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# REMARKS

ON

SOME OF THE PROVISIONS

OF THE

## LAWS OF MASSACHUSETTS,

AFFECTING

POVERTY, VICE, AND CRIME :

BEING THE

GENERAL TOPICS

OF A

CHARGE TO THE GRAND JURY OF THE COUNTY OF SUFFOLK,

IN

MARCH TERM, 1822.

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BY JOSIAH QUINCY,

*Judge of the Municipal Court for the Town of Boston.*

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CAMBRIDGE :

PRINTED AT THE UNIVERSITY PRESS,

By Hilliard & Metcalf.

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1822.

*To William Shimmin, Esq. Foreman, and the Gentlemen composing  
the present Grand Jury for the County of Suffolk.*

GENTLEMEN,

The following publication is made in obedience to your request and in conformity to my promise. Both of which have already been laid before the public.

It contains the substance of the general topics, touched in my charge in March last, with the addition of others, which I deemed of sufficient importance to introduce, and the modification of some, concerning which examination and reflection have given farther light.

If this attempt, made under the sanction of your authority, have any effect, to draw the attention, and interest the sympathy, of an intelligent and virtuous community, in any of the ameliorations of our laws, which are suggested, I shall not regret any labor, to which I have been subjected, nor deprecate any animadversion, to which this publication may expose me.

Very respectfully,

GENTLEMEN,

I am your humble servant,

JOSIAH QUINCY.

8 April. 1822.

## REMARKS.

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AMONG all the general relations of man, the most interesting to the individual, and the most important to society, are those of poverty, vice, and crime. They are, in truth, often little else than modifications of each other; and, though the class of virtuous poor form an honorable exception to the fact, yet in the more depressed classes, they are so frequently found together, that in every general survey, they may be considered, for the purpose of analysis and remark, in some measure as inseparable.

These relations are the most interesting to the individual, because upon the fact, whether in himself they exist at all, or in what degree, depends both his respectability and influence, in the present life, and all his hopes and prospects, in a future. And as to society, its great purpose and duty is to check, to prevent, or punish them; and with its success in these efforts is inseparably connected its character and prosperity.

It follows, as a necessary conclusion from these facts, that in every virtuous and refined condition of the social state, it is the great duty of the happy and respectable classes, to watch with a scrupulous and anxious exactness over the provisions, or the omissions of their laws, as they affect the less prosperous portions of the community. And this, not merely out of respect to the general interest of

society, but from a purer and more individual sentiment of duty, resulting from the peculiar felicity of their own condition. For let the objects, which poverty, vice and crime present to the view, in the course of society, be ever so low and disgusting, and let any one's own condition be as pure and as elevated as it may, there is no man, when he compares the relative advantages of his own early life and education with those, which those unhappy and depraved beings, that are obnoxious to the severities of the law, have been generally permitted to attain, who can have any cause of pride, or of self exultation, or any reason for other feelings than those of devout thankfulness to that Being, who, without any merit of his own, has made him to differ.

Poverty, vice and crime, in the degree in which they are witnessed in our day, are, in fact, in some measure the necessary consequences of the social state. Just in proportion as the higher and happier parts of the machine of society are elevated and enlarged, those parts, which are, by necessity or accident, beneath and below, become sunken and depressed. Laws themselves are, in some cases, unavoidably the causes of the crimes, which they punish. And the instruments, which society employs in its lower departments, for the administering or the executing of those laws, are often not a little responsible for the guilt, which they detect, or seize. Reflections, therefore, on the effects of the laws, on the classes of society to which I have alluded, can never be untimely or unsuitable.

Among the social relations of man, that of justice is the most important and the most interesting, whether we consider society, or the individual. The connexion of its principles with the safety and preservation of life, liberty and property, is sufficiently obvious, and forms the usual limit of general reflections of statesmen and politicians. on

this subject. To those, however, who rightly estimate the purposes or ends of human existence, there are much more important objects to be sought than those exclusively connected with the enjoyment or security of rights, which terminate in the present state of being. Of all the attributes of man, those of his moral and religious nature are of the most consequence and the most elevating. And of all the means, within the command of society, to carry down and disseminate moral and religious influences among the mass of its citizens, there are none to be compared, either in point of effect or universality, with those which result from the just distribution and wise execution of the principles of justice. Indeed, truly considered, what is justice itself, but the essence of all that religion teaches, and all that morality suggests, abstracted and adapted, by human wisdom, to the exigencies of man in society? Now, in what form, or under what aspect, can either religion, or morality, be presented to the contemplation of the low, the poor, or the oppressed, more interesting or more lovely, than in the attitude of guarding their rights, protecting their innocence, and preserving them from the consequences, either of their ignorance or their passions? Such moral and religious effect is the necessary result of the just distribution and wise execution of those principles. If, at any time, or in any country, they fail of this effect, it is owing, not to the nature of things, but to the failure, on the part of society, in providing, by its general arrangements, for availing itself of the intimate connexion, between the principles of justice and the moral and religious nature of man. And, if at any time, or in any country, what is called justice, assume the character of oppression, or venality, it is owing to the positive counteraction, in the arrangements of society, of the natural connexion subsisting between those principles and that sentiment.

