

E

1

- 1 Capital Punishments — against
- 2 — " — " — " — " For
- 3 Divorce —
- 4 — Address — on Greece
- 5 — Church of Scotland
- ~~6 — The Benefits of our Country~~

VACATION THOUGHTS

ON

CAPITAL PUNISHMENTS.

BY

CHARLES PHILLIPS, A.B.,

One of Her Majesty's Commissioners of the Court for the Relief of Insolvent
Debtors, in London.

“ I have seen,
When after execution, judgment hath
Repented o'er his doom.”

MEASURE FOR MEASURE.—*Act 2, Scene 2.*

FOURTH EDITION—ENLARGED.

LONDON :

JAMES RIDGWAY, 169, PICCADILLY :

ALFRED W. BENNETT, 5, BISHOPSGATE STREET WITHOUT.

—
MDCCLXVIII.

THOU SHALT NOT KILL

TO

AN OLD AND VALUED FRIEND,

STANLEY LEES GIFFARD, LL.D.,

THE FOLLOWING PAGES

ARE,

WITH EVERY SENTIMENT OF ESTEEM AND RESPECT,

AFFECTIONATELY INSCRIBED.

*Gordon Square,
February, 1858.*

1081684

TO

AN OLD AND VALUED FRIEND,

STANLEY LEE'S GIFFARD, LTD.,

THE FOLLOWING PAGES

AND

WITH KINDY SENTIMENT OF REGRET AND RESPECT,

APPROPRIATELY INSCRIBED.

London, 1908.

“THOU SHALT NOT KILL.”

IN proposing to expunge from our statute-book the punishment of death, I am not unaware of the opposition to be encountered. The same opposition has however met every attempt to mitigate the cruel severity of our penal code, and in every instance it has been overcome. There never yet was an error which could plead prescription, that had not its worshippers; or a proposed correction of it, which did not fill them with alarm. But the errors have been slowly and effectually exposed, and yet the world has gone on as usual, and men have lived to smile at the phantoms which formerly peopled the pathway of reform. Our penal code especially has been humanized, and capital punishments have all but disappeared from its enactments. This has been attained, however, but by slow and painful progress, against a dogged opposition in both houses of parliament, and, strange to say, amid the outcries and lamentations and minatory predictions of the wise and good.

The most eminent Judges of the land, the most pious dignitaries of the Church, sustained by their eloquence, their learning, and their authority, what Bacon so emphatically calls “the rubricks of blood.” Chancellors and Chief Justices, Archbishops and Bishops, voted for the retention of the capital punishment for the offence of stealing to the amount of five shillings in a shop. This no doubt they did conscientiously; but assuredly such examples should warn all not to let their

terrors overcome their reason, or their convictions, however venerable, militate alike against common sense and humanity.

Five and twenty years of no ordinary experience in our criminal courts gives the writer of these pages some title to have a voice in this discussion; and after much patient thought, and much very painful observation, that voice is decidedly for the abolition of capital punishment in every case whatever. Where so much depends, and must necessarily depend, on the constitutional temperament both of the Bench and Jury-box, operative, often unconsciously, on their respective occupants, it is unwise, and as unsafe as unwise, to confide to them an authority which, if exercised in error, is altogether without remedy. Many will think, perhaps, with the great Italian, that man usurps a power which is not his, when he presumes to inflict capital punishment at all. Many there are who will ask with Beccaria, "What right have men to cut the throats of their fellow creatures? Certainly not that on which society and the laws are founded. The laws are only the sum of the smallest portions of the private liberty of each individual, and represent the general will, which is only 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?"

If this be well founded, and it is easier to ridicule than to answer it, it at once disposes of the question. If it be true, what a fearful amount of crime has been committed! Let us however, assume that man has the right to surrender what does not belong to him, and see what the consequences of that surrender have been, and especially in England. The retrospect is the most horrifying, humiliating, and disgusting ever pre-

sented to the gaze of civilization. Yet it must be contemplated. It is essential to the argument, because it will prove that all the reasons now advanced to sustain death punishment as it exists, were employed to sustain it as it existed, and that experience has shown them to have been futile and unfounded. The buried sophisms long laid in dust, send forth their spectres to affright us; but like spectres, they will vanish in the daylight.

It is frightful to look back on the penal code of England, as it stood even in our own day. Every page of our statute-book smelt of blood. True, the laws were not of our own enacting, but those cruel laws were of our own retention. True, wholesale massacres did not occur as formerly, but even latterly executions were frequent enough to shock humanity, and for offences so disproportionable as to make it shudder. Many who are still alive, might have exclaimed with Lord Coke, and justly, "What a lamentable case it was indeed, to see so many christian men and women strangled on that cursed tree of the gallows: insomuch, that if in a large field a man might see together all the christians that in one year, throughout England, came to an untimely and ignominious death, if there were any spark of grace or charity in him, it would make his heart to bleed with pity and compassion." Would this have been one whit less applicable within our own memories, when the Bank of England issued their £1 notes, and Mammon sacrificed his human hecatombs at the Old Bailey? Draco, the archon of Athens, who, about two thousand five hundred years ago, proclaimed it as his opinion, that "the smallest crime deserved death, and he could find no other punishment for the greatest," has come down to us as the very incarnation of cruelty. Every school-boy's heart throbs more quickly at his name. And so be it—let his time-dishonoured memory carry down with it, for centuries to come, an accumulating infamy. But still let us be just. Let even Draco have his due. The glorious ray of the gospel

had not reached his mind, nor had its tones of charity ever touched his heart. It was heathen ignorance, and pagan ferocity, which dictated his code. Under christianity, however, or rather in its despite, Draco has had his rivals; for, alas, in England, a kindred spirit animated our legislation. For the theft of an apple, Draco decreed death—so did we for the theft of a pocket-handkerchief. Hanging was civilized, christian England's universal panacea—her legislative specific. And this she generously imported into Ireland. "On one circuit," says Mr. O'Connell, there were one hundred individuals tried before one Judge; of these, ninety-eight were capitally convicted, and ninety-seven of them hanged.* We hanged for everything—for a shilling—for five shillings—for forty shillings—for five pounds—for cutting down a sapling! We hanged for a sheep—for a horse—for cattle—for coining—for forgery—even for witchcraft—for things that were, and things that could not be. This is easy of proof, was not the fact indisputable. Taking a single year, (1809,) in a single county, (Lancaster,) we find no less than thirteen executions for forgery of Bank-notes,—the result of two assizes!—under these homicidal laws which equally reproached our creed and our civilization. How frightful is the thought that for most of the offences visited with this mournful waste of human life, a few months imprisonment would be the present penalty. But wisdom and humanity and religion made their appeals unheard amid the hurricane of prejudice and passion and revenge.

With the exception of witchcraft, this code continued down even to our day. For that imaginary and parliamentary offence, one contribution to the "cursed tree" was an offering at Bury St. Edmund's, of two old women, both widows, by Sir. Matthew Hale, the good, and wise, and learned Lord Chief Justice. And all this he unquestionably was; yet he hanged the poor old women, notwithstanding. Let us admit the moral!

* Speech in *Rex v. Magee*, p. 106.

If wisdom, and worth, and learning, such as our judgment-seat has seldom seen combined, could, under a delusive sense of duty, perpetrate an outrage such as this, so revolting to common sense, so fatal, and so remediless, how careful ought we to be to withhold such a power from a tribunal, so fallible even when most perfect!

Perhaps there is not in the nation's history a page more monitory and humiliating than that which details our legislation upon witchcraft. Let all who still by scripture doctrine defend death infliction and use religion's light to guide them through the blood-path, solemnly ponder on the picture we present. It is indeed a mournful record of the cruelty and crime, or rather of the mingled crime and cruelty and absurdity of which human self-conceit is capable. In our earlier times witchcraft and sorcery were not capital offences. It was however reserved for the sapient James the First, the most fantastical pedant that ever filled a throne, considerably to extend them. In the very second year of his reign, the statute passed through a christian parliament making it a death-crime to "evoke an evil spirit, or to consult, covenant with, entertain, employ, feed, or reward any evil spirit, or to take up dead bodies from their graves to be used in any witchcraft, sorcery or charm." James, it seems, was originally sceptical respecting the black art, and the cause of his conversion is characteristic of his understanding. It was all owing to a *cat* called Rutterkin,* which under the devil's influence destroyed the children of Francis, Lord Rutland. It was a cheap achievement, the price being,—only the soul of an old woman whom the noble proprietor of Belvoir Castle had in some manner offended. Still, James distrusted Rutterkin; but he took a sure method to satisfy all scruples, by appealing to the Church. Accordingly when the Bill reached the House of Lords, he had it submitted

* Howell's Familiar Letters, p. 440.

to a Select Committee, comprising amongst its members no less than twelve Prelates—christian Prelates, gentle reader—of the Church of England.*

Under such royal and religious auspices, it passed through parliament—a parliament of which Bacon was a member, and during a period when Coke was Attorney-General; the one, “the wisest, brightest of mankind,” the other, Westminster Hall’s most venerated oracle, and for all time likely to continue so. Yet such was the delusion of the day that the mightiest and the meanest intellects grovelled alike beneath its degradation. “In the reign of Charles the Second (says Lord Campbell), a Judge, who from the bench should have expressed a disbelief in witches, would have been thought to show little respect to the law, and to have been nothing better than an atheist.”† Law and religion indeed conspired effectually to avert the imputation, and the judicial bench zealously enforced the legislation of the episcopal. Not content with the due administration of the law, some of them went farther. Lord Coke in his Institute on the criminal law panegyricizes parliament for its witchcraft legislation, and deliberately justifies the infliction of death on the doers of such “great abominations.” Hale, in the closet, championed the monstrous perpetrations of his court, and the frequent scaffold but too practically attested the cruelty of the best, and the credulity of the wisest. The blood curdles on a perusal of what follows. “In August, 1645, eighteen witches were executed at Bury St. Edmunds, and one hundred and twenty more were in the same prison to be tried; but the Judges were obliged to adjourn on account of the near approach of the cavaliers.”‡ Nor was this all. “In the

* Lord’s Journals, vol. ii, p. 270. The Bishops were:—London, Durham, Winchester, Rochester, Lincoln, Worcester, St. Davies, Chester, Carlisle, Elie, Peterburgh, and Hereford.

† Life of Hale, vol. i, p. 562.

‡ A true relation, &c. Lon: 1645.

compass of two years (says Howell)* *near three hundred witches were convicted, and most of them executed in Essex and Sussex only.* Scotland swarms with them, and many of good quality were executed daily."

It is not to our taste, nor is it our intention to reproduce these enormities in their vile detail, but monstrous as they were, they positively become rational compared with the more monstrous proofs on which they were founded. The most outrageous fictions were accepted as facts, and the more outrageous, they were esteemed all the more conclusive. "There is† (says Howell, himself a devout believer in the craft) a famous story of a paction which Father Lewis made fifty years ago with the devil, who appeared to him in the shape of a goat. By this compact, all pleasures were to be furnished to the father for a term of 41 years; but, the devil reversed the figures, changing the 41 into 14, *as 'is' to, be seen to this day, with the mark of the devil's claw signed to it.* He was accordingly burned at the end of the fourteen years, and all children born within the parish during that period, were ordered to be rebaptized." This, as read now, may seem preposterous, yet it is indelibly written in our history of enlightened England, and in the times of men constituting that history's most enduring names: men who would have denounced the sceptic of their doctrines, as much as those do now any one who presumes to doubt their assumed infallibility.

These awful fantasies to which we make allusion, are recorded in the blood of many and many a victim; admitted as evidence in our courts, statutably sanctioned by our mitred senators, and received as grave realities by the tribunals of the country. Roger North relates, that at an Exeter assize, a poor old woman was arraigned as a witch, before his relative, Chief Justice North. The case was clear. A neighbour swore that on a certain day she saw a *cat* jump into the cottage

* Familiar Letters, p. 440. † Ibid., p. 440.

window of the accused! The crazed old creature admitted it was the devil, and, under that admission, she was hanged.* Rutterkin must have had a very numerous family. But, as we shall see, cats, though ordinary, were by no means exclusive members of the satanic cabinet. It was part and parcel of the witchcraft economy, that when man or woman, (for they were of both sexes,) were eligible as practitioners, *teats* sprouted up in various parts of their bodies, by means of which the ministerial imps were nurtured. Thus, Mr. Lowes, the parson of Branson, in Suffolk, who preached threescore sermons after his 'paction,' "had a teat on the crown of his head, and two under his tongue." This holy man was hanged upon his own confession. It would seem to us that these teats must have been, occasionally, somewhat inconvenient, as the narrative says they were, at times, "shaped like a thunderbolt."† The reverend Mr. Lowes had six imps on his establishment. These creatures used to come for their nutriment in the shape of mice, kittens, snails, snakes, hornets, and wasps.

On the same authority we are told the way by which witches were detected. The suspected person was stripped naked and seated on a high stool, so that the feet could not touch the ground:—if the hungry imps approached for their nourishment, the complicity was manifest; if they came not, the visible uneasiness of the sitters (not very surprising under the circumstances) was equally conclusive against them. The juggleries which were current in our courts of law as legal evidence are really almost incredible. In one recorded case,‡ two old women, widows, had been refused some herrings by a peasant, and they were shortly after indicted for having bewitched his children. "Quantities of pins and twopenny nails were produced on the trial alleged to have been spat up by them, and the peasant

* Life of Lord Guildford.

† A true relation, &c., Lon: 1645.

‡ The case of Duny and Cullender, executed at Bury St. Edmunds.

father himself deposed that the old women had tormented them for weeks in the *shape of a bee and a mouse.*" The old women were convicted and executed, and this infernal mockery was enacted, Sir Matthew Hale presiding! The great Chief Justice sat from seven in the morning till eight in the evening, sparing no pains to arrive at a just conclusion. He called together all the most studious and skilful in the craft, and collected their opinions. To prove their value, one specimen must suffice. A philosophic idiot, one Doctor Brown, of Norwich, declared that in Denmark many witches had lately been discovered who thus administered "pins and needles and nails." This sagacious guide gave it as his own opinion that "the devil in such cases did work upon the bodies of men and women, by a *natural inundation.*"

How sad it is to think that a great Judge, a wise, a learned, a truly christian Judge, should sacrifice human life on such gibberish as this! He sacrificed it, too—so insane were his convictions on the subject—though the fraud was sufficiently exposed during the trial! We cannot however, by any means, accede to the assertion that "he was the *murderer* of two innocent women."* He merely administered the law; and if, as Lord Campbell says, "he violated the plainest rules of justice," no one will accuse him of having done so intentionally. If such a Judge as Hale erred, who shall claim immunity? The blame is not attributable to those who administer, but to those who make the law—who commit its execution to a fallible tribunal, and so enact it that the error of that tribunal shall be without appeal or expiation. Judges and juries before Hale's time, and after it, have shed the blood of innocence, and the responsibility is tremendous—upon whomsoever it may fall; but most assuredly it should not fall on those who have shed it in the conscientious performance of their duty. Hale, when perpetrating this enormity, fully believed, with the so-called

* Lord Campbell's Life of Hale, vol. i, p. 562.

wise and learned of his day, that he was doing justice, and has bequeathed to posterity a lamentable document vindicating that belief. A brief extract from this elaborate production may serve to show into what a trance man's most enlightened intellect may fall. "The devil (says Lord Chief Justice Hale*) cannot ordinarily exercise any violence upon the outward man but by the mediation of things corporeal, and most ordinarily, by the mediation of mankind. He cannot kill, but by means of a slayer; nor rob, but by means of a Chaldean or Sabeian; nor infect the body, but by means of a witch! And all this, God has most wisely ordained in this manner that though the Impure Spirit itself lies out of the reach or regiment of human justice or government, yet the instrument without which he cannot ordinarily work, is within the reach of human justice and government." And so, under shelter of what he calls God's ordinance, he gravely vindicates a murderous law for the extermination of his creatures. Oh, what a lesson this should teach us. No doubt whatever, Hale himself—for he was an earnest and a pious man—believed in this unsurpassable abomination. No doubt at all that he, and all of them—prelates, judges, and philosophers in the mass—would "have denounced as nothing better than an atheist," any man who dissented from their doctrines; and no doubt, the heirs to their insanity under another phase, will cry shame on the delusion of the past, now that its blood-swollen bubbles have burst asunder. Even now recur to them and, lo, infatuation has the ready answer—'Oh, we admit the error of such deeds, but the age was unenlightened, a gross credulity prevailed, and intercepted even the ray of Christianity.' This is arrant sophistry. The delusive light which misled Hale and his associates, misleads ourselves—the hazy meteor born of human arrogance. Why do we condemn them? For having shed the blood of innocence; and it is a righteous condemnation; but it is a condemnation in which we involve ourselves. We

pursue a system by which we incur the same responsibility: aye, and we have realized it. Not a scaffold do we erect without hazarding the chance of it. Yet, cold-blooded casuists there are to justify the risk on the basis of expediency. Error, say they, is incident to humanity and, meaning well, we are absolved from its consequences. Not so, when we err in the usurpation of an authority, against which reason and religion equally remonstrate, and of which that very liability to err, loudly forbids the exercise. Good intentions, forsooth! What do our intentions matter to our victim? What can it signify to the wretch we sacrifice, that we do so by mistake! What avails it to our slaughtered fellow creature, whether we strangle him for a crime he never *could* commit, or for a crime he never *did* commit? Hale did the one—we have done the other—where is the difference? The only difference is this—that though *he* erred, *we* have done so too, disregarding the monition of his example. We are lavish in our censure of Hale's perpetrations while we imitate them under a different name: but in so doing, are we prudent in contemptuously undervaluing the past? True, we have our judges, our philosophers, and our prelates. But who amongst them can dispute the palm with their immortal predecessors? Where is the sage midst those who crowd our halls, competent to depose the law's Gamaliel, the mighty commentator, the time-honoured Coke, from his pedestal of ages? Where shall we find the vivid intuition, the untiring toil which has won for Bacon an eternity of fame and domiciled his name throughout the world? Has the mist of ages dimmed one ray of Hale's authority? Have the cities and cottages of England ever received from piety a more precious boon than the hallowed version which that age bequeathed to them? Let us not deceive ourselves. This thirst for blood burned itself into our degenerate nature. It was the first recorded sin after the fall. If our ancestors slaked it under the most untenable pretences, we persevere in doing so, against admonitions the most appalling.

It is otherwise incomprehensible, how, amongst a people so noble and generous in their nature, this blood-thirstiness should, from the earliest ages down to that in which we live, have been the unchanging characteristic of our laws. They converted one of the loveliest portions of the world into a vast and nauseating aceldama. Will it be believed, that according to Lord Chancellor Fortescue, more executions for robbery alone, in Henry VI.'s time, took place in England, in one year, than in all France in seven! That in the reign of the eighth Henry, seventy-two thousand robbers suffered death; a speaking proof how feeble was the effect of the punishment on the crime! That according to Sir Matthew Hale, thirteen persons were executed after one assize at which he was present, convicted of having associated with gipsies for above a month! That on the authority of Sir S. Janssen's tables, in twenty-three years, from 1749 to 1771, two hundred and forty persons were convicted of shoplifting and other analogous offences, one hundred and nine of whom were actually executed! That in the last century, one hundred and fifty offences were made statutably capital; under which new-made statutes, six hundred persons, "christian men and women," were condemned to die! That within our own recollection, one hundred and sixteen executions were perpetrated within four years, for the offence of forgery alone! Some of our punishments, too, seem to have been the invention, not of human beings, but of fiends. Take that for high treason. In Captain Walcott's case, a convict for the Rye House Plot, his heir brought a writ of error, after his father's execution, and the judgment was reversed by the King's Bench; which reversal was affirmed by the House of Lords, because the judgment had omitted to say, that *the bowels of the prisoner should be taken out and burned before his eyes, while he was yet alive!!* Most horrible as this is, still it was the law, and cruel as that law was in its spirit, it was at times even still more loathsome in its execution. The following frightful notice will be found in

the Gentleman's Magazine for 1750. "Executed at Tyburn, July 6, 1750, Elizabeth Banks, *for stripping a child*; Catherine Conway, *for forging a seaman's ticket*; Margaret Harvey, *for robbing her master*: THEY WERE ALL DRUNK, contrary to an express order of the court of Aldermen against serving them with spirituous liquors!" The Court of Aldermen!! Must not all the authorities of the prison have seen these poor wretches, when they thus departed from it, *to meet their Maker!*

Such were our laws, and such their calamitous administration, when one of those men appeared, whom Providence occasionally sends on earth to mitigate the misery of his fellow-creatures. This was the great and good Sir Samuel Romilly, a profound lawyer, a learned jurist, a wise and humane legislator, the friend of Bentham, the co-operator with Brougham, the associate of every man and the advocate of every measure likely to ameliorate the social condition of his country. Nauseated by the scenes he had witnessed on his circuit, he determined that so far as in him lay, our monster code should lap human blood no longer; well aware of the perils which awaited him—he prepared to encounter them with a hero's courage, and, if necessary, with a martyr's resignation. Of both he had much need: "he shared," says a contemporary journal,* "the fate of all propounders of change in any institution; he was derided by some, pitied by others, by not a few execrated, by almost all regarded as an advocate of a desperate cause." He could well afford to despise their pity, their ridicule and their execration. He was earning for himself a fame immortal, justifying the predictions of the prescient Mirabeau,† and repaying the ingratitude of a

* Edinburgh Review.

