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P U N I S H M E N T S,

Translated from the ITALIAN;

W I T H A

C O M M E N T A R Y,

Attributed to Monf. DE VOLTAIRE,

Translated from the *French*.

In rebus quibuscumque difficilioribus non expectandum, ut quis simul, & ferat, & metat, sed præparatione opus est, ut per gradus maturescant.

BACON.

L O N D O N:

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THESE principles will displease those, who have made it a rule with themselves, to transmit to their inferiors the tyranny they suffer from their superiors. I should have every thing to fear, if tyrants were to read my book; but tyrants never read.

CHAP. V.

Of the Obscurity of Laws.

IF the power of interpreting laws be an evil, obscurity in them must be another, as the former is the consequence of the latter. This evil will be still greater, if the laws be written in a language unknown to the people; who, being ignorant of the consequences of their own actions, become necessarily dependent on a few, who are interpreters of the laws, which, instead of being public, and general, are thus rendered private, and particular. What must we think of mankind, when we reflect, that such is the established custom of the greatest part of our polished, and enlighten'd Europe? Crimes will be less

less frequent, in proportion as the code of laws is more universally read, and understood; for there is no doubt, but that the eloquence of the passions is greatly assisted by the ignorance, and uncertainty of punishments.

HENCE it follows, that without written laws, no society will ever acquire a fixed form of government, in which the power is vested in the whole, and not in any part of the society; and in which, the laws are not to be altered, but by the will of the whole, nor corrupted by the force of private interest. Experience and reason shew us, that the probability of human traditions diminishes in proportion as they are distant from their sources. How then can laws resist the inevitable force of time, if there be not a lasting monument of the social compact?

HENCE, we see the use of printing, which alone makes the public, and not a few individuals, the guardians and defenders of the laws. It is this art, which,

by diffusing literature, has gradually diffipated the gloomy spirit of cabal and intrigue. To this art it is owing, that the atrocious crimes of our ancestors, who were alternately slaves, and tyrants, are become less frequent. Those who are acquainted with the history of the two or three last centuries, may observe, how from the lap of luxury and effeminacy, have sprung the most tender virtues, humanity, benevolence, and toleration of human errors. They may contemplate the effects of, what was so improperly called, ancient simplicity, and good faith; humanity groaning under implacable superstition; the avarice and ambition of a few, staining, with human blood, the thrones and palaces of kings; secret treasons, and public massacres; every noble a tyrant over the people; and the ministers of the gospel of Christ, bathing their hands in blood, in the name of the God of all mercy. We may talk as we please of the corruption and degeneracy of the present age, but happily we see no
such

such horrid examples of cruelty and oppression.

C H A P. VI.

Of the Proportion between Crimes and Punishments.

IT is not only the common interest of mankind, that crimes should not be committed, but that crimes of every kind should be less frequent, in proportion to the evil they produce to society. Therefore, the means made use of by the legislature to prevent crimes, should be more powerful, in proportion as they are destructive of the public safety and happiness, and as the inducements to commit them are stronger. Therefore there ought to be a fixed proportion between crimes and punishments.

IT is impossible to prevent entirely all the disorders which the passions of mankind cause in society. These disorders increase in proportion to the number of people, and the opposition of private interests. If

we consult history, we shall find them increasing, in every state, with the extent of dominion. In political arithmetic, it is necessary to substitute a calculation of probabilities, to mathematical exactness. That force, which continually impels us to our own private interest, like gravity, acts incessantly, unless it meets with an obstacle to oppose it. The effects of this force are the confused series of human actions. Punishments, which I would call political obstacles, prevent the fatal effects of private interest, without destroying the impelling cause, which is that sensibility inseparable from man. The legislator acts, in this case, like a skilful architect, who endeavours to counteract the force of gravity by combining the circumstances which may contribute to the strength of his edifice.

