
Observations
in Answer to the Remarks of
Matthew Forster,
(Chief Police Magistrate in Van D's Land,)
on the
Previous Report.

By
Captain Maconochie. R. N.

A.B. The "Supplement" (page 113) should
be read prior to the annexed "Observations," that being
the order in which they were written: it was
reversed through inadvertence in transcribing them.
J.W.W.

Observations, &c.

I have now, also, seen the remarks of the Police Magistrate on my Report: and it seems to me to be due to his station to notice them, though otherwise I should scarcely think this necessary. I am very sorry that he should differ so widely from me in opinion, — but very glad to have seen his reasons for doing so.

1. Mr. Forster, p. 2. thinks that I estimate Human Nature too highly. But this is matter of opinion. The questions between us are. 1. Whether Convicts, after being punished, can be generally also reformed: and 2. Whether if so, the best course for the purpose is by a system of training trusting chiefly to Moral impulse, or Physical coercion. Mr. Forster's opinions on both points are those of the old Martinet School which loaded our Statute Books, and Naval and Military Codes, with severe enactments. Mine are those of the growing intelligence and humanity of the age, * which in every other field are progressively clearing these away, and which

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* Somewhat remarkably, as I wrote the above paragraph the following Article appeared in the 'Tasmanian' [Hobart Town Newspaper;] and I subjoin it as a specimen of the "experience", opposed to Mr. Forster's, with which Statists in England are becoming daily familiar.

"Prison Discipline. From a Scotch Paper, the 'Scottish Guardian', we copy the two following articles on providing Schools

when duly enlightened, will undoubtedly not leave that of Transportation alone untouched. Mr. Fowler will therefore certainly be proved wrong by the result: and may he not be inferred

for the great body of the people, and for reclaiming criminals—two subjects of the highest importance in every country, but to which no attention has been given in this colony, beyond the mere routine of confirmed error:—

'Glasgow House of Refuge.

'Extract of a Letter from Mr. M^r. Lrie, Rector of the Glasgow Normal Seminary, dated Weissenfels, the 24th Sep^r. 1836:—

"Should the Society for erecting a House of Refuge in Glasgow unfortunately not give intellectual and moral instruction a place in their institution, I assure you they will go directly against the experience of men who have laboured in this work of love the last thirty years in Germany. There have been Workhouses in this country for many years; but houses of Refuge have had their origin in the experience that Workhouses for young delinquents are incapable of producing the desired end. The Scotch are a practical people, so I subjoin a few facts for their consideration. There is a Work-house in Berlin for young offenders, where instruction is by no means excluded, but where it holds an inferior place. This Workhouse sends every year a number of boys to the House of Refuge, because its own method of discipline (severity and hard labour) has failed to effect their improvement. The following cases I copy from the Reports of the Berlin House of Refuge:—

'E. Admitted, 1825. His ignorance, grossness, licentiousness, and addiction to drunkenness, and vices that injured the health, had quite enfeebled his physical and moral powers.

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inferred to be wrong, also, by the anticipation)? In an enlightened age, a stand made against the manifestly advancing tendencies of the times in which we live is almost sure to be a mistaken

He had been well whipped in the Workhouse. Eight days after he came to the House of Refuge, he ran away — was gently corrected — improved, and began to love the institution — learned to read and write — made good progress in religion, so that he was admitted to the communion — went to work with a nailor, but not liking the employment, returned to the institution, and is now working as an hostler, to the satisfaction of his master (1827.)' 'XXXVI. Admitted, 1826. Had been five times in the Workhouse. Has cost the institution incalculable pains — his conduct was brutal and unfeeling — has begun to think, to feel, and to work — appears to have left off the vices that hurt his health — departs more and more from his brutal propensities — has some honourable feeling, and gives hopes of amendment (1828.) Is an honest servant to a farmer (1830.)' 'XXXVII. Admitted, 1826. Addicted in an unexampled manner to practices that injured his health; had been sent by the police to the Workhouse. On entering the institution, unable to work and learn, through weakness — on recovering strength, began to give good promise (1827.) Bound to a shoe-maker whom he served faithfully, &c. &c. (1828.)' 'XXXIX. Admitted, 1826. Had been imprisoned in his 7th year — ran away from his parents — committed theft — had been several times in the Workhouse — at first, weak and stubborn, latterly diligent and obedient (1827.) Sometimes shows traces of stubbornness, but in general bears a good character (1828.)' 'I. Admitted, 1826. Had run away from

taken stand; for on points like these the world necessarily grows wiser as it grows older.

