



LETTER
TO HIS EXCELLENCY PATRICK NOBLE,
GOVERNOR OF SOUTH CAROLINA,
ON THE PENITENTIARY SYSTEM,
BY FRANCIS LEIBER.



LETTER
TO HIS EXCELLENCY P. NOBLE,
GOVERNOR OF SOUTH CAROLINA.

MILD LAWS, FIRM JUDGES, CALM PUNISHMENTS.

Sir—Your Excellency has done me the honor of calling upon me to communicate to you the information I may possess on the subject of penal reform, and penitentiary systems; as also, my views of their tendency toward the diminution of crime: a call, which your Excellency made with reference to the appointment of a committee, by one branch of our Legislature, for enquiry into the policy of the different modes which have been adopted in modern times, either to repress crime more effectually, or to aid, if possible, in the moral or political reformation of the convict. If I can lend any aid, however limited its effect may be, in throwing light upon this subject, of vital importance to all human society, I shall do so most cheerfully. You are perhaps aware, Sir, that the Prison Society, at Philadelphia, lately published an Essay of mine, occupied in part, with a discussion of the subject respecting which you require my communication; I take, therefore, the liberty of sending you a copy, and shall endeavour to avoid repetition in the present letter, as far as a certain degree of completeness and proper connexion in the argument will admit of it.

Among the inheritances which the people of this vast country have received from England, the English law stands pre-eminent: a fabric, reared through centuries by the patient masonry of history: a great system, which despite of its deficiencies and faults, contains, deposited and embodied, some of the choicest of those master-principles, by which nations work out their political civilisation, and which, like living seeds, are carried to distant regions and other tribes, where they grow and branch out for themselves. But neither the English Law, nor that of any nation, so long as that nation lives, is stationary and concluded. The law is a living thing; the daily and hourly application of principles to ever-changing circumstances, conditions, views and opinions. One branch of the British law, which required great reform to suit it to the better knowledge and greater experience of mankind, was the penal law, of which the least praiseworthy part, or, to speak more plainly, the most objectionable, was the spirit, which had dictated the punishments for the various offences. Death, the "*ultimum supplicium*," the last and extreme forfeiture, which can be demanded of man, was gradually made to constitute the main and primary substance of the whole system of British punishment, so much so, that all the other punishments were called "secondary," as though the first punishment which naturally suggested itself to the penal legislator for any offence, was death, for which a minor evil would be *substituted* only upon very weighty additional considerations. Blackstone, (iv, 18,) says: "It is a melancholy truth, that among the variety of actions which men are daily

liable to commit, no less than an hundred and sixty have been declared by act of parliament, to be felonies without benefit of clergy; or, in other words, to be worthy of instant death. So dreadful a list, instead of diminishing, increases the number of offenders." This severity remained almost unchanged as late as the year 1819.* It was a bloody code, and because bloody, at once injudicious and barbarous. It is well known that by the exertions of such men as Romilly and his associate reformers, the number of crimes punishable with death has been gradually much diminished, especially under the home secretarships of sir Robert Peel and lord John Russel. The various States, constituting our Union, had, in this particular, as in other reforms of the penal code, such for instance, as allowing counsel to the criminally indicted, and the making of penal prosecutions altogether state prosecutions,† preceded the mother country.‡ Yet since England has reformed her penal code, she is again in advance of some of our states, and among these is our own, the State of South Carolina. The former British penal code, which by this time ought to be known only as a striking example, earnestly admonishing of the extreme danger of ever departing in legislation from a sound principle, still continues to be, in a great measure, in force with us. Every principle in legislation, truth or error, if once adopted, leads consistently on from success and blessing to greater blessing, or from injury and ruin to greater ruin. As we sow, so must we reap.

As the laws stand on our statute book, or as they are embodied in the penal code generally, they are excessively severe or incongruous; the consequence of which is, as in all such cases it must be, according to the nature of things, that the administration of them is in many cases lax and irregular, and in others unexpectedly severe. He who steals from my pocket a handkerchief above the value of twelve pence shall, according to the letter of our law as it stands on the book, atone with the forfeiture of his life. But the thief who steals from a jeweller's shop a most costly article, is punished with whipping and imprisonment only, while at the same time a petty theft from a booth or tent in a market or fair by breaking in, is punishable with death. The utterer of counterfeit money, however small the sum may be, is punishable with death. Robbing a bank at night time by breaking into the building is not a capital offence, but the second conviction of horse-stealing is. It is clear in this case that the very principle of the latter law, namely, to protect by severity, property, necessarily often exposed, and which was enacted before banks existed, is inconsistently abandoned in the case of breaking into a bank, because the law was already made when a new state of things happened to spring into existence. If we read the list of offences punishable, according to the law as it stands, with death, and the larger number

*Substance of the Speech of Thomas Fowell Buton, in the House of Commons, March 2, 1819, London, 1819. Under the Plantagenets, 4 crimes were punishable with death; under the Tudors, 24; under the Stuarts, 96; under the Brunswick race, until 1819, 156 crimes

†An interesting comparison of English and American punishments is to be found in T. Sydney Taylor's Comparative View of the Punishments annexed to Crime in the U. S. of America and in England. London, 1831.

‡Many works on the effect as well as the history of capital punishment in England, were written at the time when the abolition of those many disproportionate punishments drew near. I would refer among others to the History and results of the present Capital Punishment in England; to which are added full tables of convictions, executions &c. by Humphrey W. Woolrych, of the Inner Temple, London, 1832.

of which I may be permitted to subjoin in a note,* are we not justified in still applying to this sad record the words of Blackstone, as they were quoted above? Is it not true of this melancholy list, what Canning, no hasty innovator, or advocate of fanciful theories, said of the English penal laws, in the Commons, in 1810: "It is in vain to suppose that they (the people) will enforce your laws which are repugnant to the best feelings of our nature." Are we not forcibly, and ought we not with shame, to be reminded of the words of a Roman statesman, uttered two thousand years ago, so very simple that they appear trite, yet in despite of this triteness, not acted out in practice, "*Cavendum est, ne major pœna quam culpa;*" and is it not true respecting the administration of many of these repugnant laws, their actual application to real cases, and for them alone they are made, what Lord Holland said in 1813, when Sir Samuel Romilly's bill for abolishing the punishment of death, for shoplifting to the amount of five shillings, was debated in the Lords: "The old law, as one abhorrent from our feelings, and not found to be justified by any necessity, has been virtually abrogated. What necessity then for this bill? Because such virtual abrogation is procured by perjury—by equivocation—by forced construction—by every unmanly subterfuge."§ Lord Holland, however, ought to have added, that although such abhorrent law may be virtually abrogated, it remains a dangerous law, so long as it is on the statute book; for the natural course of this virtual abrogation is, that in many cases, the impunity produced by the disproportionate severity of the law, increases the crime, until the injured become exasperated and call for an example. If popular passion, and perhaps fury, has thus once risen, the first case that occurs, is seized upon, all accompanying, and perhaps mitigating circumstances, are disregarded, and the sacrifice must fall, thus making the very application of the law an injustice, considering that it has not been applied to many previous and often worse offenders. It is then that such tragical cases happen as the one related in a speech in Parliament by Sir W. Meredith,‡ of a young woman under nineteen years of age, whose husband had been pressed. She had two very young children, and, without protector, sank into utmost poverty. The children cried for food, she went out a begging, but obtain-