† "I will at least tell you how much your letter has touched me: how deeply it bears the stamp of a tender heart and an honest mind, and what a charm these *dulcia sunt* diffuse over the greatest talents and the most vigorous intellectual conceptions."—*Letter of Mirabeau to Romilly, 1785.*

misled land, by adding another Howard to her history. The dust of his detractors is scattered before the winds, but his pure name remains, and will remain for ever amongst the memorials of virtue and the treasures of humanity. He set about his christian work with caution. "As it appeared to me," says his diary, "that I had no chance of being able to carry through the House a bill which was to expunge, at once, all these laws from the statute-book, I determined to attempt to repeal them one by one." He commenced with that murderous law of the good Queen Bess—the 8th Eliz. c. 4—which made the privately stealing from the person a capital offence! Under this most monstrous enactment a hungry boy who stole a pocket-handkerchief was liable to be executed. Let it not be said that such an iniquity could not be enforced; worse even than that, was perpetrated, as will be seen hereafter.

The repeal was carried, almost in silence; one solitary Irish Member muttering "innovation." Thus encouraged, in the session of 1810, he attempted to repeal the statute of William, which made a private theft in a shop to the amount of five shillings punishable with death. This bill escaped through the Commons, not without opposition, but was defeated in the Lords by a majority of 31 to 11. Posterity will scarcely give credence to the fact, that in this majority are to be found an Archbishop and six Bishops! The diary has stereotyped their names and sees; and adds, with an acerbity which few will censure,* "I rank these prelates amongst the members who were solicited to vote against the bill, because I would rather be convinced of their servility towards government, than that, recollecting the mild doctrines of their religion, they could have come down to the House, spontaneously, to vote that transportation for life is not a sufficiently severe punishment for the offence of pilfering what is of five shillings' value, and that nothing but the blood of the offender can afford an adequate atonement for such a

* Diary, vol. ii, p. 331.

transgression." The Church will hesitate ere it adopts the alternative thus sarcastically tendered for its acceptance, that its faith was forgotten in its subserviency. We have, however, searched in vain through the debates, for any *arguments* justifying votes which appear to us little in accordance with the spirit of christianity. But the Church stood not alone. The sages of the woolsack and the bench added the law to the gospel. It is almost incredible how wise men, and learned men, and good men, unexceptionable in all life's relations, could have clung to prejudices so injurious! Lord Chief Justice Ellenborough exclaimed against the bill as an innovation, declaring that he knew not where such speculations were to stop, and strange to say, with rare sagacity naming the very bill,* the repeal of which was next to pass the Commons! Innovation, forsooth, as if every improvement was not an innovation! as if every abuse which could plead prescription was therefore to be perpetuated! as if the vile abominations sought to be repealed were not themselves, with scarcely an exception, innovations upon the ancient common law of England! Romilly was not an innovator, he was the repealer of innovation. To those who pin their faith upon authority we submit the fact, that the then judicial bench of England, without one dissentient, upheld this sanguinary statute! It may not be without its advantage to remark that the chief, if not the only, ground taken was the danger to property consequent on its repeal. Results have proved that Dodona's oracles could not have been more at fault. "I trust"—exclaimed the Chief Justice of the day—

"Your Lordships will pause before you assent to a measure pregnant with danger to the security of property. The learned Judges are *unanimously* agreed that the expediency of justice and the public security require there should not be a remission of capital punishment in this part of the criminal law. My Lords, if we suffer this bill to pass, we shall not know where to stand—we shall not know whether we are on our heads or on our feet! My

* XII. Ann, st. 1, c. 7.

Lords, I think this, above all others, is a law on which so much of the security of mankind depends in its execution, that I should deem myself neglectful of my duty to the public, if I failed to let the law take its course.”*

Such was the logic which satisfied the Lords; and so, with the assent of all the Judges of England, and by the votes of seven dignitaries of a christian Church, it was *again* decided that human life was justly forfeitable for a private theft, in a shop, amounting to five shillings! Again, next year, in 1811, the bill, carried through the Commons, was rejected by the Lords, led by three of the most eminent of the Judges. Again, in 1813, undaunted and indefatigable, he reintroduced this bill, carried it through the Commons and lost it in the Lords; an Irish Archbishop, on this occasion, displacing the English one, and five of the episcopal bench supporting him. Again, in 1816, the Commons passed, and the Lords, little being said, again refused it. In 1818, for the last time, he triumphed in the Commons, but death, alas, arrested him in the struggle, and he left to others the consummation of his labours, and the glory of his example. May that resplendent example never be forgotten! May Romilly's untiring perseverance, invincible but by death, animate his successors in this christian cause, till the “cursed tree” is totally uprooted.

It is become a fashion to declare these laws were not enforced to their extremity, and that executions did not follow on conviction. The fact is otherwise; a multitude suffered death under this act. Records enough there are of death inflicted by it. Death, death on the gallows—death for five shillings, and this in a civilized—a christian land! We have seen, (p. 12,) according to an undoubted authority, that these statutes alone, in twenty-two years, had one hundred and nine victims positively immolated, the convictions being two hundred and forty. This in the abstract, is sorrowful enough, but to those practically expe-

* Lives of the Chief Justices, vol. iii, p. 2

rienced only can be known what frightful individual misery it occasioned; what orphans, what widows, what widowers, what life-long tears of young and old, mingled with the blood which flowed from this enactment; and all for nothing, for this inhumanity repressed not the offence. It is always distressing to dwell upon details, but there is one case recorded, so vouched and so transcendental in its wretchedness, that it never ought to be forgotten. Let every thinking man in England read it line by line, and sentence by sentence, and when he has pondered over it, and risen from its perusal, let him ask his reason and his conscience, whether man should have power over the life of a fellow-creature. Let him remember too, that this infliction was no hasty act—that it was the result of consideration, no doubt anxiously and cautiously given—that it was submitted to the Judges and authorized by the executive! Alas, for poor human nature in its brightest phase; how weakly fallible! yet how presumptuous! “Under the shop-lifting Act” (says Sir William Meredith, addressing the House of Commons in 1777), “one Mary Jones was executed, whose case I shall just mention. It was at the time when press-warrants were issued on the alarm about Falkland Islands. The woman’s husband was pressed, their goods seized for some debt of his, and she, with two small children, turned into the streets a begging. ’Tis a circumstance not to be forgotten, that she was very young, (*under nineteen,*) and remarkably handsome. She went to a linen-draper’s shop, took some coarse linen off the counter, and slipped it under her cloak. The shopman saw her, and she laid it down. *For this she was hanged.* Her defence was ‘that she had lived in credit, and wanted for nothing, till the press-gang came and stole her husband from her; but since then she had no bed to lie on—*nothing to give her children to eat, and they were almost naked;* and perhaps she might have done something wrong, for she scarcely knew what she did.’ *The parish officers testified to the truth of this story.* But it seems there had been a good deal of shop-

lifting about Ludgate. An example was thought necessary, [by the Judges,] and this woman was hanged for the comfort and satisfaction of some shopkeepers in Ludgate street. When brought to receive sentence, she behaved in such a frantic manner as proved her mind to be in a desponding and distracted state, *and the child was sucking at her breast when she set out for Tyburn*" [gallows].—Well and truly did Sir William Meredith exclaim, "I do not believe a fouler murder was ever committed against law, than the murder of this woman, by law."

Surely this appalling case, if it stood alone, ought to have produced the repeal,—the immediate repeal,—of this sanguinary statute. The salvation of human life in future from the impious mockery of man's discretion ought to have sprung up at once from the blood of Mary Jones. That the conviction of this poor creature was legal—in strictness, legal, no lawyer will deny. The removal of an article even for an inch, if the jury found the intent to steal, was in law a larceny; but a constructive larceny after all. However, if a case ever could have converted the merciless to mercy, it was the case of Mary Jones: she was not the criminal, or, if she was a criminal, the authorities made her one; they took her bread from her—they forced him who earned it, from his happy home, to fight their battles,—perhaps to lose his life in them; she had no bed to lie on, she had no bread for her little ones; and because nature, maternal nature, the holiest and most resistless of all human impulses, could not combat the temptation of the moment, they took her life, and that, while she was herself, in law, an infant! But, say the anti-abolitionists, these times are over, such a tragedy could not be enacted now. No gratitude to them for it; they did, in every case, *as they are doing still*; they clung fast to their unchristian usurpation and held it while they could, with the desperate tenacity of a drowning grasp. No! this tragedy could *not* be enacted now—thanks to the Merediths and Romillys, it could not—thanks to them and men like them who have huma-

nized the spirit of the people, and weaned our laws from the nutriment of blood; the instinct of the age would spurn such an atrocity—every mother in London would start up from her prayers to save, and shield, and shelter the victim.

But let us remember that there was a day, a century after our glorious revolution, under the enlightened sway of protestantism too, in which English law enacted, English Judges recommended, and an English Home Office advised, the perpetration of such a deed. And when we talk of such an impossibility being at least attempted, let us remember that in 1814, a Recorder of London was said to have declared it to be the determination of the Regent, to make an example for this offence, a child of ten years of age actually at the moment lying under sentence of death for it, in Newgate. The Recorder was Silvester. The Attorney-General of the day, Mr. Garrow, expressed a doubt whether Silvester ever said so, declared that the government had no such intention, and finished by pronouncing a panegyric on “his excellent friend.” “I said nothing, (says Sir Samuel Romilly) but I recollected, as must have done many others of those who heard him, the savage conduct of this Recorder, in the late case of *Eliza Fenning*.”—(See *Romilly's Diary*, vol. ii, p. 411.) Let it not be forgotten, either, that Archbishops and Bishops voted against the repeal—that all the Judges of England authorized their Chief Justice to denounce it in their name—that Lord Ellenborough vehemently proclaimed it an innovation—that Eldon, Lord Chancellor, piteously declared, “There was no knowing where this was to stop, and that the public ought to know, once for all, in what the criminal code consisted, that their Lordships, from time to time and from year to year, might not have *their feelings distressed* (!) by discussions like the present;” *—and that this fierce struggle actually continued from poor Mary Jones's case in 1777, down to the year 1818. But it is gone at last, and their

* Parliamentary Debates, 1813.

Lordships' feelings have since then been severely "*distressed* from time to time" by the indecorous perseverance of men who knew no better—rude and unpolished and impracticable men—who would not understand why laws, not to be acted on, were still to be retained, and uncouthly thought that the caprice of mankind—even of ministerial mankind, was not to be trusted—credulous and timid men, who weakly suspected that what had been, might be—that another Regent might be ill-advised, and a future Ludgate obtain the "comfort" of another immolation.

The next act which Romilly endeavoured to repeal, was that which made stealing in a dwelling-house to the amount of forty shillings a capital offence. This was in May, 1810. On his first attempt he failed in the Commons, defeated by a majority of two; a defeat, however, counterbalanced by the support of Canning, Wilberforce, and that memorable Master of the Rolls, Sir William Grant.*—Well and truly did that great Judge say, that, "where the law and the practice were opposite to one another, one of them must be wrong, and he had no doubt it was the law." And never, perhaps, did statute more than this exasperate the public. It was repealed, not so much by parliament as by its own iniquity. Juries would not convict on it—Judges would not act on it. Lord Kenyon, overcome to tears by a shrieking creature, who had just been found guilty, cried out from the bench, "Woman, woman, I don't mean to hang you!" What a solemn, stultifying mockery was this; the Jury condemning the accused, and the Judge sentencing the law! "I felt then (says the narrator † who was present at the scene) as I feel now, that this was passing sentence, not on the prisoner, but on the law,"—and so indeed, it emphatically was.

It is mortifying to reflect that prominent among the opponents of criminal law reform was, unquestionably, a great Chief Jus-

* Parliamentary Debates, 1810.

† Mr. Morris, some while Master in Chancery.

tice, and almost pitiable to recall the sophisms to which he was indebted for a temporary success. For instance:—"My Lords, when the statutes now sought to be repealed, were enacted, there were in parliament most wise and able legislators. There were Lord Somers, Lord Cowper, and Mr. Lechmere, afterwards Lord Lechmere." Doubtless—and time has proved the value of the *ad verecundiam* argument. It has proved to demonstration, that Lord Cowper and Lord Somers, and the gentleman who afterwards became Lord Lechmere, were all as benighted as purblind prejudice could render them. But what kind of an argument was it, after all! He might have said as cogently on a proposal to repeal the frightful witchcraft statute of King James,—“Beware, my Lords, how you tamper with this statute—it is a consecrated statute—remember, Bacon was in the parliament that passed it—remember, Coke was then Attorney-General—but above all remember—the prelates of a christian Church concurred in it.” Arguments must have been scant indeed when such a mind sought aid from such as these. We accept, however, what follows in its full extent. Vouched by such a man, we implicitly believe it; and that being so, we entreat attention to the consequences of the system. Lord Ellenborough depicts a solemn scene produced by the mere passing of the death sentence—he appeals to all who have witnessed it—and few had more vivid colours at command. The ‘trembling convicts’—the ‘dreadful denunciation’—the ‘formidable array of justice,’ and all ‘the apparatus of the law,’ lost none of their terrors in this portraiture of his. “It is a ceremony (said he to his pre-disposed majority) than which nothing can be imagined more awful, nor, as I firmly believe, more effectual for the purpose of restraining crimes by terror, and, as it were, crushing them in embryo.”

Now, let us see what effect the performance of this marvellous ceremony, during the next eight years, produced upon the national mind of England. This speech was addressed to the

Lords in 1811. In 1819, Doctor Cotton, the Ordinary of Newgate, examined before a committee of the House of Lords, thus testified on this very subject. "I am always in court (said he) at the time of passing sentence of death, unless something very particular occurs. I have seen prisoners acting in a most indecent manner, while sentence of death was passing, so much so, as to call for my reprehension afterwards. I have seen the persons upon whom the sentence was pronouncing, cracking nuts and looking up to the galleries and nodding to their companions or acquaintances who were witnessing the scene." See, how familiarity with death-denunciation, disrobes it of its terrors! Lord Campbell, while lamenting this 'systematic opposition' of the Lord Chief Justice to Sir Samuel Romilly's reforms, speaks of Judges passing sentences of death which 'were never to be executed,' so that, after all, the 'formidable array,' and the 'awful apparatus' which so appalled the Lords, were merely spectral mockeries! There were indeed exceptions to which we entreat the attention of the country. "In a rare instance, perhaps, (so writes Lord Campbell,) a *cruel* or fantastical or careless* Judge allows the law to take its course, and so brings great scandal on the administration of justice."† We presume not to ask whether this indeed was so. Our respect for the authority precludes the question. But assuming it to have been so, we ask of every christian man within this realm, whether human life should for one moment have been exposed to such perilous possibilities!

But the juries themselves soon set law, and fact, and autho-

* Lord Cockburn exhibits a strange specimen of this genus, in our own time, extant in *Scotland*. His name was Braxfield. "He rarely failed (says the learned writer,) to signalize himself in pronouncing sentence of death. It was almost a matter of style with him to console a prisoner by assuring him that—'Whatever your religious persuasion may be, or even if, as I suppose, you be of *no persuasion at all, there are plenty of reverend gentlemen* who will be *most happy* for to shew you the way to eternal life.'"—*Memorials*, p. 124.

† Life of Lord Chancellor Eldon, p. 239.

rity at defiance. Men, aghast with horror at these wholesale sacrifices, refused to officiate at them. They preferred perjury to blood. How unholy are the laws which generate guilt while professing to extirpate it! Bentham, the great and venerable jurist, undervalued by an age of which he was in advance, suggested the results of legislation such as this. "The mildness of the national character," says he, "is in contradiction to the laws, and, as might be expected, it is that which triumphs. The laws are eluded, pardons are multiplied, offences are overlooked, testimony is excluded, and juries, to avoid an excess of severity, often fall into an excess of indulgence."* So said a still greater man than Bentham, two hundred years before him.—"Any over-great penalty," says Bacon, "besides the acerbity of it, deadens the execution of the law." Our House of Lords differed from Bentham and from Bacon, and, as might be anticipated, the Lords were wrong. But the consequences of their error were tremendous; no less than the menaced demoralization of an entire people. From that error resulted some of the foulest verdicts that ever defiled a jury-box: what their sum total must have been may be inferred from a statement made by Lord Suffield, in the House of Peers, on the 2nd of August, 1833. "I hold in my hand," said his Lordship, "a list of 555 perjured verdicts, delivered at the Old Bailey, in fifteen years, for the single offence of stealing from dwelling-houses; the value stolen being, in these cases, sworn above 40s., but the verdicts returned being to the value of 39s. only. If required, I will produce the name of every one of these 555 convicts, and shew the value proved to have been stolen." This became too horrible to be tolerated any longer, and what does the reader think was the remedy? A repeal of the law? No such thing. If that was the result, "the people of England," as Lord Wynford said, on a similar proposal, "could not sleep in safety in their beds." No, but

* Theory of Legislation.

the legislature revised its arithmetic. Man, made in the image of his Maker, rose in the money market. Human life was extravagantly averaged at £5. A rise in the article of no less than sixty shillings a head!

But still, the obstinate juries demurred to the valuation. Perhaps, as for mere blood, they thought the price too low; or, it may be, they remembered that an immortal soul was included in the estimate. Again, therefore, to the scandal and disparagement of public justice, they applied the only remedy in their power. Disregarding the actual amount stolen, they substituted for the old 39s., "Guilty of stealing to the value of £4 19s." Take one single case under the improved system—it is selected merely for its flagrancy.—A man, named Robinson, was tried at the Old Bailey, Sept. 13, 1831, for robbing his employers to the amount of £1000. Of this property, £300 worth was traced to a man to whom Robinson had sold it; and more of it, to the amount of £200, was found in his own room, thus accounting for £500 out of the £1000; the jury found this man guilty of stealing to the amount of £4 19s. He was again indicted for stealing to the amount of £25, and again convicted of stealing under £5. There were several other indictments against Robinson, who seems to have been a wholesale depredator; but the prosecutors, after such verdicts, allowed him to plead guilty to them all to the extent of £4 19s. The jury remembered that in the previous May, a man* had been executed under this very statute, and they shrank from the work of extermination. An ornament† of the bench went far towards justifying such verdicts, which have come down to us, on his high authority, as "pious perjuries."

It would appear indeed, that juries were not alone in reprobation of this statute. The feeling reached higher and went farther than the jury-box. "There was (says Sir William Grant,) amongst prosecutors, witnesses, juries, judges, and the

* John Broach, at the Old Bailey, May 25, 1831.

