Dr. Turnbull's Objections

to the proposed Changes in

Convict Discipline,

answered.

By

Captain Macnaghten, R.H.
At the same time that the Paper preceding this was prepared by me to be laid before the Settlers, Dr. Turnbull was directed to prepare one against my views, to be submitted along with it. Neither was thus used: but the other Paper having been shown to me, I wrote this in reply to it. The arguments used in it may be gathered from my reply.

A. M.

1st Nov. 1837.
Dr. Turnbull's Objections, &c Answered.

This Paper (Dr. Turnbull's) appears at best ill adapted to its proposed purpose; for instead of considering the Question at issue economically, it turns almost entirely, and in the most abstract form, on Prison Discipline.

I am quite willing, and I think able, to meet its reasons given even on this ground; but I submit that it is not the point on which the opinions of the settlers are wished.

1. The first objection which it urges against my plan is, that by beginning the prisoners at a lower point of punishment, the fear of further degradation would be in great measure lost; and this loss, it is held, would be very important. But the whole question turns on a balance of advantages; and no system can be devised which shall combine all. I want punishment for the past made certain, early, at once felt to be irksome, even in mere comparison with the monotony of Ship-board; and therefore obviously calculated to inspire regret for former guilt, and a craving desire to obtain indulgence and comparative relaxation by future good conduct. And if I can succeed in this, I have a far more active principle engaged than the mere fear of incurring further punishment. I have a stimulus to positive good conduct, whereas the other is a mere check on what is positively bad. No exertion may be considered too much.
much under the one, nor any too little under the other, if it but keep clear of the law. And accordingly under the latter, which is the existing principle, it is well known that a cruise on the skirts of legal offence, as near as possible, yet not too near, is a familiar pastime among ill-disposed Prisoners.

Moreover, the one is a generous principle,—a modification of that desire to ascend in the social scale which supports all the social virtues; while the other is the mere Felon's resource,—as it is called in this very paper, the last beneficial instinct which deserts the Convict. And if thus the last, why should such extreme importance be attached to its early operation?

Another argument may also be adduced against the views thus maintained. There is a restlessness in the unhappy men under consideration, which it is well known, in existing circumstances often prompts them to crime merely to procure change of place. But under my system, although continued crime would be checked by every extremity of punishment, even unto death if necessary, at the Punishment Stations, it would only be good conduct, not bad, that would procure change of place; and the feeling of monotony, and of impatient desire to get away, would thus be found a far stronger stimulus to right action than any fear of falling lower.

2. The next objection offered to my plan is, that by separating the processes by which Punishment and Reform are respectively sought, we separate what Providence has joined in ordinary life, and thus depart from the analogy of
human nature. (At least I take this to be the spirit of the objection, which otherwise I really do not quite understand.) But I dispute the fact thus stated. We familiarly see adversity, it is true, consequent on error, working out Reform; but this does not prove it, and reasoning on my own experience I should say that it was quite otherwise. On conviction of error committed, and experience of its bitter fruits, we give a certain period to deep sorrow, the recollection of which is the reality of which may accompany us through life. But at length a moment comes, unseen by us Fallible observers, but not the less real, when the depth of sorrow, the punishment of our past errors, and hope and resolution to recover our lost ground, the moral training, in a word, still not accompanied by pain and suffering, but cheered by a steady look forward, and by a sense of progress making in the proportion of the energy and self-denial employed, commences. And this is precisely the analogy that I would follow. I would punish— that is, create and nourish deep and sincere sorrow for the past, for a time; and then, at the proper moment, give encouragement for the future. And to object to this method because there is an accommodating power in human nature to the circumstances in which it is placed, which prevents any physical suffering from becoming excessive, seems to me even extraordinary fallacious. God has set limits to the power and cruelty of man over his fellows; but are we therefore to study to fall short of these in the application of just punishment? On this principle we should provide amusement for our prisoners.
Prisoners when we confine them; and store the Boys' cells with toys, and the Men's with cards and dice, in order to stultify our own acts, and alleviate the punishments which we are required to inflict on them.

