, in connection with the facilities for obtaining strong drink, that are placed in their way, &c. &c. (Ibid. Vol. II, p. 47, 48, 49.)

§ XLIV. (See page 7.) "The frequency of flagellation in some of the Ironed gangs, as well as in other stations of Prisoners, including the Hyde-park Barracks, Sydney, is a subject deserving notice; for as a punishment, flagellation is generally admitted to have a degrading effect. In some of the Ironed Gangs this punishment has on an average been administered four times round to each man, (many of the cases being of 50 lashes each,) in a period of less than eighteen months. And we have been informed that upwards of 1000 men have been flogged in the Hyde Park Barracks within the same period. — In the large Road-gang in Illawarra the punishment of flagellation
"is comparatively rare, and the conduct of the men is generally good." (Idem. Vol. II. pp. 52, 53.)

II. XIV. (See page 7.) "The practice of mustering prisoners holding Tickets-of-leave, once a quarter, is attended with some disadvantages on which we venture to offer a comment. Many of these persons have so strong a propensity to indulge in drinking spiritsuous liquors that they fall into the temptation almost as certainly as it comes in their way. Some of them, conscious of their own weakness, engage in situations remote from Public-houses, and in the intervals between musters conduct themselves in an orderly manner. But, being from ten to twenty miles, or more, from the place of muster, they have to leave their homes once a quarter for one, two, or more days, to present themselves at the place appointed, which is generally contiguous to a public-house, and few of them return to their work without having been intoxicated; and instances are not unfrequent in which, under the influence of intoxication brought on from these circumstances, they commit some misdemeanours which result in their privation of the hard-earned indulgence of a Ticket-of-leave." (Idem. Vol. II. pp. 53, 54.)

XLI. (See page 64.) "We cannot but regard the Prison-Discipline of the Females as even more defective than that of the Males. We are aware, however, that more attention has of late been paid to the state of the Factory at Parramatta; and that some improvement has been the consequence, though much, nevertheless, remains to be done. Great
Great benefit might reasonably be expected from the erection of a prison for the reception of Female Prisoners on their arrival, as well as for such as are returned from service without any complaint against them, who ought not, however, to have any communication with the newly arrived." (Idem. Vol. II. p. 57, 58.)

§ XLVII. (See pages 414, 10) "In concluding these observations we take the liberty of stating our conviction, that the undue measure of punishment that is attached to many offences by the (British) Law, has a direct tendency to frustrate one of the chief ends designed, viz. the reduction of crime. This severity in numerous instances deters from prosecution, so that many offenders become hardened by repeated transgression; and others being associated with culprits more vicious than themselves, become confirmed in depravity at the same time that they are rendered greater adepts in crime." (Idem. Vol. II. p. 59.)