

INQUIRY INTO THE RIGHT OR JUSTICE OF THE PUNISHMENT OF DEATH.

[Concluded from Vol. XVI., p. 222.]

THE author having thus established the principles, on which he not only denies the right of society to punish the culprit with death, but also proves that the end which society proposes to itself by this punishment, always fails; he shows, in the third part of his work, the means which he believes proper, to attain this three-fold end:—

1. The safety of society.
2. The punishment of crime.
3. The amendment of the criminal.

In arriving at this part of the subject and following our author, we shall see him conforming to the manners, and, above all, to the enlightened ideas of justice, which begin, in the present day, to govern both people and magistrates, because it is from them only, and their application, that any certain or beneficial consequences can result. True social justice, that which unites the just with the useful, is that repressive justice which is also a preventive justice; for its office is to prevent the return of crime from the liberty to which it was owing. This liberty, which produced the evil, has roused the attacks of society, which, however, do not prevent its reformation. It is necessary then, instead of dooming it for ever to perpetual slavery, to endeavour this reformation of it, and take from it the enticements to err, by enlightening it, and by opposing the fear of punishment as a counterpoise to the temptations of crime. The present penal system is doubly odious: in the first place, it supposes a criminal incurable, either for ever, or for a fixed period; in the next, because, in sending him back upon society at the expiration of his punishment, it seems as if he was supposed to be corrected at the fixed and precise period of his liberation.

The repressive system, which our author proposes to adopt, and which is purely a penitentiary one, admits a scale of punishments which are applicable, not only to the nature of the criminal act which it would repress, but also to the moral state of the perpetrator. Together with this scale of punishments, there is also a remuneratory scale, which affords a hope to the criminal, in case of his repentance and reformation, of remission of punishment; a principle which has been adopted in the penitentiary code of Geneva, and which puts in action the two most powerful principles of conduct, fear and hope. We shall now abstract the principal features of the author's repressive system. He proposes five degrees of imprisonment, and subdivides each of them into five others. The *minimum* of imprisonment being a year, (for, in his system, lesser punishments resolve themselves into mere fines,) he who is condemned to one year's imprisonment, will have one degree to

pass through; he who is condemned to ten years, or to twenty years, will have to suffer long, and will pass successively from the degree of severer punishment, to one less severe, and softened according to his amendment. Thus the greatest criminal, at the moment of his re-entering society, after having successively descended every step of the scale, will only be in the situation of a culprit condemned to one year's imprisonment. A condemnation to the *maxima* of punishment, will impose an imprisonment of less than twenty-nine years on him, who, by a rapid moral improvement, remains but a short time on each step of the scale; whilst he who is condemned to ten or twenty degrees, may, without amendment, remain imprisoned twenty-nine years. The author combines the punishment of mere imprisonment, with that of solitary confinement. For political offences, moreover, or attacks upon the state, our author proposes three degrees of punishment: banishment from the city, banishment beyond the state, and transportation.

We think we have now given the reader an exact account of M. Lucas's work. It seemed to us the best means of making a treatise of the kind properly understood, to analyse it carefully. It behoves us now to make a few observations, not so much to combat the author, as to add our mite to the treasure he has amassed. In a matter so difficult, and at the same time so important, every friend of humanity ought to bring his offering.

We should have been glad to find, in a work executed with so much talent, some philosophical researches on the origin of the application of capital punishment in ancient times; on the greater or less extension which the principle has received under different forms of government; and among these which have afforded most latitude to its development. In fact, it would have been interesting to know, why the punishment of death has been sanctioned by all religions, (with the exception of two or three,) and why some of them have even formally established it.

What is then the connection which exists between the principles of a theocratic power and those of that sanguinary legislation, which has not found yet a better method of punishing crime than that of massacring the culprit. We cannot be astonished at seeing this system, opposed as it is to republicanism, more rare and milder in republics than in monarchies. We should be astonished rather, if, in our days, it much longer exist in other enlightened republics; like those of the United States and Geneva. It is worthy of remark, that those of the savage tribes, which live in republics, do not think themselves possessed of a right over the lives of their fellow-beings, when even taken in war, and when, consequently, belonging to a rival nation; whilst, on the contrary, this system is in force among tribes governed by a monarchy. We should be willing to prove, that, if the greater number of the principal ancient nations had begun with a