THE necessity of uniting in society being granted, together with the conventions, which the opposite interests of individuals must necessarily require, a scale of crimes may be formed, of which the
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first degree should consist of those, which immediately tend to the dissolution of society, and the last, of the smallest possible injustice done to a private member of that society. Between these extremes will be comprehended, all actions contrary to the public good, which are called criminal, and which descend by insensible degrees, decreasing from the highest to the lowest. If mathematical calculation could be applied to the obscure and infinite combinations of human actions, there might be a corresponding scale of punishments, descending from the greatest to the least: but it will be sufficient that the wise legislator mark the principal divisions, without disturbing the order, lest to crimes of the *first* degree, be assigned punishments of the *last*. If there were an exact and universal scale of crimes and punishments, we should there have a common measure of the degree of liberty and slavery, humanity and cruelty of different nations.

ANY action, which is not comprehended in the above-mentioned scale, will

not be called a crime, or punished as such, except by those who have an interest in the denomination. The uncertainty of the extreme points of this scale, hath produced a system of morality which contradicts the laws ; a multitude of laws that contradict each other ; and many, which expose the best men to the severest punishments, rendering the ideas of *vice* and *virtue* vague, and fluctuating, and even their existence doubtful. Hence that fatal lethargy of political bodies, which terminates in their destruction.

WHOEVER reads, with a philosophic eye, the history of nations, and their laws, will generally find, that the ideas of virtue and vice, of a good or a bad citizen, change with the revolution of ages ; not in proportion to the alteration of circumstances, and consequently conformable to the common good ; but in proportion to the passions and errors by which the different law-givers were successively influenced. He will frequently observe, that the passions and vices of one age,
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are the foundation of the morality of the following; that violent passion, the offspring of fanaticism and enthusiasm, being weakened by time, which reduces all the phenomena of the natural and moral world to an equality, become, by degrees, the prudence of the age, and an useful instrument in the hands of the powerful, or artful politician. Hence the uncertainty of our notions of honour and virtue; an uncertainty which will ever remain, because they change with the revolutions of time, and names survive the things they originally signified; they change with the boundaries of states, which are often the same both in physical and moral geography.

PLEASURE and pain are the only springs of action in beings endowed with sensibility. Even amongst the motives which incite men to acts of religion, the invisible legislator has ordained rewards and punishments. From a partial distribution of these, will arise that contradiction, so little observed, because so common,

mon; I mean, that of punishing by the laws, the crimes which the laws have occasioned. If an equal punishment be ordained for two crimes that injure society in different degrees, there is nothing to deter men from committing the greater, as often as it is attended with greater advantage.

CH A P. VII.

Of estimating the Degree of Crimes.

THE foregoing reflections authorize me to assert, that crimes are only to be measured by the injury done to society.

THEY err, therefore, who imagine that a crime is greater, or less, according to the intention of the person by whom it is committed; for this will depend on the actual impression of objects on the senses, and on the previous disposition of the mind; both which will vary in different persons, and even in the same person at different times, according to the succession of ideas, passions, and circumstances.

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Upon that system, it would be necessary to form, not only a particular code for every individual, but a new penal law for every crime. Men, often with the best intention, do the greatest injury to society, and with the worst, do it the most essential services.

OTHERS have estimated crimes rather by the dignity of the person offended, than by their consequences to society. If this were the true standard, the smallest irreverence to the divine Being ought to be punished with infinitely more severity, than the assassination of a monarch.

In short, others have imagined, that the greatness of the sin should aggravate the crime. But the fallacy of this opinion will appear on the slightest consideration of the relations between man and man, and between God and man. The relations between man and man, are relations of equality. Necessity alone hath produced, from the opposition of private passions and interests, the idea of public utility,

utility, which is the foundation of human justice. The other are relations of dependance, between an imperfect creature and his creator, the most perfect of beings, who has reserved to himself the sole right of being both lawgiver, and judge; for he alone can, without injustice, be, at the same time, both one and the other. If he hath decreed eternal punishments for those who disobey his will, shall an insect dare to put himself in the place of divine justice, or pretend to punish for the Almighty, who is himself all-sufficient; who cannot receive impressions of pleasure, or pain, and who alone, of all other beings, acts without being acted upon? The degree of sin depends on the malignity of the heart, which is impenetrable to finite beings. How then can the degree of sin serve as a standard to determine the degree of crimes? If that were admitted, men may punish when God pardons, and pardon when God condemns; and thus act in opposition to the supreme Being.