† Blackstone.

ministers of the Crown, a general confederacy to prevent the law being executed."*

Thus ever has it been, not merely in modern, but in ancient times. The constitution of man's mind changes not with clime or country, or era, but is always and everywhere the same. A sanguinary system, long continued, is sure to exasperate the popular patience. Outraged humanity rises in its might, and spurning the tortoise pace of legislation, stands between the lawgiver and the victim. This is experience. This is history. We have seen it at home. We may read of it in foreign realms and in remote antiquity. Our cruel enactments, out-heroding even Draco's, have been, one by one, reluctantly surrendered to the national indignation. And so were Draco's.—Human nature would not wait upon the heartless calculations of a cold philosophy, but defaced the code while the sage was deliberating. No great wonder, while the pulsations of suffering marked the minutes of the hour-glass. These laws were repealed, as Aulus Gellius tells us, not by the formality of a decree, but by the tacit and unwritten consent of the Athenians.—Solon surrendered what he no longer could sustain. Thus, as has been said, the operations of mankind seem to recur in cycles, and in our day London has only seen what Athens beheld some two thousand years before.

One instance more, and only one, (before we come to the main subject of our argument,) of the folly as well as flagrancy of legislation such as this. Who can forget the outcry raised on the mere hint of a mitigation of the laws relating to forgery? All England was panic-stricken. The banks must stop, public credit would be a thing of history, commercial confidence would vanish into air! Such were the predictions of bankers, and merchants, and traders,—of every counting-house—of the whole Exchange; and they prevailed, not unnaturally, for the commercial world were entitled to all

* Parliamentary Debates, 1810.

deference on the subject. But they prevailed not long. These cruel laws were repealed—repealed, after torrents of blood had been shed—after the jury-box had been desecrated a thousand times, and the kiss which sealed the gospel invocation, had proved to be the kiss of Judas. They were repealed—and wonderful to relate, on the petition of the bankers of nearly every city and exchange in England, except London. It is painful to be compelled to add, that this petition was prompted, not by the statesman's policy, or the philosopher's convictions, or the christian's humanity, but by the same motive which produced their previous opposition—the money market's motive—mere self-interest. So they state candidly in their document. In 1797, a bill had been passed, enabling the Bank of England to issue notes under the value of £5. The forgery of these notes was, of course, a capital offence. The passing of that bill was Moloch's installation. From that fatal date, in eight years, one hundred and forty-six people, of both sexes, were hanged, for the forgery of Bank notes alone! At last the Old Bailey became a human shambles. The perjury tactics were again adopted; juries would not convict. An expedient was then resorted to by the prosecutors of giving the accused the option of pleading to the minor charge—that of having forged notes in their possession—and so saving their lives. The expedient failed; in the September sessions of 1818, thirty-eight persons were indicted capitally for forgery or uttering. Harassed and terror-stricken at the alternative before them—of inflicting death or violating their consciences—they implored the legislature to relieve them.

At a subsequent period the Duke of Sussex presented a petition to the House of Lords for the abolition of capital punishments in certain cases, signed by seven individuals, who had been foremen of seven Grand Juries at the Old Bailey during the previous year, and also by eleven hundred merchants, traders, and others, who either had served, or were liable to

serve, as jurors for the county of Middlesex. The *annual* returns in trade of the first ninety of the petitioners, amounted to no less than *ten millions* sterling!* This petition is here alluded to, because it shews, in strong language indeed, the view which Jurors took of the awful duty required of them. The petition declares that, "in the present state of the law, they feel extremely reluctant to convict, where the penal consequences of the offence excite a conscientious horror on their minds, lest the rigorous performance of their duty, as Jurors, should make them accessory to JUDICIAL MURDER! Hence in courts of justice, a most unnecessary and painful struggle is occasioned by the conflict of the feelings of a *just* humanity with the sense of the obligation of an oath." We have seen how true this is, and how ostentatiously, when the conflict came, Juries, almost maddened by the wholesale slaughter of the day, flung their religious obligation to the winds—a dreadful alternative, but one which, in cases of life, experience tells us has been but too frequently adopted, where public opinion and the law conflicted. No doubt nothing can be more unjustifiable than this; yet we cannot alter the constitution of human nature; but what shall we say of a system, which, by arrogantly insulting that nature, weakens the protection by which every man in England retains everything which is worth possessing. Parliament, the guardian of the morals, as well as the property of the nation, has wisely, in such cases, yielded to the tide it could not stem.

The petition of the Bankers, in 1830, virtually abolished punishment of death for forgery. It was high time, and only just in time. This important petition was entrusted to Mr. Brougham, no hasty innovator, but a true reformer, cautious of change, of which, when approved, he was indefatigable in the accomplishment. In this petition neither the Bank of England nor the Bankers of London joined—an unenviable reminiscence. The petition was signed by Bankers, and by Bankers only, of

* Duke of Sussex's Speech, September 6, 1831.

two hundred and fourteen cities and towns of the United Kingdom; two hundred and thirty-three Banking-houses, thirty-six Joint-Stock Banking Companies, and five hundred and two individual Bankers affixed their signatures to this petition, which Mr. Brougham advocated with talent and energy, worthy of himself and the occasion; his speech, say the journals of the day, was "splendid, impressive, and unanswerable." It proved, in fact, by evidence abundant and incontrovertible, that generally, the law almost insured impunity to the forger. Christian juries would not convict—christian men would not prosecute.

Such a manifest determination in the jury-box, and such a mass of evidence by men the most experienced and interested, could no longer be resisted, and accordingly in the session of 1832, capital punishment for forgery was repealed, except in cases of wills, and powers-of-attorney relating to the public funds. We have already alluded to the motive—the selfish motive in which this movement of the Bankers originated. We give now the very words of the petitioners, invaluable words, speaking trumpet-tongued, how insane the folly is which can seek in cruelty the protection of property, or the repression of crime. "Your petitioners," say these candid philanthropists, "find by *experience*, that the infliction of *death*, or even the *possibility of the infliction of death*, prevents the prosecution, conviction, and punishment of the criminal, and *thus endangers the property which it is intended to protect*. Your petitioners **THEREFORE** earnestly pray that your Honourable House will not withhold from them that protection to *their property* which they would derive from a more *lenient* law." In fact these gentlemen found they had no alternative, they must either have surrendered their substance to the forger, or declared war against the hangman. They saw the gallows was clearly at a discount. One glaring case to this effect will suffice as well as hundreds, though, if necessary, hundreds might be furnished; a man was tried at Carnarvon for forgery to a large amount on

the Bank of England; the evidence of the guilt of the prisoner was as satisfactory as possible, and brought the charge clearly home to him; the Jury, however, acquitted him. The next day he was tried on another indictment for forgery; the evidence in this case was as conclusive as in the former, yet the Jury again acquitted the prisoner. The Judge addressed him in these remarkable words: "Prisoner at the bar—although you have been acquitted by a Jury of your countrymen of the crime of forgery, I am as convinced of your guilt as that two and two make four." The Judge was Chief Baron Richards. Soon afterwards, says the writer, I met one of the Jury and expressed my surprise at the acquittal. "Why," answered he, "neither my fellow jurymen nor myself had the least doubt of the prisoner's guilt, but we were unwilling to bring in a verdict of guilty, because we were aware the prisoner would have been punished with death, a penalty which we conceived to be too severe for the offence."* Thus did the Judge impugn the verdict, thus did the Jury violate their oath, and thus did a sanguinary statute restore these chartered culprits to their profession. Had the punishment for this offence been transportation, such men would not have been let loose upon society.

The noblest institution in the world was daily degenerating into a school of perjury: nor was this all—men would not prosecute. "I should say (states Mr. Samuel Hoare, a London Banker,) that not one in twenty forgeries is prosecuted." Another eminent capitalist, Mr. Isaac Lyon Goldsmid, on the same occasion† testified that he had no doubt the punishment of death had a tendency to prevent prosecutions, and that evidence might be adduced to that effect "in hundreds of instances," if inquiry was made upon the subject. "It is," says Alderman Harmer, in his examination before the Commissioners on Criminal Law, "a matter of common occurrence for prosecutors

* Correspondent of Morning Herald, April, 22, 1830.

† Common's Report, 1819, Evidence, p. 115.

and witnesses to devise some stratagem to secure the escape of the offender; and I have known them to suppress facts and colour their evidence to effect their object. When reprov'd for such conduct, they have justified the act by asserting, that it was better to err in their testimony, than to be the means of taking away the life of a fellow-creature." "The cases which come before the public on bills of exchange, are not, in my opinion, any thing nearly equal to the detections which take place and the compromises which are made thereupon; respectable bankers, merchants and solicitors, engage in such compromises the more readily, because from the merciful feeling of juries, a conviction is uncertain; but many more, on account of the highly penal consequences which would result from a successful prosecution. *I cannot calculate, even within a hundred, the number of such compromises which have come within my own knowledge.*"* Mr. Harmer, a gentleman of great intelligence and known integrity, was himself a solicitor, of the most extensive criminal business in the kingdom; he stated to the Committee, that on a moderate computation, he was concerned for one hundred prisoners annually, and that in his professional practice at the Old Bailey, he had had communication with above two thousand.† He adds, "The instances, I may say, are innumerable, within my own observation, of jurymen giving verdicts in capital cases in favour of the prisoner, directly contrary to the evidence; I have seen acquittals in forgery where the verdict astonished every one in court, because the guilt appeared unequivocal, and the acquittal could only be attributed to a strong feeling of sympathy and humanity in the jury to save a fellow-creature from certain death. The old professed thieves are aware of this sympathy, and are desirous of being tried rather on capital indictments than otherwise; it has frequently happened to

* Second Report on Criminal Law, 1836, p. 82.

† Common's Report—Evidence, May 18, 1819.

myself, in my communications with them, that they have expressed a wish that they might be indicted capitally, because there was a greater chance of escape!"

Public opinion, which neither Minister nor Parliaments can long resist, when it has truth and justice for its basis, thus virtually repealed these inhuman enactments, and what has been the consequence? What of the prophecies! Has public credit failed? Has private confidence ceased? Are the counting-houses closed? Is the Exchange deserted? Does merchant meet merchant with less conscious security than when they elbowed the hangman on their walk from the West End to Lombard Street? Has the crime increased since the repeal? Do the Bankers now need a Committee, or that Committee a solicitor? Scant indeed would be his bill of costs compared with the palmy era of the £1 notes—alas, for the law! and alas, for the prophet! The grand vaticination was, that in each case, where we repealed the capital punishment, there would be an increase of the crime,—as if it signified whether five hundred additional pockets were picked, or five hundred more shops were pilfered annually of five shillings over the counter; aye, or that even the Banks lost ten times the sums they did, when put in comparison with the sacred life of man—of whole human hecatombs! But all this alarm was mere hallucination; so far from crime increasing on the repeal, it positively diminished; the law had encouraged the crime by deterring prosecution or inducing compromise, and thus giving immunity to criminals. The repeal unfettering men's consciences, depriving the offender of all sympathy or scruple, secured his punishment, and crime decreased. This is proved undeniably by the parliamentary returns. Take the crime in Mammon's estimation most unpardonable, the crime of forgery: in the five years ending with 1820, when the hangman had his deadliest harvest, 645 persons were committed—94 were executed; in the five years ending with 1835, the commitments were 351—the executions,

nil! This is exclusive of the innumerable compromises which took place during the former period, and which, of course, could not be ascertained.

In our view of the subject, believing, as we do, that under no circumstances should man's life be taken away by law, and maintaining, as we mean to do, that under no circumstances has man a right so to take it, these statistics are of little import; but for the satisfaction of those who abide by the argument of expediency, we subjoin some from the Home Office Tables annually laid before parliament.

First, as to *England and Wales*:—

Number of persons COMMITTED in *England and Wales* for various crimes, during three years immediately *preceding* the repeal, or discontinuance, of the capital punishment for each offence, and the three years immediately *subsequent*

	<i>Last Execution.</i>	<i>Three Years Before Repeal, &c.</i>		<i>Three Years After Repeal, &c.</i>
		Committed.	Executed.	Committed.
Cattle Stealing, three years ending 1820	..	113	.. 3	67
Horse Stealing — . 1829		590	22	566
Sheep Stealing — . 1831	..	787	.. 7	793
Stealing in Dwelling-house . 1831		422	4	520
Forgery — . 1829	..	213	.. 15	180
Coining — . 1828		39	7	14
Letter Stealing — . 1832	..	11	.. 1	14
Sacrilege — . 1819		24	2	25
House-breaking — . 1833	..	2103	} .. 8	} 2410
Burglary — . 1836		787		
Robbery — . 1836	..	1053	.. 5	889
Arson — . 1836		191	17	113
Riot and Felony — . 1832	..	208	.. 6	60
Piracy — . 1830		52	2	2
Attempts to Murder — . 1841	..	661	.. 2	707
(Capital) Assaults on Females . 1836		174	5	185
Other Offences — . 1835	..	69	.. 9	75
		7497		6620

These general results for England are in unison with the following Return (No. 165) to the House of Commons, dated 23 March 1837, relating to Middlesex :—

Number of EXECUTIONS which took place for *London and Middlesex*, in 3 years ending 31 Dec. 1830 ; in 3 years ending 31 Dec. 1833 ; and in 3 years ending 31 Dec. 1836 ; together with the Number of COMMITMENTS in each of those periods respectively, for Offences that were capital on 1 January 1830.

Periods.	Executed.	Committed.
In 3 years ending 31 Dec. 1830 ..	52 ..	960
Ditto — — 1833 ..	12 ..	896
Ditto — — 1836 ..	<i>nil</i> ..	823

Here, on turning to the Home Office Tables for London and Middlesex, a striking fact presents itself—namely, that not a solitary conviction for murder took place in the last three years—during which there had been a *discontinuance* of executions. It is unprecedented we believe in the annals of the Old Bailey. (See also page 8, of Return No. 21, printed in 1846.)*

One word more as to murder. The chance of exemption from punishment is quite enormous, the prisoner being *tried for his life*. In all other cases (taken collectively), with a secondary

* The reader desirous of additional statistics, may refer with advantage to a little work of T. Wrightson, Esq. (printed for Hearne, 1833,) containing some very valuable tables from 1810 to 1831 :—Or, the Second Report of the Commissioners on Criminal Law, 1836, pp. 21, 22 ; 40 :—Or a Return (No. 354,) made to the House of Commons, 22 May, 1846 :—Or, a Paper by A. H. Dymond, Esq., read before the Society for Promoting the Amendment of the Law, July 7, 1856 :—Or, lastly, to the following Returns made to the House of Commons ; namely, No. 547 printed in 1839—No. 87 printed in 1840—No. 48 printed in 1841—No. 36 printed in 1842—No. 618 printed in 1843—No. 471 printed in 1844—No. 21 printed in 1846—No. 690 printed in 1847. Five of these (No. 87, No. 48, No. 36, No. 618, and No. 21) relate especially to the crime of murder. (All the Returns are procurable at the Office for the Sale of Parliamentary Papers, in Great Turnstile, Holborn.) But we must not omit to mention also some important statistical information given in the *Eclectic Review*, reprinted separately (for Gilpin, London) in 1849.

penalty affixed, the convictions average 77 per cent. In murder the average seems to have been under 24 per cent., taking three consecutive years. That is to say, 53—or about two out of three—escaped, who probably would not have escaped had the penalty been short of death.*

It would be easy to shew that in analogous cases a decrease in severity, was followed by a decrease in crime. "All experience," said Mr. Lennard,† "shews that the repeal of capital punishments had led to an increase of convictions and a diminution of crime." Sir Fitz Roy Kelly says,‡ in June, 1840, "A few years before, there were nearly two hundred capital offences on the statute book; now there are only fourteen, and there has been

* This calculation is founded on the three years ending with 1855, in which the commitments were 198. Of these, 29 were insane, leaving 169. Of the 169, only 39 were convicted of murder: the rest were all released as unoffending members of society. *Not one of them was convicted, or even tried, for manslaughter.* Upon that point we have the most unquestionable evidence, as follows:—"Under the head 'Murder' in the Criminal Tables, cases of manslaughter are never included: but persons charged on commitment or indictment with murder and *found guilty of manslaughter* only, are always included *under the head 'Manslaughter.'*"—This mode of making up the official records is obviously essential to the correctness of the Tables, for otherwise the same prisoner would be entered *twice over*.

We have said that the rest were all released as unoffending members of society. But had they been tried on *non-capital* indictments, how few would have been so released!—At the rate of 77 per cent. (the general average) of convictions, how many *convictions* would there have been out of 169 *commitments*? Why, at least 129, instead of only 39 convictions. Therefore the 90 others were acquittals *in excess*. Are we not warranted in concluding that about two out of every three escaped because the denounced penalty was death? Of such a reduction—in the fearful ratio of three to one—a *reduction in the certainty of punishment* for murder, what must be the effect on those who calculate '*their chances*?' The Grand Duke Leopold of Tuscany, after twenty years' experience, was enabled to congratulate his subjects on the rarity of atrocious crime, as well as the decrease of offences in general, resulting from a mitigation of the law. But *he* promoted "*a certainty of punishment to real delinquents.*" *We* reverse his maxim, in order to gratify the vindictive thirst for retaliation—'Blood for blood': but in doing so, we sometimes slay the innocent, and—as we have now seen—we often acquit the guilty.

† Parliamentary Debates, 1834.

‡ *Ibid.*, 1840.

no increase of crime since the repeal." "In no instance," said Mr. Hume,* "had offences increased in consequence of the mitigation of the punishment: on the contrary, in every instance there had been a decrease, so that, in future, capital punishments would be but an unnecessary sacrifice of human life." Such has been the result not only in England, but in various ages and in different nations, where this benign and philosophic principle has been recognised. "The laws of the Roman kings," according to our great commentator,† "and the twelve tables of the Decemviri, were full of cruel punishments. The Porcian law, which exempted Roman citizens from the punishment of death, silently abrogated them all. In this period the Republic flourished. Under the Empire severe punishments were revived, and then the Empire fell." In reference to the principle, the great orator and magistrate of Rome pours forth his enthusiasm: "Far, from us," says Cicero, "be the punishment of death—its ministers—its instruments! Remove them, not only from their actual operation on our bodies, but banish them from our eyes, our ears, our thoughts; for not only the execution, but the apprehension, the existence, the very mention of these things is disgraceful to a freeman and a Roman citizen."‡ How sublimely these bursts of the illustrious heathen contrast with the heartlessness of modern cant:—"O jus eximium! O Lex Porcia! legesque Semproniae."§ In France, Brissot|| adopted it.—"L'expérience," he says, "de tous les siècles prouve que la crainte du dernier supplice n'a jamais arrêté les scélérats déterminés à porter le trouble dans la société." Sir James Mackintosh, a great and venerable name, thus reminds the grand jury of Bombay, in his last judicial address, when taking leave of them: "In the seven years ending in 1763, there had been one hundred and forty-one capital convictions, out of which there were forty-seven executions,—averaging nearly seven a year. A gradual

* Ibid., 1840.

† Commentaries.

‡ Pro Rabirio.

§ Cicero, Oratio in Verrem.

|| Theory of Legislation.

reduction of convictions and of punishments took place, and in the seven years ending in 1804, under the presidency of Sir William Syer, the convictions for murder were eighteen, and the executions twelve—not quite two a year : and during the seven years of my presidency, dating from 1804, there were but six murder convictions, and no execution :—yet,” he adds, “ there was, during that entire period, no diminution in the security of the lives and properties of men.”* Here was theory reduced to practice, the result establishing that the theory was sound.

The humane experiment of death punishment's repeal has been tried in other countries and in other times, and has been tried beneficially. Joseph the Second, by an edict signed at Vienna on the 13th of January, 1797, promulgated a new code, abolishing capital punishment by the judicial tribunals. In Louisiana, the code of Mr. Livingstone has excluded death. In England, William the Conqueror decreed—“ I prohibit that any man should be put to death for any cause whatever in my dominions.” In Russia, not one criminal was executed during the whole reign of the autocratical Elizabeth. Yet, still, Elizabeth, howsoever favourably disposed, dared not abolish the use of torture to extort confession. This was reserved for her great successor, Catherine the Second, who adopted her humane policy to the utmost. But, such is man's instinctive cruelty, and so linked were the Russian prejudices to this infernal practice, that even Catherine, the absolute and intrepid Catherine, could not abolish it, but by stratagem. In 1762 she recalled this power from the inferior justices who had shamefully abused it. In 1767, a secret order was transmitted to the provincial Judges, that whenever such torture was deemed requisite by them, they should draw up the general articles of the charge, together with the proofs, and submit the case to the governor of the province; and all the governors were directed to determine such cases according to the 10th chapter of her Majesty's ‘Instructions,’

* Charge to the Grand Jury of Bombay, 1811.

wherein torture is proved to be both cruel and useless: this, therefore, was a tacit abolition of torture. Yet, it appears that crime increased not—by christianity becoming practical.