* "Stealing privately from the person above the value of twelve pence"—"Stealing in a church or chapel over the value of twelve pence"—"Stealing in a booth or tent in a market or fair, by violence or breaking the same, the owner or some of his family being therein"—"Robbing a dwelling house in the day time by breaking, any person being therein"—"Robbing in a dwelling house without breaking the same, any person being therein and put in fear"—"Being accessory before the fact to any robbing in a dwelling house where any one is put in fear"—"Breaking any dwelling house, warehouse, shop or other building attached to the dwelling house, in the day time, and stealing therefrom above the value of twelve shillings"—"Being accessory to any such breaking and stealing before the fact"—"Stealing a slave"—"Aiding a slave in running away"—"Hiring or counselling any person to steal or inveigle a slave"—"Second conviction of horse-stealing"—"Second conviction of any grand larceny"—"Forgery"—"Counterfeiting current coin"—"Making or keeping in possession any die, stamp or mould for counterfeiting"—"Uttering or attempting to pass any counterfeit coin, money, &c. knowing the same to be counterfeit, as genuine"—"Arson"—"Burglary"—"Robbery"—"Murder"—"Rape"—"Satisfying sexual appetite between two males"—"Second conviction of manslaughter"—"Killing a slave with malice"—"Second conviction of bigamy"—"Carnal knowledge of a child under ten years of age"—"Being accessory before the fact to all the above offences"—"lying in wait and slitting the nose, &c.

§House of Lords, April 2, 1813.

‡In the year 1777.

ed nothing, until at last she took some coarse linen off the counter; the shopman saw her, and she laid it down at once. All these circumstances were most creditably testified to, "but it seems there had been a good deal of shoplifting about Ludgate: an example was thought necessary; and this woman was hanged for the comfort and satisfaction of some shopkeepers in Ludgate-street." One child was sucking at her breast when she set out for Tyburn, (the gallows.) Heart-breaking as this story is, it is but a prototype of numerous cases, in principle the same, which cannot otherwise but happen occasionally, where the punishment is over-severe; for cruelty produces impunity, impunity increases crime, increased crime engenders passion and clamor; passion demands a sacrifice. Yet, this is by no means the only way in which cruel and disproportionate laws work impunity. Even of those convicts whose verdict has been according to the law, despite of its severity, the greater number escape, because those who must give their final and executive sanction to a verdict, or who have the privilege of staying its execution, shrink, in their turn, from allowing the law to take its course: pardons are granted. In 1831 it was stated, that of 8,781 persons sentenced to death in England, for the then last seven years, the number of the executed was 407. The pardoning once begun, it extends to other punishments, and that unhal-lowed, indiscriminate defeat of the intention of the laws, made at great expense, which undermines all obedience and respect of the laws, becomes a general custom, and most demoralizing political agent: "right and law become loosened and shaken."* The penal laws of South Carolina seem to be a surprising anomaly. A people who have the right and easy means to change their laws, allow a set of penal laws to continue as statutes, which they, nevertheless, do not mean to enforce. What then is the reason? Are we more blood-thirsty than others? Are we less willing to do what is right? Are our offenders, even the merest pilferers, so inveterate villains that they must be cut off at once? I believe that the candid answer is, that the general reason for all this inconsistency is neglect. Place our penal laws together before the public, let them see what can be done, and what has been done, and I believe that the erasure of those laws, which altogether belong to another age, and a different society, would be called for by the universal voice of the people.

It is not, however, in England and the United States alone, that reforms in the penal code have taken place; indeed, the penal reforms, which have been effected in several states of the European continent, have been infinitely vaster, and more systematic, than those of England and most of our own states. A variety of causes, of which I will mention those which appear to me the most prominent, has produced the remarkable result, that ever since the beginning of the last century, increasing attention has been paid to the penal laws of various countries, until a universal spirit of thorough and comprehensive penal reform constitutes without contradiction, one of the very peculiar characteristics of our age. All of the following countries have either essentially changed part of their penal systems, especially the various punishments, or have actually decreed entire new and remodelled codes, some of which contain admirable features.† Long as the list

* *Leges ac jura labefacta.* Cic.

† The Governments of all the German States which have lately adopted an entire new

will appear, it is, nevertheless, not complete: Norway, Prussia, Austria, Bavaria, Wurtemberg, Baden, Henia, Saxony, Hanover, Nassau, and many of the smaller Germanic States, France, Spain, Portugal, Great Britain, Tuscany, Naples, Greece, the United States,† the various South American Republics, Brazil, British India, &c. So universal a tendency must needs have some very deep cause, or we should be obliged to consider the vastest changes in history, as mere accidents, and not as the necessary efforts of the gradual developement of the human mind. I conceive these to be the main causes:

That spirit of scientific criticism, dating, in its new impulse at least, from the period of the reformation, had gradually extended into an entire revision of all branches of knowledge, and a scientific desire to reduce every thing to fundamental principles, or rather to find out these fundamental principles. The penal law was not excluded from this searching inquiry.

States having become larger, and governments stronger, they could afford adopting slower, as well as milder modes of punishment, less awful to the sight, in place of those which were rather founded upon quick revenge. There are two prominent causes, wherever we find excessively severe punishments: they were originally decreed from a consciousness of weakness and fear, or dictated by a feeling which strove to punish besides the offence itself, the *daring* of having disobeyed. In every crime, a kind of rebellion was found. This indeed is, in a great measure, reducible to a consciousness of weakness on the part of government. The truly and consciously strong, are free from revenge. By feeling revenge against a man, I raise him in some degree to an equality with myself.

Greater security produced a less sanguinary spirit in general; the age of philanthropy arose, and men like Voltaire—for whatever we may justly think of the tendency of many of his writings, we ought also to remember, how prominent and persevering an assailant of barbarous punishments, and of power persecuting innocence, he ever was, through his whole life—Beccaria and Howard appeared.