C H A P.

CHAPTER XXVII.

Of the Mildness of Punishments.

THE course of my ideas has carried me away from my subject, to the elucidation of which I now return. Crimes are more effectually prevented by the *certainty*, than the *severity* of punishment. Hence in a magistrate, the necessity of vigilance, and in a judge, of implacability, which that it may become an useful virtue, should be joined to a mild legislation. The certainty of a small punishment will make a stronger impression, than the fear of one more severe, if attended with the hopes of escaping; for it is the nature of mankind to be terrified at the approach of the smallest inevitable evil, whilst hope, the best gift of heaven, hath the power of dispelling the apprehension of a greater; especially if supported by examples of impunity, which weakness, or avarice too frequently afford.

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IF punishments be very severe, men are naturally led to the perpetration of other crimes, to avoid the punishment due to the first. The countries and times most notorious for severity of punishments, were always those in which the most bloody and inhuman actions and the most atrocious crimes were committed; for the hand of the legislator and the assassin were directed by the same spirit of ferocity; which, on the throne, dictated laws of iron to slaves and savages and, in private, instigated the subject to sacrifice one tyrant, to make room for another.

IN proportion as punishments become more cruel, the minds of men, as a fluid rises to the same height with that which surrounds it, grow hardened and insensible; and the force of the passions still continuing, in the space of an hundred years, the *wheel* terrifies no more than formerly the *prison*. That a punishment may produce the effect required, it is sufficient that the *evil*

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it occasions should exceed the *good* expected from the crime; including in the calculation the certainty of the punishment, and the privation of the expected advantage. All severity beyond this is superfluous, and therefore tyrannical.

MEN regulate their conduct by the repeated impresson of evils they know, and not by those with which they are unacquainted. Let us, for example, suppose two nations, in one of which the greatest punishment is *perpetual slavery*, and in the other *the wheel*. I say, that both will inspire the same degree of terror; and that there can be no reasons for encreasing the punishments of the first, which are not equally valid for augmenting those of the second to more lasting and more ingenious modes of tormenting; and so on to the most exquisite refinements of a science too well known to tyrants.

THERE are yet two other consequences of cruel punishments, which counter-act the purpose of their institution, which
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was, to prevent crimes. The *first* arises from the impossibility of establishing an exact proportion between the crime and punishment, for though ingenious cruelty hath greatly multiplied the variety of torments, yet the human frame can suffer only to a certain degree, beyond which it is impossible to proceed, be the enormity of the crime ever so great. The *second* consequence is impunity. Human nature is limited no less in evil than in good. Excessive barbarity can never be more than temporary; it being impossible that it should be supported by a permanent system of legislation; for if the laws be too cruel they must be altered, or anarchy and impunity will succeed,

Is it possible, without shuddering with horror, to read in history of the barbarous and useless torments that were coolly invented and executed by men who were called sages? Who does not tremble at the thoughts of thousands of wretches, whom their misery, either caused or tolerated by the laws, which favoured the

few and outraged the many, had forced in despair to return to a state of nature; or accused of impossible crimes, the fabric of ignorance and superstition; or guilty only of having been faithful to their own principles; who, I say, can, without horror, think of their being torn to pieces with slow and studied barbarity, by men endowed with the same passions and the same feelings? A delightful spectacle to a fanatic multitude!

C H A P. XXVIII.

Of the Punishment of Death.

