

**CRIME AND PUNISHMENT: THE MARK  
SYSTEM, FRAMED TO MIX  
PERSUASION WITH PUNISHMENT, AND  
MAKE THEIR EFFECT IMPROVING, YET  
THEIR OPERATION SEVERE**

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Crime and Punishment: The Mark System, Framed to Mix Persuasion with Punishment, and Make Their effect improving, yet their operation severe by Alexander Maconochie

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**ALEXANDER MACONOCHIE**

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# CRIME AND PUNISHMENT.

## THE MARK SYSTEM,

FRAMED TO MIX PERSUASION WITH PUNISHMENT, AND MAKE THEIR  
EFFECT IMPROVING, YET THEIR OPERATION SEVERE.

BY CAPTAIN MACONCHIE, R. N., K. H.,

LATE SUPERINTENDENT OF NORFOLK ISLAND.

"Our present punishments resemble every thing that is most deteriorating in ordinary life; and they deteriorate accordingly. If we would infuse into them those impulses, which under Providential guidance make other forms of adversity improving, we would make them improving also," pp. 42, 3. *et passim*.

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## P R E F A C E.

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THE increase of crime and deteriorating effect of our ordinary punishments are admissions in the mouths of many, but would seem to be laid to heart only by few. They elicit frequent expressions of regret, but they do not lead to energetic acts of improvement. The individual corrupter of youth, or betrayer of comparative innocence, when brought to justice is ostentatiously censured ; but the wholesale process continues with little notice.

Many circumstances may be considered to account for this apathy, though certainly none can justify it. The rude justice of early times, retaliation, still complicates the subject ; and faint hearts sink under the difficulties thus alone created. We sow the wind, and suffer ourselves to be overborne by the whirlwind. We seek to overcome evil by evil, and think that good cannot be obtained because the result of this process is more evil still.

The present writer has enjoyed many peculiar facilities for observing and reflecting on this subject. He has recently concluded a service of eight years

in the Penal Colonies, during the four last of which he commanded on Norfolk Island, with from 1500 to 2000 prisoners constantly under his charge. He was unable to try his entire system with these men, partly from want of scope, partly from want of power. He could do little more than keep its principles in view; and as a whole it was thus subjected to that most hazardous of all tests, a half trial. Yet even so, crime diminished with him on the Island to nearly one-half of what it had both previously been, and has since become. Of 920 doubly convicted men discharged by him to Sydney during his command only twenty, little more than 2 per cent., had been reconvicted up to January 1845. And of 527 first convicted men transferred by him to Van Diemen's Land on indulgence in February 1844, only fifteen, under 3 per cent., were under punishment (that is to say, had committed grave offence) in July last, after a period of sixteen months,—while, amidst all the difficulties of the colony, 454, or above four-fifths, were in private service, or otherwise respectably maintaining themselves. The proportion of 10,365 locally trained prisoners at the same time under punishment was 888, or no less than 9 per cent., and in service 6642, or something under three-fifths,—in both respects showing a striking inferiority; though the men who had been under the Mark System had at first to contend with a strong prepossession against them as coming from Norfolk Island,—they had no friends to assist them in overcoming



this prepossession,—and no acquaintance with work peculiar to Van Diemen's Land otherwise to recommend them. These facts severally rest on returns laid before Parliament during the present session.\*

There seems, then, here the strongest *prima facie* evidence that the plans of the writer deserve consideration. In the annexed pages they are otherwise exhibited in their most comprehensive yet succinct form, and are sought to be regarded economically, as well as morally and politically. In all these aspects they hold out a large promise; and this uniformity of result is another presumption in their favour. It is the exclusive employment of force in penal discipline that at present defeats its objects, and swells its expenditure; and the introduction of persuasion that would remedy the one evil, would equally abate the other.

The entire subject is of great importance, and ought also to excite great interest. Our committals are now nearly 200,000 annually within the three kingdoms, and greatly exceed this number within the empire. Above a tenth of them are of children, and almost a third of youths under twenty. We execute very few;—we transport under 5000;—even these last we turn to bad account in another hemisphere;—and the whole (if we believe that our

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\* See also Note, p. 53.

existing forms of punishment deteriorate, of which there can be no serious doubt), we may be thus said to train at great expense, and discharge, apostles of evil, graduates in its details, to corrupt and seduce their, perhaps still hesitating, friends and companions. In this proportion, then, we directly contribute to lower the tone of moral feeling in our population; and, while conducting this process, are we entitled to lament over the increase of crime, and bow before it as an unavoidable calamity?

And there is also another point of view in which the question may be placed, in the hope of drawing public attention to it. The improvements that have been made in this department within the last few years have all been in apparatus, not system. The abstract principles of punishment are just what they always were, vindictive and retributory, not corrective; and these improvements have also been nearly all in the machinery of *force*,—for with the single exception of increased means of religious instruction, the *materiel* of persuasion in our penal arrangements is not greater now than it always was,—or rather in many respects it is less,—for it is a melancholy rule that as the appliances of force are extended those of persuasion become neglected, if not otherwise directly contracted. While, then, in every other branch of administration our social movement has shown itself in extending the sphere, and confiding in the influences, of

persuasion, in this alone it is exhibited in perfecting the means of coercive agency;—and if it be said that this is an incident inseparable from the subject, at least it should be observed that it is also coincident with failure. Crime increases; and with this undoubted fact before us we may surely be permitted to doubt the reasoning which in this department alone retains us under the influence of old maxims, when not rewarded with success in it by their means.

To those who take an interest in the highest interests of man, the views thus taken will require no recommendation. Others may not at first regard them so favourably:—but of all they only ask consideration, and *action*, should conviction follow. If it be not rendered probable on examination that in this, as in many other instances, under the kind ordination of Providence our temporal prosperity is bound up with the discharge of our moral obligations, and is sacrificed through their neglect, then is the case, though still not to be abandoned, only half made out. But if, on the contrary, it is found that all interests concur there should be no delay in acting on the conviction.

To many, very many indeed, the least delay will be equivalent to no change. It is a common argument against death punishments that if inflicted erroneously they are irrevocable: but is a sentence to deterioration in an ordinary gregarious prison or