The more Government was understood to be an institution for the benefit of all, and the more specific privileges, not unfrequently wrung from others by force, came to be discountenanced, the more diffused also became a general feeling of justice, with which excessively severe laws were incompatible. A general demand of obedience to the laws, for even laws always are regularly applied, and not kept in abeyance until for some reason they should fall upon a single victim, and a general indignation at impunity, are some of the most active causes of the great penal reform; far more so than a morbid philanthropy, as many persons suppose.

penal code, as also the Government of Norway, have adopted the praiseworthy plan of publishing the labors of the various committees, appointed to draw up the code, first as Propositions, with an additional volume containing the "Motives," or reasons, with an exposition of the whole plan. After these had been a sufficient time before the public, and all objections been heard and weighed, and amendments been made, the proper authorities adopted and promulgated the code. This cautious, patient and liberal mode of proceeding on so grave a subject, ought to be imitated by all penal law reformers.

*The State of Massachusetts appointed, in the year 1837, a committee to reduce so much of the Common Law of Massachusetts, as relates to crimes and punishments, and the incidents thereof, to a written and systematic code. In 1839 the "Preliminary Report" of this committee was printed by the senate, (Senate, docum. 21) of which I transmit a copy with this letter.

People would not any longer endure laws which forced even a Mansfield to charge the jury to find a verdict against their oath, as he did, for instance, when he could not otherwise than charge the jury to find a verdict for theft of less value than the articles which were lying before them were palpably worth, in order to save the criminal from an unjust death.

Lastly, three highly important truths were discovered, or more clearly and firmly established, in the course of penologic enquiries. These are :

1st. That it is not severity alone which gives efficacy to a punishment, but its certainty.

2nd. That punishment can be certain only, if it is, according to public feeling, and the spirit of the age, proportionate to the offence. This proportion can not indeed be closely established upon absolute principles, but many sound and practical rules can, nevertheless, be found for its adjustment, and at any rate it must not be offended by startling incongruity of the several laws in the same code : and that punishment becomes uncertain, and impunity, as well as injustice, consequently increase, in the same ratio in which disproportionate severity increases.

3rd. That if it is true that criminals consider themselves at war with society, it was likewise true, that in turn, the state considered itself at war with the criminal, which ought not to be ; and that it is both for the advantage of society and conformable to the essential character of the institutions of the state, to treat the offender, even while he is punishing, as a human being, that is, a being who has not lost his moral ingredient.

The essential points in which all these universal endeavors of penal reform in the eighteenth and nineteenth centuries, whether prompted by a sterner sense of justice, or a gentler charity, by a more penetrating scientific spirit, or the results of more patient and comprehensive experience, agree, are these :—“ To ascertain and fix more definitely the object of all punishment ; to select such punishments as aid in obtaining this object, and to discard all others ; to make the penal laws certain, first by wording them with sufficient clearness, secondly by drawing the minimum and maximum limits of the punishment for each offence, as close as the nature of the respective class of offences may permit, and thirdly, by forestalling, as much as possible, undue interpretation and construction ; to ascertain a safe mode of trial and sufficient protection for the accused ; to give to the whole body of penal laws that uniformity which results from the same fundamental principles pervading the whole code ; fairly to proportion the punishments, so that all the punishments of the same code be in proportion, one with another, and that each punishment be in proportion to the offence, according to the general sentiment of the age, respecting its criminality and danger ; to avoid, as much as it is in human power, the infliction of any evil, accessory and greater than the duly awarded punishment is intended by the law to inflict ; not only to avoid unjust severity on the one hand, but also unjust lenity, or dangerous impunity, on the other, and to insure as much as possible, the certain infliction of punishment for every committed offence ; to avoid the increase of crime on the part of the state itself ; and to that end, to adopt such punishments only, as will not, according to the nature of man, make the offender worse, and more dangerous through and after the punishment, than he was before ; to abolish disgraceful exposure and indelible stamps of disgrace ; to offer as much as possible, the

means of political reform, and therefore, to remove every species of punishment which necessarily must prevent it; to try at least the moral reform* of the offender; to stay, as much as possible, the rapid onward course of criminality in each offender, after he commits his first offence, or when the abandoned youth is rapidly hurrying toward it, by seizing upon him by other means than those contained in the penal code for adults, in order to rescue him at once, and by breaking up, by all possible means, the fearful education and training in crime, and the criminal association of adult offenders. Many endeavors have likewise been made to prevent crime by other means; for instance, by general school systems, by associations, affording work to the distressed and laborless, by temperance societies, schools for adults, and other humane endeavors.

Although this spirit of penal reform is so general in our age that it forms one of its peculiar characteristics, persons are not wanting wherever it is attempted, who either treat it slightly as useless, or actually oppose it, the one from a want of sufficient attention to the subject, the others from erroneous notions respecting penal matters. Whenever an improvement is attempted, the inertia of the indolent and superficial must be overcome. Respecting our subject we are told by some: "The law is good enough; we have got along with it well enough so far, why should we change?" They forget that no law is good enough, which is only good enough. The law, and especially so important a branch as the penal, is only, then, good enough, when it is framed as perfect, as honestly collected experience and wise penetration, with due regard to the means at our disposal, and the relations for which it is intended, can make it. A human law, eventhough framed, with all care, attention and honesty, will remain deficient, and leave room for farther improvement, at a future period. Others oppose reform, merely because it is a change; all change is stamped by them as innovation. They forget that nothing is immovable; that if the law be not changed, the circumstances to which the law applies change, and needs must change, according to the order of things; so that the law, apparently the same, but applied to changed circumstances, has virtually changed, and unfortunately in most cases for the worse. Most wisely, in my opinion, says the historian, Raumer, assuredly no revolutionary man, that those who without reflection insist upon the old law, merely because it is the law, when every thing around it has changed, are frequently the true revolutionists, not always those who desire a change. With regard to reform of penal laws, opposition is frequently, perhaps generally, met with at the hands of a class of men, whom the community in general, justly consider with respect, and whose opinion seems, at first glance, to be entitled, upon this particular subject, to especial deference—I mean the judges. Criminal Judges are much occupied with criminals, and, consequently, are easily betrayed into a belief that they know much of their character; yet the judge, by his official intercourse with the criminals, and few indeed take the trouble of otherwise obtaining information respecting the character of criminals, or the operation of punishments, knows the criminal only with the lawyer by his side. The judge's being occupied with many criminals, and the scum of society, renders him naturally, if not callous, at least less acute in feeling toward them;

* It will hardly be necessary to explain, that by political reform is meant, the acting upon the resolution to obey the law of the land, and lead an unblemished life as a citizen, from whatever reasons this resolution may have been taken; by moral reform is meant that desire to do right because it is right; in short, to be, not only an unoffending citizen, but a good man.