2. Mr. Forster, however, (also p. 2) opposes his practical expe-

from two masters — been accused of theft — convicted a-begging and vagabonding — four times in police-office, and thrice in workhouses. Soon fell in with the regulations of the house — began to love order, and has as yet remained true to his promise to learn and reform (1827.) Bound to a shoemaker in Berlin — behaves well and frequents the sabbath school regularly.

These are a few of the first cases in the first Report. This establishment at Berlin is one of the best in Germany: it is not called a house of Refuge, (though I have called it so above for sake of clearness,) but House of Education, as best indicating its lofty aim, and the nature of the means by which it works its wonders. The following is the way in which the week is divided: — Religion, 1 hour; Intellectual Exercises, 2; Grammar, 2; Reading in the Bible, 2; Reading in Collection, 2; Writing, 3; Mental Arithmetic, 3; Reckoning on Slate, 10; Lessons on form and drawing, 1; Botany and Geography, 3; Singing, 1; Exercises in Style, &c. 1; in Church, 3; Prayers on Sunday Evening, 1; Censure on Behaviour, 1; Working hours, 57; Recreation and Meals, 25; — in all, 112 hours, from five in the morning till nine in the evening actively employed.

The Lesson hours are generally from seven to nine, A.M. and from five to seven P.M. During the first ten years of its existence, the establishment has sent back to society, one hundred and sixty-one of the pupils entrusted to it. Of these nine have since died, 111 are honest members of society, 27 are doubt-

experience to my suggestions; — and undoubtedly his experience is valuable, so far as it goes. But what is its real extent? Is it beyond that of the workings of a uniformly coercive system? And if not, can it bear at all on the question whether one of moral impulse would be more efficient? Mr. Forster can testify to the external decency (?) yet internal vice and profligacy which are the results of his system; — exactly as some years ago the lamp-lighters of London testified to the degree of light which pervaded its streets before they were lit with gas, — and, equally with Mr. Forster, pronounced on the impossibility of improvement on other plans than their own. Yet the triumphs of science were not more certain in that case than they are in this, so soon as the results drawn from her isolated experiments shall be generalized, and reduced to practice on a great scale. Already on every occasion in which moral motive has been made to actuate masses, of either Men or Boys, it has been found a superior power to physical constraint; and Mr. Forster himself acknowledges this when he speaks of the difference between free and coerced labour.

3. He admits, further, p. 4. that the experiment might be well tried in a new Penal Colony: and I should be happy to see it tried anywhere, for I am convinced that it would any where succeed. But, if I had to choose myself, I would certainly rather try it in an old than in a New Colony: for it

doubtful cases, and 114 appear to be hopeless. Last year the work of the pupils amounted to £228. 14. 0 — or £2. 15. 0 for each pupil. There is also a Girls' House attached to the above, of which I cannot speak at present, &c. &c.

it is in the Old Colonies that it is most wanted. In the infancy of society many acts of arbitrary authority are submitted to, and are really innocuous, or even advantageous, which, as civilization advances, and population becomes dense, and a sense of private right grows to be strong, become in the highest degree injurious and unbearable: and the rapidly increasing deterioration of morals in the Old Penal Colonies (which I have demonstrated from the indisputable authority of judicial records) becomes frightful when we contemplate also their present rapid advance in power and population. A century may elapse before the necessity for improvement in this particular can, in any new Colony, equal that now, as it appears to me, existing in Van Diemen's Land.

4. But Mr. Forster, also p. 4, contends that allowing Convicts to choose their Masters would be practically to release them from Police surveillance altogether. Yet why so? Ticket-of-leave men choose their own Masters now: and men, whatever their power of choosing their Masters, or Residences, might easily be restrained from changing them without acquainting the Police. Besides, I only recommend this indulgence to be granted to men previously punished and trained: and until both these objects are attained I purpose that they should be kept in the strict, methodical, and systematic hands of the Government, rather than be confided to the training of Settler Masters, whom Mr. Forster himself describes, p. 13, as "taking very little interest in the moral character of a man, compared with his physical ability."