Inspired by these examples, and convinced by the profound reasoning of Beccaria, Leopold, Grand Duke of Tuscany, abolished death punishment altogether, and with what result? He is the best authority on the subject. Having abundantly tested the effect of the change, he thus, in 1786, announces it:—"With the utmost satisfaction to our paternal feelings, we have at length perceived that the mitigation of punishment,—joined to a most scrupulous attention to prevent crimes, and also a great dispatch in the trials, together with a certainty of punishment to real delinquents,—has, instead of increasing the number of crimes, considerably diminished that of smaller ones, and rendered those of an atrocious nature very rare." Such was the result, the positive result of this humane legislative experiment. Franklin has strengthened it by a striking comparative illustration, drawn from a neighbouring State. It is conclusive. "In Tuscany," says he, "where murder was not punished with death, only five had been committed in twenty years; while in Rome, where that punishment had been inflicted with great pomp and parade, sixty murders were committed in the short space of three months!" He adds it as remarkable, that the manners, principles, and religion of the inhabitants of Tuscany and of Rome were exactly the same; so that it would seem as if the abolition of death alone, as a punishment for murder, produced this difference in the moral character of the two nations.—And now, with these indisputable facts before us, let us ask ourselves whether the lives of Englishmen have become less precious than those of Russians, Italians, and Americans? Of what use have been these miserable enactments? or rather, what calamities have they not caused! What misery have they not occasioned! what blood have they not shed! what perjuries have they not produced! what guilt have they not sheltered and protected!

And all for what?—that society might be safe. Then the blood of mankind has been vilely squandered, for never has England lived more securely from all these offences than since she ceased to live beneath the shadow of “the cursed tree.”

PART II.

WHEN the Father of all evil sought to ensnare the Lord and Master of the world within his toils, *he quoted scripture*. He is still at work and fills the minds of good and pious men with the preposterous paradox, that the blessed book of life contains a death injunction—an injunction coeval with the deluge and binding upon christians. Now, if this be so in truth, all speculation ceases—obedience becomes a duty. Let us examine then the question with all the reverence which befits so serious an enquiry and an authority so sacred.

The passage in the Bible on which the anti-abolitionists rely, is to be found in Genesis.* The words are, “Whoso sheddeth man’s blood, by man shall his blood be shed.” This, they say, is a command transmitted to all mankind, through Noah, on his disembarkation from the ark. We contend, on the contrary, that it is no command at all:—it may be prophetic—it may be denunciatory, but there is nothing imperative about it. A penal

* Chapter ix. 4—6.

injunction should be free from all obscurity—coming from such a source, there could be no doubt attached to it; is this then clear? Does it mean murder, or does it mean homicide, or does it mean both? there is no qualification in the passage, and blood is shed in both.

We appeal to the judicial authorities of the land to point out one word in this passage as it stands, which will not apply to homicide as much as to murder. It is all very well for men who have been saturated with this error in their childhood, to cling to it in their old age, and clamour down all contradiction; but assertion, howsoever vehement, is not proof, and this is far too grave a matter to be thus summarily dismissed. A penal law ought to be specific, clearly defining the offence and then prescribing the punishment. The great legislator of the Jews was thoroughly aware of this; nothing could be more precise and clear than the penal provisions of the Levitical code, and nothing more mandatory than its inflictions; for instance:—

“He that smiteth his father or his mother, *shall surely be put to death.*”

“He that stealeth a man and selleth him, or if he be found in his hand, *he shall surely be put to death.*”

“He that curseth his father or his mother, *shall surely be put to death.*” *

There is no room for doubt or cavil here, no such vague phrase as—“whoso sheddeth man’s blood, by man shall his blood be shed,” though the shedding of that blood may be comparatively venial—may be the effect of accident or self-defence or misadventure,—or may have been committed in the heat of blood, which even *our* sanguinary laws did not make a capital offence. If it meant murder, and murder only, it should have said so; and it would have said so, were it intended to have been

* Exodus xxi. 15—17.

mandatory. If it meant homicide also, are the anti-abolitionists prepared to abide by it? Perhaps many of them are—between some cases of homicide and murder the partition is but thin—a far worse offence than stealing to the amount of five shillings in a shop; and, as we have seen, they hanged for that. In the versè immediately preceding, we find, “And surely your blood of your lives will I require; at the hand of every beast will I require it, and at the hand of man.” Are we then to shed the blood of the beast following nature’s instinct and unconscious of evil? Most certainly we are, if this is mandatory; observe the reason given for this; because man was made in God’s image! So is the murderer, so is the executioner—where is it to end?

The fact seems to be that in the almost depopulation of the earth consequent on the deluge, this was a solemn monition for the protection of human life, and its meaning ceased with the necessity which called for it. That this must have been so, is demonstrable from the circumstance that Moses himself committed a murder, and King David an atrocious one, and their blood remained unshed. What answer can there be to this? But did the Jewish legislator who penned this passage, deem it either imperative, or permanent? He could not have done so, for not only does he draw a clear distinction between murder and manslaughter; but, where death having ensued from the act of the beast, he permits a money ransom when, by his own law, life was forfeited.*

In the antediluvian world we have but two recorded murders; doubtless, in that wicked world, there must have been many more. The first murderer was Cain—the first being, born of woman, stained the young earth with the first human blood—and that

* “If the ox were wont to push with his horn in time past, and it hath been testified to his owner, and he hath not kept him in, but that he hath killed a man or a woman; the ox shall be stoned, and his owner also shall be put to death.

“If there be laid on him a sum of money, then he shall give for the ransom of his life whatsoever is laid upon him.”—Exodus xxi. 29, 30.

blood was the blood of a brother! The crime assumed a giant maturity at the very moment of its birth; it defied time or atrocity to exaggerate it: it was not only a murder, but a fratricide—committed on the very threshold of the altar, the blood of the sacrifice and of the murdered, mingling.* This was indeed a murder “instigated by the devil”—the offspring of envy and malice, without any provocation; yet Cain’s blood was unshed,—the Almighty prohibited its being shed. “Whosoever slayeth Cain,” said the LORD, “vengeance shall be taken on him sevenfold. And the LORD set a mark upon Cain, lest any finding him should kill him.” Observe here—Cain was marked, not lest he should kill others, but, lest he should be killed himself. He had shed man’s blood, innocent blood, a brother’s blood,—and yet he was marked—that his blood might *not* be shed. Who shall dare to scan, who can presume to solve, the mysteries of the inscrutable? Cain might have been spared, as a monition to mankind; or he might have been spared for that soul-healing repentance for which our legislation denies the opportunity. Who shall say whether, as he bent beneath a “punishment greater than he could bear,” the rock within may not have melted and gushed forth tears of acceptable penitence! There is no violence in this presumption; for, though Scripture says—“A fugitive and a vagabond shalt thou be in the earth,” the same Scriptures distinctly tell us, that “Cain went out from the presence of the Lord, and dwelt in the land of Nod, on the east of Eden”—that he had a numerous posterity,—that he “builded a city,† and called the name of the city, after the name of his son, Enoch.” This seems scarcely compatible with the fact of Cain’s having *continued* “a fugitive and a vagabond in the earth.” Viewed in any light, however, this case, even if it stood alone, furnishes a distinct, indelible, undeniable proof, that the passage in Genesis ix. 6, is not a mandate.

* Abel offered the firstlings of his flock.

† Genesis iv. 17.

The second, and only other recorded antediluvian murder, was that by Lamech, fifth in descent from Cain, and he seems to have pleaded provocation, and to have argued from his progenitor's precedent that his life was in no danger. "I have," said he to his wives, Adah and Zillah, "slain a man to my wounding, and a young man to my hurt. If Cain shall be avenged sevenfold, truly Lamech seventy and sevenfold." We do not read of Lamech's life having been taken, nor is there in the sacred narrative of the years before the flood, one single instance of death having ensued as a penalty on the "shedding of man's blood." Yet, that blood had been shed, and that abundantly, is more than probable, as we find God assigning to Noah, the "violence" of mankind, as one of his provocations to their destruction. "And God said unto Noah, The end of all flesh is come before me; for *the earth is filled with violence* through them; and, behold, I will destroy them with the earth."*

But adverting to this Noachid passage, we may not dismiss thus lightly, the remarkable cases of Moses and David, as they appear to us decisive of the question; they even seem to stand forth, as it were, ostentatiously, in denial of the supposed mandate. The crime of Moses was not the result of personal provocation: "He spied an Egyptian smiting an Hebrew, one of his brethren," and he killed him. There was no heat of blood. It was done deliberately, craftily, and with a very special regard to his own security: "He looked this way and that way, and *when he saw that there was no man*, he slew the Egyptian, and *hid him in the sand*."† Now had the monition to Noah been a mandate, what was it to him who saw him? The All-seeing eye, at all events was on him, and the awful fiat could not have been evaded. But his caution availed not; he *was* seen by two of his own countrymen—who reproached him with the murder, and he fled; Pharaoh sought to slay him—no difficult matter if aided by God's decree: but even Pharaoh could not slay him, and he

* Genesis vi. 13.

† Exod. ii. 11, 12.

lived to defy and humble this very Pharaoh on his throne, and to die peacefully in the Land of Moab at the ripe age of one hundred and twenty years; yet, even then, "his eye was not dim, nor his natural force abated."

The very inducement under which Moses returned to Egypt after his crime, should for ever negative the preposterous construction forced upon the passage in Genesis ix. 6. "And the Lord said unto Moses in Midian, Go, return into Egypt: for all the men are dead *which sought thy life.*"* What! Assure the murderer that his life was safe, after commanding all mankind to shed the murderer's blood! If this was a mandate, it was addressed, not to the sovereign whose laws were outraged, nor to the bereaved family of the murdered, but to mankind in the mass. If this was a mandate, man had no alternative but obedience. No human mercy could expiate the blood once shed, nor could all the tears of penitence wash the guilt away. Moses stands forward in historic proof, that the passage is no mandate. His whole career negatives the mandate. From his death-girt cradle, to his rest in Moab, this man was the favoured of the Lord—the chosen leader of the chosen people, the inspired bearer of God's will to Israel—her light, her guide, her deliverer from bondage, her lawgiver, her prophet—whom "the Lord knew face to face:"†—yet this very man—over whom a nation "wept for thirty days," and whose memory that nation clings to still, almost the solitary relic of all she loved, and prized, and venerated—shed the blood of man, and his own remained unshed.

The murder by David is even more remarkable, not merely for the absence of extenuation, but for its superlative and unsurpassable atrocity. The story is soon told. Having committed adultery (a capital offence by the Jewish law,) with the wife of one of his officers, he sent him to be slain in battle, taking good care that his death should be assured; nay more, by a refine-

* Exodus iv. 19.

† Deuteronomy xxxiv. 10.

ment upon cruelty and treachery combined, he made his fated and confiding victim the unconscious bearer of his own death warrant. “ And David wrote a letter to Joab,* and sent it by the hand of Uriah : and he wrote in the letter, saying, Set ye Uriah in the forefront of the hottest battle, and retire ye from him, that he may be smitten and die.” The order was but too literally obeyed, and the anointed adulterer sinned without inconvenience. Yet, this David was, from a shepherd boy, raised to be king over Israel, and he reigned forty years, and was a man of piety, as recorded by the Scriptures. However, the same sacred book convicts him of this most sinful murder, and records that he was forgiven. True, he was rebuked, and punished, and repented—rebuked by Nathan, in a parable, bold as it was beautiful—true, the child of his adultery was smitten unto death ; but, the miscalled mandate remained dormant—the blood of David was unshed. Alas, is there not something almost akin to blasphemy, in thus imputing to Eternal Wisdom an edict contradicted by its acts ?

But, what shall we say of Herod—the unparalleled of murderers—who crushed innocence even in its bud, and turned infancy’s cradle into its sepulchre ! who filled Rama with “ lamentation, and weeping, and great mourning ”—what shall we say of an incarnate demon who, surfeited with crime, yet still insatiate, planned on his death-bed a posthumous immolation, as if his darkened spirit sought an expiring pleasure from the blood he shed, and the tears he caused to flow ! † Let his historian answer :—“ A man he was of great barbarity towards all men equally, and a slave to his passion : but above

* 2 Samuel xi. 14, 15.

† When this wretch felt that he was dying, he summoned all the principal men of his empire to attend him—upon pain of death. He then had them all shut up in the Hippodrome, and extorted a promise from his sister Salome and her husband Alexas, that the moment he expired they should be all indiscriminately slain, that he might have the honour of a memorable mourning at his funeral ; and this favour he implored

the consideration of what was right ; yet he was favoured by fortune as much as any man ever was, for, from a private man he became a king ; and though he were encompassed with ten thousand dangers, he got clear of them all, and continued his life till a very old age.”*

These instances by no means stand alone ; they are selected chiefly from the fame of the offenders. There is the murder of Eglon, king of Moab, by Ehud, while affecting to deliver to him a message from the Almighty.† There was also the murder of Sisera‡ by Jael, and many others—if the foregoing were not sufficient for our purpose. So far, indeed, was Jael from reproach, that she became a theme for panegyric. The song of Deborah and Barak thus invokes the murderess—“ *Blessed* above women shall Jael the wife of Heber the Kenite be, blessed shall she be above women in the tent,”—and then, with horrible minuteness, it details the murder. “ She put her hand to the nail, and her right hand to the workmen’s hammer, and with the hammer she smote Sisera ; she smote off his head, when she had pierced and stricken through his temples.” One of the beatitudes of this exploit, omitted in the song, but recorded in the history, is, that when it was performed, “ Sisera was fast asleep and weary.”

What was Manasseh’s case ? Here it is, as disclosed to us by Scripture. “ Moreover, *Manasseh shed innocent blood very much*, till he had filled Jerusalem from one end to another ; beside his sin wherewith he made Judah to sin, in doing that which was evil in the sight of the Lord. . . . And Manasseh slept with his fathers, and was buried in the garden of his own

of them with tears in his eyes. “ He took care (says Josephus,) when he was departing out of this life, that the whole nation should be made desolate of their dearest kindred when he ordered that one out of every family should be slain, and this without either crime or accusation !”

* Jewish Antiquities, Book xvii. c. viii.

† Judges iii. 20, 21.

‡ Judges iv. 21 ; v. 24, 26.

house, in the garden of Uzza : and Amon, his son, reigned in his stead."*

It will be difficult indeed in the presence of such facts, successfully to contend that this much-cited passage was meant to convey a mandate. Many eminent divines do not think it was, and names high in philosophy agree with them. Hear one of the loftiest. "This passage," says Dr. Franklin,† "has been supposed to imply that blood could only be expiated by blood. But I am disposed to believe with a late commentator on this text of Scripture, that it is rather a prediction than a law. The language of it is simply, that such is the folly and depravity of man, that murder, in every age, shall beget murder. Laws, therefore, which inflict death for murder, are, in my opinion, as unchristian as those which justify or tolerate revenge ; for the obligations of christianity upon individuals to promote repentance, to forgive injuries, and to discharge the duties of universal benevolence, are equally binding upon states." The commentator to whom Franklin alludes, is the Rev. William Turner,‡ who gives a natural and rational exposition of the passage. "To me," says he, "I must confess it appears to contain nothing more than a declaration of what will generally happen ; and in this view, to stand exactly upon the same ground with such passages as the following :—' He that leadeth into captivity, shall go into captivity.'—' All they that take the sword, shall perish with the sword.' The form of expression is precisely the same in each of these texts ; why then may they not be all interpreted in the same manner, and considered—not as commands, but as denunciations ? And if so, the magistrate will no more be bound by the text in Genesis to punish murder with death,—than he will, by the text in the Revelations, to sell every Guinea captain to our West India planters."

* 2 Kings xxi. 16—18.

† Inquiry upon Public Punishments.

‡ See Memoirs of the Manchester Literary and Philosophical Society, vol. ii, p. 309—Essay read, March 24, 1784.

But after all, is it certain that this passage has been correctly translated from the original? The most learned scholars differ upon this subject. A most respectable authority* undertakes to state that “no version of the Bible prior to the fifth century, contains the words ‘by man,’” in the disputed passage, but “that Scripture itself has been interpolated to suit the purposes of the state.” Be this as it may, it is an unquestionable fact that, of the original as it now stands, five different versions have been given by five grave and venerable authorities, all omitting the important words ‘by man.’†

But there is one consequence deducible from the construction given to this passage by our opponents, to which we would call particular attention. Suppose we concede to them, in its fullest extent, all that they require. Suppose we admit this to be a God-given decree to mankind—communicated directly by the Deity himself, as mandatory as they would have it, universal in its application, binding alike, as such a mandate must be, on all ranks and classes and conditions of society. Suppose we yield further still to their construction, and grant that the words “whoso sheddeth man’s blood, by man shall his blood be shed,” exclude homicide, and mean murder only:—So be it—and being so, *what becomes of the Sovereign’s prerogative?* The moment the fatal word is heard from the jury-box, the convict’s fate is sealed irrevocably. God’s awful mandate—eternal, final, irreversible—has gone forth, and not all earth’s authority—neither king, nor parliament, nor conclave, nor all collectively, can weigh a feather in the scale against it. This must be the inevitable result, if this passage be mandatory, and if it means murder.

Next comes the question, did not the Mosaic laws ordain death punishment? No doubt they did. But the Jewish

* Eclectic Review, July, 1849.

† Capital Punishments unsanctioned by the Gospel. By the Rev. Henry Christmas, M.A., F.R.S., &c.—1846. Gilpin: London.

people were set apart for a purpose, and that purpose has been effected. The whole scope and object of their system was, by type and ceremonial, and sacrifice and prophecy, to herald in the advent of our Saviour. That once accomplished, the system was at an end. The Mosaic dispensation and the Levitical code, framed for the exigencies of a turbulent, vindictive, hard-hearted, and idolatrous race, are gone together. Such laws are not only inoperative upon christians, but they are repugnant to the pure spirit of Christianity itself. They prescribe death for the murderer, no doubt; but so they do for the slave-dealer, and the adulterer, and the witch, and the blasphemer, and the sabbath-breaker. They enact, too, the savage principle of retaliation—‘eye for eye, tooth for tooth; as he hath caused a blemish in a man so shall it be done to him again.’ This was a system, doubtless, suited to a barbarous age and an unruly nation. It must have been, being with God’s permission; but by the same fiat it has ceased. Are we ready to revive it? Is the fiercest of our opponents prepared to submit to a British parliament a bill punishing adultery with death, or a humane proposal to draw the teeth, or gouge out the eye of a fellow creature? No! but he will retain the penalty for murder. By what authority? By what warrant does he pick and cull out of a connected code the fragment that suits him, and reject that which does not? Oh, but he finds a mandate against murder in the decalogue, drawn by the Deity, and addressed not to the Jew merely, but to all mankind. He truly does, and he finds in the same decalogue, by the same finger as ‘Thou shalt not kill,’—‘Thou shalt not steal,’ ‘Thou shalt not commit adultery.’ But where does he find a penalty in the decalogue assigned to the breach of any of its commandments?—above all, the penalty of death? And is man to mend God’s decalogue, and annex to its violation his own arbitrary, and it may be, sinful punishments? The decalogue, therefore, gives no warrant whatever for the infliction of

death penalty by man. The Levitical law does—but that code was administered under the immediate supervision of the Almighty. The system was a pure theocracy—it could not err, and accordingly we do not read of a single innocent life having been sacrificed mistakenly, under form of law. Not so, alas, as we shall find hereafter, under the government of erring man.