republican form of government, this legislation would never have been admitted among them. For who, under a system truly republican, would have dared to destroy a fellow-being, even if culpable? The ardent friends of absolute monarchy have, on the contrary, always regarded it as the palladium, the *sine qua non*, of the system. It is also under monarchical influence that it has been principally developed. Truly may it be said, that this development of it has been at the expense of the public morals, and that it has only taken place by the degradation of the people. It is, perhaps, more to punish the nations for being indifferent to the fatal consequences which lead after them, than to give a divine sanction to their usurped authority, that absolute kings have always refused to acknowledge the people as the source of their power. To what a state of degradation then must not these nations have fallen in the eyes of their kings, if, to make the power which they exercise despicable even in their own eyes, it was necessary to regard it as descending from God. It must be confessed in justice, that nations, by their apathy, have justified the impious extravagance of their pretensions. Has there not even been found a number of profound politicians, as Grotius, Hobbes, &c., who have gravely inquired, whether the human race belonged to a certain number of men, or if this certain number of men belonged to the human race, and have determined on the former opinion being correct. What has been the result? They began by despoiling individuals of their natural rights, which were forfeited to the profit of society; next they gave this society, with all its rights, to the control of one man! It was then it became necessary to make laws of blood, to preserve such an order of things; and that, under the pretext of protecting society, they should enslave it. At last it was established as a principle, that a criminal might not only hurt society, but might also outrage royal majesty! Admirable discovery! to sanction the exercise of these same laws, and to accustom the people to see absolute kings dispose, whenever they chose, of their subjects' lives. To complete the great work of slavery, and of brutalizing nations, they recognized in kings the right of pardoning. This was to consecrate the theory *du bon plaisir*. It is not the use of this pretended right we blame, but we would that it had been always exercised by God rather than by our monstrous system of legislation. It is the right, placed where it is, that we revolt at.

We have read a variety of fine phrases on the exercise of this divine right, which connects, it is said, royalty with heaven; but these servile declamations have always excited our indignation. This right, the fruit of a profound political combination, has only been invented for the profit of royalty, and to give it an *éclat*; and the proof of this is, that, under the Roman republic, neither the senate nor the consuls ever attempted to give a pardon; the Roman people themselves even did not, although they sometimes revoked

their own judgments. In fact, why pardon sometimes? The law ought always to punish, or the king to pardon; for there is, in the one or the other case, a contradiction or an injustice. If we now descend from the consideration of this right in the prince, to that of it in the magistrates, who administer justice in his name; are they also to have the right of pardon? Are they to have the power over twenty men condemned to death; for example, to pardon four or six or eight of them, or not to pardon any of them? And yet such a system as this can find partisans and defenders! It seems to us, that, in the sixth chapter, in which the author makes a very ingenious comparison between society attacked, as a collective body, by a criminal, and the same society, attacked as a nation, by another nation; it seems, we say, that he might have pointed out the strange contradiction which the conduct of society presents in these circumstances. As a nation, it pardons prisoners of war; as a collective body, it takes away the life of a criminal. The first, however, seems to have acted in the same direction, nearly, as the last; the one against society in a mass, the other against one or many individuals of this society. Now, certainly, the first are the most culpable, for by their number they really endanger society; and yet the law of nations, as it is called, declares that such a society, when attacked, has not a right to kill the prisoners thus made. It reserves all its severity for the criminal which puts it in no danger. The savages seem to us more consistent. Human justice is without pity for the feeble only? Is this the case, because number carries with it a title to this right? But number does not constitute right, nor even augment it. Without doubt, in sparing the life of prisoners, something is yielded to the natural horror felt at the shedding of blood. But why not yield altogether? In true morality, the life of one man is as precious as that of ten thousand.

In the ninth chapter of the first part, the author examines the great question respecting attacks made upon the existence of government. After a luminous discussion, as indeed are all those of this work, the author establishes this principle, 'It is not a crime in itself, to change the political form of societies. These changes are not only a right of human nature, they even tend to its perfection. But these changes are to be produced by legitimate appeals; these appeals are the regular, free, and enlightened efforts of all the subjects.' The author pursues a profound line of argument to prove the legitimacy of this principle; all his arguments appear to us incapable of refutation. It is well known that it is only governments without guarantee which run risks of this kind; it is not necessary to reflect long, to discover that the nature of absolute power is such that it will always justify, in the eyes of free and thinking men, every attempt that can be made to overthrow it. People subjected to absolute kings may, perhaps, regard such attempts with curiosity, but never with real interest. Perhaps even they will

admit with difficulty, the culpability of the aggressor ; at least will pity him should he fall : history proves this. It is not thus when a conspiracy is made against liberty, or against a free government. Every individual then resents the attack, because the rights of the government are his own. The traitors will find in every individual an obstacle and a combatant. Is this the case, or can it be so, in a monarchical government ? In the first, in case of an attack, you find men who combat for their rights ; in the second, only paid agents, who endeavour to preserve their places, their authority, or their revenues.