In this relation it cannot be unsuitable to notice a single general provision of our laws, constituting a part of the general system of our state jurisprudence, in its civil relations; partly on account of its necessary effect on the whole character and moral influence of justice; and partly because circumstances exist in this metropolis, at the present moment, peculiarly favorable to induce a general and attentive examination of the principle, involved in the subject.

A new arrangement of the administration of justice, in its lower department, has been obtained for this metropolis, in consequence of a very general and prevailing sense of abuses, which had been the consequence of the system, antecedently existing. The principle, on which this new arrangement is founded, has for its object, to insure to the poor, in their narrow and humble sphere, an independent and disinterested tribunal, for the protection of their rights, the healing of their wrongs, and the settling of their controversies. This principle is not more important to this metropolis, than in its general nature it is to the character and moral effect of justice, throughout our commonwealth.

Of all the principles, affecting the general organization of society, that which permits the distribution of justice, in any of its departments, to be considered as a business, or a trade, in which success is dependant upon the number and frequency of acts of office, is the most corrupting to the individual, and in its ultimate effect, the most injurious and disgraceful to society. Notwithstanding long familiarity with such a system has made men's minds thoughtless concerning its necessary effects, yet it can require only a slight analysis, and a very short process of reasoning, to satisfy every reflecting mind, concerning the great and inevitable corruption of its consequences. A principle of the kind, to which I have alluded, if applied to the higher



and happier classes of the community, and to the concerns about which their controversies usually arise, would not be endured one moment. Why, then, should it be permitted any where, in relation to those concerns, which include necessarily almost the whole objects of the controversies of those of a lower and less happy condition? Is not principle as much violated in the one case as in the other? What though they are controversies but small in point of amount? In these are often included the whole property of the poor. Why should not society take the same care, and make as sound provision for deciding their causes, by its greater and purer lights, as it makes for deciding causes of greater magnitude, and affecting happier conditions? Besides, although each cause be but small, in point of amount, yet this amount is multiplied, almost infinitely, by the number, which the jurisdiction affects; so that, although each cause is small, yet, in consequence of that number, the whole amount of property, affected by its decisions, is probably greater than that affected by those of any other tribunal. Will it be said, that these controversies, for the most part, originate in the bad passions of the vicious and the base? What then? If it be true, that of all the means of carrying down and disseminating moral influences among the mass of mankind, none are to be compared with those which result from the just distribution and wise execution of the principles of justice, can any thing be more destructive of these effects, than to permit the mass of the community to know justice chiefly by its administration in the hands of men, whom experience teaches them to consider as on the watch after opportunities of gain, from their vices; as making profit by their passions; and as interested to enhance their losses and miseries, by multiplying, or lengthening out, their controversies? Can any system be better

devised to bring an odium upon the very name of justice, or have a more direct tendency to destroy all those, its moral influences, on which the success of all the institutions of society, particularly in republics, depends?

The more vicious, the more base, the more abandoned the class of society, on which any department of justice acts, the more and the weightier is the reason, that those who administer it should be elevated above all interest, and all fear, and all suspicion, and all reproach. Every where the robe of justice should be spotless; but, in that part, where it is destined to touch the ground, where, from its use, it must mix with the soil, there its texture should contain and preserve whatever there is of celestial quality in human life and conduct; there, if possible, its ermine should dazzle, by exceeding whiteness; and be steeped, not only in the deep fountains of human learning, but be purified in those heavenly dews, which descend alone, from the source of divine and eternal justice.

Society, it is true, finds an apology for that system, by which the character of the lower tribunals is reduced, in the right of appeal, which it gives to the higher. Now, what is this when justly considered, but granting, by way of compensation for abandoning the chief duty of society, the power of taking refuge in its oppression?