In stating this, we have been misconceived as asserting that innocence never suffered. Such was not our intention. Our meaning was, that we could find no case where, as in human ministration, life was sacrificed by pure-minded men, misled by circumstance, plausible but deceptive. Doubtlessly, instances may be found under the theocracy, of guiltless men having suffered—not however according to law, but in wicked and direct contravention of law. By foul contrivances—by subornation—by perjury—by packed tribunals—by corrupted judges. Such cases come not within our category, no more than do the murders perpetrated by Jeffries during his Western Assize. We refer to cases, not of intention, but of error—where accuser, witness, judge, were all unimpeachable, and, all mistaken. An incident has been cited from the Book of Kings of which we cannot admit the application. Naboth, the Jezreelite, from religious motives, refused to yield up his vineyard to Ahab, the king. Jezebel, his wicked wife, now and henceforth the synonyme of infamy, had Naboth murdered, in mockery of law. She had Naboth arraigned as a blasphemer against God and a reviler of his sovereign! To insure success she forged the king's name, tutored the judges, suborned the witnesses—the 'men of Belial,' and by this vile instrumentality she murdered Naboth and usurped his vineyard. It was no trial—it was no mistake. It was a murderous conspiracy, and the conspirators were, the king, the queen, the witnesses, and the judges! This was no case where the prosecutors were pure—where the witnesses were truthful—where the tribunal was upright—and where the con-

viction was honest, inevitable, and mistaken. It was the reverse of this, yet it was all permitted—but permitted by Him who could immeasurably compensate the sufferer. But why permitted? Daring inquisitor! interrogate Him whose mysterious wisdom permits the plague, the famine, the hurricane, and the earthquake? But we know He proclaimed to mankind that from its inception, the whole iniquity lay bare before His eye, and so, the dogs licked up the blood of Jezebel, and ‘Ahab’s house was made as the house of Jeroboam.’*

All now however has undergone a change. God no longer holds personal communion with his creature. The whole Jewish economy is vanished—gone, with all its marvels, its glory and its crime, its sublime ceremonial and denounced idolatries—gone, with its ark and sword and sceptre, its gorgeous worship and its regal pomp—gone without a solitary vestige left, save the living miracle of its scattered race—the outcasts of earth rather than its inhabitants—without throne, or temple, or altar, or domicile, or country. We renounce its laws, we repudiate its example, and bow down before, what they so impiously disdained, the bright advent of a holier dispensation. Nor are we disposed to undervalue the precious volume they have given to us; we can well appreciate its beautiful simplicity, its lucid narrative, its sublime poetry, its varied imagery, its historic lore, its wild, solemn, awe-striking inspiration. But above all, we can venerate the types, and miracles, and prophecies, and mysteries—mysteries no longer—which foretold, elucidated and confirmed the Gospel revelation. We cannot, nevertheless, for a moment admit that its laws are obligatory on the christian world. ‘God, who at sundry times and in divers manners spake, in time past, unto the fathers by the prophets, hath in these last days spoken unto us by his Son.’ And what has that Son said to us? Has he not, in express words, abolished the whole code of Moses? Has he not denounced the vindictive

* 1 Kings, xxi. 7—23, and 2 Kings, ix. 30—36.

principle of retaliation, and substituted that of mercy and forgiveness? Where do we find in that blessed Sermon on the Mount, a word which breathes not love and charity? After promulgating the divine beatitudes, see how he speaks of the Law he was superseding—"Ye have heard that it hath been said, 'An eye for an eye, and a tooth for a tooth;' but I say unto you, That ye resist not evil; but whosoever shall smite thee on thy right cheek, turn to him the other also."

So much for the Levitical law. How of the commandments? "Ye have heard that it hath been said by them of old time, 'Thou shalt not forswear thyself, but shalt perform unto the Lord thine oaths:' but I say unto you, Swear not at all." Again,—and we especially recommend this passage to all who whimsically apportion capital punishment to the violator of the Sixth Commandment, though by the same warrant they might affix it to the violation of every other injunction of the decalogue,—“Ye have heard that it was said by them of old time, 'Thou shalt not kill; and whosoever shall kill shall be in danger of the judgment.'”—Of what judgment? Of death, say the abettors of capital punishments, who choose to change the words, “Thou shalt not kill,” as they are quoted by the Saviour,* and as they stand in King James's Bible, into “Thou shalt do no murder.” Did the divine speaker so apprehend the words? “But I say unto you, that whosoever is angry with his brother without a cause, is in danger of the judgment.” Will any man contend that for such a reason, those blessed lips could have denounced the penalty of death? Assuredly they could not; and there is not to the violation of any injunction in the decalogue a temporal penalty attached, unless indeed it be to that of the Fifth, and even that, but by implication; and even then, to be inflicted by the Almighty.

The only instance of a capital offence having been brought under the cognizance of the Saviour, as recorded in the Gospel

* Matt. v. 21:—Exod. xx. 13.

narrative, is that of the woman taken in adultery: "And the scribes and pharisees brought unto him a woman taken in adultery; and when they had set her in the midst, they say unto him, 'Master, this woman was taken in adultery, in the very act. Now, Moses in the law commanded us, that such should be stoned: but what sayest thou?'" This, we are told, "they said, tempting him," hoping that by his answer he would either usurp the Roman prerogative or abrogate the Jewish law, a dilemma in which their question was intended to involve him. The demeanour of the Mighty Being thus addressed, is most remarkable. At first, as it would seem, he appeared not to hear them. "Jesus stooped down and with his finger wrote on the ground." Now—had he chosen to countenance the severity of the ancient legislation—how easily might he have reconciled the Mosaic doctrine with the Roman authority, and thus set at nought their treacherous inquisition! But this he did not. By doing so, he must have ceded either to one or other, or to both conjointly, the power of death infliction.—And this he did not. Neither was he silent. His reply decided not the rival pretensions of Rome or Jerusalem, but it swept away the principle on which both were founded, the right—so far as christianity was concerned—to take away human life. He refused any such principle his sanction, and he did so in language which, by announcing its only possible justification, proclaimed its assumption by mankind, impossible. "He that is without sin among you, (said he,) let him first cast a stone at her." The sinners shrank away at once from the presence of the sinless—the only sinless. Be it remembered here that the question as put, challenged the recognition of the Jewish punishment by the Christian dispensation. Be it remembered also, that though Jesus saw the foul intent which lurked beneath the question, the bystanders could not, and so received his answer in its literal acceptation. The case stood thus:—Moses bids us shed this culprit's blood, Jesus, what sayest thou? And what said he?

Let him begin "who is without sin among you." Slay—was the mandate of the Mosaic dispensation. Slay not—is the more merciful admonition of the Christian. If power over human life is only given to the sinless, it must be the exclusive attribute of Heaven. Cæsar cannot claim that which belongs not to him—he never gave it, nor can he take it away—should he take it, he may err in doing so—and should he err, reparation is impossible. Power over life belongs to God alone; he gave it, he alone can take it, and he alone cannot err in taking it. Such, as it ever has appeared to us, is the fair inference deducible from this narrative—an inference drawn, in all humility, from its sweet accordance with the heavenly disposition of the Saviour. Nor does this inference involve either excuse for the offence, or exculpation of the offender. While his mercy recoiled from a penal condemnation, the justice of his nature could not withhold reproof—"Go," said he to the poor, humbled, trembling creature, "Go and sin no more." But here he paused. He gave no countenance to the shedding of her blood. How sinful man would exercise such a power, the past revealed to him in the fate of John the Baptist, and the future spake to him from the mournful Calvary. So he gave it not.

An authority for the death-infliction has been deduced from the New Testament in the instance of Ananias and Sapphira, and to give the precedent the greater weight, it has been cited as "episcopal." We confess to not seeing its applicability, and think it applies rather the other way. The guilt, for guilt it unquestionably was, was not denounced as criminal by human legislation, and of course was not cognizable by any human code. Peter declared specifically what it was. He called it a "lie to the Holy Ghost"—the most awful of all scriptural offences—an offence not only penal, but inexpiable. It was a deliberate insult to that unspeakable Majesty, even to breathe against whom was a blasphemy not to be forgiven—"neither in this world, neither in the world to come." The Blessed Saviour

himself declared it to be more unpardonable than even to “speak against the Son of Man.” There was nothing whatever human in the incident to constitute it a precedent for humanity. The offence was against Heaven, and by Heaven was the forfeiture inflicted. As its detection was not by man, but by Omniscience, so its punishment was not by man, but by Omnipotence. It is significant enough that Saint Peter, inspired apostle as he was, though commissioned to proclaim the crime, never ventured to pronounce the sentence. The very mode of the punishment, impracticable by man, seems to indicate the denial of its delegation. The edict was divine—the condemnation voiceless—the death-blow invisible. It was all of God. Human nature had neither act nor part in it. Had it been intended, under the new-born dispensation, to arm man with this authority, here was indeed an opportunity of announcing it. But search as we may the Gospel narrative, amid all the sin and crime and cruelty and suffering to which the apostles were exposed, though we meet many instances of life restored, we seek in vain for one of death inflicted.

A royal author* of our own day, while discussing this subject in its religious aspect, grounds his enlightened advocacy of abolition expressly on the very doctrines of the Gospel. “Many “men (says this truly christian monarch) distinguished for learning and noble minds, found their conviction of the justice of “capital punishment on a religious view, and on the explanation “of certain passages in the Old Testament. Without entering “into a casuistical examination of the real meaning of these “passages, I will merely state that I support the views I here conscientiously endeavour to develop, *on the spirit of Christianity*. “This divine doctrine does not represent life as the greatest good “—as the end of all agency and being; but rather as a time of “trial, a preparation for another and more blissful life, which

* The reigning King of Sweden and Norway. On Punishments and Prisons.—English Translation: Nutt. London.

“ forms the true goal and home of man. How can one then, from
 “ a religious point of view defend a punishment, which shortens
 “ this time of trial, which breaks off this preparation? Is it not
 “ in short, to try to penetrate into the unfathomable decrees of
 “ Providence?”

Having failed in their scrutiny of the gospels themselves to find either fact or sentiment favouring death infliction, the anti-abolitionists ground their justification on a dis severed portion of one solitary passage in Saint Paul's Epistle to the Romans;—a very strained construction and a very far-fetched inference. The words are these:—[the ruler] “ beareth not the sword in vain.”* The word, “ sword,” say they, means authority *over life*. We say, it means no such thing, but is merely a figurative expression, symbolizing authority in the abstract. Saint Paul exhorts the church to obey the ruling powers, reminding it that the law furnishes them with the means of *enforcing* that obedience. That is all he says, and all he meant to say. He specifies no particular mode of punishment, and it seems clear he could not have so intended. He is recounting to them the duties they are to fulfil under peril of the consequences. He is admonishing them not to do evil:—“ But if thou *do that which is evil*, be afraid: for he beareth not the sword in vain:” “ Render therefore (he presently adds), to all their dues: tribute to whom tribute—custom to whom custom—fear to whom fear—honour to whom honour.” Does he mean that if they do not, they are to be put to death? Is it seriously argued that the great apostle enjoined this on the early christians and enjoined it in perpetuity! Are the indefinite words, “ doing evil ” meant to imply capital punishment as a consequence? Or, is *any* infraction of the laws the meaning of the passage? If this be so, he that pilfers, or reviles, or is intoxicated, “ does evil ” and must die for it.—But before our opponents burrowed these two lines out of the thirteenth Romans, we presume they had

* Romans xiii. 4

perused Chapter xii.* of the same epistle, where Saint Paul quotes this plain and awful admonition —“VENGEANCE IS MINE; I WILL REPAY, SAITH THE LORD.” Now, as these sentences are only just five verses apart, we leave it to our opponents to place them side by side and, if they can, to reconcile the simple meaning of the one with the forced construction they would have us put upon the other.

This *scripture* vindication is an old device of the anti-abolitionists. It was formerly their death pretence for witchcraft, as it is now their death pretence for murder and with equal reason. In those days they had recourse to the Old Testament. “It assures us (said they) that there are evil spirits. This easily appears by the temptation of our first parents; by the history of Saul and the witch of Endor, the history of Micaiah and the false prophets, and the history of Job.”† Such was then their blasphemous application of an obsolete system and an effete economy to christian times! The empiricism had its day, and, as we have witnessed, did its work. But the blood-bubble, over-swollen, burst at last. And now, exposed and desperate, it invokes the gospel. Even between the promises of eternal life, a ruthless impiety would interleave the death warrant. Even from ‘Sharon’s rose,’ the honey bud of christians, they would cull a poison! We challenge them however to produce one passage from the Saviour’s lips even savouring of their dogma. But in default of a text, they need not take the trouble of either inventing or disinterring a tradition.

We are quite apprised of the jealousy we shall arouse by touching on this subject. Ecclesiastics, it seems, claim here, an exclusive jurisdiction—the interpretation of scripture belongs to them. To which denomination? There are, we find, in Wales and England, no less than thirty five separate sections,

* Verse 19.

† Modern relation of matters of fact concerning witches and witchcraft on the persons of the people.

each maintaining separate opinions,* and all claiming to be right in their interpretation! Such being the case, in our construction of the Bible, we abjure the bidding of any sect whatever. Time was, indeed, when bigotry held that blessed book in chains. But the mighty German bade the chains fall off, and sent it forth for the weal and welcome of a world. Yes, of a world, without any distinction of station or of class. Meant, as we believe, for all mankind, its teachings are intelligible to all:—its mysteries, to none. It needs but little learning to understand the one—the lore of the Sorbonne cannot resolve the other. When the self-sufficiency of man attempted it, it only caused the shame of christendom, and furnished the foolish infidel with a sneer. We will therefore read the Gospel for ourselves, and, as we read it—its precepts are peace—its promise, salvation—its condition, repentance—its vital principle, a living faith in the atonement. As we read it, it is mercy's manual, 'good-will to mankind,' breathing through every page. Let satanic subtlety isolate some phrase to mar, by its misconstruction, the scope and spirit and tenor of the context. And, having done this, let it reconcile the christian's creed with the practice of the anti-abolitionists. Let it unite the poles, or bring the antipodes together. They are as much asunder. When the blessed Gospel whispers peace,—they mutter vengeance. When its hermit-herald bids a world repent,—with their axe and their wheel and their faggots they render penitence impossible. When Mercy desireth not a sinner's death, but "rather that he may turn from his wickedness and live,"—they smite him down, and, too often in his wickedness, the sinner dies. Great and Beneficent Ruler of the universe! Surely, surely, this is not HIS teaching whose nativity the star of heaven announced! Over whose baptism the peaceful dove presided! Whose every thought and word and deed spake mercy to mankind! No, no—this cruel doctrine is not born of Bethlehem. It is racy of the soil from whence

* Official report made by Horace Mann, Esq.; 1853.

it springs, and reeks of earth all over. Its pride usurps dominion over life—its impiety grasps an empire even beyond it. Such are its pretensions! And what have been its fruits? Has it not filled our world with woe! Has it not shrouded it in mourning! How many myriads have suffered for their conscience sake! How many graves have been dug by this sectarian dogmatism—if indeed its victims, denied even a grave, have not vanished in ashes before the winds of heaven! Thus, while legislation claims dominion over life, bigotry claims dominion over conscience—and both quote the divine word for their double violation of the divine prerogative. Let the nation ponder deeply upon this, for it is the national concern. And awfully indeed does it concern us all—to see that we have Gospel warrant for this practice.

Where then is that warrant? We deny it an existence; and we do so, because the exercise of power over man's life is not compatible with the limited faculties of man. We refer not now to the irretrievable injustice worked by human Judges, despite their best intentions and their utmost care. Instances enough of this shall be adduced to startle the reflecting, and convince all who are open to conviction. What we refer to here, is the terrible results of this assumption—not in courts of law alone—but horrible to relate, under pretext of religion! We do allude to the unholy carnage of christians, by "christians," in the desecrated name of christianity! Would that we could exclude this glorious land from the accursed guilt-roll! But our eighth Henry—the libeller alike of Luther and of Rome—too often wrote his creed in blood, and in the same characters recorded his recantation. But his more consistent, and, if possible, more savage daughter—proved her consanguinity by her crimes, and so incarnadined her native land that the encircling ocean cannot wash out the stain. But even Scotland—wise, learned, and moral as she is—reads with a blush the annals which attest the unchristian contentions of Catholic and Pro-

testant—the murder of priest by primate, in the name of God ;* and the ferocious Calvinism of Knox, kindled at the fire in which Servetus perished. Need we instance Ireland—unhappy Ireland—the victim of each sect's alternate triumph—whence it required all the light of our own times to scare the owls and vultures of bigotry away. This is but an epitome, and an abridged epitome, of what has happened in Great Britain.

Has it happened elsewhere? It is but a repetition of the world's history. Wherever man has assumed usurpation over life, we shall not only find him quoting religion in its defence, but making religion at times the pretext for its exercise. Were such men sincere? What right have we to think them otherwise? No doubt they thought the motive was an atonement for the means, and that Scripture justified their employment. We think far otherwise, and so doubtless do most of our opponents. But ought not this to make them pause? When they see such consequences flowing from such assumption—when they see such assumption justified by Scripture, which they well know, affords no such justification—should they not suppose they may be as much mistaken as those from whom they differ, and who are actuated by as high a motive as their own? No doubt they will scornfully discard the supposition. With equal scorn, perchance, they would spurn any comparison with Mahommed. Yet, let us balance the account between them. Mahommed propagates his heterodoxy by the sword—*they* propagate their orthodoxy by the stake—the one slays, the other burns; that is all the difference, save that the Mussulman practised what he preached. This is no sophistry to suit a purpose. The crimson record is bound up with history. It is of many an age and many a country. We can call our witnesses—it is not our fault that we are answered from the grave. And see—the spectral convocation rises—accusers in their shrouds! Behold the “noble army of the martyrs,” the phantom repre-

* Hume, vol. v, p. 23.

† Ibid., p. 26.

sentatives of every virtue—behold the saints, the heroes, the patriots, the apostles, slain either by “christians,” or because they were so. Behold the cross—meek mercy’s cross no longer—the cross of fire—summoning its followers to deeds of madness. See where it waves over the desolated vales of South America, mocking their Inca on his bed of coals. And lo, Rome’s banner soars before the city of Beziers, and while her soldier would incline the man of peace to pity—this is his reply, —“KILL ALL—GOD WILL KNOW HIS OWN”—and then the mitred butcher’s word went forth, and tottering age and infants at the breast, and the mothers feeding them, were all mercilessly and indiscriminately murdered, “so that (says the historian) in that city there remained no living thing.”* Yet hold not here—Look on the burning villages of the Vaudois—see the murder-dotted hills of the Waldenses—hark to the hoarse knell of Saint Bartholomew—bend down, believer, as you value life, before the *Auto da Fe*. These things have been done by wise men, by “holy men,” by truly zealous men, and—as they marvellously imagined—in the service of “religion”!

Such have been the results—not one tithe of the results—of human *usurpation over human life*. Seeing what we have seen, and believing, as we do, that the Gospel confers on man no such authority in any case whatever, we shall receive it as a legacy of peace and love and charity, and we shall read it, not by the murky pile of persecution, but in the sunshine of the heaven to which it leads.