The eleventh chapter is admirable throughout. There is a strength of reasoning, a warmth of sentiment, an eloquence of expression, which do honour to the talents of M. Lucas. He there examines the the punishment of death in regard to religion. 'The justice of the scaffold stretches its bloody hands, and binds the victim's eyes as if it were the precursor of that supreme justice which takes vengeance, not deceives. It is then to the noise of the axe which falls, and to the blood which streams, that this justice is announced to the world ! Fatal justice ! which hinders remorse, if it be not awakened ; which stifles, if it be ready to spring up ; and of which the least crime is, that it destroys that second innocence which succeeds repentance.'

We shall add a few words to these admirable reflections. Justice kills the assassin to punish him in this world ; and religion, if the criminal repents at the moment of death, makes him hope, we might even say promises him, pardon in another world, because of his punishment here. What is the result of this strange conduct ? It is that the criminal who dies on the scaffold believes, and, mark well, the people who behold his death, nearly always partake in the sentiment ; he believes, we say, that the sacrifice of his life, and some prayers uttered in haste, will avail to obtain the pardon of the Supreme Judge, and that, consequently, the scaffold is but a stepping-stone from earth to heaven. Where then is the use, either to the culprit or the spectator, of public punishment, or of this hypocritical and impious accommodation between the preparations of punishment and the succours of religion ? Does it not resemble, in this case, the superstitious and cruel Louis XI. and his good *Vierge de Plomb* ? But if the culprit braves death and that eternity with which they threaten him in vain, since he neither believes in it, nor repents, what must be the result of his hasty death, if society believes that man has an immortal soul ? Does it desire to make a twofold sacrifice of this miserable creature ? For by thus putting him to death, with all his crimes about him unrepented of, 'you kill' says religion, 'his soul.' Society then in this case, acts like that Italian assassin, who, wishing to carry his vengeance beyond the present world, said to his victim, 'Curse God, or I will

kill thee;' and who, hearing the curse, stabbed him, exclaiming 'wretch, thou wilt be damned.'

The distinction which the author makes between the suppression of crime, and the moral amelioration of the culprit, is without doubt, correct. But the theory on which this distinction is founded, has the fault of being extremely difficult in its application. Where could agents be found, sufficiently disinterested, to fulfil with zeal and ardour, and above all, with constancy, the duties the author requires of them? Where are the Howards, the Frys, the Rochefoucaults, Liancourts, &c. who would take charge of the moral amelioration of culprits? Who, ever anxious to discover the slightest tendency to good in them, would devote their lives to those pious duties? And when we reflect, that in every prison there would be wanted such persons as these, to carry the system of our author into effect, have we not reason to fear, without any calumny on human nature, the improbability of finding in hired officers, those various virtues which are scarcely to be found together in those who voluntarily devote themselves, and their fortunes, to the consolation of human suffering?

If, in his first part, the author clearly established, that society has in no instance a right to kill the culprit, in the second he proves distinctly, that the ceremonial and form of punishment, that on which so much stress is laid, in regard to its moral effect on the multitude, have no useful influence in suppressing crime. The author has reviewed in this part of his treatise, with much talent, the works of Partoret, Beccaria, Bentham, Guigot, and Hill. There results from this review, a close and profound conviction, that the prodigal and daily waste of blood upon the scaffold, is without any use to the morals of the people. The proofs of this assertion, an assertion which their prejudice only would controvert, but which every truly philosophic mind will take hold of with avidity, seem to us beyond the possibility of confutation.

The task of criticism will be easy. We have only to object to the phraseology, which the author appears voluntarily to have adopted in the first part of his work. We do not think, as he seems to have imagined, that his style has gained in vigour and precision, what it has lost in clearness and simplicity. The reading of this part is indeed made fatiguing by it; as the author's affectation of brevity frequently leads to obscurity; and his endeavour after energy of expression, to confusion of ideas. We advise him carefully to revise his first part. We do not think that the two other parts, from being written with simplicity, have lost any of the effect they were intended to produce, and really do produce, on the mind of the reader.