and, in general, the judge is, and ought to be, a representative of the conservative principle, without which no state can any more endure than without a due portion of the movement principle. Judges, however, are frail, as all other men, and their being habitually the more especial representatives of the law, as it is, makes them, not unfrequently, fall into a sort of idolatry of it, ending, by considering the Law as the end and object, not Man, for whom the law is made. When the quoted bill, for abolishing the punishment of death for privately stealing from a shop to the amount of five shillings, was debating, in the House of Lords, Lord Eldon said, "If the present bill be carried into effect, then may your Lordships expect to see the whole frame of our criminal code invaded and broken in upon." Others, and, I believe, Lord Eldon himself, at other times, extended even their remarks, to the danger to which the whole constitution would stand exposed, in consequence of abolishing that iniquitous law. Well might he have been answered. If this be really so, if this law can be supported by enormity only, if the British law is a stately pile, whose particles can be kept together only by a costly cement, mixed and drenched with human blood, then, the sooner it crumble into dust, the better. But for whom is this palace destined? Do the people, whose very blood must make the mortar, dwell in it? For whose protection was it built? Is there no humble yet secure chamber in it, where misguided want and despairing wretchedness may fly to, and even while doing penance, may still find safety?

Others again, oppose those reforms which involve the offering of means for the political or moral reform of the offender, as useless, and treat them as chimerical, not unfrequently as ridiculous. Have they any substantial knowledge of the subject? Have they taken the least trouble to inform themselves upon it? a subject which cannot be hastily judged of by a few conclusions drawn from some general principles, still less by mere assertions. It requires attention, knowledge, patience, experience. Declaring, by a few words, all offenders as irreclaimably lost, is a matter of very grave import. If it be so, let the truth be known and proved by facts: for it would be unwise indeed to detain the community with useless, expensive and disappointing experiments. If it is not so, how rash is the aspersion! Experience, however, shows us, that it is not the truth, and that it is not only for the benefit of the offender, but quite as much so for the whole society, even though we assume no higher ground than that of the merest utility, that a mode of punishment be adopted which offers at least the possibility of a reform of habits, train of thoughts and, perhaps, of the heart. And can we forget, that although men ought to live in society subject to laws, and although these laws must be enforced, nevertheless many of these are sometimes directly, at other times indirectly the causes of crime? Has any civilized state remained free of erroneous laws which have created sudden revulsions in the exchange of labor and produce, and consequent losses, want, despair, and ultimate crime? Has society by justly demanding that every one shall be bound to defend his country and his liberty, not indirectly deprived many a poor wife of her only support, and exposed her to want of food and raiment, gradually leading her to vice and crime? If we contemplate this insufficiency of human laws, shall we not, for the very reason that laws must be enforced, feel inclined on the other hand, not to add to the necessity of punishment, the barbarity of considering every offender as a rank weed, poisonous from its first germ, to be plucked out and burnt? Does society not owe a debt to many an offender?

Experience, not only in America and Europe, proves that crime may be stayed at various stages of criminality in the offender, but even in other parts of the world among people of totally different views and habits, the result has been the same. It must then be something really founded upon the elements of the human soul, and not merely a fancy of dreaming philanthropists. The Chinese government, on the recommendation of Soong-ta jin, conductor of lord Macartney, established penal colonies from the Saghalian westward. Yoong-ching, third Emperor of the Manchoo race, said in an edict, in which he pardons the colonists and grants them land, because they had behaved well: 'It may be seen from this occurrence, that if criminals have a path of self renovation opened to them, there is reason to hope they will reform their vices and become moral.'† Before the futility of attempts at reforming criminals be pronounced in a sweeping manner, it is necessary to be well acquainted with the very different classes of offenders, both as to character and age, and the different causes of crime. If for instance, a man commits crime because he never learnt to work, there is a very reasonable chance of his behaving better in future, if we can skilfully devise a punishment, which, besides its being a grave and impressive punishment, will not only teach him to work, but even to love working, which will convince him that take all in all, even according to a very limited moral view, there is more comfort in industry than in criminal sloth, and that, barring all higher considerations of religion and the dignity of man, there is inconsistent folly in all paths of crime, because the means chosen defeats its own end.

The punishments chiefly in use in our state are fine, public whipping, the pillory, or public exhibition, imprisonment and death.

Fine is an apt punishment for small or police offences, because they involve no immorality, or no high degree of immorality, and, the fine being paid, the whole punishment is at an end. But fines for higher offences belong to the most objectionable of all punishments for a variety of reasons. It has a most demoralizing effect upon the community, serious offences can thus be bought off by the wealthy, but must be compensated for by the poor, with imprisonment, the punishment cannot be duly proportioned; for whatever latitude may be left to the judge, it is impossible for him to apportion a fine to the pecuniary capacity of the offender, so soon as he is really rich. How can a fine which, properly apportioned to a poor man, amounts to twenty dollars be raised, as a sense of justice would demand it, in proportion to a fortune of three or four hundred thousand dollars? Or if it were, it would be equally injurious; the state would appear to be desirous of depriving its citizens of their property, and actually would soon become desirous of doing so. The state must never be or appear to be the pecuniary gainer by crime, be this by way of exacting excessive fines, or by deriving a considerable surplus revenue from prisoners. In both cases, it tends to serious mischief. One period of history, as that when the robberies of the starchamber, with the Lauds, Straffords and Westons, pressed for plunder wherever it could be espied, ought to be forever sufficient to warn against the one; and disclosures as we have had them lately in the State of New York, which prove, how often humanity was forgotten, in order to obtain a more brilliant balance of the prison revenue, ought to be equally sufficient, to warn us against the latter. It is one of the exceptionable traits of the French

† Davis The Chinese, I, 426.

for the benefit of the inoffensive part of the community, as in many Eastern countries a leper is bound to wear a distinguishing mark. A criminal who should be prevented by any means of this sort from following his trade, would be considered a poor bungler indeed by his companions in guilt.

The punishment of death, without any additional torture, as a matter of course, ought, according to the almost universal opinion of all the most civilized nations, to be restricted to the crime of murder, and a few others equal in atrocity, if retained at all. I speak of course of the penal code for the citizens at large only. It is different respecting military codes.