The chief duty of society exists in the relations of justice. That duty is well expressed in our bill of rights.—*Justice, free without purchase,—complete without denial,—promptly without delay.*

Now failure in this duty, on the part of society, is oppression,—the worst of all oppressions, when it is in effect the oppression of the poor. Whenever, in consequence of the organization of the judicial system, confidence does not exist in the lower tribunals, *there is no justice in such so-*

*ciety for that class of the poor, who cannot afford to carry their causes to the higher.* Confidence in the tribunal is of the very essence of justice. Of what advantage is it to the citizen to have his cause decided by a rule, if he, who is appointed to apply that rule, be deficient, either in the intellectual power, or in the moral will, to apply it justly? How is that duty of “promptitude without delay,” which is one of the essentials of social justice fulfilled, when in consequence of the neglect of society to provide confidential courts of inferior jurisdiction, the poor are in effect denied justice altogether, and the rich are condemned to the delay and expense of hunting their rights through two courts, instead of one?

The importance of all the relations of property are comparative. If the whole earnings of the industry of the poor be small, yet, if it be in contest, why should not those earnings be submitted to a tribunal as disinterested and independent, as the whole earnings, however great, of any other class of the community? Is not his all as dear to the poor man, as to the rich? If humbleness and depression of condition not only strengthen the attachment to the little which is possessed, and diminish the restraints, which a higher and happier condition in society imposes, upon the passions; if knowledge be less, and sense of personal character less, do not these circumstances constitute a most imperious claim upon society, for a tribunal, so constituted and appointed, as always to induce into it men of high legal attainment and high moral character? Whatever interest, or whatever prejudice, the sentiment may oppose, no occasion ought to be omitted to press upon the sense of a virtuous and intelligent community this great truth, as applicable to the smaller, as to the greater judicial relations of society;—that there is no sound basis for justice, and no sufficient security against its perversion,

except in the independence of judges, and their total disconnexion from any interest, in the number, or amount, of causes brought before them.

In contemplating the principles of our criminal jurisprudence, nothing strikes the mind with such force, as their truth, and their simplicity. No where have the workings of the human intellect, among the relations of man and society, been followed by results more happy, or honorable. Yet, strange as it must appear to any mind, not previously formed by a knowledge of the state of things in society, while nothing is omitted to discover, to prosecute and to punish crimes, when committed, there is little, almost nothing operative, in our public institutions of the character of prevention. The children of vicious and abandoned parents are in our streets, on our wharves, in our market places, sometimes begging, sometimes pilfering, sometimes seeking a precarious and accidental employ, often spent on their vices, more often forming an apology for multiplying opportunities for stealing. In such primary schools, the children of the vicious are permitted, by society, to prepare themselves for those higher seminaries, the gaols and state prisons. Have then the genius and the power of man exhausted themselves, in rearing that proud temple of criminal jurisprudence? Content with its simple proportions, its majestic columns, the perfect relations of its moral architecture, has man no invention, in reserve, to place before its portals, some house of refuge, some efficient shelter, where means of prevention and of diminishing may be attempted for those crimes, which the inflexible ministers within are compelled to punish? In that base and degraded throng, composed sometimes of manly strength, and sometimes of female weakness—now of hoary vice, and now of childhood, criminal rather from the temptations of example, than of

passion, is there not one—must there not be many—who by a little prospective care, some additional provisions, on the part of society, might have been prevented this shame, and rescued from this ruin? If but one, is not the guilt of that one, led and educated to crime, by an utter want of preventive means, applicable to his condition, a heavy weight of responsibility, for which, in some form, society will have to account, in its prospects? How much more then, if there be many? Can it be doubted, that states are moral beings, responsible for privileges abused, for opportunities neglected, for powers perverted? What though the mode of retribution, established by providence, be not by any visible interposition, nor by any distinct and immediate connexion between offence and punishment; yet is there not an eternal and indissoluble connexion, palpable, in the nature of things, between virtue and happiness, between a just, perfect, elevated performance of duty and the attainment and long possession of peace, distinction and prosperity? And is not this eternal and indissoluble connexion of things, in that scheme of providence, which man calls nature, equally true and applicable to all the relations of man, public and private, national and individual?

Let us follow the victim of crime to the place of its reward,—the bar of justice. With what powers are its ministers invested? They have, indeed, powers of decision and powers for punishment. But if any of those, who are offered as victims of the law, as often happens, are, in fact, subjects of correction rather than of public, shameful punishment, with what means are judges entrusted, and what institutions has society reared, subsidiary to such a purpose? Is there any thing, in our system of laws, of the nature to permit the hope, or to offer the chance, of reformation?

There is, indeed, a discretion invested in the judge. A discretion of time and place. Of time,—between imprisonment for days, months, and years; between years and life. Of place,—between imprisonment, in the county gaol, and imprisonment, in the state penitentiary. Let the offender be of whatever age; of whatever sex; let the offence be of whatever degree; let it be the villain, grown gray in crime, or the boy, scarcely escaped the tenderness of infancy, who has submitted to the first temptation,—the judge has no other discretion than that of time, in one, or other, of these receptacles of infamy!