THE useless profusion of punishments, which has never made men better, induces me to enquire, whether the punishment of *death* be really just or useful in a well-governed state? What *right*, I ask, have men to cut the throats of their fellow-creatures? Certainly not that on which the sovereignty and laws are founded. The laws, as I have said before, are only the sum of the smallest portions of the private

private liberty of each individual, and represent the general will, which is the aggregate of that of each individual. Did any one ever give to others the right of taking away his life? Is it possible, that in the smallest portions of the liberty of each, sacrificed to the good of the public, can be contained the greatest of all good, life? If it were so, how shall it be reconciled to the maxim which tells us, that a man has no right to kill himself? Which he certainly must have, if he could give it away to another.

BUT the punishment of death is not authorised by any right; for I have demonstrated that no such right exists. It is therefore a war of a whole nation against a citizen, whose destruction they consider as necessary, or useful to the general good. But if I can further demonstrate, that it is neither necessary nor useful, I shall have gained the cause of humanity.

THE death of a citizen cannot be necessary, but in one case. When, though

deprived of his liberty, he has such power and connexions as may endanger the security of the nation; when his existence may produce a dangerous revolution in the established form of government. But even in this case, it can only be necessary, when a nation is on the verge of recovering or losing its liberty; or in times of absolute anarchy, when the disorders themselves hold the place of laws. But in a reign of tranquility; in a form of government approved by the united wishes of the nation; in a state well fortified from enemies without, and supported by strength within, and opinion, perhaps more efficacious; where all power is lodged in the hands of the true sovereign; where riches can purchase pleasures and not authority, there can be no necessity for taking away the life of a subject.

If the experience of all ages be not sufficient to prove, that the punishment of death has never prevented determined men from injuring society; if the example of the Romans; if twenty years reign of Elizabeth,

Elizabeth, empress of Ruffia, in which she gave the fathers of their country an example more illustrious than many conquests bought with blood ; if, I say, all this be not sufficient to persuade mankind, who always suspect the voice of reason, and who chuse rather to be led by authority, let us consult human nature in proof of my assertion.

IT is not the intenseness of the pain that has the greatest effect on the mind, but its continuance ; for our sensibility is more easily and more powerfully affected by weak but repeated impressions, than by a violent, but momentary, impulse. The power of habit is universal over every sensible being. As it is by that we learn to speak, to walk, and to satisfy our necessities, so the ideas of morality are stamped on our minds by repeated impressions. The death of a criminal is a terrible but momentary spectacle, and therefore a less efficacious method of deterring others, than the continued example of a man deprived of his liberty, condemned, as a
beast

beast of burthen, to repair, by his labour, the injury he has done to society. *If I commit such a crime, says the spectator to himself, I shall be reduced to that miserable condition for the rest of my life.* A much more powerful preventive than the fear of death, which men always behold in distant obscurity.

THE terrors of death make so slight an impression, that it has not force enough to withstand the forgetfulness natural to mankind, even in the most essential things; especially when assisted by the passions. Violent impressions surprize us, but their effect is momentary; they are fit to produce those revolutions which instantly transform a common man into a Lacedemonian or a Persian; but in a free and quiet government they ought to be rather frequent than strong.

THE execution of a criminal is, to the multitude, a spectacle, which in some excites compassion mixed with indignation. These sentiments occupy the
mind

mind much more than that salutary terror which the laws endeavour to inspire; but in the contemplation of continued suffering, terror is the only, or at least the predominant sensation. The severity of a punishment should be just sufficient to excite compassion in the spectators, as it is intended more for them than for the criminal,

A PUNISHMENT, to be just, should have only that degree of severity which is sufficient to deter others. Now there is no man, who upon the least reflection, would put in competition the total and perpetual loss of his liberty, with the greatest advantages he could possibly obtain in consequence of a crime. Perpetual slavery, then, has in it all that is necessary to deter the most hardened and determined, as much as the punishment of death. I say it has more. There are many who can look upon death with intrepidity and firmness; some through fanaticism, and others through vanity, which attends us even to the grave; others
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from a desperate resolution, either to get rid of their misery, or cease to live: but fanaticism and vanity forsake the criminal in slavery, in chains and fetters, in an iron cage; and despair seems rather the beginning than the end of their misery. The mind, by collecting itself and uniting all its force, can, for a moment repel affailing grief; but its most vigorous efforts are insufficient to resist perpetual wretchedness.