If I have used, in the preceding lines, the words, "if retained at all," I do not mean to be understood as siding with those who believe either on christian, religious, or general philosophic grounds, that no man or society of men can ever have, or acquire the right of depriving a fellow man of life.* Not one century has passed, since the establishment of the Christian faith, that

*Among those who from time to time have raised their voice against capital punishment, have been some of the first philosophers and most profound theologians, as well as some of the most esteemed philanthropists; yet the far greater number of these men have declared themselves in favor of the right which society possesses, of depriving an individual of life, who with fore-thought and malice has slain a fellow creature. Among those who in a rare degree united philosophical acumen, and theological lore, with deep piety, and who declared every execution a crime, is the great SCHLEIRMACHER, whom no one indeed has ever charged with fanaticism, even of the slightest tinge. He gave his opinion in a sermon, delivered in the year 1833. Yet, with the profoundest respect toward that eminent man, and the grateful affection of a pupil toward a revered teacher, I cannot otherwise than say, that this sermon appears to me unsatisfactory in a high degree. One point he certainly shows conclusively, if indeed this was necessary, that no passage of the Old Testament contains any injunction binding upon us, to punish any crime with death; but with equal clearness, it appears to me, has Dr. Ammon, another distinguished divine shown, that the New Testament contains no commandment to abolish it. This question is in my opinion, not to be decided upon biblical ground. The question is one of strict right, into which that of expediency or necessity of course largely enters, as in all questions of right, which involve the infliction of an evil, or the doing of a damage to another. The question of the right of society to inflict capital punishment was very thoroughly discussed, as might have been expected, by all those committees appointed in the various German states, for the remodeling of the penal codes, and frequently again by the Estates, before they became the law of the land. The result has been this in all cases, that capital punishment has been retained for murder and open rebellion, or attempts against the person of the chief of the state; that execution is reduced to the mere privation of life, as expeditiously and as free from torturing pain as possible. The works of Count de Sellon, member of the Sovereign Council of Geneva, and of Mr. Lucas, Inspector General of the prisons in France, contain I believe, pretty much all the arguments urged against capital punishment. They have not been able to convince me of the necessity of abolishing it; nor do I say, I am convinced of the necessity of retaining it, where perpetual solitary confinement can be substituted; that is, where the circumstances are such that, from experience we may have any right to expect that imprisonment for life, awarded for murder, will not be broken in upon by a pardon on any other ground, than that of substantial doubts respecting the misdeed having been excited after sentence had been pronounced. Those who, in another part of our country seem so desirous of abolishing capital punishment, ought to consider that there would be no surer preparation for this change, if ever brought about, than the almost total abolition of pardons. So long, however, as it is considered by the convicts more fortunate if they are sentenced for imprisonment for life, or fifteen years, than for seven years, because in the former case they know almost to a certainty, they will be pardoned after the first four or five years, while in the latter, there is much more probability of their being allowed to suffer their term uncurtailed, we must not be expected to put murder virtually on a par with issuing forged notes.

I cannot conclude this note without referring to an argument which I perceive, is frequently directed in this country, against capital punishment. The advocates of its aboli-

some men or sect, have not taken this view of certain words spoken by Christ, and in the natural progress of error, they have frequently, gone so far as to deny any coercive right whatsoever in a Christian government. Anterior to the Reformation, as well as after it, and down to our own times, and in our own country, we find this latter hollow and unbiblical doctrine held up from time to time, partly from fanaticism, which is generally combined with weakness of intellect, or actually originates from it, or wily deception which makes use of fanaticism in others.

In theory there appears, to me, no difficulty respecting the punishment of death; it is as easy, or as difficult, to prove abstractedly the right we have to punish with death, as that of imprisoning for life, or indeed depriving of personal liberty for any given period. Nor is there in my opinion, any reasonable objection against the punishment of death, if restricted as indicated above, on the score of mercy. It will be admitted that it would be outrageous the best feelings of our nature, were any other punishment than imprisonment for life substituted for death, if it is the punishment for murder.

tion say, You cut off a man and send him to his eternal doom before it was the will of God. He gave him time for repentance, but you deprived the poor culprit of this precious and invaluable chance. It seems to me that this whole argument is begging the question; for the very point is, whether capital punishment is lawful and just. If it be not, of course we must abolish it; if it be, then a murderer whose life is cut short under that law, dies according to the will of God and his own order of things, for it is his will that we live in states, and that strict justice be administered—it is the law which even he, the Creator, “has written in our hearts.” Thus persons are not wanting, who say that in executing a fellow being man presumes to do more than his God did, who did not hurl destruction upon Cain, when he had shed the first human blood, and I was surprised to find that even Schleiermacher, in the cited sermon, alludes at least to this argument. One hardly knows how to answer such an argument, so much does it stagger reason. Because God does not strike the arm of the thief or the tongue of the perjurer with palsy, shall we not arrest that arm and seal that tongue, by trial and punishment? Because God allows the blessings of his sun and of his rain to fall upon the field which a fraudulent guardian has wrung from his ward, shall we not wrest it from the culprit by trial and verdict? Where should we end, if we once begin to take God’s abstaining from direct, special and instantaneous interposition, as a proof that we shall allow all things to go on undisturbedly? Shall I, happening to be present when an assassin lifts his arm to plunge a dagger into an innocent victim, not stay the murderous arm before the evil deed is done, because God, who might do it, does not do it? Yes, fanatical sects have existed, who actually sought the highest degree of piety in absolute passiveness, and those who use the argument just stated, may see to what their error must ultimately lead by fair consistency and a conclusive chain of reasoning. But it was ordained otherwise: man shall be a moral being, guiding himself, not a machine moved from without. May this instance serve as an additional one to shew, how dangerous it has always proved to be to mix dogmatic views with inquiries strictly belonging to the sphere of right. Yet the argument, founded upon the scriptural account of Cain’s murder would, in my opinion, prove in favor of those, who maintain the right of capital punishment, if we take the whole account, as we certainly are bound to do, and not merely the fact that God did not send physical destruction upon the murderer’s head. God punished him far more severely; he “curses him and his labor;” he makes him “a fugitive and a vagabond in the earth;” he “hides Cain from his face,” it is “a punishment greater than he can bear.” Cain knew that it was the law written in the human heart, that he who murders has no right to complain if he be slain in turn, for he exclaims, “it shall come to pass, that every one that findeth me shall slay me.” How did he know it? No case of murder had occurred. And the Lord acknowledged the justness of his fear, for he “set a mark upon Cain, lest any finding him should kill him.” He wants Cain saved as an especial case and exception from what otherwise would be natural and right. This argument then seems to prove nothing applicable to human administration of justice; or if it proves any thing, it is in favor of capital punishment for murder.

All imprisonment, however, ought to be solitary, as we soon shall see: now a man of natural great timidity, may prefer even this to death, simply because he has an insuperable fear of death, but I suppose no one else will pretend to say that solitary imprisonment for life is preferable to death on the score of mercy. Mr. Livingston, a strong advocate for the abolition of capital punishment, insists upon perpetual solitary confinement for the murderer, and I confess that when I read the description of the punishment which he felt himself obliged to propose as a substitute for death, (in the Introductory Report to his Code of Prison Discipline,) I could not help reflecting how infinitely preferable death would be to such a life.