To punish first and train afterwards, seems to me to be the same with ploughing first; hoeing, weeding, and otherwise cultivating, afterwards, and so at length reaping. To combine the several operations in, on the contrary, to keep the ground waste; and this, in its figurative sense, seems to me, even proved at this moment in Van Diemen's Land. It is elsewhere where in this Paper presumed that when I say there is little Reform in the Prisoners, I mean real Reform, on principle, and not merely in seeming: and this certainly is what I mean, but in a much wider sense than seems to be here understood. I do not mean religious Reform, for that may, indeed, be rare anywhere: but I mean that the standard of morals is generally low among the Prisoners; that for the most part they will lie, cheat, rob, steal, and impose on each other, and on the Free population about them, wherever their safety, or "fear of further degradation" will permit; that they very frequently overstep this limit, and incur second sentences; and that thus through the laxity of moral principle caused in all by the example of these dispositions in them, and the necessity of contending with them, the proportion of crime to population in the Colony is very high, and appears to be on the increase.

3. It is next objected to my plan of requiring the Prisoners on probation to group themselves into parties of six, to rise and fall together, first, that this would be to
create combinations among them, whereas the principle has hitherto been to rule by dividing them; and, secondly, that being an entire novelty, its beneficial effect at least remains to be proved. But under existing circumstances is any prison on the island so situated as to be unable to associate intimately with at least five others, if he chooses to? Can the presence of the free population in any degree prevent, or rather can it do other than promote this by the repulsion between the two classes? And is not division between the convicts themselves brought about by direct means, as by encouraging them to inform against each other (however necessary, perhaps, in existing circumstances) in itself the most odious and demoralizing process imaginable, alone sufficient to prevent any Reform among them— to raise their selfish feelings; to destroy their more generous ones—to nourish treachery, false accusations, perjury— moral wickedness in almost every shape? And in truth, is it not at this moment, productive of all these effects in these Colonies to even a frightful extent? It is quite a mistake, also, to say that the beneficial effect of the other, (my proposed) system is as yet purely hypothetical. It is perfectly well known and appreciated in Naval and Military discipline; and twenty years ago I remember it familiarly applied to Boats’ crews, Liberty-men, Ship and Barrack Masses, in order to give numbers an interest in the strict maintenance of individual regulation. It is also, as I understand, already resorted to on a small scale, but with great success, in the management of the Prisoners on several estates in this very Colony. Even if
it were a novelty, therefore, its promise might claim for it a trial; but in truth the only real novelty about it is, its universal application.