IN all nations, where death is used as a punishment, every example supposes a new crime committed. Whereas in perpetual slavery, every criminal affords a frequent and lasting example; and if it be necessary that men should often be witnesses of the power of the laws, criminals should often be put to death; but this supposes a frequency of crimes; and from hence this punishment will cease to have its effect, so that it must be useful and useless at the same time.

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I SHALL be told, that perpetual slavery is as painful a punishment as death, and therefore as cruel. I answer, that if all the miserable moments in the life of a slave were collected into one point, it would be a more cruel punishment than any other; but these are scattered through his whole life, whilst the pain of death exerts all its force in a moment. There is also another advantage in the punishment of slavery, which is, that it is more terrible to the spectator than to the sufferer himself; for the spectator considers the sum of all his wretched moments, whilst the sufferer, by the misery of the present, is prevented from thinking of the future. All evils are increased by the imagination, and the sufferer finds resources and consolations, of which the spectators are ignorant; who judge by their own sensibility of what passes in a mind, by habit grown callous to misfortune.

LET us, for a moment, attend to the reasoning of a robber or assassin, who is deterred

deterred from violating the laws by the gibbet or the wheel. I am sensible, that to develop the sentiments of one's own heart, is an art which education only can teach? but although a villain may not be able to give a clear account of his principles, they nevertheless influence his conduct. He reasons thus. "What are
" these laws, that I am bound to respect,
" which make so great a difference be-
" tween me and the rich man? He re-
" fuses me the farthing I ask of him, and
" excuses himself by bidding me have
" recourse to labour, with which he is
" unacquainted. Who made these laws?
" The rich and the great, who never
" deigned to visit the miserable hut of the
" poor; who have never seen him divid-
" ing a piece of mouldy bread, amidst the
" cries of his famished children and the
" tears of his wife. Let us break those
" ties, fatal to the greatest part of man-
" kind, and only useful to a few indolent
" tyrants. Let us attack injustice at its
" source. I will return to my natural
" state of independance. I shall live free
" and

“ and happy on the fruits of my courage
 “ and industry. A day of pain and re-
 “ pentance may come, but it will be
 “ short; and for an hour of grief I shall
 “ enjoy years of pleasure and liberty.
 “ King of a small number, as determined
 “ as myself, I will correct the mistakes
 “ of fortune; and I shall see those tyrants
 “ grow pale and tremble at the sight of
 “ him, whom, with insulting pride, they
 “ would not suffer to rank with their
 “ dogs and horses.”

RELIGION then presents itself to the
 mind of this lawless villain, and promising
 him almost a certainty of eternal happi-
 ness upon the easy terms of repentance,
 contributes much to lessen the horror of
 the last scene of the tragedy.

BUT he who foresees, that he must pass
 a great number of years, even his whole
 life, in pain and slavery; a slave to those
 laws by which he was protected; in sight
 of his fellow citizens, with whom he lives
in freedom and society; makes an useful
comparison

comparison between those evils, the uncertainty of his success, and the shortness of the time in which he shall enjoy the fruits of his transgression. The example of those wretches continually before his eyes, makes a much greater impression on him than a punishment, which, instead of correcting, makes him more obdurate.