In my opinion, the vital question respecting the punishment of death, is not one touching the punishment directly but the trial. The question is, whether men can ascertain and establish a mode of trial which is so safe, and guarantees so well against blind passion, or deception, that it gives sufficient certainty as to guilt, because of all those punishments which cannot be stayed if once inflicted, this is the most serious. But there is in our country, on the other hand, this difficulty: that, owing to the easy access to the chief magistrates, pardons will always be easier to be obtained, than in other countries, a very strong reason, by the way, why we in particular, ought to make the punishments so that the universal opinion of the respectable and considerate citizens should consider them in a fair proportion with the offence, neither too lenient and trifling with the community, nor too severe and trifling with the convict, lest a moral strength to resist overwhelming petitions and even clamor for pardon, be required in the chief magistrate, which cannot be a common attribute of the human character.

Respecting the frightful abuse of pardoning, the proportion of the number of pardons to unpardoned sentences, and the consequent reduction of years of imprisonment to but a small part of what the law decrees, I refer to my translation of the work of Messrs. de Beaumont and de Tocqueville, on the Penitentiaries in the United States, where interesting statistical tables relating to this subject are to be found. I also would mention, that wherever a proper Penitentiary system has been introduced in America, pardons have very perceptibly decreased: for instance in Pennsylvania.

It is well ascertained that the period of human life, in which most crimes are committed, is that from twenty years of age to thirty, especially crimes whose perpetration requires violence. It is this, the period during which the human heart is most subject to rashness and passion. I own, such as matters stand now in our own country, I cannot easily imagine a case possible of a murderer, say of twenty-five years of age, though his crime be of the most fiendlike character, sentenced to imprisonment for life, who, with the changes of governors, united to the almost universal injudicious petitioning for pardon, and the ease with which events are forgotten in a country where the busy and thriving bustle of one day presses so hard upon the preceding one, would not, after some year, be turned again upon the community, and would walk about a living example of the laxity of justice, or be sent to a neighboring community, exposing it to renewed crimes.

I now come to the last species of punishment, which I have proposed to myself to consider in this letter, namely, imprisonment. Privation of personal liberty has invariably become more and more the main punishment in the penal codes of progressive nations. It recommends itself to the wise legislator on many accounts, of which I will only mention, that it is what I

would call a calm punishment; in inflicting it, the State appears not as a tormentor; it, therefore, does not irritate or exasperate the resentful criminal anew, while it is to the callous offender, who cares but little for whipping, or the infliction of any other pain, so soon as it is passed, a dreaded evil; it does not irretrievably degrade as branding or cropping the ears, or any other mutilation does; it does not offend or harden the community by the exhibition of suffering; it may, which is a very great advantage, be better apportioned than almost any other punishment. Indeed with reference to this latter point, no other punishment can compete with it except fine; but imprisonment has this advantage that, while it is very true that the shame necessarily attached to imprisonment will be more acute and give additional severity to this punishment, when inflicted on a well educated man of the wealthier classes, it causes on the other hand a greater loss to an offender, who belongs to the classes which necessarily live from hand to mouth. The fine, however, it has been seen, cannot be proportioned, as strict justice would demand, beyond a certain limit, while this punishment itself must always refer to imprisonment as an equivalent in those cases in which the offender is incapable of paying the fine. Imprisonment alone affords any reasonable chance to effect a political or moral reform in the offender; and lastly, the uniformity of a penal code, by which I mean that the chief bulk of punishments be of the same character, but differently apportioned, (from which the lightest and heaviest punishments alone ought to form exceptions,) and which for reasons given in the accompanying Essay, I consider a necessary attribute of an unexceptionable penal code, can be obtained only if imprisonment be made the main punishment. Yet, unless imprisonment be wisely regulated, there are likewise great objections against it. The two most prominent of these are, the fearful propagation of crime within the prison, by the free intercourse and concentrated communion among the criminals, congregated as they can be no where else out of the prison walls, and the expense which the buildings of the prisons, their necessary officers and the support of the imprisoned unavoidably entail upon the community, unless the State will commit the cruelty of imprisoning without support, as is actually, or was a few years ago, the case in Brazil, where the prisoners are obliged to beg, and are of course frequently exposed to sufferings of the most appalling kind.

Thanks to the humane endeavours of so pure lovers of men, even though lost in the immundity of guilt, to philanthropists, such as Fontana, Howard, and others actuated like them, by sound charity, attempts have been made, more especially since the middle of the last century,* to avoid these evils without

*John Howard, born in 1726, found the following inscription over the entry into the institution for youthful offenders, built in Rome, in the year 1704, by Corlo Fontana, an inscription which has become at a latter period so famous by Howard's communication, and has been aptly chosen by Mr. Charles Lucas, the distinguished penologist of France, as the motto for his extensive work, "On the Reform of Prisons or the Theory of Imprisonment," 3 vols, Paris, 1836-1838:

PARUM EST
COERCERE IMPROBOS
PENA
NISI PROBOS EFFICIAS
DISCIPLINA.

It is but little to coerce the wicked by punishment, if thou doest not make them better by discipline. On the same journey, Howard found at Genoa an institution for 600 lads and girls, rebuilt in 1636; over the entry into the weaving room, he read:

SILENTIUM ET OBEDIENTIA.

giving up the advantages of imprisonment, until, by experience, added to experience, the perseverance of the lovers of strict justice, which sternly demands that neither too much nor too little be done in the way of punishing crime, has perfected the system of imprisonment in the degree in which we find it in the present time in some countries. You are well aware, sir, that I allude to the two systems of imprisonment, the one called the Auburn or Silence System, the other, the Pennsylvanian, Separation or Eremitic System. As it is common, whenever a great reform is preparing, that all errors are run through, before the ultimate proper mean is found, so there have in this instance not been wanting men, who, we may well say, madly asserted that all punishment of crime was useless, and that the only way of preventing it, was the stopping up of all its sources. Every sound criminalist will grant, that prevention of crime is infinitely better than punishing it, and that by preventing pauperism and promoting general education, much will be done toward the prevention of crime; but it shows but little knowledge of the human heart and human society, to suppose that there will ever exist any community free of violators of its laws. We need of course, not occupy our attention with these visionary theories, though but lately re-asserted.