To write a book like this, at twenty-four years of age, is to enter on the career of fame by the fairest gate—that of humanity. The

publication of M. Lucas seems also to us, not only a good work, but a good action.

The day is not far off, and M. Lucas has hastened its approach, when the nations, compelled at last by the voice of the true friends of humanity, who have said to them for the last fifty years, 'There is no necessity for the shedding of blood, it is always a crime to shed it,' will at length abolish those monstrous laws, which have at present no other strength, but that acquired by long usage. They only exist in our days, because they have existed before them; they are respected only because they exist; and the moment they are abolished, all the world will wonder at having so long and so stupidly submitted to their control. Such is man. Before Galileo discovered the motion of the earth, before Harvey demonstrated the circulation of the blood, not even the possibility of these things was suspected. Before Columbus discovered the New World, the light of his genius was taken for the reverie of a heated imagination. The day preceding their immortal discoveries, these great men were regarded as madmen; the day after, they were venerated and adored as Gods.



A DESPOT'S MIDNIGHT.

I will sleep not again—Oh! such horrible slumbers
 Are big with convulsion, and yield but affright!
 The souls of the dead, in their shadowy numbers,
 Surrounded my couch in the silence of night.
 They came in their shrouds, as the cold earth had found them—
 In my lone hour of terror, coil'd up in my gulf,
 The iron shone darkly with which I had bound them,
 And red glared the blood which my vengeance had spilt.

I will sleep not again—let my sceptre of might
 Be dash'd to the earth, and my glory be lost,
 Ere visited thus, mid the darkness of night,
 I should writhe 'neath the looks of that soul-scaring host.
 They came, and my chamber was full of the dead,
 The grave gave them up to beleaguer my pillow;
 Mid the dim spectral gloom, did they flit round my head,
 And my spirit was toss'd like the foam on the billow.

I will sleep not again!—A dark form stood beside me,
 Fierce hate and defiance were throned on his brow—
 From his glance I'd have shrunk into chaos to hide me,
 It's light was so fearful—it glares on me now:

Then a cold nameless terror came freezingly o'er me,
 I lay lone in my helplessness, tortured and torn,
 While the shadowy form in its wrath stood before me,
 And I panted aloud for the dawning of morn.

I will sleep not again!—Then a pale spirit passed me—
 Her blue eyes were darken'd with sorrow and weeping;
 Though did not the light of her fair visage blast me,
 Mid the depths of whose gentleness anger was sleeping,
 Yet did pity with such melting tenderness move me,
 That my heart's stubborn cordage was broken and rent—
 O how did those looks of meek sadness reprove me,
 That pale mourning form, by my cruelty bent.

I will sleep not again!—A proud spirit came nigh—
 I had seen him in majesty walking the earth;
 His presence was kingly—the fire of his eye
 Shone too haughtily and strong for his name and his birth:
 From the throne of my royalty down did I look—
 I survey'd him with hate, not unmingled with dread?
 Let men tremble before me—I cared not to brook
 Such a bold fearless front;—so he slept with the dead.

I will sleep not again!—there he stood in his pride,
 A dull, fearful calm o'er his features was cast,
 A stillness more horrible far to abide,
 Than if wrath had been gathering fiercely and fast;
 For I read in his aspect his measureless scorn.
 Then coldly he laugh'd—as the sound smote my ear,
 I shrunk in my littleness—When will the morn
 In her orient splendour and freshness appear?

I will sleep not again, till the midnight be past,
 For its maddening horrors again will come o'er me;
 But let sweet perfum'd light o'er my chamber be cast,
 And the young virgins dance in their beauty before me,
 And bring me the wine-cup—I long to drink deep—
 For merciless thirst in its strength hath assail'd me;
 Let soft music my senses in luxury steep;
 They'll revive me again, for they never have fail'd me.

Then I'll laugh at the shadows that haunted my sleep;
 Yet I'm weak—and if slumber again should o'ertake me,
 Then see round my couch that ye strict vigil keep—
 I say that in darkness ye must not forsake me.
 If ye mark that my rest is unhealthful and curst,
 Shake it off—'tis the blessedest boon ye can give;
 For know that they're with me, and doing their worst,
 And I may not again bear such torture and live.