

On the Punishment of Death

A FRAGMENT

The first law which it becomes a Reformer to propose and support, at the approach of a period of great political change, is the abolition of the punishment of death.

It is sufficiently clear that revenge, retaliation, atonement, expiation, are rules and motives, so far from deserving a place in any enlightened system of political life, that they are the chief sources of a prodigious class of miseries in the domestic circles of society. It is clear that however the spirit of legislation may appear to frame institutions upon more philosophical maxims, it has hitherto, in those cases which are termed criminal, done little more than palliate the spirit, by gratifying a portion of it; and afforded a compromise between that which is bests—the inflicting of no evil upon a sensitive being, without a decisively beneficial result in which he should at least participates—and that which is worst; that he should be put to torture for the amusement of those whom he may have injured, or may seem to have injured.

Omitting these remoter considerations, let us inquire what, DEATH is; that punishment which is applied as a measure of transgressions of indefinite shades of distinction, so soon as they shall have passed that degree and colour of enormity, with which it is supposed no, inferior infliction is commensurate.

And first, whether death is good or evil, a punishment or a reward, or whether it be wholly indifferent, no man can take upon himself to assert. That that within us which thinks and feels, continues to think and feel after the dissolution of the body, has been the almost universal opinion of mankind, and the accurate philosophy of what I may be permitted to term the modern Academy, by showing the prodigious depth and extent of our ignorance respecting the causes and nature of sensation, renders probable the affirmative of a proposition, the negative of which it is so difficult to conceive, and the popular arguments against which, derived from what is called the atomic system, are proved to be applicable only to the relation which one object bears to another, as apprehended by the mind, and not to existence itself, or the nature of that essence which is the medium and receptacle of objects.

The popular system of religion suggests the idea that the mind, after death, will be painfully or pleurably affected according to its determinations during life. However ridiculous and pernicious we must admit the vulgar accessories of this creed to be, there is a certain analogy, not wholly absurd, between the consequences resulting to an individual during life from the virtuous or vicious, prudent or imprudent, conduct of his external actions, to those consequences which are conjectured to ensue from the discipline and order of his internal thoughts, as affecting his condition in a future state. They omit, indeed, to calculate upon the accidents of disease, and temperament, and organization, and circumstance, together with the multitude of independent agencies which affect the opinions, the conduct, and the happiness of individuals, and produce determinations of the will, and modify the judgement, so as to produce effects the most opposite in natures considerably similar. These are those operations in the order of the whole of nature, tending, we are prone to believe, to some definite mighty end, to which the agencies of our peculiar nature are subordinate; nor is there any reason to suppose, that in a future state they should become suddenly exempt from that subordination. The philosopher is unable to determine whether our existence in a previous state has affected our present

condition, and abstains from deciding whether our present condition will affect us in that which may be future. That, if we continue to exist, the manner of our existence will be such as no inferences nor conjectures, afforded by a consideration of our earthly experience, can elucidate, is sufficiently obvious. The opinion that the vital principle within us, in whatever mode it may continue to exist, must lose that consciousness of definite and individual being which now characterizes it, and become a unit in the vast sum of action and of thought which disposes and animates the universe, and is called God, seems to belong to that class of opinion which has been designated as indifferent.

To compel a person to know all that can be known by the dead concerning that which the living fear, hope, or forget; to plunge him into the pleasure or pain which there awaits him; to punish or reward him in a manner and in a degree incalculable and incomprehensible by us; to disrobe him at once from all that intertexture of good and evil with which Nature seems to have clothed every form of individual existence, is to inflict on him the doom of death.

A certain degree of pain and terror usually accompany the infliction of death. This degree is infinitely varied by the infinite variety in the temperament and opinions of the sufferers. As a measure of punishment, strictly so considered, and as an exhibition, which, by its known effects on the sensibility of the sufferer, is intended to intimidate the spectators from incurring a similar liability, it is singularly inadequate.

Firstly, Persons of energetic character, in whom, as in men who suffer for political crimes, there is a large mixture of enterprise, and fortitude, and disinterestedness, and the elements, though misguided and disarranged, by which the strength and happiness of a nation might have been cemented, die in such a manner, as to make death appear not evil, but good. The death of what is called a traitor, that is, a person who, from whatever motive, would abolish the government of the day, is as often a triumphant exhibition of suffering virtue, as the warning of a culprit. The multitude, instead of departing with a panic-stricken approbation of the laws which exhibited such a spectacle, are inspired with pity, admiration and sympathy; and the most generous among them feel an emulation to be the authors of such flattering emotions, as they experience stirring in their bosoms. Impressed by what they see and feel, they make no distinctive between the motives which incited the criminals to the action for which they suffer, or the heroic courage with which they turned into good that which their judges awarded to them as evil or the purpose itself of those actions, though that purpose may happen to be eminently pernicious. The laws in this case lose their sympathy, which it ought to be their chief object to secure, and in a participation of which consists their chief strength in maintaining those sanctions by which the parts of the social union are bound together, so as to produce, as nearly as possible, the ends for which it is instituted.