Why should not the ancient houses of correction be revived? Why should they not be reestablished on an enlarged principle, and modified by a scale, coinciding with the exigencies of the present state of society? Why should not, in addition to the provision of such receptacles, a power be invested in the judges, enabling them to exercise the present discretion, entrusted to them, in relation to such institutions, in favor of age, or sex, or degree of offence? There is but one reason;—that mistaken reason;—that abused word;—economy! The expense!—As if any expense was of weight, when put into the scales against humanity;—against the duty, incumbent on every society, to multiply the means of moral advancement, and of diminishing the number of victims, to the higher sanctions of the law! It cannot be too often impressed on the consideration of the wise, the thoughtful, and the virtuous, that the existing provisions of society are shamefully deficient, in means to enable its ministers of justice to discriminate, in awarding punishment, between different classes of offenders and degrees of offence; that they are equally deficient in supplying any practical means of reformation; and that society itself does little else than plot the ruin of every juvenile offender, and every novice in

crime, when it provides no other alternative for punishment, than confinement in gaol, and confinement in the state's prison. As to gaols, what condition can be better devised to effect utter destruction to body, mind, and soul, than long confinement in them; without exercise; without occupation; condemned amidst gloom, and filth, and idleness, to the society of the most worthless and depraved!

It is not pretended, that there is any thing new, in these suggestions. Would to heaven that there did not rest upon our state any deeper stain than that of ignorance!

In February 1813, by a resolve of our legislature, two judges of our supreme court, (Parker and Jackson,) and the solicitor-general, (Davis,) were appointed to revise the criminal code of our commonwealth, to collate the laws for the punishment of offences into one act, with such alterations, in their description and punishment, as they should deem necessary, and to report to the legislature by way of bill. In the May session following, this report was made, and pressed upon the attention of both branches, in the speech of His Excellency Governor Brooks, at the opening of that political year, in the following urgent and pointed manner.—“ The utility of a concentrated system of penal and criminal law, in which punishment shall be graduated, by the nature and aggravation of crimes, and adapted to the actual state of society and public sentiment, was duly appreciated by your immediate predecessors; and I have great satisfaction in adding, that a revision of the criminal code of this commonwealth was, to the fullest extent, referred to a committee of three of our most learned and distinguished jurists, designated by the legislature in the month of May last; from whose talents and labors we may anticipate the most salutary results.”

Now, what were the “results of these talents and labors,” and how was the report of these “distinguished jurists” appreciated and acted upon by our legislature? Let the records of our commonwealth answer. In the session following, an act was passed in the terms they recommended. The material provisions of which were the following.

The first section provides, that in case of convicts, sentenced for the first time to solitary imprisonment and hard labour, for any term not exceeding three years, a discretion should be invested in the court, before whom conviction shall be had, to order the sentence to be executed in the common gaol, or house of correction, in the county, in which the offence shall have been committed; and requires the keeper to execute the solitary imprisonment by confinement in one of the cells of the gaol, if there be any; and if there be none, then in the most retired and solitary part of the prison; feeding him only on bread and water, unless other food be necessary for the preservation of life, and allowing no intercourse with such convict, except for the conveyance of food and other necessary purposes.

The second section requires the keeper, after the expiration of the term of solitary confinement, to furnish the convict with tools and materials suitable for his employment in the gaol, or in the yard thereof, in the day time; and makes it the duty of the sheriff of the county, to see to the execution of these sentences, to make and report rules and regulations for that purpose to the respective inferior courts of criminal jurisdiction in the counties, who are authorized to repeal or to alter them—to report also to said courts, at every session, the names, condition, mode of treatment, and employment of the convicts.



The third section provides, that the keeper shall cause to be kept a true account of the labor of each—of its proceeds—as also of the charges, costs, and expenses of materials, and of the execution of the act—to sell such proceeds, and keep an account of the sales—to report such accounts to said courts respectively—to pay over to the convict, at the expiration of the sentence, the residue of such proceeds, after deducting cost of materials, of maintenance, and all charges, and previously to that time, to his family, if he have any, at the discretion of the court.

The fourth section provides for the keeping of the convict in solitary confinement on bread and water, in case of contumacy and disobedience, and for the distribution of the bible, and other religious tracts, among such convicts as can read.

The fifth section provides, that any county gaol, or house of correction, hereafter erected, shall have suitable apartments for solitary imprisonment—the yards of sufficient dimensions for the employment of such convicts, with fences sufficiently high to prevent escapes and access. And it is made the duty of the court of sessions, in every county, in which there is now a gaol, or house of correction, suitable for the confinement of such convicts, forthwith to order such yards to be laid out and inclosed, under the penalty of five hundred dollars, in case of neglect for two years.