5. Mr. Forster supports his previous objection by stating,

p. 5, "that the Prisoners sent out are of the worst description of the most morally degraded part of the British population, - men, perhaps, whose whole course of life has been one continued scene of crime; yet as a general description this cannot apply. Many come out quite young: many for their first offence: and very many, doubtless, are comparatively innocent, and have fallen victims to suspicious appearances, to the discredit cast on poverty and destitution, to the wrong notions entertained in England on the subject of Transportation, and to the arts of men more wicked than themselves, who push them forward, and shelter themselves behind their detection. There can be no question that the vast majority are of these several descriptions, - and even of the remainder, it is proved by the concurrent testimony of Mess^{rs}. Bachhouse and Walker, Captain Cheyne, and myself, that the very worst are accessible to humanizing impressions when gently and kindly dealt with, though undoubtedly they are exasperated, and made worse by contumely and unceasing coercion.

6. Mr. Foster's arguments, p. p. 6, 7, are answered by observing, that the circumstances to which he there objects are precisely those of the present Tickets of Leave.

7. He next comes, however, pp. 8-9, to comment on my proposal that "Sentences of Transportation should in future be for indefinite periods, and be determined only by the Prisoner's conduct in the Colony;" which, he says, "would strike at the root of all certainty of punishment, and reduce all crimes to the same level." But he has, I hardly know how, misunderstood me here. In the place referred to I contend, not against specific periods being allotted

allotted to punishment, but that the expiring of these, should not, of itself, and without evidence of reform, free the criminal. My proposal is directed against the hardened, and not in favor of any. I hold that where a man has forfeited his place in society by conviction of crime, society has a right besides punishing him, to require him to evince contrition and good resolution for the future, before it receives him again into his former place. And Mr. Forster's remarks do not bear on this proposition at all.

7. He next, p. 10, objects to my proposal, that "Divorce" should in certain cases, be part and parcel of the Law of Transportation; his arguments on which, however, are, also, equally founded on misapprehension. My proposal is, that "Women, whose innocent partners refuse after a given time to join them, should become free after that time to form other connexions"; and although I make the proposal with some hesitation, as not insensible of the difficulties attending it, I yet could prove its expediency by statements of the consequences of the want both of Wives and Husbands, in the Penal Colonies, such as would make the blood curdle, were this not, in truth, rendered unnecessary by Mr. Forster's and Mr. Spode's own statements of the beneficial effects of Marriage, where it is possible to contract it, in the Convict character, both male and female. But Mr. Forster is persuaded that it is "impossible in a Protestant country to put aside the law of God, as a measure of expediency." And is there then any Protestant Country without a Law of Divorce? And in eminently Protestant and moral Scotland, is not this so liberal as to grant such a release even on

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alleged incompatibility of temper? I am far from arguing in favor of such latitude as that: but surely, if a wife can be divorced for adultery, it is no great strain to divorce her equally for a transportable felony. Surely, setting aside altogether the wants of the Penal Colonies, the father of a young and innocent family, if himself innocent, might be entitled to claim such a release on his own account. And it might be a further check on female misconduct.

P. Mr. Forster next comments, p. 12, on the plan suggested by me, Note F, for effecting the transition from one system to the other; and attached, as I am, to ends, not means, if this can be improved on; I should be most happy to concur in its being done. But in the operation I cannot think that the abstract justice of any of the steps need be much considered. If the change, when effected, would obviously improve the condition of all Convicts, a little suffering, or unfairness, entailed on individuals among them, in conducting it, (even if all that Mr. Forster alleges, which I dispute,) need not, I think, be dwelt on: they would be but as the suffering inflicted on an innocent patient in order to recover his health. But the very great unfairness of allowing the Masters to chuse the best men themselves, subject, (as I expressly state,) "to a careful comparison of their choice with the Police characters of the individuals chosen,"—I really cannot see.