Secondly,—Persons of energetic character, in communities not modelled with philosophical skill to turn all the energies which they contain to the purposes of common good, are prone also to fall into the temptation of undertaking, and are peculiarly fitted for despising the perils attendant upon consummating, the most enormous crimes. Murder, rapes, extensive schemes of plunder are the actions of persons belonging to this class; and death is the penalty of conviction. But the coarseness of organization, peculiar to men capable of committing acts wholly selfish, is usually found to be associated with a proportionate insensibility to fear or pain. Their sufferings communicate to those of the spectators, who may be liable to the commission of similar crimes a sense of the lightness of that event, when closely examined which, at a distance, as uneducated persons are accustomed to do, probably they regarded with horror. But a great majority of the spectators are so bound up in the interests and the habits of social union that no temptation would be sufficiently strong to induce them

to a commission of the enormities to which this penalty is assigned. The more powerful, and the richer among them,—and a numerous class of little tradesmen are richer and more powerful than those who are employed by them, and the employer, in general, bears this relation to the employed,—regard their own wrongs as, in some degree, avenged, and their own rights secured by this punishment, inflicted as the penalty of whatever crime. In cases of murder or mutilation, this feeling is almost universal. In those, therefore, whom this exhibition does not awaken to the sympathy which extenuates crime and discredits the law which restrains it, it produces feelings more directly at war with the genuine purposes of political society. It excites those emotions which it is the chief object of civilization to extinguish for ever, and in the extinction of which alone there can be any hope of better institutions than those under which men now misgovern one another. Men feel that their revenge is gratified, and that their security is established by the extinction and the sufferings of beings, in most respects resembling themselves; and their daily occupations constraining them to a precise form in all their thoughts, they come to connect inseparably the idea of their own advantage with that of the death and torture of others. It is manifest that the object of sane polity is directly the reverse; and that laws founded upon reason, should accustom the gross vulgar to associate their ideas of security and of interest with the reformation, and the strict restraint, for that purpose alone, of those who might invade it.

The passion of revenge is originally nothing more than an habitual perception of the ideas of the sufferings of the person who inflicts an injury, as connected, as they are in a savage state, or in such portions of society as are yet undisciplined to civilization, with security that that injury will not be repeated in future. This feeling, engrafted upon superstition and confirmed by habit, at last loses sight of the only object for which it may be supposed to have been implanted, and becomes a passion and a duty to be pursued and fulfilled, even to the destruction of those ends to which it originally tended. The other passions, both good and evil. Avarice, Remorse, Love, Patriotism, present a similar appearance; and to this principle of the mind over-shooting the mark at which it aims, we owe all that is eminently base or excellent in human nature; in providing for the nutriment or the extinction of which, consists the true art of the legislator. [Footnote: The savage and the illiterate are but faintly aware of the distinction between the future and the past; they make actions belonging to periods so distinct, the subjects of similar feelings; they live only in the present, or in the past, as it is present. It is in this that the philosopher excels one of the many; it is this which distinguishes the doctrine of philosophic necessity from fatalism; and that determination of the will, by which it is the active source of future events, from that liberty or indifference, to which the abstract liability of irremediable actions is attached, according to the notions of the vulgar.

This is the source of the erroneous excesses of Remorse and Revenge; the one extending itself over the future, and the other over the past; provinces in which their suggestions can only be the sources of evil. The purpose of a resolution to act more wisely and virtuously in future, and the sense of a necessity of caution in repressing an enemy, are the sources from which the enormous superstitions implied in the words cited have arisen.]

Nothing is more clear than that the infliction of punishment in general, in a degree which the reformation and the restraint of those who transgress the laws does not render indispensable, and none more than death, confirms all the inhuman and unsocial impulses of men. It is almost a proverbial remark, that those nations in which the penal code has been particularly mild, have been distinguished from all others by the rarity of crime. But the example is to be admitted to be equivocal. A more decisive argument is afforded by a consideration of the universal connexion of ferocity of manners, and a contempt of social ties, with the contempt of human life. Governments which derive their

institutions from the existence of circumstances of barbarism and violence, with some rare exceptions perhaps, are bloody in proportion as they are despotic, and form the manners of their subjects to a sympathy with their own spirit.

The spectators who feel no abhorrence at a public execution, but rather a self-applauding superiority, and a sense of gratified indignation, are surely excited to the most inauspicious emotions. The first reflection of such a one is the sense of his own internal and actual worth, as preferable to that of the victim, whom circumstances have led to destruction. The meanest wretch is impressed with a sense of his own comparative merit. He is one of those on whom the tower of Siloam fell not—he is such a one as Jesus Christ found not in all Samaria, who, in his own soul, throws the first stone at the woman taken in adultery. The popular religion of the country takes its designation from that illustrious person whose beautiful sentiment I have quoted. Any one who has stript from the doctrines of this person the veil of familiarity, will perceive how adverse their spirit is to feelings of this nature.

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