The sixth section provides, that in case of the want of a suitable gaol in the county, where any sentence is passed, the court may order the sentence to be executed in the gaol of some neighbouring county; where the convict is to be confined and kept at work.

There is, in the general features of this act, much that is admirable. Considered as the commencement of a system, it is worthy of all praise. The great means of re-

formation, solitary imprisonment, and hard labor, are ordered. The great evil of county gaols, want of air, exercise and employment, are obviated. Means are provided for its execution. Penalties are inflicted upon counties in case they fail of erecting the prescribed accommodation. All this is wise, practical, efficient, honorable. But, alas! with what regret and disgust must it be added, all this is false, hollow and deceptive! This act stands little more than a dead letter upon the statute book; absolutely so, except as to some of its minor and less important provisions. I cannot learn, that in one county of the commonwealth, it is pretended to be carried into effect, in the great principles, which constitute its character. What is worse, this whole system, thus wisely planned, thus solemnly recommended, thus rationally sanctioned, was, to all efficient purposes, repealed, in less than four months!!

The whole efficiency of this system obviously depends upon the fifth section of the act;—that which compels the counties to prepare the requisite accommodations in their gaols and in their yards. For without means of solitary confinement, how can sentence be executed? Without space and inclosures, how can hard labor be imposed? This act passed on the 19th of February, 1819, and this fifth section, the vital principle of the whole system, was repealed on the 18th of the June ensuing!

But this is not the worst, nor yet the most lamentable feature in the case. While the means of executing the punishment are taken away, the authority and obligation of the court, to sentence the convict to it, is continued! In the case of convicts, in general, the act vests only a discretion, but in the case of females and boys, under sixteen years of age, it is imperative. The consequence is, that courts at every session condemn to solitary imprisonment and hard labor; and none of either can be executed!

Now can any thing be better calculated to bring laws into contempt and derision, than to pretend to punish, and yet systematically fail in the means? Can it be wondered at, if villains learn to scorn, what the wise are unable to justify, and the virtuous to defend?

Let then the community understand, that in all these cases where the court is obliged, by law, to condemn to solitary imprisonment and hard labor, it is deceptive. The sentence is never executed. The real sentence is confinement in the county gaol, amid idleness, often without air; without exercise; exposed to the worst society; and under circumstances the least calculated to support the mind under temptation, and the best to corrupt and debase it.

In the course of these inquiries, my engagements have permitted only a personal inspection of the gaols in this vicinity and of the state prison.

Of Boston gaol, I shall say nothing, because its condition is notoriously objectionable. The attention of the community has been long since drawn to it. And more commodious accommodations are in course of preparation.

That at Cambridge, being the best prepared, and under an intelligent and well disposed citizen, is probably as well conducted as any in the commonwealth. Its condition is sufficiently safe and comfortable. It is well ventilated. But how notoriously defective it is in those means of reformation and employment, which the act of February 1819 requires, the public will perceive, by its deficiency in almost every requisite prescribed by that act.

1. The gaol has no cells. In case of sentence, it must therefore be executed in one of the lower rooms; which has a large space, light, and has, in all respects, as little of terror as any room in the gaol. And as to solitude, there is no difficulty in prisoners conversing together from any one room to another.

2. There are no tools provided, nor any materials for work.

3. There is no employment in the gaol.

4. The yard is confined, and employment in it is impracticable, even were it to be attempted.

Of course all the other wise provisions of that act are wholly neglected. It is in effect a dead letter.

A few facts, with which I became acquainted, in consequence of my visit to the gaol at Cambridge, will evince, more than a thousand arguments, the duty of society to restore and to perfect, in efficiency, that system, which was sketched in the act of February 1819.

There are now in that gaol three boys and three girls. The boys under an original sentence of five years' imprisonment, by the municipal court of Boston. The girls under that of three. These sentences were the least, which, under the circumstances of their offence, the court deemed itself authorized to inflict, in compliance with the law. Two of the boys are under sixteen; all the girls under fourteen years of age.

I visited these children. The room was sufficiently comfortable, for a gaol; well aired and clean. But how were they employed? Sitting opposite to one another, at a board, doing absolutely nothing. *They complained of want of employment.* The keeper had none to give them. The wise provisions of the statute book are but words to catch the sense. There are no means, or materials, of employment, provided by society. The act looks well upon paper. Strangers, who know nothing of our laws but in the statute book, will wonder and admire at the providence of our legislature. But citizens, who know facts and see effects, must feel something like contempt for such provisions; unless, indeed, a higher and a holier sentiment shall invite them indignantly to urge upon their representatives the disgrace, which results to a commonwealth, from

wise laws existing in form, and being repealed in effect ; from those, who ought to be the fathers of the state, condescending to promise reformation, and under that promise continuing old abuses. What right has society to oblige, by general provisions, its ministers of justice, to condemn children to pass the best years of life, the most important to their future prospects, immured between the four walls of a prison, in utter sloth and idleness, in a situation to incur the worst habits ; and exposed to a perpetual influx and efflux of whatever is base, and vicious, and criminal ? Their offences, indeed, require restraint and require punishment. Society has a right to inflict both. But it has no right, nor do such crimes require, that youth, in its tender years, should be confined to a moral pest-house, out of which nothing good can ever issue ; and where it is inevitably exposed to taints, which will corrupt the whole course of their future existence in this world, and fix their eternal destiny in another.