A truly good man, in a country where good moral conduct is rare, will never be a useless one; nor need such a one fear comparison with a good mechanic, even if the choice lay absolutely between them. But in most cases both would be retained.

G. The

9. The payment of wages in part only, instead of immediately in whole, referred to p. 13, is a mere loose suggestion to which in my Report I attached very doubtful importance: — and I now willingly abandon it.

10. So far from its being left doubtful by me, as stated by Mr. Forster, p. 15, whether I contemplated any probationary gradations, or not, — my words in Note F, giving the outline of my plan, are; "The apparatus both for punishment and encouragement 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, though admitting, perhaps, of some exceptions, each individual should pass through the whole." In which extract I would now make ^{but} one alteration: — I would admit of no exception whatever to the rule in question.

11. Mr. Forster says, p. 16, that "Government labour, under the strict surveillance which it is, is not an employment tending to the development of the 'moral principles' of any set of men:" to which important admission I fully assent. But Government labour might be otherwise conducted than it is, and so become eminently conducive to such development; — which is precisely what I wish.

12. Mr. Forster, p. 17, commences a series of exemplifications of the incorrectness of my statements; the first of which is an assertion on his own part, that "very few Convicts feel the shame of expulsion from Home." Yet all I say on this subject is in these words; "To say nothing of the pain inflicted by the first shame of conviction and expulsion from Home, which must be differently felt by differ-

different individuals, and by the best most," &c. I no where else even allude to the topic

13. His next exemplification of my errors is thus expressed, p. 18; "Convicts are not assigned to services alien to their previous habits and powers - but on a directly contrary principle. It is true that frequent errors are made;" &c. Now, I no where say that they are designedly so distributed: but merely that from the nature of things they must be so. And the best collateral proof that the errors predominate may be drawn from Mr. Forster's own admission that they are frequent; and also, the incessant complaints made by Settlers on the subject.

14. I am not aware that I have stated to the contrary of what Mr. Forster asserts, p. 19, under his 3^d and 4th head of my inaccuracies. His statements may be there true, or not true, without materially bearing on any question between us. Yet if they prove any thing it is on my side; for they shew that the greatest drunkenness prevails where there is the greatest constraint - that there is less in Assigned Service; and less still among Tickets of Leave. The drunkenness prevalent among the free population arises from quite other causes, yet, also, allied to the present Convict System, as I have elsewhere explained, - I allude to the difficulty with which their labour has to contend in the market from the large supply in it of gratuitous labour, - to the degrading associations to which they are necessarily condemned in struggling with this difficulty, - and to the distress and recklessness produced by it.

See Questions
pp. 108, 109

15. Under his 5th head, Mr. Forster, p. 20, states that

that "punishments are not lightly ordered." Of the degree of deliberation which prefaces sentences to punishment, I cannot, of course, judge: but certainly very heavy penalties seem to me attached to very slight offences; and Mess^{rs}. Backhouse and Walker are of the same opinion. Note G. 9, 10, 14, 16, 31, et passim.

17. Mr. Forster's 6th & 7th Heads, p. 21, may be passed over; but his concluding remarks require comment.

P. 22, he uses these words: "It is however wonderful" how "the prosperity of this Colony has advanced, and is still" "advancing, under the present system." And in this sentiment I fully concur; but it is important at the same time to mark precisely the degree in which the cause and effect thus brought together are really joined, otherwise we may fall into a very gross mistake. Under the existing system of Prison Discipline, then, the Penal Colonies have advanced, and are advancing in prosperity, because this system has been the means employed to give order and subordination to the mass of labour otherwise collected in them; but this no more proves that it is therefore, the best, or only means for producing these effects, than our Naval victories prove that severe flogging and swearing are the best, or only means of maintaining nautical efficiency. A certain amount of advantageous effect having been produced, it cannot be said that under all circumstances either has been altogether unsuitable as a means: but Capt. Cheynes calculation, shewing a loss of £50,000 a year, in productive labour on the Roads of V. D. Land alone, arising from the existing system, of itself shews that it is not the best means; and there are its harshness, uncertainty, and other-

wise injurious operation to super-add.