In § 5. Admitting it. However, to be plausible, which this paper next does, it is urged against the whole plan that this improved method (or assumed such) is not proposed to be introduced into the first stage; and that there, consequently, some connecting link; some social influence, among the prisoners (such as the author considers the contempt and ill-disguised aversion of the Free population towards them at present to constitute) will be altogether wanting. But first I want the men punished for the past, and to make them in consequence: humble, sorrowful, penitent, submissive, and prepared to exert themselves, as subsequently directed, in order to recover their lost ground. I do not hence, therefore, require union among them for any active purpose: on the contrary, they would sorrow better alone: and if, for other reasons, they would be here kept entirely separated, as far as this object is concerned, it would be better—(I have no desire, like the Author of the Paper before me, to amuse them while in it:—I am quite willing, and even desirous, to make their stay in it short; but not to assist them to forget, or to bear with indifference, the punishment actually allotted them.) The entire seclusion of each individual would, however, be impossible, and for other reasons, even would be undesirable. The men must now have the opportunity afforded of studying each other, of drawing, like to like, of exhibiting themselves each to the other, so as to furnish grounds for a future choice.
among them when enabled to write; and, as I have con-
tended at length in one of my other papers, the moral
and social effect of this would, may must be, of the
highest importance as a ground-work of future character
and exertion. The study of each man in this stage would
be to discover the men least likely to get afterwards into
scrapes; and to recommend himself to their favour.
Good conduct would be thus a popular quality with all,
instead of, (as now too often happens,) a butt for the envy
and dislike of the more vicious. The will and emulation
of the men would be thus directed to good almost on in-
stinct; and the stimulus would scarcely ever flag, because
it would not be an occasional impulse, impressed from
a single point without in the shape of a task-master,
but would be supported by every thing about and around.
To use a strong, but yet just image, each man would be
as though he were seeking a wife, and devising of recom-
mending himself generally, that he may have a chance of
being accepted where he has chosen. All his bad qualities
would be kept under strict command, and all his best
brought into the strongest evidence.
6. Accordingly, I have myself no fear of the con-
sequences anticipated in the next objection here made to my
plan, viz.; that by associating numbers thus early together,
the better would be exposed to corruption from the others.
The very reverse would, I am persuaded, be the case; and
the worse would be drawn after the better. The writer of
these objections does justice in one respect to the power of
social influence, but great injustice in others. He thinks
the
the congregation of numbers powerful for evil, but not for good. The congregation of numbers, however, in our Fleets and Armies does not make villains of all their Members, though there are necessarily 'black sheep' among them; and why? because their general object it a high and honourable one, and the "espirit de corps being directed to good, it neutralizes the power of individual impulses. And it is the same with religious Communities, and any other associations of which the ultimate object is good. But the very reverse of this is the case at present among the Convicts. Their espirit de corps is directed to evil, (to shirk, impose on their task-masters, and acquire forbidden indulgences as they best can;) and the worst characters among them become necessarily the leaders. In a degree, also, it was the same thing in the Female Emigrant Ships. The Women, even the most respectable of them, had a low, indecent object, (marriage with entire strangers,) in their contemplation, and were thus prepared to have their minds corrupted by their more abandoned Companions during the leisure and monotony of a sea-voyage. But to argue against social impulses from such examples as these, is really to argue against Providence itself, which

* I must say I think this reference to the Army is very ill-chosen; for the moral influence of association is by unquestionably bad; and it appears to me, on the very principle assigned by Captain Macombie, but with an inverse application, viz: because the object for which they are associated is immoral - contrary to the law of God as made known in the New Testament. And however the
which has made man a social animal, and cannot, therefore, but have given him powers by which to benefit from social communion.

7. The nature of the labour thus proposed to be inflicted on Prisoners on their first arrival is, however, next objected to as not likely to constitute "such an

"apprenticeship as will best suit them for the duties of a

farm, and thus procure them suitable wages afterwards." Yet why so? for surely in the hands of Government it may be made whatever may be most suitable. At present there is no regular apprenticeship at all; for a man on his arrival is set to any thing, from drawing water to herding sheep, that may be most useful to his immediate employer, however useless to himself; and accordingly, worn out and decayed Prisoners are at present for the most part utterly and entirely helpless. But surely this need not be, and would not be, if in the earlier stages of their progress they were passed through well constituted Schools of Industry, such as the punishment and training Stations ought to be made. There is very little, if any country-work to which they might not thus be trained; even the Gentlemen Convicts among them, as they are usually called, in favour of whom I would most certainly, (though it is almost unavoidable in existing circumstances,) make no exception in working out my plan.

8. It is next said, that to carry this Plan into effect a host
a host of Superintendents would be required, all of whom must be men of superior talents and qualifications;—but this I utterly deny. I want honest, punctual Billiard-markers, and little more. I want no wise judgment, or high discriminating powers of any sort, but merely a steady observation and faithful record, of what passes around; with so much talent as is equal to distinguish right from wrong, and to prefer the former. The publicity of the several reckonings would be alone a security for their impartiality, the frequent occurrence would be another; and the distribution of men into parties would be a third. An Overseer might desire to favour, or oppress, one man, but not six; he might make a false statement of a man’s conduct a week or months previously, but scarcely on the very day: and with a dozen parties, perhaps, about him, all cognizant of the actual facts, and witnesses of the second made of them, an Overseer would be very hardy if he attempted either favour or injury. In truth, if I value my plan for anything more than another, it is on the facility of its working, (founded on its resemblance to common life, merely substituting marks of commendation for wages,) and on the almost impossibility of abuse under it.