THE punishment of death is pernicious to society, from the example of barbarity it affords. If the passions, or the necessity of war, have taught men to shed the blood of their fellow-creatures, the laws, which are intended to moderate the ferocity of mankind, should not increase it by examples of barbarity, the more horrible, as this punishment is usually attended with formal pageantry. Is it not absurd, that the laws, which detest and punish homicide, should, in order to prevent murder, publicly commit murder themselves? What are the true and most useful laws? Those compacts and conditions which all would propose and observe, in those moments when private interest is silent, or combined

joined with that of the public. What are the natural sentiments of every person concerning the punishment of death? We may read them in the contempt and indignation with which every one looks on the executioner, who is nevertheless an innocent executor of the public will; a good citizen, who contributes to the advantage of society; the instrument of the general security within, as good soldiers are without. What then is the origin of this contradiction? Why is this sentiment of mankind indelible, to the scandal of reason? It is, that in a secret corner of the mind, in which the original impressions of nature are still preserved, men discover a sentiment which tells them, that their lives are not lawfully in the power of any one, but of that necessity only, which with its iron scepter rules the universe.

WHAT must men think, when they see wise magistrates and grave ministers of justice, with indifference and tranquility, dragging a criminal to death, and whilst a wretch trembles with agony, expecting

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the fatal stroke, the judge, who has condemned him, with the coldest insensibility, and perhaps with no small gratification from the exertion of his authority, quits his tribunal to enjoy the comforts and pleasures of life? They will say, " Ah ! those cruel formalities of justice are
" a cloak to tyranny, they are a secret
" language, a solemn veil, intended to conceal the sword by which we are sacrificed to the insatiable idol of despotism.
" Murder, which they would represent
" to us as an horrible crime, we see
" practised by them without repugnance,
" or remorse. Let us follow their example. A violent death appeared terrible in their descriptions, but we see
" that it is the affair of a moment. It
" will be still less terrible to him, who
" not expecting it, escapes almost all the
" pain." Such is the fatal, though absurd reasoning of men who are disposed to commit crimes; on whom, the abuse of religion has more influence than religion itself.

IF it be objected, that almost all nations in all ages have punished certain crimes with death, I answer, that the force of these examples vanishes, when opposed to truth, against which prescription is urged in vain. The history of mankind is an immense sea of errors, in which a few obscure truths may here and there be found.

BUT human sacrifices have also been common in almost all nations. That some societies only, either few in number, or for a very short time, abstained from the punishment of death, is rather favourable to my argument, for such is the fate of great truths, that their duration is only as a flash of lightning in the long and dark night of error. The happy time is not yet arrived, when truth, as falshood has been hitherto, shall be the portion of the greatest number.

I AM sensible that the voice of one philosopher is too weak to be heard amidst the clamours of a multitude, blind-

ly influenced by custom; but there is a small number of sages, scattered on the face of the earth, who will echo to me from the bottom of their hearts; and if these truths should haply force their way to the thrones of princes, be it known to them, that they come attended with the secret wishes of all mankind; and tell the sovereign who deigns them a gracious reception, that his fame shall outshine the glory of conquerors, and that equitable posterity will exalt his peaceful trophies above those of a Titus, an Antoninus or a Trajan.

How happy were mankind, if laws were now to be first formed; now that we see on the thrones of Europe, benevolent monarchs, friends to the virtues of peace, to the arts and sciences, fathers of their people, though crown'd yet citizens; the increase of whose authority augments the happiness of their subjects, by destroying that intermediate despotism, which intercepts the prayers of the people, to
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the throne. If these humane princes have suffered the old laws to subsist, it is doubtless, because they are deterred by the numberless obstacles, which oppose the subversion of errors established by the sanction of many ages; and therefore every wise citizen will wish for the increase of their authority.

C H A P. XXIX.

Of Imprisonment.

THAT a magistrate, the executor of the laws, should have a power to imprison a citizen, to deprive the man he hates of his liberty upon frivolous pretences, and to leave his friend unpunished, notwithstanding the strongest proofs of his guilt, is an error, as common, as it is contrary to the end of society, which is personal security.

Imprisonment is a punishment, which differs from all others in this particular,

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that