Again, p. 22, Mr. Foster calls my Report "equally an Essay on the mode of Government, as on Transportation;" and I admit this to a certain extent, and only contend that it is a merit, not a demerit; for as well might a brick be given for a sample of a building, as a system of so complex a nature as the Prison Discipline of the Penal Colonies, be properly depicted apart from the circumstances which it has created around it. In the course of my statements, however, I have been thus necessarily led to name the late Lieut. Governor; and my mode of doing this seems in some way to have dissatisfied Mr. Foster, which I sincerely and truly regret. Yet I do not think that I am really in fault on this point either. My observations in so far as they can be considered personal to Colonel Arthur at all, tend to justify rather than censure him. It is true that I lament his attachment to this system, which he found established, and of which unfortunately he sought to improve the apparatus, rather than revise the principle; and I impute his unpopularity (an undoubted fact) to this attachment, analyzing, moreover, the process, or modus operandi, by which this effect followed this cause. But so far from imputing personal blame to Colonel Arthur for this, I point out that the same effect has followed the same cause in the case of all the other Governors of Penal Colonies since their establishment. And I thus directly disclaim all peculiar application in my remarks. These Governors have been many in number - of different characters - various shades of talent and merit, and some have been regretted after their departure. But every one, without exception, has been unpopular during

during his Administration; and remarkably enough, Mr. Forster himself assigns the reason of this in terms almost, as it were, formed to suit my argument. His words are: "Doubtless Colonel Arthur's principal difficulties arose from convict questions; but he nevertheless did his duty to the Crown and to the King's Ministers, as respected the discipline of Convicts, straight-forwardly, without seeking colonial popularity." To which I cordially agree. He did his duty (or rather what he considered his duty, for had he chosen he might undoubtedly have had his system modified) frankly and conscientiously; but he was over-tasked; he was required to reconcile contradictions, and he was unable to succeed. But is it then no fault in a Political System, or not worth adverting to, that it thus places every successive Governor in the same false position with respect to those he is sent to govern? And is it no aggravation of this fault that these latter are the active, intelligent, energetic, and of themselves sufficiently restless Inhabitants of powerful and distant Colonies, whose physical strength, already great, is nourished, while their moral worth is impaired, and their affections are alienated, all by the same process?

I have the greatest possible respect for Mr. Forster personally, No one can be more zealous and energetic as a Public Officer. And I believe that his benevolent feelings are frequently at issue with the discharge of his official functions. But he serves under a system which directs its efforts to the repression of crime by punishment, not to the prevention of criminal impulses, or the fostering of virtuous ones. He is devoted to this system. It brings him in contact

only with the most abandoned characters (or with the worst exhibitions of the less bad, for, as I have elsewhere said, it is by no means always the worst that are most punished;) and the fairer pages of the much abused, often soiled, but always beautiful book of "Human Nature", are sealed to him. Avowedly, also, he does not read on the subject, but relies entirely on his own experience;- and when I shew that his experience is thus one-sided, am I not justified in arguing that his testimony, and reasoning founded on it, are equally defective?

In the estimate for the year 1838 laid on the table of the Legislative Council of V. D. Land, it will be seen that the Police absorbs one fifth of the whole income of the Colony; while the proportion assigned to moral and religious instruction is a twelfth only. And in existing circumstances there can be no fault found with these figures, for the one is probably as little, and the other as much, as can, under the actual system, be respectively so appropriated. Yet they indicate the proportion in which, under that system, force and persuasion, the wind and the sun, (to use the words of an old Fable,) seek in this country to strip the Traveller of his Cloak;- and in the faith of that Fable we need scarcely, therefore, enquire whether the Cloak is so stripped, for on the contrary we may be assured that it is thus only made to wrap the closer; or in other, and less figurative words, that the system in question is itself the fruitful parent of above half the vice and crime which it seeks to repress and punish.

2. What

Q. What is the most ordinary offence in V.D. Land, and the occasion of almost every other?

A. Drunkenness!

Q. And what causes so much drunkenness?

A. The misery of the lower classes of the Inhabitants, whether bond or free, - caused to the first by the severity, and other incidents of the Penal Laws; and to the second by the difficulty and degradation which they have to encounter by competing in the labour market with the gratuitous Convict labour furnished to the Settlers by Government.