There is a cold and heartless reply to these arguments ; in making which indifference and meanness put on the cloak of philosophy, and wrap themselves round with the oracular air of wisdom. “ Those, who commit crimes of atrocious character, are beyond the reach of reformation. All attempts of that kind have proved fruitless.” The assertion can be proved false in a thousand instances. Conviction is not always proof of atrocity, especially in the young. One fact shall suffice, and that taken from the gaol and the subjects in question.

The three girls, above mentioned, were sentenced last October. They remained three months in close confinement. One of them, a girl of twelve years, was so obviously humble, interesting, and contrite, that the keeper took her out of the prison into his own house, to save her from the perdition, with which her confinement among her companions threatened her. She has been now

three months at liberty ; an inmate in his family. I saw her, active, industrious, happy, and respectable. Neither of these three knew their letters when imprisoned, or any thing of work. This individual could now read, and had been instructed in the usual work of the family, and had every appearance, and her uniform conduct since her release, indicated the existence of good dispositions. If the accommodations of the gaol permitted, even if all the statute provisions were only executed, five children, besides two or three women, less than twenty years of age, (to say nothing of men,) might be employed in this single gaol, and saved from those worst of all corporeal and mental habits, which long continued sloth, and idleness, and vicious companions, induce ; and this too without loss to the establishment ; the first cost of the arrangements only excepted.

With respect to state prisons, it is undeniable, that whenever they exist, without classification, without solitary confinement, and where indiscriminate society is admitted among the convicts, that, far from being places of reformation, they are, in fact, but high and well endowed seminaries of crime, to which men are, from time to time, sent to be instructed and advanced to every degree of vice and wickedness, and from which, after due matriculation, they are sent forth into the world, well skilled and scientifically prepared, by means provided by society, itself to profess and to practise every art of infamy !

Just in proportion as any state prison is destitute of the three great efficient means of reformation, solitary confinement, classification and separation, particularly during the night, it is more or less obnoxious to the censure of such a character. It is impossible that intercourse among the vicious should not corrupt, especially where it is constant, and compressed as it is within the walls of a prison.

The first great defect in our state prison, is want of

means of sufficient solitary confinement. This is, in fact, little more than nominal. The prisoners can have communication either from above, or from the adjoining room. So defective is the building in continuity of parts, that in case of a prisoner, condemned to bread and water, those confined in the room above have been detected in feeding him through the chinks in the floor of their apartment.

Not only the cells, which the institution has, are bad in themselves, but there is also a great deficiency in point of number.

Lastly, the want of sufficient sleeping rooms, to keep them separate at night, is fatal to all hope either of reformation, or any attempt to prevent a gradual, mental and moral deterioration.

In this connexion, it is proper to observe, that the great and efficient principle, on which the state prison was first established, is not now pretended to be carried into effect, and it may be questioned, whether it has, in that institution, ever been fairly put to trial, owing, partly, to original defects in the plan of that establishment, and partly to an undue regard to profit, or diminishing of its expense; which has been demanded of the superintendent, in the conduct of it. In its original design, the states' prison was intended as a place of punishment and reformation, by the application of solitary confinement, meagre diet, and hard labor. The great and efficient principle of this institution,—solitary confinement,—the most terrible as a punishment, the only one, on which, in aid of labor, and in absence of spirituous liquors, any hope of reformation can be founded, has been, for the reasons stated, for a long time, if not always, as has been said, little else than nominal. It has at length become systematically reduced to the least possible, consistent with any regard to the terms of the law; in consequence of the solicitations of the directors of that institution, and the concurring sense of duty of the judges,