Somewhere in the Paper before me it is called artificial; but I dispute the accuracy of the term. The most artificial of all states is that of Punishment, of subjection to stripes, to contumely, to coercion of the most rigorous sort; and that state the present system prolongs indefinitely to the unhappy Prisoner. I dispatch it soon; and the sooner because I do not seek to mitigate as I inflict it. I then
bring the more ordinary impulses of society to bear upon my pupils, (as I would next consider them;) and by wound- 
ing these up, perhaps, a little tighter, but in no degree altering their essential character, I expect great results, because I shall be working in harmony with the impulses of human nature, instead of directly in their very teeth.

9 of 10. The ninth objection appears to me a singular one, viz: that the labour of men in their first stage, could not be made productive; for even granting this, would it be a valid objection to a great moral improvement? But on what grounds either advance or grant it? Could any labour be more productive, either of Revenue to the Crown, or benefit to the Community, than the clearing, draining, en-closing, and otherwise bringing in the Waste Lands, preparatory to their sale and occupation. And the tenth objection seems to me even more extraordinary, viz: that the system could not be now worked in this Colony, unless for a time in conjunction with another, the present one; and therefore that its effects would be for that time obscured by it. This may be admitted, even to the very terms, and still be no argument: for surely we had better have a little twilight than continued night. But was it ever heard of that a social improvement was to be objected to because it could not be introduced as by an Harle-quin's wand? on the contrary, is it not well known, that a positive advantage is gained, in almost all change, by one system gliding into another, not per saltum, but slow- ly and gradually? The crudeness and imperfection of all human combinations have thus leisure and opportunity afforded them.
them for correction. Fiction is not less valuable in Morals than in Mechanics; in the one case, as in the other, by a beautiful ordination of Providence, it becomes a power, by opposing a resistance.

II. The eleventh and last objection, I scarcely know how to meet, because it applies to the existing state of Society in the penal colonies,—not to that which I am certain my system would introduce. It is that the new plan would give the Prisoners at an earler period the command of their own time and labour, and thus lead them to congregate together "instead of remaining under the surveillance of the most respectable members of the Community." And in existing circumstances, while the tendency of the Prisoners is altogether to evil, there might be an inconvenience in this, though I have never heard that new ticket of Leave men prefer the service of their Companions to that of the Free Settlers, and I should think it was quite the reverse. But supposing it were so now, surely wages and other circumstances, the desire to keep out of the way of temptation, and the general tendency upwards when the men's thoughts are, and have been for some time, habitually turned to good, might safely be relied on to distribute them as most advantageous both to themselves and the community, at however early a period they thus get their freedom. Observe that it is no favour, no chance, no mere exemption from crime, that would then, as now, procure them this early release. They must be very good men indeed, and must have stumpled very well on companions, that get soon through; and if they abuse their
liberty again they may be at any time, returned, on adequate conviction. I cannot help thinking, therefore, that this objection is as little founded as all the others.

After stating objections to my Plan, the Writer next offers some comments on my statements regarding the existing one; on which head it might only be necessary to observe, that these latter having been addressed expressly to Settlers, who must be perfect judges of their accuracy, and cannot be misled by them, it would seem unnecessary either to re-prove or support them in this stage. However, I shall offer a few observations on them notwithstanding.

1. I have already stated the real meaning I attach to the word Reform in all my papers. I believe that among the Prisoners the improvement scarcely in any case exceeds development of caution; and in the great majority the other impulses familiarly overcome even that.

2. The compulsory labour in my system is inflicted by Government, and systematically and proportionately administered as a direct punishment for offences against the Community, which it represents. That in the existing system is inflicted by Individuals, not according to system, or proportion, but impulse; and not from public spirit, but for their own private advantage. The one would thus be felt as a fines inflicted by a Magistrate; the other is considered, universally, and justly, as an appropriation by a thirst, and altogether uninterested party in the
original offence, of the proceeds of that fine. To him it is
said, therefore, grudgingly, and is twice indited, corrupt-
ing alike him who gives and him who receives it.

3. A London sweep is not much improved by being
made a mere drudge of any sort; though if, by chance,
he is better employed, he may be much improved. And I
would merely take away all chance in the matter, and
make it certain that he would be well employed.