Q. What are the peculiar recommendations of drunkenness as a gratification to miserable men?

A. The means of indulging in it are easily obtained; they are soon swallowed; and they procure a temporary oblivion of their cares.

Q. How then was drunkenness once so prevalent in the British Navy?

A. Because the discipline was then unnaturally strict in it too.

Q. But some years ago the Seamen in the Navy gave up half their allowance of spirits without a murmur. How was this?

A. Because even before this took place the discipline was more than proportionally relaxed; and the sacrifice was further accompanied by the grant of other, and more substantial indulgences.

Q. And some English Merchant Ships are now even sailed on Temperance principles; how is this?

A. Because in these consideration for the substantial com-

comfort of the Seamen is carried even further.

Q. And this practice is common in American ships?

A. Yes; because in them the seamen are frequently engaged "in shares"; and being thus in part owners, their comforts are still more regarded.

Q. But drunkenness is said to be still a common vice in American Ships of War. How does this happen?

A. Still on the same ---- principle. The American Navy is only slowly imitating the British in consideration for its people's comforts. It still flogs severely - stops leave - stops grog, and compels unnecessary exertion to gratify the love of display, or whim, of the Commanding Officers.

The men drink, therefore, as all men will do in similar circumstances, to drown care.

Q. What then is the Penal Lesson to be gathered from this recapitulation?

A. It cannot be too much, too often, or too energetically insisted on - When we punish, and must, therefore, make men unhappy, we should do it where they cannot get liquor; and on the other hand, when we bring them in contact with liquor, if we would preserve them from crime, we should do what may be possible to make them comfortable, and to give them the power, the leisure, the lightness of heart, and by consequence the inclination, to enjoy other and higher pleasures than the debasing, and demoralizing one of intoxication.

Q. But would this system accord with the objects of transportation?

A. Undoubtedly; for it would both punish and reform; - the precise purposes for which Transportation was devised.

Q. But would it be in accordance with "Human Nature?"

A. No

A. No one can rationally doubt it, who considers the previous examples.

2. Would it partake of the character of the Wind, or of the Sun, of the Fable?

A. It would be the Sun of salvation, in every sense of the word, to thousands, and tens of thousands of unhappy wretches who are now buffeted by the Wind of the existing System; and to whom it is tempered, (shorn as they are to the quick,) only by such snatches as they are able from time to time to make at liquor and oblivion.

2. And who could make this Sun to arise?

A. Any Governor of a Penal Colony who may warmly and earnestly recommend the subject to the consideration of the Home Authorities, whom I know to be well prepared to entertain it; - any influential Statesman at home, who may in the like spirit investigate the Documents now being sent thither regarding it; - or any much humbler individual who may patiently, but earnestly, continue similar representations till they are attended to.

2. And what would be the reward of ^{any} such Individual?

A. It may not be summed up. - He will have relieved the greatest amount of suffering and injury, both moral and physical, that ever was inflicted by Englishmen on their Countrymen, - born free like themselves, many of them comparatively innocent, and none of whom deserve to have their vice and crime inseparably added to their other punishments; he will also have substituted for this mass of evil much good, for the number of those improved by a judicious system would probably exceed that deteriorated by an injudicious one; he will have extracted a canker which is now eating
into

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into the vitals of powerful and infant Colonies; and if these benefits are acknowledged by his contemporaries his estimation among men will be in proportion to them.

2. But supposing they are not recognized during his life, what then?

A. His own consciences will supply all deficiencies.

Nor is drunkenness the only vice the prevalence of which may be thus distinctly traced to the incidents of the existing Penal Code. On the contrary, there is scarcely one of those which most abound which may not equally be so afflicted. Irritated feelings, insubordination, recklessness, quarrelling, deceit, theft, and prostitution, are almost its inevitable consequences. — Does it repress Crime, then, or create it? I think that there can be but one reply, when all circumstances are thus considered.

7th August }
1837. }

(Signed) A. Maconochie.

N.B. The "Supplement" should have succeeded the "Report"; the "Observations" on M. Forster's Remarks following the Supplement, this being the order in which they were written. The transposition occurred thro' inadvertence.

Glow.