who have felt themselves bound, and so long as that institution continues, in its present state, must feel themselves bound to regulate the discretion entrusted to them, more with regard to the actual condition of the establishment, than to the apparent requisitions of the law. As an evidence of the effect of this condition of that prison on the court, in the exercise of its discretion, I state it as a fact, which the records of the municipal court of Boston will substantially support, that out of more than one hundred convictions, occurring within the three years past, in every one of which *one year's solitary imprisonment* was authorized by the law, if the court saw fit;—this, its entrusted, discretion has been exercised, so as to reduce this solitary imprisonment, in *more than two-fifths of those cases, to five days;—in more than another two-fifths to ten days;—and in the remaining generally, to fifteen, or twenty;—in none to more than thirty!* A similar modification of discretion has been exercised, I am informed, by the courts in the other counties of the commonwealth. This exercise of discretion has been the consequence of remonstrances from those charged with the care of the state prison, and the information given by them, as above stated, that the cells were not sufficient, in point of number, that they were, in fact, not so constructed as to effect perfect solitude, their vicinity being such that tenants found means of conversation with each other, and, above all, that, owing to defects in their structure, long confinement so injuriously affected the health of the tenants of them, and was generally followed by such bodily debility, or sickness, as made a transfer to the sick list, instead of to hard labor, the necessary consequence. Here, then, it is obvious that the great and efficient principle of that institution, to every practical intent, is abandoned.

Instead, then, of being introduced to that solitude, which leaves conscience to its own workings, and the hell, within the guilty bosom, to flame, unquenched by



things, external, unallayed by the sight, and support of companions, in like misery, the offenders are, in fact, introduced into a social state ! The society of the condemned ! Low, in thought to vice, industrious !

Again ;—it may be questioned, whether profit should ever be made the principal object in such an institution. Its great purposes should be punishment and reformation. To these, all its arrangements should tend and be made subservient. Whenever the criterion of success, in such an establishment is made to depend, not upon its moral effect upon the character of offenders, but upon its pecuniary effect upon the outgoes of the treasury, a principle of corruption is introduced into its system, which, sooner or later, will destroy all its moral vigor and efficacy.

In this remark I would not be thought to intimate that labor should not be considered as an essential part of the system, but only that the criterion of its success should be made more to depend on moral effect, and less on pecuniary profit ; and that solitary confinement being considered as the efficient cause of reformation, the institution should never be deficient in the means of applying it effectually. The want of cells, and the inadequacy of those which exist, are the first great wants in this establishment. To erect those, which are necessary, will require expense. But how can expense be better applied than by enabling those, charged with the care of the institution, to put the base and the convict into that furnace, which heaven has placed in their own bosoms ? In the deep silence of the cell, it is God, who speaks. It is he, who punishes, and if, as it is said, to hardened villains, the condition is almost, absolutely, insupportable, can any fact more strikingly evidence the wisdom of the system, or more clearly indicate the duty of society ? In whose hands can hardened villains be better left than in His, who alone knows, when to break and when to bind : and who.

in the secret recesses of the cell, may visit the poor prisoner, broken, humbled, and subdued, with a contrition and hope, for which the wisest and the freest may seek in vain, and of which the proudest need not be ashamed.

The general and obscure opinion of the expense of that establishment, seems to me, on inquiry, not justified by facts. Nor do I apprehend that the commonwealth have any reason of complaint upon that account. The annual report of the warden of the state prison shows that in the year 1819,

The balance of expenses was . . . .	\$2,472,72
Salaries of officers . . . . .	2,900
	<hr/>
	\$5,372,72

That in 1820,

The balance of expenses was . . . .	3,858,31
Salaries of officers . . . . .	2,900
	<hr/>
	\$6,758,31

That in 1821,

The balance of expenses was . . . .	4,390,77
Salaries of officers . . . . .	2,900
	<hr/>
	\$7,290,77

That during these years the least average of prisoners, in custody, has been two hundred and fifty, and the highest two hundred and eighty; and that the actual cost, averaged on the number of convicts, has been as low as twenty-one dollars, per head, for the year, and has never exceeded twenty-six dollars.

Now in a commonwealth, consisting of five hundred thousand souls, full of activity, riches, and skill, an expense, for the support of all its convicts, amounting to less than twenty-six dollars per head, and in total amount, but little exceeding seven thousand dollars by the year, can scarcely be a subject of regret, or complaint. It

seems to be as little, as, calculating upon the known relations of things, in this world, can reasonably be expected ; and ought to be considered as a subject of gratitude, rather than of discontent.

In this estimate, the original cost of this establishment is not included ; nor yet the claims, now made for rebuilding its walls and necessary for enlarging its usefulness. Such expenses are unavoidable. They belong to the condition of things in society. And banks might as well complain of the cost of keys, of locks and iron doors, as society of the expenses of goals, penitentiaries, and state prisons.

Undoubtedly, some error in judgment, or some fault in executing was committed either in the original design, or in the subsequent construction of the buildings and walls of that institution. This, I understand, is admitted on all sides. But these are reasons, only, for a wiser consideration, and a more careful application of future expenditures ; and are none at all, either for abandoning it altogether, or for refusing to perfect its arrangements, so as to give a full effect to the original system.