Repeated experience in various countries had shown that it was absolutely impossible either to prevent the prisoners from becoming not only seriously contaminated by others, but also, from mutually generating a still higher criminality than that which each criminal brought with him into the prison; or, to effect any reform in the prisoner, unless communion among them could be entirely intercepted. To effect this, two different modes were resorted to; both founded upon the same principle, but differing in their execution. In the one system, the prisoners are separated by night, in solitary cells; but in the day time, they work in common, without being permitted, however, to converse or commune with one another by signs. This is called the Auburn, or Silent System. In the other, the Pennsylvanian, or eremitic system, the prisoners are always separated, day and night, without any interruption, by being placed in solitary cells. Both Systems not only admit, but enjoin labor as indispensable and fundamental, and one of the necessary ingredients, of any sound and safe penitentiary system. For a long time it remained an undecided question, which of the two was preferable; experience alone, could finally decide, whatever the anticipations of one or the other side might be. Ample, and yearly increasing, experience has decided, and, in my opinion, triumphantly so, in favor of the Pennsylvania System—that is, in favor of uninterrupted solitary confinement at labor. It is, as yet impossible, incontrovertably to establish the superiority of either system, by mere statistical tables, showing an increase or decrease of crime, if indeed it can ever be established in this way. The larger or smaller number of offences, depends upon a thousand causes, unconnected with punishment. Nor can any exhibit of re-committals prove much, either in England or the United States, because we have not sufficiently accurate police lists to ascertain re-committals, especially not in our country. A criminal may easily pass from one state into another, where nothing is officially known of his crime,

For these and other historical notices respecting the gradual progress of the science and art of punishment (for it is both like the art of healing,) I must refer to a work to which I shall presently have to advert in another respect, containing the fruits of valuable researches; it is Dr. Julius's Moral Condition of the United States, 2 vols. Leipsic, 1839, the second volume of which is wholly occupied with crime and punishment.

defending the Auburn system and disapproving of the Pennsylvanian, says : „ The danger of solitary confinement with labor, has certainly been over-rated.” Considering the quarter whence this assertion comes, it must be considered as the beginning of a new period in the controversy on the two systems, for thus one point is given up, upon which I believe, turned at least one half of all the attacks directed against uninterrupted seclusion from its opponents in New-England.

The objections on the ground of expensiveness, are two-fold : it is maintained that the buildings necessary for total seclusion require a great outlay, and that the various species of labor which can be carried on in a solitary cell, are far less in number than those which require united labor and more room, so that the means of its own support are reduced in a penitentiary on the eremitic plan. It is very true that a spacious cell with a yard will always cost more than a cell in which prisoners are rather boxed up in a frame work, than lodged, as is the case in the Auburn penitentiaries. Still, it ought to be observed, that a great prejudice on the point of costliness, has arisen from the very high expense of the Eastern penitentiary, the first which was erected on the eremitic plan. This was partly owing to circumstances unconnected with the Penitentiary system itself, partly to the fact, that experience had not yet then been sufficiently collected. One of the latest penitentiaries on the eremitic plan, is the Philadelphia county prison, for 408 prisoners, costing \$300,000, or each cell \$735 29. The penitentiary at Auburn for 700 prisoners, costs \$450,000, or \$584 41 the cell. These expenses decrease, the larger the number of prisoners is, for which the penitentiary is built ; but it must be remembered that the larger the penitentiary on the Auburn plan, the more rigorous necessarily becomes, and must become, its discipline ; while the eremitic system allows of much greater extent, without injury to the essential parts of the system, so that the difference of cost would greatly diminish. Yet, even if this were not the case, the greater security, the redemption of first offenders and consequent great saving of property, the heightened moral tone of the community, which is always an effect of a just and pure penal code, acted out by the citizens at large with political alacrity, would be sufficient compensation. When we speak of the losses of property occasioned by crime, persons not sufficiently acquainted with the subject generally think of thefts and robberies only, which have been detected and tried ; but thieves may carry on their nefarious occupations for years before they are detected. Facts have lately come to light before committees of parliament which show the enormous, and almost incredible loss of property, caused by pilfering and stealing of all sorts, for instance, on board the canal boats. If, therefore, we can vigorously break in upon that criminal affiliation, which is necessary for this systematic thieving, and which avowedly is in the highest degree promoted by prison acquaintances, we shall find that the money laid out for eremitic penitentiaries, which alone can effectually prevent these affiliations, is not wasted, but on the contrary, well invested for the community.

Respecting the second point, all that ought to be desired is, that a penitentiary may support itself ; for although I allow that the prisoner owes a far greater debt to this community than that of his support alone, namely, the debt for all the expenses which crime creates by the necessary support of penal justice, police, &c. it is not to be denied that it is dangerous

to make an institution, in which there are men so wholly at our command, yield a public revenue. The desire for more and more profit leads but too easily to such oppressive measures against those who cannot complain, as have from time to time been officially complained of by examiners into the Auburn prisons. In our state, I doubt not, but that very convenient in-door labor could be found for the prisoners. Shoe making is in all penitentiaries a favorite occupation, and our importers of negro shoes would willingly contract with the penitentiary instead of sending for shoes elsewhere. So would weaving cotton cloth be a sufficiently profitable occupation for prisoners.

How, on the other hand, is the mode of operation of the Auburn system, or that penitentiary system which is founded upon silence of a large number of congregated men? The prisoners, it is allowed, must be prevented from communing by word or sign, if the system shall have the slightest reforming effect; even safety alone demands that no communion should take place between men who work together, are infinitely superior in number to their officers, whose work puts many instruments into their hands which would well serve as weapons, and who withal are in a state in which force alone can keep them—in a state of imprisonment. Yet the desire of communion is a primitive and elementary desire of our soul; to repress it then, means are requisite as severe as the desire is urgent; for nowhere can nature be repressed with gentle means. To enforce silence a punishment, pending as it were over each prisoner, to fall on him instantly when silence, the great basis of this system has been broken, and of sufficient rigor to repress the desire of utterance, as natural and urgent as the appetite for food, is absolutely necessary—I mean the whip. Those who watch over the prisoners must be furnished with the whip or some other instrument for instantaneous corporal punishment, and the authority to use it at discretion within a certain limit, say six lashes, must be given them. The Auburn system is founded on silence; silence, and even that not in a perfect degree, can by physical and moral possibility be maintained only by the scourge—the Auburn system rests essentially upon the whip. So soon as the London criminals learned that the silencial system was to be introduced in the British prisons, they prepared themselves at New-Gate for this new order of things by practicing with one another the language of signs, as we learn from the report of the surgeon of that prison. No agent of any Auburn penitentiary, nor any prisoner who knew it by experience, has ever denied to me the necessity of the whip. But the keepers know that communion, nevertheless, does take place. They become suspicious, and if they must prevent communion even by signs, it is clear that they must frequently mistake accidental movements for intentional signs; unjust infliction of lashes is the consequence. Besides, who counts the lashes whether they are within the number allowed by law, when the keeper is irritated? The convict? He cannot complain. Indeed it would be an odd system which first gives the necessary right of punishment to a keeper over a criminal, and afterwards gives the right to the criminal each time to impeach the officer. Who shall decide? Certainly not the criminal, yet on the other hand "*quis custodiet ipsos custodes?*" Who guards against the guards? The original principle itself, that this system rests upon the instantaneous infliction of bodily pain, as well as the irritation thereby caused among the convicts, requiring new, frequently increased severity, give from the beginning a character of harshness to this whole system. The perfectly natural course of things has been, I believe, in all Auburn prisons, cer-