Let us forget, however, these scenes of horror, revolting alike to reason and religion. Let us turn, as happily we may, from the barbarities of civilization, to the civilization of barbarism:—After the first edition of this work, was printed, we received a singularly interesting communication. It is a report of the proceedings of the parliament of Otaheite—on the subject of death punishment. This people, be it remembered, were a

* Histoire des Français, par Lavallée, vol. i, p. 337.

nation of cannibals at no very distant period. They became converts to christianity in the commencement of this century, and made such progress in their social improvement as to found for themselves a constitution. It was on the 24th of February, 1824, that they convened a native assembly for the purpose of devising their system of laws, and a debate of four days' duration was terminated by a unanimous vote excluding death punishment from the code of Otaheite.* The house of meeting was their house of worship, and the first proposition submitted to them was, whether death or banishment should be the punishment for murder? A speaker declared the crime ought to be capital, because it was capital in England, and having received from that country the precious gift of christianity, it was their duty to adopt the laws. To this a high personage replied, that England *punished many crimes with death, to which no christian legislature should assent*; and he declared it as his fixed opinion that such an example as that, was not one for imitation—an opinion which seemed to find favour with the assembly. After some pause, however, a chief arose, noble and stately in demeanour and clearly high in general estimation. “It is not,” said he, “the law of England that should guide us, good though it may be. We ought to be guided by the Bible. Now our missionary stated to us a few days ago, that the Bible says ‘Whoso sheddeth man’s blood, by man shall his blood be shed;’ and that such was the reason for the law of England. I think, therefore, not because it is the law of England, but because the Bible orders it, that we should punish the murderer with death.” After this the debate proceeded, when at length a chief arose, named Tati, whose rich native dress bespoke high rank and whose movement commanded instant deference. “Perhaps (he proceeded) some of you may be surprised that I who am the first chief here, and next to the royal family in rank, should have held my peace so

* Tyerman and Bennett’s Journal, vol. ii, p. 80.

long. I wished to hear what my brethren would say, that I might gather what thoughts had grown up in their breasts on this great question. I am glad that I have done so, as I have been instructed. Now with him who says we should punish with death because the laws of England do so, I agree not, because he goes too far. Nor do I agree with him who quotes the Scripture, because I think he also goes too far. The Bible, he says, is our perfect guide. It is. But what does the Scripture mean, 'He who sheddeth man's blood, by man shall his blood be shed'? Does not this go so far that we cannot follow it, any more than we can follow the laws of England, all the way? For instance, I am Tati. I am a Judge; a man is convicted before me: he has shed blood; I order him to be put to death: I shed his blood; then who shall shed mine? Here, because I cannot go so far, I must stop. This cannot be the meaning of those words. But, perhaps, since many of the laws of the Old Testament were thrown down by the Lord Jesus Christ and only some kept standing upright; perhaps, I say, this is one of those which were thrown down. However, as I am ignorant, some one else will show me, that in the New Testament our Saviour or his apostles have said the same thing concerning him that sheddeth man's blood as is said in the Old Testament. Shew me this in the New Testament, and then it must be our guide." After him rose Pati, a chief and a Judge of Eimeo, and one of the most interesting members of the assembly. He had been the high priest of Oro, and was the first Otaheitan who, at the hazard of his life, abjured idolatry. "My breast," he exclaimed, "is full of thought and delight and surprise. When I look around at this House of God in which we are assembled, and *consider who we are* that take sweet counsel here, it is to me all a thing of amazement, and makes glad my heart. Tati has settled the question; for is it not the Gospel which is to be our guide? And who can find directions there for putting to death? I know many passages which forbid, but

none which commands to kill. Another thought arises in my breast. Laws, to punish those that commit crime, are good for us. But, tell me, why do christians punish? Is it because we are angry, and have pleasure in causing pain? Is it because we love revenge, *as we did when we were heathens*? None of these:—christians do not love revenge; christians must not be angry. They cannot have pleasure in causing pain. Christians therefore do not punish for these. Is it not rather that by the suffering which is inflicted we may prevent the criminal from repeating his crime, and frighten others from committing it? Well, then, does not every body know that it would be a greater punishment to be banished for ever from Tahiti, to a desolate island, than just *in a moment* to be put to death?"

Such were the wise and noble sentiments of one, who but a few years before, had wandered, a savage, if not worse, amid the wilds of Otaheite? What could he have said better, had he made Beccaria the study of his life? When this high chief had finished, one of the *taati rii*, as they are called, which means the commoners or representatives of a district, next presented himself. He was heard as respectfully as had been those of a superior dignity who preceded him. "I stand up," said he "because no one else does, and because pleasant thoughts are growing in my bosom. Perhaps every thing good and necessary has been already spoken by the chiefs; yet, as we are not met to adopt this law or that law because one great man or another recommends it, but as we, the *taati rii*, just the same as the chiefs, are to throw all our thoughts together,—that out of the whole heap the meeting may make those to stand upright which are best, whencesoever they come,—this is my thought. All that Tati said was good; but he did not mention that one reason for punishing, (as a missionary told us, when he was reading the law to us in private,) is to make the offender good again, if possible. Now, if we kill a murderer, how can we make him better? But, if he be sent to a desolate island, where

he is all solitary, and compelled to think for himself, it may please God to make the bad things in his heart to die, and good things to grow there. But if we kill him, where will his soul go?"

The rude council of these children of the woods seems to us to breathe the very soul of christianity. Callous civilization will deride their humanity, and intolerance condemn their doctrine; yet it may be, perhaps, that both would be the wiser and the better for a lesson from the ex-high priest of Oro. Poor and unsophisticated people! long may they possess the gospel in its simplicity, pure as the great Hebrew convert preached it! so will they find in it their youth's preceptor, their manhood's guide, and their old age's anchor. And oh, for them or for their island, may the day never come, when martyrdom shall blot its page with blood, or Inquisitions provide a torch by which to read it!

It has been remarked before, that in the earlier ages, when christianity was in its freshness on the earth, we find it practically opposed to the infliction of death punishment. "Up to the fifth century," says Schlegel, in a note upon Mosheim's History, (vol. i. 466,) "it was the current opinion that christians could not bear a part in the execution of criminals." In Milman's Church History, we read, (vol. ii. 82,) that Julian removed christians from the office of Prefect because they would not put criminals to death; and in the same work (vol. iii. 457), we learn that St. Augustine denounced the destruction of criminals in the circus, and complained of the practice as adding to the ferocity of the people.* These historic facts are quite in accordance with the christian spirit and the christian doctrine; quite in accordance with that blessed Gospel which breathes mercy from the beginning to the end; quite in accordance with every word and act of Him, who, while reprovng, pardoned.† So far from Christ countenancing the death infliction, even for

* Eclectic Review, July, 1849.

† John viii. 11.

murder, his own dying supplication was the pardon of his murderers. Yet, under *judicial* forms, and a sanguinary code, was this monster murder plausibly committed. Surely, surely, the pure, and innocent, and sacred blood which stained Mount Calvary, should have been the last which earth's tribunals ever shed? But, alas, it was not—and many a scaffold's guiltless martyr has since told erring man, that in assuming God's prerogative—"he knows not what he does."

PART III.

HAS man a right by human legislation, to deprive man of life? If he has not, capital punishments fall to the ground. We say he has not—we say, with Beccaria, that no man possesses a right over his own life, and, not possessing it himself, how can he delegate it to another! Suicide is not only a crime which nature abhors, but it is a felony by our English law. It is clear, therefore, both in law and morals, man's life is not at man's disposal.

By what authority does any man or any community of men assume power over their fellows? By common agreement—by what is called the social compact, and by it alone; by it, he delegated to others, certain portions of his individual rights; in accepting the control of the laws, he sacrificed a portion of his liberty—in submitting to taxation, to a certain extent, he conceded a portion of his property; and thus by the formation of communities, and the establishment of civil government, he was

secured from the anarchy of a state of nature. These, for such a purpose, were most wise and salutary sacrifices; but he could go no farther, he could not transfer a power which he possessed not.

Man's life is not his own—our own law says it is not his own—it is a loan from the Almighty. It is not a gift, it is a loan, to be revoked at will, and at any moment; to the despot in his purple, to the pauper in his rags, it is alike a loan, and the fellow worms must alike account for the use which they have made of it.

There is no instance in the world's annals, in which capital punishments were authorized by Heaven, save under the Levitical code, and that code was administered under the immediate eye of The INFALLIBLE. It is not for us, poor erring creatures, to scan the enactments of that mysterious system, with penalties apparently so disproportioned to the offences. It was doubtless part of a supernatural economy which it is not ours to scan, or scanning, to comprehend. These sanguinary enactments, operative upon crime, may have had a significance yet unrevealable to mortals. They may have been meant as expiatory sacrifices, prefiguring and typical of the awful final one which closed, on Mount Calvary, the reign of blood. Such are our views on this all-important subject. Nor are they ours alone: great and good names might be adduced in their support; we have already cited the opinions of Beccaria, whose invaluable treatise is co-extensive with civilization. So we say, as has been powerfully argued by Sir Thomas More,*—"God commandeth us that we should not kill, and, if a man would understand killing by this commandment of God to be forbidden after no larger wise than man's constitutions define killing to be lawful; then, why may it not likewise by man's constitutions be determined after what sort, whoredom, fornication and perjury may be lawful? For, whereas, by the permission of God, *no man*

* Introductory Discourse to the Description of Utopia, Book i. 75.

neither hath power to kill neither himself nor yet any other man— then, if a law made by the consent of men concerning slaughter of men, ought to be of such strength, force and virtue that they, which—contrary to the commandment of God—have killed those whom this constitution of man commanded to be killed, be clean, quit and exempt out of the bonds and danger of God's commandment; shall it not then, by this reason, follow that the power of God's commandments shall extend no further than man's laws doth define and permit? and so shall it come to pass that, in like manner, man's constitutions in all things shall determine how far the observation of all God's commandments shall extend. Now you have heard the reasons why I think this punishment unlawful." It is true that the subject matter of the argument was theft, but, assuredly More's reasoning goes directly to the legality of the punishment in the abstract. We might add the authority of Mrs. Fry, whose angelic life was worn out in "doing good,"—who relinquished the leisure and luxuries of her station, and almost domesticated herself amid the dungeon's gloom,—the willing captive of her own benevolence,—reforming the crime and solacing the misery she found there—she ought to be a great authority, because an intelligent and daily witness of the frightful errors of a fallible tribunal. It was this sad experience which doubtless wrung from her the mournful exclamation, as death's agent, at man's daring mandate, hurried some youthful victim before her God, perhaps innocent; perhaps guilty, and if so, alas,—

Out off in the very blossoms of her sin,
Unhouse'd—disappointed—unanel'd,
No reck'ning made, but called to her account,
With all her imperfections on her head—

"Is it for man to take the prerogative of the Almighty into his own hands?"* Assuredly it is not, and perilous indeed is

* Life, vol. i, 267.

the position of the person who presumes to do so. So thought Mrs. Fry. So thought a still more consummate authority—an authority, practical as well as theoretical—one who has adorned the day in which we live, but who was intended “for all time.” “We have no right,” (says Lord Brougham, then Lord Chancellor,) “to shed a criminal’s blood, because he has shed the blood of another man: we have no right in *reason* to do this; we have no warrant from *religion*. It is doubtless a great evil for a man to be murdered; but that, in reason, is no argument for inflicting death upon the murderer.*” And this, be it observed, was a deliberate opinion pronounced by the head of the law, before the peers of England. So thought also the great American†—a name dear to science, to humanity, and to freedom. “The power over human life is the sole prerogative of Him who gave it. Human laws, therefore, are in rebellion against this prerogative, when they transmit it to human hands;” And again‡—“I have said nothing of the punishment of death for murder, because I consider it an improper punishment for any offence.” So thought another great American, John Quincy Adams, the friend of Washington, and one of his successors, as President of the United States. “I heartily wish § and pray (says he,) for the success of your efforts to promote the abolition of capital punishment; and, if you can shape the laws of the land to a disclaimer of the *right of Government itself to take from any human being the life granted him by his Creator*, I would welcome it as the harbinger of a brighter day, when no individual of the race of man, shall ever lose his life by the act of another.” So thought an authority, not long departed, who saw and shuddered at the results to which this usurpation led:—“Capital punishment was held in horror by Lafayette, who constantly raised his voice against that mon-

* Lords’ Debates, September 6, 1831.

† Franklin, Inquiry.

‡ Inaugural Discourse.

§ Letter to the National Society of Massachusetts, 1845.

strous penalty. He thought society had no right to take away what it could not restore.* So thought another illustrious son of France—illustrious alike as a patriot and man of science:—“I am (said the great Arago) a decided partizan of the abolition of the punishment of death.”† So was Condorcet, his philosophic contemporary:—“He demanded (said Arago,) and in a tone of profound conviction, that the code should be purified of the frightful stain of capital punishment, which rendered the error of the Judge for ever irreparable.”‡ So, evidently thought our own lucid commentator, who thus went as far as his position (as a Judge) warranted:—“To shed the blood of our fellow-creature is a matter that requires the greatest deliberation and the fullest conviction of our own authority; for life is the immediate gift of God to man; which, neither can he resign, *nor can it be taken from him, unless by the command or permission of him who gave it.*” If it be said that Blackstone somewhat qualified his doctrine by not denying to man the *right* to take away the life of a transgressor—“though (he takes care to add,) persons of some abilities have *doubted* it”—no question that is so. But then, how awfully he modifies his qualification. “I (says he,) only suggest a few hints for the consideration of such as are, or may hereafter become, legislators. *The guilt of blood, if any, must lie at their doors, who misinterpret the extent of their warrant!*”§ The admonition is momentous, and worthy of all remembrance. Another scholar of our own age and land, (consulted for his lore, by one of our most enlightened statesmen,||)—Gilbert Wakefield—declares that in his judgment “no man, and no company of men, are authorized to take human life.” “It is undoubtedly,” (says the philosophic and as it seems to us,

* Jules Cloquet's Recollections.

† Biography of Carnot, pronounced before the Academy of Sciences, 1837.

‡ Eloge on Fourier, 1833.

§ Commentaries, vol iv, p. 10.—Christian's edition.

|| Charles James Fox.

the truly christian monarch* whom we have already† quoted)
 “both the right and the duty of society to punish every action
 “which can disturb the public system of justice; it can even,
 “if the offender has, by a relapse, shewn himself incorrigible, or
 “if his offence is of a nature to endanger the public safety,—
 “render him incapable of again injuring the other members of
 “the community. But does this *right* extend farther than to
 “the loss of liberty, by which the object is gained? Every
 “punishment which goes beyond the limit of *necessity*, enters
 “the jurisdiction of despotism and revenge.”

We have in addition, the testimony of able, practical men to the same effect. “In the course of my experience,” says Mr. Harmer, a very high authority, “I have found that the punishment of death has no terror upon a common thief; indeed it is much more the subject of ridicule among them than of serious deliberation; the common expression among them used to be, ‘Such a one is to be twisted;’ and now it is, ‘Such a one is to be top’d.’ The certain approach of an ignominious death does not seem to operate upon them, for after the warrant has come down for their execution, I have seen them treat it with levity. I once saw a man for whom I was concerned, (the day before his execution,) and on my offering him condolence and expressing my sorrow at his situation, he replied with an air of indifference, ‘Players at bowls must expect rubbers.’ Another man I heard say, that ‘It was only a few minutes, a kick and a struggle, and it was all over; and that if he was kept hanging more than an hour, he should leave directions for an action to be brought against the sheriffs.’ The fate of one set of culprits, in

* King OSCAR, on Punishments and Prisons.—“The effect [says the translator, Mr. May,] produced by the appearance of this work, was all that the illustrious author could have desired. The book was eagerly sought and read, and the Dict, inspired by the noble sentiments there developed, appointed, to be applied in the manner proposed,” a munificent sum.

† At page 54.

some instances has no effect even on those who are next to be reported : they play at ball, and pass their jokes as if nothing was the matter. I mention these circumstances to shew what little fear common thieves entertain of capital punishments, and that so far from being arrested in their wicked courses by the distant possibility of its infliction, they are not even intimidated at its certainty ; and the present numerous enactments to take away life appear to me wholly inefficacious.* So slight is the influence of this punishment individually.

But what effect does it exercise on the nation ? this is a consideration which no civilized christian legislature can cast aside ; the reformation of the ill-disposed is impeded by such spectacles. " These executions," says Mr. Forde, the ordinary of Newgate, in his letter to Bentham, " are of no avail either for punishing criminals, or deterring others from the commission of crime ;" and no one, from his position, could be more qualified to form a judgment. Sir John Fielding declares as the result of his experience, that " a discharged criminal, generally by the end of the next session after the execution of his comrades, becomes the head of a gang of his own raising." But we need not retrograde to the days of Mr. Forde or Sir John Fielding, to prove their demoralizing, rather than reformatory effects.

Lord Nugent† mentions, that in May, 1840, a man named Thomas Templeman, was executed at Glasgow for the murder of his wife, and that pickpockets plied their trade under the gallows ; at that time to be sure, a boy could not be hanged for stealing a pocket-handkerchief—a humane amendment had substituted transportation for life, and scores have been so transported : but Barrington, the *facile princeps* of the profession, declares, that even when the offence was capital, the thieves selected the moment when the strangled man was swinging above them, as their happiest opportunity, because, they shrewdly argued, " everybody's eyes were on one person, and all were

* Evidence, May 18, 1819.

† Speech at Newcastle-on-Tyne.

looking up." The late excellent Basil Montagu used to relate, that through the interest of the Duke of Portland, he obtained the respite of two unhappy men who were sentenced to death, at Huntingdon, in 1801, for sheep-stealing. By dint of great exertion he reached the place a short time before the hour appointed for the execution ;—the streets were thronged with crowds who came to see *the show*, and, to his utter horror, the High Sheriff advised him to leave the town as speedily and as *privately* as he could, to avoid ill-treatment, from the disappointment he had occasioned !

A more frightful instance of this demoniac frenzy, so produced, we borrow from America. " After (says Mr. Livingstone*) the execution of Lechler had gratified the people about York and Lancaster with the spectacle of his death, and had produced its proper complement of homicide and other crimes, a poor wretch was condemned to suffer the same fate in another part of the State of Pennsylvania, where the people had not yet been indulged with such a spectacle. They therefore collected by thousands and tens of thousands. The victim was brought out. All the eyes in the living mass that surrounded the gibbet were fixed on his countenance, and they waited with strong desire, the expected signal for launching him into eternity. There was a delay. They grew impatient : it was prolonged, and they were outrageous ; cries like those which preceded the tardy rising of the curtain in a theatre were heard. Impatient for the delight they expected in seeing a fellow-creature die, they raised a ferocious cry. But, when it was at last announced that a reprieve had left them no hope of witnessing his agonies, their fury knew no bounds ; and the poor maniac—for it was discovered that he was insane—was with difficulty snatched by the officers of justice from the fate which the most violent among them seemed determined to inflict." This most awful and humiliating instance of the degrading depth to which human

* Introductory Report, p. 132.

nature may descend, occurred at a place called Orwigsburgh, in Pennsylvania, and Mr. Livingstone declares the picture by no means overcharged. The name of the rescued maniac was Zimmerman.

This sad list might be indefinitely lengthened, but such details, so mournfully humiliating, may not be dwelt on longer than is necessary; one instance more shall close the catalogue—it is, really, too appalling to be surpassed, and too much in point to be omitted: we give it on the authority of Mr. Dymond. On one occasion when forgery was capital, a criminal had been executed at the Old Bailey, and his body had been placed at the disposal of his friends: his widow pursued his trade of forging £1 notes, and a young man sought her house, to purchase some; the police were heard in pursuit, and to prevent discovery, she crammed the notes *into the mouth of the corpse*; and there the police officers found them.

This is, by no means a solitary instance of perseverance in the crime, in defiance of the penalty. “During one sitting as a magistrate (says Mr. Manwaring)* three persons were brought before me for uttering forged notes. During the investigation, I discovered that those notes were obtained from a room in which the body of a person named Wheller (*executed on the preceding day for uttering,*) then lay, and that the notes in question were delivered for circulation by a woman, with whom he had been living.” Such facts as these, so clearly exposing the inefficacy of our system have at last, though tardily, attracted the attention of Parliament. During the session of 1856, a Committee of the House of Lords, moved for by a most eminent prelate,† reported on the subject, after hearing evidence—and their report is quite conclusive—as to the policy of *public* executions. Now, we always supposed that publicity was the very essence of the penalty, awing as it were, whole multitudes at once by the *terror of the example*. They knew not human nature

* Commons' Report—Evidence, June 15, 1819. † The Lord Bishop of Oxford.

who thus argued. Exhibitions such as these will never produce any other effect upon the feelings of mankind in general, save that of petrifying them; the evidence given before the Bishop of Oxford's Committee abundantly testifies to this:—

The Venerable Archdeacon Bickersteth thus states that which passed under his own eyes, in the town of Shrewsbury, during the execution of Josiah Misters, convicted of an attempt to murder. “There was an unusually large attendance, not only of the inhabitants of the town, but of the country round. The whole scene was new to me, and very unexpected; the town was converted for the day into a fair—the country people flocked in, in their holiday dresses, and the whole town was a scene of drunkenness and debauchery of every kind. I had an opportunity of inquiring from some of the most respectable inhabitants, what was their own impression, and their opinion entirely coincided with my own, that the whole exhibition was calculated to be injurious to good morals, rather than otherwise. It was particularly remarked upon that occasion, that a very large number of children were present; children and females constituted the larger proportion of the attendance. The impression left by the execution was not one of seriousness, and it was impossible to make it so. I was anxious before the day came, if possible, to use it as a day upon which some moral effects might be produced, but I found it quite in vain.”