The defects in this establishment, to which I have alluded, have been the subject of repeated representations of its directors ; and recently of a most urgent communication of the executive. There exists among our public authorities an unwillingness to meet the necessary expenditures, which can only be overcome by awakening general sympathy and exciting public sentiment, on its interests and its duties, in these relations. The poor, the vicious, and the criminal are necessary parts of the social system. To those who rule in society ; and to those, who are prosperous and happy in it, the obligation to seek and apply the natural and efficient remedies, to their condition, is imperious and perpetual ; resulting, not merely from

the interests of society, but from those higher sentiments of humanity and of gratitude to that Being, who prescribes and constitutes all the prosperity of a state, and all the differences existing among individuals. In this relation, no opportunity should be permitted to escape, to impress the moral sense of the community with these great truths;—that every public institution for punishment or restraint, which is destitute of the means of preventing indiscriminate intercourse among its inmates, is a moral pest-house, calculated to make all worse that are sent to it, and with no possibility of making any better,—and that every society, which, through insensibility, thoughtlessness, or overweening regard of expense, refuses to such an establishment the means necessary to moral discipline, and as far as practical to effect a reformation, must be, in the eye of reason and of heaven, itself deeply criminal, and in some form, sooner or later, will have to account for its crime, in its prospects.

I cannot close these remarks, without making a single reflection, upon the mode, in which capital punishment is permitted to be inflicted, on that unhappy class, which even the mildness of our laws condemns thus to suffer.

Concerning the right of society to inflict this punishment, I can have no question. But in relation to the objects of such punishment;—terror—and the deterring of others, by the example of the victim's fate, in the forms and publicity of the execution of justice, there are strong reasons of doubt; especially with the accompaniments, which custom has established, and the law permits.

A recent, and notorious instance, will explain the views on this subject, which I would bring before the consideration of the public.

A villain of the baser sort, such as often escape from the

gallows in Europe to find it in this country, lately paid the forfeit of his crimes in a county adjoining this metropolis. The day was appointed;—the time and place advertised. A mass of human beings, composing no inconsiderable portion of the population of this and the adjoining towns, precipitated themselves toward the spot. For what? To receive any moral, or religious, impression from the scene? To come away improved, in any feeling of the heart; instructed in any lesson of the understanding? Was there one of that vacant, gaping, thoughtless, jesting crowd, which were poised on every hill, and scrambling on every height, led by other motive than that instinctive, morbid sympathy, which in its healthy state, implanted by heaven, to make men alive, and active to relieve each other's misery, is then only shameful, when perverted to base excitement and vulgar curiosity, in witnessing each other's sufferings?

Now, what did the scene exhibit, calculated to excite fear and deter guilt? The culprit, it is said, walked with a firm step and an undaunted air;—his confessor by his side. He surveyed the instrument of his fate unappalled, with an unconcern, expressing rather dignity than despair. He gave himself the signal for his exit. The astonished multitude surveyed him, as all crowds survey heroes; and he paid the forfeit of his crimes, it was said, with the assurance of a saint! His body was guarded either with pious enthusiasm, or venal faithfulness; lest he, who it seems feared the surgeon's knife more than the gallows, should be made useful, by his remains, to that society, which he had never benefitted by his existence. Learned men write the story of this hero and saint! The press scatters, in our stores, in our houses and our streets, the account of his crimes, his hardihood and his escapes; showing how slowly justice lingers; how long the wicked may enjoy a

happy and hardened impunity! Now, what is there in all this to serve the end of society, in the example of his fate? On the contrary, if the love of fame be a passion common to the low as well as the high; to the base as well as the noble; if to go out of the world accompanied by the admiration of numbers, and by the promise of salvation, be one of the most natural and strongest desires, in the human bosom, is not there somewhat in the scene, which I have sketched, and which is, in no part, exaggerated, of a character, almost, to invite and allure, rather than to deter?

Why should the law encourage these false sympathies and morbid excitements of the grosser sort? If there be in man a terror of dissection, greater even than the terror of death, why should not this, for the safety of society, be indissolubly connected with capital punishment? For what good end can tales of villany be circulated through the community? Tales, concerning which no man has any measure to know what is true and what is false, except the assertion of the villain himself!

Of all the scenes, acted within this state, there is none more calculated to excite shame and disgust, than those attending and consequent on such executions. It will have had, however, its moral effect, under providence, if it awaken the wise, the virtuous and the pious, to consider the means of putting an end to the recurrence of such scenes; and of devising some mode of executing the greatest of all its punishments, more conformable to human condition, and more consonant to social interest.