tainly in all prominent ones, either that rigorous severity has gradually increased until public opinion became outraged; mildness being found insufficient to maintain the system; or the main principle, the prop and stay, nerve and essence of the whole, silence, was abandoned altogether. In addition to this, we must consider that Auburn penitentiaries may be made very profitable. A desire of showing a large surplus at the end of the year once existing, and being coupled with the other necessary requisite of this system, the power of inflicting instant punishment with the lash, nothing is more natural, not according to the peculiar wickedness of some individuals, but according to the common nature of man, than that cruelty should in many instances have increased from an anxiety to make the penitentiaries profitable state institutions, and thereby please the legislatures. Again and again have committees, appointed by the legislatures, reported upon these points, and again and again has their voice been disregarded. The most prominent penitentiaries upon the plan of separation by night and common labor in silence by day, are those at Wethersfield in Connecticut, at Auburn and Sing-Sing in the State of New-York, and at Charlestown near Boston. In 1834 a committee of the General Assembly of Connecticut for inquiry into the state prison made a long report of 119 closely printed papers, showing that excessive severity had taken place, partly in order to make the prison more profitable. A milder course was adopted; an attack and murder of one of the keepers by the convicts took place; and the discipline became severer again. Of the reports by proper committees upon Sing-Sing, prison several have emphatically denounced the harshness exercised there, for instance that printed by the Assembly, February 6, 1833 refer to page 9—11 in particular,* and the report which was printed by the Assembly March 30, 1839. This report repeatedly states that the prisoners are wholly governed by stripes, inflicted without controul, and that one of the important object sought to be obtained by the penitentiary system, the reformation of the convicts is abandoned and lost." (P. 5.) It says, that "other convicts have been disabled, from severe scourging, and been sent to the hospital to be cured; and even that sanctuary, it seems, does not always prove a protection from the cat; for it is sufficiently proved that some, who were at the time on the sick list and detained in the hospital, have been stripped and flogged. Contractots for labor at the prison, and prison guards, have sometimes been permitted to inflict severe chastisement upon convicts," &c. (Pp. 6 & 7.) But I must refer your Excellency to the whole report, because it requires the serious consideration of every one engaged in the penal reform of any civilized society. Auburn was considered, in 1832, to be governed with more mildness than Sing-Sing; so prisoners, who had been at Sing-Sing and Auburn, distinctly stated; but it seems that the officers of that penitentiary found, likewise, that it was impossible to maintain the Auburn system by comparatively gentle means; severity, therefore, gradually increased, until cases occurred, believed to be most shocking by the community, and official inquiry was made. The Governor of the State of New York recommended the removal of the agent. The testimony taken by the legislative Committee, respecting these severities, was lately strengthened, not a little, by what was divulged in a case of libel, by Elam Lynds, the Auburn agent, against Oliphant and Skinner,

*I ought to mention that against this an officer of the Sing-Sing prison published: Comments on the report of the Select Committee &c. Mount Pleasant 1833.

Onondaga Circuit, Sept. 1839.* No complaints on the score of excessive severity, have, to my knowledge, been made against the Charlestown prison, near Boston: on the contrary, there we find the very principle of silence abandoned, and "indulgence of necessary or occasional speaking"† is granted. If, nevertheless, that prison produces as admirable results as we are frequently told, and those who tell us so do not labor under great delusion, the effect must be solely owing to the uncommon genius and almost unique moral power of some rare individuals, over the convicts—a state of things which, in its nature, must be so rare that we cannot conscientiously found a plan of imprisonment and possible reformation on it. For in laying out plans of lasting institutions and extensive operation, it is one of our first duties to ground them upon the nature of man, as it appears from common experience, upon the average talent of mankind, but not upon intellectual eminence, which may be found once upon an age. That, however, it be possible to have an effective, lastingly sound penitentiary, upon the Auburn plan without rigidly enforcing silence, with men for keepers, agents and inspectors, such as honest and respectable men commonly are, no one who has paid the slightest attention to modern punishment, will venture to assert. I, for my part, believe the moral or political good effect of the Auburn penitentiaries, is altogether exceedingly precarious, or very rare, but without silence, and consequently without its strict enforcement by physical means, it is as difficult for me to imagine it, as an orator that is dumb. In Geneva, in Switzerland, an opposite process has taken place, and, in order to appreciate this instance, I ought to assure your Excellency, that from an examination of the many reports upon prison discipline and penal reform published in that republic, it appears to me, that serious attention has been paid there to the subject. The republic of Geneva adopted the Auburn plan, guided by a mistaken apprehension, that the eremitic system, which none there knew from personal examination, was too severe; but it appears, from a late work of Mr. C. Aubanel, the superintendent of the Geneva penitentiary, that they have already found it necessary, in the natural course of things, to adopt for the division of convicts of the longest sentences, besides separation during night, solitude by day; in short, to exchange the silencial system for the eremitic.‡ So has the Belgian government directed the introduction of the eremitic system in the *maison de force*, at Ghent, so famous because separation by night and silence during day, have been acted upon in that prison for half a century.§ I know of no case where an eremitic penitentiary has been changed for one on the Auburn plan.

Let me now, Sir, turn to the second point. What is the opinion of those who possess the greatest practical and personal experience? I have stated already in the essay, mentioned before, that all the agents of Auburn penitentiaries, with whom I am acquainted, admit that the eremitic system is the

* The whole testimony of the trial is to be found in an extra number of the Auburn Journal, Oct. 16, 1839.

† Tullius' Moral Condition of the United States, vol. II. p. 200, where the above words are given in brackets, as quotation."

‡ I do not possess Mr. Aubanel's last work, and quote from the work of Dr. Julius, a sufficient authority for accuracy.

§ The concluding pages of a Vindication of the Separate System of Prison Discipline, from the misrepresentations of the North American Review, Philad., 1839, are referred to for the point of general acknowledgment in favor of the eremitic system, as indeed that whole judicious pamphlet for the general subject of this letter.