Respecting another case, the same reverend dignitary stated, that in answer to a letter which he had written to a respectable inhabitant of Shrewsbury, he was informed that the mining districts generally furnished the larger proportion of spectators; “They come out just as they would to *bull-baiting or a cock-fight*; and after the solemn scene is over, the day is invariably one of drunkenness, oaths, and disorder. About thirty years ago, a man, who had been a local sectarian preacher, was executed at Shrewsbury—he had been convicted of the crime of murder on the most clear and undoubted evidence; yet, at the

time of his execution, he was permitted to speak to the people, several thousands of whom were present, as usual. Having a powerful voice, which he exerted to the utmost, he was heard at a great distance, even as far as the gardens on the north side of the Abbey Foregate. In the course of his harangue he called out several times, 'I am going to glory, what shall I do for you? tell me what I shall do for you?' He then gave out a hymn, two lines at a time, which was sung by a portion of the throng, himself leading the singing; and at the conclusion the executioner performed his office. Surely such a scene could only have had one or other of two effects on the minds of the persons present—it must either have diminished their respect for the laws of man, or have weakened their fear of God."

Captain Mayne, chief of the Shropshire constabulary, thus writes to the Right Reverend Chairman of the Committee:—
 "My own opinion is, that an execution is viewed much more in the light of a show, than of an awful punishment; and in proof of this, I would mention, that on an occasion in this town, (Shrewsbury) when one took place, the performance at the circus here was postponed for two hours, *in order to enable the people to witness both.*"

We have extracted only a small portion of the evidence which came before the Lords' Committee, merely adding a few instances, the result of our own research. The Committee came to an unanimous conclusion, founded on that evidence, and reported accordingly.

The reader will observe, that the point for their Lordships' deliberation, was the policy of "*public*" executions. That before us, is the propriety of their *total abolition*—and we have no hesitation in claiming this committee, on their own shewing, as powerful, though perhaps unconscious, advocates of our cause. A committee, including amongst its other eminent members, such names as those of the Bishop of Oxford, and Lord St. Leonards, is well worth contending for. We beg, however, not

to be misunderstood ; we would by no means attribute individual opinions to any of these noble Lords, which, for aught we know, they may or may not hold ; but we fearlessly assert that their joint report, and the evidence on which it is founded, contain conclusive arguments in favour of abolition. We claim every line of it on behalf of the abolitionists.

During many centuries, we have now persisted, year after year, in the infliction of this most awful punishment, taking man's life, stigmatizing his memory, involving his innocent orphans in his ruin, and hurrying himself before an offended God, without even time for a too requisite preparation.* And why has this been done? It has been done, as we are told—for the protection of society, by holding up the terror of the example. Of course, this is our only justification for the infliction of punishment at all ; it is not intended for retaliation on the criminal—"Vengeance is mine," saith the Lord.—Well, is the object effected? Is the only legitimate purpose of punishment completed? Do men shrink back, aghast, from the spectacle, and return to their homes to contemplate its moral? Look again, say we, to this report :—Their home is deserted for the public-house, the din of the "circus" alternates with the death-shriek—women—English women—English mothers, familiarize their offspring to the dying agonies which are to delight their manhood—babes at the breast imbibe life's nutriment while death's work is doing—(it is all in the report)—gospel in hand, Christ's minister approaches,—he is unheard, if not derided,—the hangman holds high festival—the feelings of mankind are for a moment palsied, their hearts are hardened, their manners brutalized, their moral perceptions blunted, or suspended—all that softens, sanctifies, humanizes earth, vanishes from its surface—for miles and miles around, the whole living mass

* It was the custom until lately to execute murder convicts within forty-eight hours after their conviction : so they always tried them at the Old Bailey on the Friday, thus *humanely* giving them the benefit of the *dies non*.

becomes diseased and tainted—every healthy hamlet, catching the infection, rushes to the scene of blood as to “a show,” while blasphemy, obscenity, drunkenness and crime celebrate their horrible Saturnalia beneath the gallows. Advocate of blood! Terror-striker *by example!* Dwell upon this picture if you dare—its every feature will be found in the Lords’ Report, or in the documents annexed to it.

This abortive system of terror-striking by example, is, after all, but a trouble-saving expedient—the mere short-cut of lazy legislation. It is the stultified device of state empiricism, to stay the plague by sacrificing the patient. No doubt, the Calcraft of the day profits largely by a system so reproductive. He is, and ever will be in abundant practice so long as a senseless legislation considers that the extermination of the criminal involves that of the crime. If terror could extinguish crime, and if crime’s extinction is the sole legitimate object of punishment, then our system errs *on the side of lenity*. That terror principle once admitted, Draco’s system is the only sound one. Sir William Grant has put it well. “If (said he,) intimidation could prevent crime, why should not the terror of death attend the most trifling offences? Why stop at the terror of death for any offence?” The anti-abolitionists are by no means open to this reproach. They *did* enact it, for the most trifling offences—and they inflicted it too; and finding it did not deter from a theft of five shillings, they logically infer that it will deter from murder! Aye, and that their punishment (supposing it permissible) might fail, as it did before, they commute in murder, as they did in the minor offences. But, repeated failure nothing daunts the penal experimentalist. He has tried his specific in every shape and form—in that of the stake, the axe, the thumb-screw, the gibbet, and the gallows. We believe there are some still amongst us who have seen human heads spiked above Temple Bar, and within memory, certainly, the raven has scented Execution-dock. With what effect? Murder doubtless is not what

it was. It no longer stealthily crouches in the by-ways. It faces us boldly in the public streets. Armed with the garotte, it stalks abroad through our familiar thoroughfares, or more relentless still, it smiles upon the victim and pours poison into the cup of hospitality.—The recent revolting case of Palmer stands not alone in its atrocity. The sacrifice of his aged mother by Bacon, as she sat at his board, and received her death-meal from his hands, transcends even it in turpitude. Murder's familiar mode has become monotonous. Its jaded appetite requires the zest of more than a blood-banquet, and life's forfeiture counts for nothing now, unless all that charms, and hallows, and endears it, accompanies the immolation. We much doubt whether within our own memories and within the same interval, crimes so daring, so crafty, and so fiendish were so rife in England, as within the last ten years ; and, even while we write, they are frightfully increasing.

An able journal, opposed diametrically to our views upon the subject, very candidly admits this fact. “ *At the present moment, (it declares) slaughter stalks abroad, not only in its most terrific shape, but in every conceivable variety. Parricide at Bramal—fratricide at Liverpool—a double murder and suicide at Bath—wife murder at Islington—the monstrous and mysterious tragedy in London, besides the murder in Leigh Woods,—are a cloud of witnesses, such as rarely, if ever, have presented themselves in such close and terrible proximity to the horrid passions to which even civilized society is liable.”

At this, we marvel not. But ought not such a fact to startle our opponents ! Are they quite sure that this much cherished fallacy may not produce an effect the very opposite of that intended ? Is it quite clear that these scaffold-exhibitions may not, by familiarity, indurate men's nature ? Or, even more fatal still, may they not operate perniciously on the very classes they were expected to reform ?

* Saturday Review, October 17, 1857.

If this needed further proof than that which we have already adduced, it will be found on reference to the admirable treatise of the reigning King of Sweden. That enlightened monarch—in an elaborate analysis of the number of executions in proportion to the population of no less than twelve European States, within the same number of years,—positively demonstrates the futility of the punishment as a means of repression. After his statistical statement, proving the inutility of laws—to use his own words—“severe as those of Draco,” King Oscar says, “notwithstanding the number of executions in proportion to the population is greatest in Spain, and next in Sweden and Ireland, it is well known that the amount of crime is not less there; but on the contrary, greater than in many other countries where capital punishment is not at all, or at least is very sparingly used.” “Without more closely examining whether society has *the right* of torturing and finally putting to death one of its members,—in order to excite fear and horror in the rest,—it is probably very doubtful, whether the greater or less amount of crime depends exclusively on a greater or less application of the warning theory. Experience seems, on the contrary, to prove that crime is more effectually prevented by a more general enlightenment, a steady and liberal organization of society, and easier means of gaining a livelihood.” This is truth—profound, historic truth, and we cannot sufficiently express our admiration of the Royal Sage who has thus—despite of chronic prejudice and selfish power—nobly propounded it to his brother Sovereigns. May Beccaria’s words prove prophetic in his instance:—“If these truths should happily force their way to the thrones of Princes, be it known to them that they come attended by the secret wishes of all mankind.—Tell the King who deigns them a gracious reception, that his fame shall outlive the glory of conquerors, and that equitable posterity will exalt his peaceful trophies above those of a Titus, an Antoninus, or a Trajan.”

Yes, the Swedish Sovereign's philosophy is sound. Government *by terror*, is neither safe, nor politic, nor by possibility, permanent:—Government *by reason* is the only system applicable to man. Proofs will be found abundant in history, at once illustrative and confirmatory, of our position. Let us take one from the nation nearest us—neither locality nor time can effect a purely abstract question—namely, the probable operation of a principle. Let us look then to France, in 1793, and what do we see there? A spectacle indeed, over which humanity mourns and religion weeps:—a shattered throne—a church in ruins—a guileless monarch, the most inoffensive of his race, mercilessly butchered a few months before his queen—a degraded, plundered, disavowed nobility—a ferocious rabble revelling in blood! What could have evoked a prodigy so portentous? Surely, misgovernment even in excess, need not have transformed a population into fiends!—Nor did it, reader.—The blind rulers, on whom this terrible reprisal fell, were themselves the cause of the unnatural transformation. Cruel laws, cruelly executed, produced, in the end, by process of repetition, their invariable effect. They infuriated the passions—they benumbed the feelings—they petrified the very heart, of the nation. This natural, nay, almost inevitable result did not escape the observation of America's great jurist.* Well and philosophically does he ask—“if the people had not been familiarized to scenes of judicial homicide, would France or England have been disgraced by the useless murder of Louis or of Charles? If the punishment of death had not been sanctioned by the ordinary laws of those kingdoms, would the one have been deluged with the blood of innocence, of worth, of patriotism, and science, in her revolution? Would the best and noblest lives of the other have been lost on the scaffold in her civil broils?” To assert it, would be a libel on human nature. Even as “clay in the hands of the potter,” so is man, malleable and plastic. He will

* Livingstone's Report on penal laws.

take the form into which society may fashion him, and become accordingly, its ornament—or, its curse. And so it is with society itself,—the creature entirely of precept and example. But, most assuredly, neither individuals nor communities were ever yet *improvised* into iniquity. It is the work of ages—and ages of persevering perverseness they must have been, which thus imbruted a people, so naturally light-spirited and generous as the French. And such in truth these ages were. The finished and accomplished professors of the guillotine had all graduated in the Place de Grève. The imp was systematically educated into the demon. It sickens the soul to recall some of the punishments of the old regime. For instance, that of regicide.—Take the case of Ravailiac. His crime was execrable—but still more so was the mode of his execution;—it was enough to permanently *unhumanize* a people. Cruelty has, as yet, no epithet in its nomenclature adequately to designate it. Having undergone in his dungeon, tortures unspeakable to extort confession of confederacy, he was taken in a tumbril to the Place de Grève. They tore the flesh from his bones with red-hot pincers. They burned off his right hand with flaming brimstone. They poured molten lead and boiling oil and scalding pitch into his bleeding wounds; and they tied four horses to what remained of the macerated and still palpitating frame, to tear it into quarters. This having been vainly persevered in for an hour, the frenzied rabble finished his agony with their knives. And, this mutilation of God's image was perpetrated by wretches shaped like men, and calling themselves "christians." But vengeance was greedy still. The christian men burned the corpse to ashes.

Reader—shudder not. This was pure humanity!!—a wise "deterrent"—to banish regicide from France for ever! And, the "deterrent" was as effectual as ever. Of the successors to Henry, Louis the 15th had an attempt made on his life, and the "bed of steel" improved on the "deterrent." Louis

the 16th was murdered in the name of law. During the revolution, Barras, Danton, Robespierre, and all the several despots of the day—all died by violence. The Empire came, and attempts were made on the life of its great founder. The old monarchy was disinterred, and one of its royal scions fell beneath the dagger. The House of Orleans rose in the ascendant, and Louis Philippe escaped the dagger of more than one Fieschi. Lo, again the Empire—and to a gracious providence we owe it, that Napoleon the Third still guarantees the peace of Europe and the prosperity of France. Such was the effect of the most frightful vengeance that ever fiends devised, and kindred men were found to perpetrate. And so it has been, and so it ever will be. When once the contemplation of a giant crime usurps the mind, the fear of sanguinary punishment can find no entrance, and its infliction only hardens those who behold it.

We have, at last, discovered that which our ancestors should have discovered long ago—we have, though somewhat tardily, found out, that these savage exhibitions are but revolting failures—that a cannibal appetite for blood has been created—that wherever legalized, they characterize, if they do not cause, the national decline: witness decrepid Spain, exulting over her bleeding matador; or Rome, in her degeneracy, counting the agonies of the dying gladiator. The Lords' Committee disapprove the system, and they propose in lieu of it—the abolition of death punishment, of which their report assuredly is the knell?—No, but a plan for *private* executions, attested by officials! Other countries have made the same discovery, and, strange to say, with no better effect, than having blundered on the same experimental remedy. How disgustingly horrible is the account we have, of a very recent decapitation at Hanover. Not only did a large crowd—many of them carrying bottles of brandy—assemble and commit gross excesses, but a number of individuals, subject to epilepsy, rushed to the scaffold, at the

moment the criminal's head fell, *to drink the blood*,—the popular belief being that it is a cure for epilepsy,—and the *executioner readily gave it to them!!* This frightful scene has caused an immense sensation in Hanover, and petitions to the government, praying that executions may no longer be public, have been numerously signed.* This perhaps may suit the meridian of Hanover; but the Lords' Committee may perfectly rely on it, that England never will accept the substitute.

If we have read aright her social character, she would recoil instinctively from private blood-shedding, no matter what the modifications. Publicity in all which appertains to the courts of justice, has become a necessity with our people. The plain truth is, the death system has broken down entirely, and expedients will not mend it. Though we exclude the people, we dare not exclude the Press, and every incident which now thrills the land with pity or with horror, will be made just as public as if enacted on a platform. The moral evils of drunkenness and debauchery, inseparable from the scene, can doubtless be averted; but a direr evil will supersede them, if suspicion should be excited as to the enforcement of the law. The popular mind is by nature jealous of authority; anything like mystery in a matter so solemn, and so universal in its application, will at once arouse and aggravate the feeling. Darkly, indeed, will that day dawn on England, which introduces even a doubt on such a subject. The endurance, nay, the cheerful endurance of taxation, unequalled in its amount, arises entirely from the confidence in everything appertaining to our courts. The peasant and the artizan walk erect under the pressure which secures to them the protection of the laws, and gives them assurance of their equal operation. Publicity, wide publicity, in every stage of our criminal proceedings—from the initiative in the police court, to their termination by the executive,—commands, and most justly, universal acquiescence.

* Weser Gazette, 1857.

There is one exception, that of the grand jury; and to our own knowledge, its secrecy has worked much ill, and may produce much more. Of the moral effect of executions on the young inmates of the prison, who, of course are secluded from the contamination of the spectacle, we have authentic and most unquestionable authority.* “Let the schoolmaster of Newgate be examined, and he will prove that for some days after every execution, a common amusement of the boys, is, to play the scene over again, one boy acting the constable, another the ordinary, a third the sheriff, and a fourth the hangman. I have seen this done many times, and on one occasion before the bodies of the men, just hanged, had been removed from the scaffold.” Let the Rev^d. Ordinary of the prison speak. “I have had occasion (says Mr. Cotton) to go into the press yard within an hour, or half an hour, after an execution, and I have found the inmates amusing themselves, playing at ball or marbles, as if nothing had happened.”† This has been witnessed by Mr. Edward Wakefield, and Mr. Cotton, within the prison. But what has not all London seen outside of it? Have we not had the foulest murders dramatized and enacted? Have we not seen, night after night, the metropolitan theatres crowded to suffocation, and “christian” audiences cheering the mockeries of suffering crime! Who can forget the Thurtell tragedy, with its carefully authenticated accessories—the very car from which the victim fell, paraded on the stage! Even within these two months we find in the journals, the fac-simile of a play-bill, as issued at Oldbury:—

“AN UNRIVALLED COMBINATION OF ATTRACTION AND NOVELTY!

THE RUGELY TRAGEDY,

OR THE

LIFE AND DEATH OF WILLIAM PALMER!!

First scene—RUGELY, *Second scene*—SHREWSBURY. *Third scene*—LONDON.

TO CONCLUDE WITH

MUSIC AND DANCING, AND A LAUGHABLE FARCE!”

* Wakefield on the Punishment of Death. † Commons' Report—Evidence, 1819.

The most horrible murders have formed the staple of our minor theatres. We record a few of those thus dramatized. The career of the demoniac, Mrs. Brownrigg, was enacted under the title of

MARY CLIFFORD.

Corder's, under that of

'THE RED BARN.'

Thurtell's as

'THE GAMBLERS.'

AMBROSE GWINETT.

JONATHAN BRADFORD.

JACK SHEPPARD.

EUGENE ARAM.

DICK TURPIN.

JERRY ABERSHAW, and

MR. RUSH,

in their turns filled the theatre, delighted admiring and sympathetic thousands, and taught the precocious assassin in his teens, how to acquire a dramatic immortality.*

And all this, after human blood has flowed in torrents, and divines and statesmen have preached and apostrophized the efficacy of example. But the Lords' Committee can amend all this—the remedy proposed is to repeat in private, that which in public proved a worse than failure. In Prussia, it seems, and in some States of America, they say, this system is introduced, and has succeeded. We have no doubt of it, no more than we have that cannibalism is popular in Caribbee. But what is that to us? every country has its customs, suited to its tastes—so let them; we wish to Prussia all prosperity, present and to come, but we covet not her institutions; they are doubtless palatable to her people, and racy of her soil: to us, they would be exotic; the plant that blossoms in the hotbed of a despotism, would not live an hour in the bright, breezy, open, mountain

* We have been favoured with the above authentic list, by Messrs. Lewis and Lewis, of Ely Place, the able solicitors to the Dramatic Authors' Society.

air of liberty. As to America—why should we borrow from America the expedient, when she proffers to us the right? The witness from that country, the Honourable Mr. Kennedy, expressly stated, that “the *total abolition of capital punishment* is a subject which is in constant discussion among them,” and that “one or more of the States may have abolished it altogether.”

According to the statement of Mr. Andrew, an American barrister, when addressing a local legislative committee, Alabama, Michigan, Maine and Rhode Island, had tried the experiment, and one of them having had nine, and another twenty-five years’ experience of it, were satisfied with the result. In the State of Louisiana, known throughout the world by the noble report of Mr. Livingstone, on “the code of crimes and punishments,” it has no existence:—On the other hand, in that of Massachusetts, where the severity is excessive, for sixty-five years the crime of murder has been gradually increasing.* In Switzerland, in the Cantons of Friburg and Neufchâtel this punishment has been abolished, without increase of crime; while in that of Berne there are frequent executions, and frequent and aggravated offences.

Executions, then it is clear, have not deterred by their example; but have they not done worse? Have they not suggested crime? Paradoxical as this appears, it is a fact nevertheless. Some instances were adduced before the Lords’ Committee. “It having occurred to me,” writes the chaplain of Aylesbury gaol, to the Venerable Mr. Bickersteth, “during my intercourse with criminals, that a disproportionate number of them seemed to have resorted to witness executions; I have to-day made it my business to question all the prisoners here, under sentence of six months and upwards, upon that point, and the result has remarkably confirmed my impression: for I find that

* Speech of Mr. Ewart, Parliamentary Debates, 1856.

the great majority of those who have had the opportunity, *have attended executions*. So also, only a few months previously to his own execution, had the unhappy man whom I attended to the scaffold; and it became a subject of deep regret and bitter remorse to him, that he had gone to it as to a holiday fair, and had returned from it without perceiving any warning."