4. Can the Master of this Paper seriously consider
the absence of punishable offence, however sever the
code, a satisfactory proof of virtue? Can any attachment
to system carry him so far as this? I should have deemed
it impossible, and I cannot help thinking that it is even
unwise to take up such a position, for the objection which
I make to the existing system on this head, though it
undoubtedly applies to its past administration, need not
necessarily do so to the future. It would be just to think,
I think, to require records of conduct, both good and bad, to
be punctually kept by all Masters and Overseers, on pain
of the loss of their men or situation: and it would be the
greatest improvement of which, I think, the present sys-
tem is susceptible, short of cutting it over by the roots.

5. It seems to me even a contradiction in terms to say
that labour which is specifically confined to one district
is "not found unable to circulate." Scarcely any applic-
ation is more common than from Ticket of Leave men,
for permission to change their district; and even if this
were always granted, which it is not, still the obstruction
would be great, for a man cannot thus go to look for
work, or a job that he knows if may be gone before he gets his answer. Moreover, next to a Conditional Pardon the greatest favour a Ticket of Leave Man can ask, or obtain, is a General Pass and why? just because his labour which cannot circulate without this, by its means can.

6. If a man's Ticket is taken from him, he must be sent somewhere; and the choice lies between the Cell, the Prisoner's Barracks, and a Road Party. In all three cases his occupations are interrupted; and in the last two, his associates are necessarily of the worst description. In reference also to the Police Reports it will be seen how slight are frequently the occasions of all, or any, of these sentences; and then a better judgment can be formed than on mere contradictory assertion, how far this class of men can venture on courses of permanent industry without fear of interruption. I confidently maintain that they cannot; and that it is one of the greatest social and economical mistakes in the existing System to compel them thus to hang loose on the community. Recal lory pursuits are liable at every turn to become criminal ones.

7. The essence of Slavery is coerced labour; and this is found in the Army and Navy, and in the New Plan, as well as in Assignment. To says the present Writer, and I also say, I in some measure. But Assignment is Domestic Slavery; and the differences are prodigious. There was a time, and not very distant, when pressed Sailors, and Cramped Soldiers were little better than Hares; and at that time also the exhibitions of Slavery were not wanting among them,-capricious tyranny, and exile, idle,

Evil
levity, except, or, whose occasion offered, crimes. But even then, Sailors and Soldiers were never Domestic Slaves. They had always their choice whether they would serve an Officer, or not, and when they did, they received extra wages at their Master's expense. They were thus never made private property, like a Spunged Servant; and amidst all the severity with which they were treated, their self-respect was rather nourished than degraded—they were called fine fellows, and appealed to as such on all trying occasions. Much physical suffering may be borne and even much coercion, when unaccompanied by moral degradation; and when moreover, endured in a noble cause, with which a man's own feelings are identified, not to accumulate fume in the pocket of a Task-master.

With the Author's concluding observations I tolerably concur. Enquiring into the amount of the existing evil is undoubtedly the first duty; and the merits of a new system constitute but a second question. But when the prosperity of the Settlers and quietness of the Prisoners are adduced in favour of the present institutions, I trust that the means will also be considered by which these results are obtained—the tears, the stripes, the bolts, the fetters, the sin, the sorrow, the shame, the universal bondage, and the consequent misery and degradation which are their purchase. The end may be captivating, but the price is fearful. Every one of the poor creatures under consideration has the same stake in life that we have,
the same need of favourable circumstances to keep him right, - the same liability to error, under the pressure of unfavourable ones, - and the same abstract claim to have even his corporeal and temporal happiness considered, as far as circumstances will permit, when we are appoisioning his lot. It is not enough, then, to show success in maintaining tranquility, unless we can also show that the measure of suffering and coercion employed to obtain it is not more than necessary. And so far from considering it possible to show this of the existing Convict System in this Colony, I think it even demonstrable that it directly creates three-fourths of all the crime, and thus gratuitously inflicts three-fourths of all the misery, without:

A. M.