So, also, Mr. De Katte, attaché to the Prussian legation, giving his reasons for the adoption of private executions, says, "we found the publicity of executions had a bad moral effect: it rather excited people to commit murder, than deterred them from it."*

Mr. Rowton states a remarkable instance of this: "a young man of mild and gentle disposition, murdered a little girl, with no provocation in the world—in fact, he never saw her before: the excuse he pleaded was, that years ago he saw a man destroyed; that ever since that time, he had experienced a fiendish desire to murder somebody, and that he could not rest until he had committed the deed."†

"I am aware myself (says Dr. Lushington, in his evidence,) of one remarkable case, of which I know the particulars most accurately. There was a person executed at Newgate for forgery; a boy respectably brought up, passed by, who for the first time, saw an execution; he went home, and that very day forged upon his master, and was left for execution. He was not executed, because the Ordinary of that time, refused to administer the sacrament to him, upon the ground of his youth, and that was considered a sufficient ground to let him off; though at that period the executions for forgery were uniform.‡"

The Rev. Mr. Roberts, of Bristol, has rendered it superfluous to continue this enumeration. He states, that out of one hundred and sixty-seven persons, whom he had attended, under

* Lords' Report, 1856. † The Punishment of Death Reviewed, p. 74.

‡ Second Report of the Commissioners on Criminal Law, 1836, p. 52.

sentence of death, one hundred and sixty-four had been present at public executions! Here is a speaking commentary on our legislation. "The end of punishment (says the Marquess Beccaria,) is no other than to prevent the criminal from doing further injury to society, and to prevent others from the like offence." We apprehend that every jurist, and publicist, and casuist living, will admit this to be a sound aphorism in penal legislation.

"The only way to look at the punishment of death, (says the noble chairman of the sessions for the West Riding of Yorkshire,) is to say, is it an example or not? If an example, it is defensible; if it is not, it is not defensible."* If this be so indeed, how dire, how terrible is England's retrospect! For ages past, we have doggedly pursued a system, which has positively generated crime—its parent rather than its preventive. There never was 'a tree' planted in England, with such a power of re-production as the gallows:—deny the fact—here are the proofs of it; dispute the inference, here is history teaching by example;—it cannot be either disputed or denied, but, whoever asserts it, may be denounced. So let it be. The christian abolitionist should regard such anathema, as he would the howl of the hyena scared by bright day-light from his unholy banquet. Thus was Romilly denounced, and "ridiculed, and execrated" too, for daring to meddle with the murderous enactment which sacrificed poor Mary Jones upon the scaffold. But, so it has been from immemorial time—so has it been with all the benefactors of an ungrateful world from Socrates upward, even unto Him, the pure, the meek, the Blessed One, who died for its redemption.

This cruel system, so inconsistent with every precept he has given to us, is an admitted failure, worse than a failure, admitted by a Committee of the House of Lords. But the punishment, it seems, is a fitting one—its failure was caused by the mode of

* Evidence of Lord Wharncliffe—Commissioners' Report, 1836, p. 96.

its infliction. We have been tardy in discovering it. A much shorter time will suffice to test the adequacy of a substitute utterly at variance with the genius, the feelings, the principles, or it may be, the prejudices of the nation. If we cannot repeal this punishment at once, if expedients must be resorted to, WHY NOT TRY ITS SUSPENSION FOR A TIME? The raven prophecies, which croaked their ill omen, on all past repeals, have all been falsified; why should this prove an exception? It did not prove so in despotic Russia, under the rule of Elizabeth or Catherine—nor in Tuscany, under the sway of Leopold—nor does it, at this moment, in Republican Louisiana. In good truth, we have misconceived the force of capital punishment, all along; and we mistake now, in attributing its failure to the mode of its infliction. The germ of the failure is in the penalty itself; if murder deserves the severest punishment, and we admit it does, death is by no means the severest; it has seldom the terrors we attribute to it. “In crimes which are seldom or never pardoned, (said Sir William Meredith) death is no prevention. House-breakers, forgers and coiners are sure to be hanged: yet house-breaking, forgery and coining are the very crimes which are oftenest committed. Strange it is, that in the case of blood, of which we ought to be most tender, we should still go on, against reason and against experience, to make unavailing slaughter of our fellow creatures.” The hardened criminal deludes himself into heroism by the death endurance, or rather, by the death defiance. “The lads of the village (London) shall have no cause to blush for me,” said Thurtell, on the eve of his execution—and sought solicitously the details of the prize fight between Spring and Langan. Others regard it as the solution of a mystery—“here goes,” said one of the traitors of Cato Street, “to learn the great secret,” as he swung himself into eternity. A very few years ago in Ireland, three wretched men were hanged for murder; they sneered at death, and ate and smoked just before their execution; one of them

declared he would not accept of a reprieve, and that the hangman would do the best deed he had ever done for them; while another declined to speak upon the scaffold, because, said he, "our Saviour said nothing when he was executed!"* "I call upon you, gentlemen (said the hapless Major Andrè) to bear witness that I die like a brave man," and continues the narrative, the spy was forgotten in the hero! Death, even imminent, is not always terrible. It is, at times, defied—at times, it is even courted. The soldier seeks it at the cannon's mouth. The sailor spurns it on the rocking mast. The bandit spirit, too busy with his guilt, never thinks of it at all; or if he does, it is to dare and disdain "the hazard of the die." 'Take me away from this *concourse*', said the fastidious Greenacre to his executioner. Palmer, beneath the shade of his impending doom, gave his last thoughts to calculations on "the Derby"; while the rabid fanatic of Shropshire, as we have seen, sang and shouted himself into 'glory' on the scaffold, and died asking orders for another world!

So true it is, as Bacon tells us, that "death is no such terrible enemy, when man has so many attendants about him, that can win the combat of him. Revenge triumphs over it, love slights it, honour aspireth to it, grief flieth to it, fear preoccupieth it." Death on the scaffold is but a moment's agony, a shudder, a fall, a quivering, it is over. "If that is all," said the peasant at Bury, after seeing a murderess executed, "I should not care about being hung myself."† Can any person doubt that a life-long punishment—the longer the life, the heavier the punishment—the life protraction being, in fact, of the essence of the punishment—hopeless captivity, girt round with degradation, ceaseless toil, public exposure, the murderer's ignominy, never terminable but by that welcome death, which would be invoked, not dreaded:—can any one doubt that an example such as this,

* Speech of Mr. Ewart, 1856.

† Lords' Report—Archdeacon Bickersteth's evidence.

would be far more monitory than an exhibition at once valueless and revolting. In recognition of this sound and philosophic doctrine, that such a punishment is neither the most feared in its infliction, nor the most deterrent in its example, we quote the authority of the great conservative leader of our day—a station to which, if his birth did not entitle him, his talents must. Adverting to the defiant fortitude with which the Sepoy rebels met their fate, the Earl of Derby as eloquently as philosophically said—“It is clear that when a man, from the mouth of the cannon from which he is to be blown, boasts that he has killed three or four Englishmen, death, by a *sudden blow*, has no terrors for him, and that he is most probably looked upon, rather as a hero than a criminal, by his vile associates. I, my lords, would inflict upon these men a doom far *worse than death*—I mean, a protracted life, with the brand of Cain upon their brow. A life, embittered by severe, by degrading, and by painful labour, would be a far worse punishment than death.” The sentiment, never perhaps more eloquently expressed, is that of sages, jurists, sovereigns and divines—of Bacon, Beccaria, Franklin, Hall, Bentham and Catherine, Leopold and Oscar; it reduces the whole question to this single point—does murder merit the *severest* punishment? We think it does.

“There are many,” says Beccaria, “who can look upon death with intrepidity and firmness; some through fanaticism, and others through vanity, which attends us even to the grave; others 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; and an iron cage and despair seem rather the beginning than the end of their misery. The mind, by collecting itself and uniting all its force, can, for a moment, repel assailing grief; but its most vigorous efforts are unable to resist perpetual wretchedness.”* The infliction then is a failure; and the uncertainty of the infliction aggravates

* Beccaria, v. xxviii. p. 108.

the failure, and increases crime. All criminals calculate, even after conviction, on the chances of commutation, and each hopes the chance may fall on him. Even should it fall on him, he may suffer, notwithstanding.—Of this, Lord Campbell gives a mournful instance: “When I went (as he relates) the Oxford circuit, a man was hanged at Gloucester, *by mistake*, from there having been some delay in forwarding the reprieve from Hereford. The Sheriff, on account of the *trifling* nature of the offence, delayed the execution to the last minute. It did come, when the executioner *was cutting down the dead man from the gallows.*”*

This may have been the fault of some official, or, it may have been the vacillation of the Judge, but, primarily, it originated in those laws of blood which made human life dependant upon either. However, though the law be sanguinary, the Home Office is not, and we firmly believe that one of its most onerous and anxious duties is the recommendation of as many convicts, as it can conscientiously, to the mercy of the crown. Who can doubt it? Let justice be done to all. What earthly interest can any statesman, holding the distinguished station of Home Secretary, have in tendering advice to his Sovereign other than such as will redound to her honour and his own. The two gentlemen † on whom the responsibility of the Home Department rests at present, possess every qualification requisite to acquire the public confidence; humane, laborious, honourable men, selected for their fitness, from the bar, to the very highest rank at which, they might have aspired. This we say as a matter of mere justice, because there seems a growing disposition to inflict on individuals the vices of a system. To judge fairly the selections of the Home Office, we must know the facts in each particular case, and such disclosure might be most impolitic. We have every guarantee of which the system is susceptible, but the system itself is vicious in the extreme. An

* Lives of the Chief Justices.

† Sir George Grey and Mr. Waddington.

uncertainty as to the infliction of punishment will, to a certainty, encourage the crime which incurs it; what can be more illusive than the scene we so often see enacted; a heinous crime—an impartial trial—a clear conviction—proclamation made—sentence passed—a solemn warning to prepare for death—all hope of mercy utterly prohibited—the scene is over—and, lo!—the punishment is commuted! Everybody knows that this is common; culprits calculate on it, they deem the whole matter to be a game of chance, and each hopes that he may prove the winner. Hence crime increases. Doctor Lushington testifies strongly to the injurious operation of this uncertainty,—“My own notion is, that there are very few criminals deterred from the commission of crime by any fear of the punishment of death; the chances are so much in their favour, taking the whole from the commencement of a prosecution to the period of execution, that I verily believe, and I am quite satisfied I could shew by a variety of instances, that that is the general feeling.”

“Then you think that the rarity of capital punishment diminishes the efficacy of the capital laws?”

“Not the rarity of capital punishment, but the uncertainty of its being inflicted in any particular instance. I have been into the gaol of Newgate before the order came down for executions to take place, when there were thirty-five persons capitally convicted; such has been the uncertainty that the then governor of the gaol has pointed out to me as the persons likely to be executed, four or five individuals, and that same night came down the order, and not one of them was ordered for execution, but four other persons.”*

We have been favoured with a transcript from the records of the Central Criminal Court, exemplifying the continuance of this uncertainty. It specifies the capital convictions in that court, with their respective results, from the years 1840 to 1856,

* Second Report of Commissioners on Criminal Law, 1836, p. 50.

both inclusive, and is confined to cases involving actual violence. It appears from this authentic list, that *in all* the cases not amounting to murder, the sentences were commuted. In those of actual murder—forty-four in number—twenty-three were executed, nineteen transported, one was pardoned, and one imprisoned for a year in Newgate. Can any person doubt the impolicy of a penal lottery such as this? Experience and philosophy alike repudiate it. “A less punishment which is certain, (says Beccaria,) will do more good than a greater punishment which is uncertain.” “My own opinion is (says Chief Baron Macdonald,) that the criminal law should be ingenuous—that it should speak distinctly what a criminal is to expect; and that the execution of the sentence should be as nearly infallible as possible*.” “It is not the severity of punishment, (says Russia’s greatest sovereign,) but the certainty of not escaping, that restrains licentiousness†.” “It has (says Franklin,) long been a desideratum in government, that there should exist in it no pardoning power,—since the certainty of punishment operates so much more than its severity, or infamy, in preventing crime‡.” “I have no sort of doubt, (says Sir Richard Phillips, who, as Sheriff of London and Middlesex, brought both study and observation to the subject,) that the uncertainty of punishment is the cause of all crime.§” “To us”—says a wise, and pious, and most eloquent preacher of our christian church,—“To us it appears evident that the *certainty* of punishment will restrain offenders, more than its severity; and that when men are tempted to transgress, they do not weigh the emolument they had in view against the penalty awarded by law, but—simply the probability of detection and punishment, against that of impunity. Let the punishments be moderate, and this will be the most effectual means of rendering

* Commons’ Report—Evidence, 1819.

† Instructions, p. 127.

‡ Inaugural Discourse.

§ Commons’ Report—Evidence, 1819.

them certain.*" It would not be difficult to multiply these authorities, did, what appears to us to be a self-evident administrative axiom, require their aid. This vacillating commutation-nostrum is a fountain of mischief in our criminal administration. It is calculated to derange the system altogether. It stultifies the court—it falsifies the sentence—it neutralizes the law—it nerves the criminal. A punishment solemnly denounced from the judgment seat should be rigidly, literally and inflexibly inflicted. We should have no paltering with crime or criminal—no ermined menace, ending in a mockery. We advocate not undue severity. Let our punishment be as lenient as the parliament may devise for the offence. But, be what it may, *let it be carried out*, and let this stern fact be well certified in all the dens and caverns and hatching nests of crime. The sanguine desperado who calculated on consequences as mere contingencies of main and chance, in nine cases out of ten will shrink before *certainty*. There is a striking illustration of this recorded as having occurred during Marlborough's campaigns. It happened that in Flanders a soldier in Prince Eugene's army was doomed to die for marauding. The man was such a favourite that the Duke himself interfered in his behalf. "No, said Eugene, I never did and I never will pardon a marauder." "At that rate, Prince, we must hang half the army. I pardon a great many." "I never do—and that is the reason I execute so few—however, let an inquiry be instituted, and if it don't turn out that you execute more in proportion than I do, I will pardon this fellow." The balance was found to be largely against the Duke. "There, your Grace, said Eugene, you see the soundness of my principle. You pardon many, and are forced to execute many—I pardon none, and have few to execute." The principle had a profound knowledge of human nature for its basis. Of course, the exception to our rule would be, where innocence is subsequently ascertained—and then remission as to the future and

* Miscellaneous Works of the Rev^d. Robert Hall. p. 451.

compensation for the past,—a just, humane and christian article—although of impossible place in the creed of our opponents.

While the executive commutes a penalty, the legislative annuls or varies it, and as it seems to us—with equal ill effect. Thus some few years ago, transportation was all but abolished,* and in place of it, a term of imprisonment was substituted. The ticket-of-leave experiment followed upon that, and burglaries are now perpetrated in Fleet Street. The gaols were thinned on the appeal of pious and pains-taking chaplains, self-glorying in the conversion of their protogés! Simple-minded enthusiasts! They misapprehended the conviction by which the conversion was produced. No doubt, as a corollary to all this, crime and committals will inevitably increase. Let us have however no demand made upon us for the re-enactment of a sanguinary code, in consequence of its substitute being thus shorn of its efficiency.

Such being the uncertainty in carrying out the law, a momentous question instantly suggests itself—Is there more of certainty in its administration? Undoubtedly not; if the walls of Westminster Hall could speak, they would at once say—No. Who has not heard of the “glorious uncertainty?”—happy indeed is the man who has not felt it. Let us see how it works in our courts of equity and common law, before we investigate its criminal operation. We are not left to speculation here; our library shelves groan under the lumber of what once was wisdom, and bend beneath the burden of obsolete authorities and over-ruled decisions. Mutability is the atmosphere of the lawyer’s world, it is the breath of his nostrils; if he has it not, he dies. Let whoever doubts it, stroll for a moment into the courts of Westminster,—there he will see the sages of the law laboriously undoing what has been elaborately done, granting

* The writer, examined before a committee of the House of Lords, in 1847, vainly, with other *practical* men, forewarned their Lordships of the impolicy of this repeal.

new trials where errors have been committed, and setting aside verdicts sometimes obtained against the weight of evidence, and, as it sometimes happens, from judicial mis-direction; one half of the term is of necessity thus occupied. Let him then migrate from common law into the maze of equity, and there he may meditate on Vice-Chancellors and Lords Justices and a Master of the Rolls, reviewing decisions brought before them on appeal, and with anxious care affirming or reversing them. The scene is concluded in the House of Lords, where sits the Lord Chancellor with his legal staff, patient and pains-taking, reviewing the reviews, and perhaps reversing some of the reversals. Such is the uncertainty of inevitable occurrence in the ministration of the law, and this with a bench, so filled and constituted, as to be above praise or depreciation; and this has ever been, and is, and ever will be, until we have, what we never can have—an infallible tribunal. Suppose these ulterior corrective investigations were not open to a suitor where property is concerned, see what an amount of mischief might ensue—how many heirs might be despoiled of their inheritance—how many usurpers might enjoy estates to which they had not either claim or title, while the rightful owners were perhaps pining in a workhouse—how many wrong-doers might escape triumphant, how many injured plaintiffs might be deprived of their redress! Scores of such cases every year in England demonstrate at once the uncertainty of our law, and the fallibility of its wisest and its best administrators. Seeing therefore what undeniably exists in our courts of common law, shall we find greater certainty in those of criminal jurisdiction? Less, infinitely less: men carry with them there the same liability to err, the same imperfections, and the same infirmities which warped their judgment in the civil court; and they will find in the criminal one, everything likely to aggravate these defects. They will find there, but too often, the passions of mankind in fearful operation:—avarice raving over its losses—revenge furious for its victim—details of

suffering, sometimes real, often simulated, all calculated to enlist the feelings, to inflame the imagination and mislead the reason; well concocted perjury, exaggerated injuries, possible mistake, delusive identity—who can always guard against them? They have deceived the wisest and baffled the most cautious. Let us add to these the endless varieties of the human temperament, always operating unconsciously on the possessors; now tending to injurious lenity, now still more injuriously, to harshness; in each case working unintentional injustice. Sir Samuel Romilly gives a remarkable instance of the different impression made, by the same facts, on the judicial mind.* “In the county of Norfolk two men robbed a poultry yard, one of whom was apprehended, while the other escaped. The one in custody was convicted before Lord Loughborough, and sentenced to *a few months’ imprisonment*. His companion, having surrendered, was convicted at the next assizes before Mr. Justice Gould, a humane Judge, who *transported him*.” Such we know to be the nature of mankind, too often the mere puppets of impulse—latent, but invincible.

“Naturam expellas furca tamen usque recurret.”

What deduction do we draw from this? First, that as little discretion as possible should be allowed to any Judge: and next, the obvious and the righteous one, that erring man should not inflict a punishment fatal and irreparable. The infliction of such penalty is the awful prerogative of the only Being who never can do wrong. In the hands of man it is a perilous assumption, unwarranted by reason or religion—an assumption fraught with fearful responsibility, because its errors are both possible and proveable, and never can be expiated. This uncertainty it was, which wrung from Lafayette the solemn exclamation in the French Chamber of Deputies †—“I shall ask for the abolition of the punishment of death, until I have the in-

* Essay on the Criminal Law and how it is administered.

† 1830.

fallibility of human judgment demonstrated to me. The punishment of death has always inspired me with feelings of horror since the execrable use made of it during the former revolution." Such reminiscence, terrible indeed, naturally produced this rational determination. The principle is a sound one. Fallible man should never inflict an irreparable punishment. If the judgment is wrong, justice itself is compromised; public confidence in its ministration is undermined. "One foul sentence (says a consummate authority) * doth more mischief than many foul examples; for these do but corrupt the stream, the other corrupteth the fountain." In all minor punishments, if in error, we can make some compensation—inadequate perhaps, but all within our power. There are sufferings, of course, which we never can compensate. We cannot atone to innocence for the pang bitterly endured by it in exile or in prison, when torn from life's endearments without a crime. We cannot make reparation to friend, or child, or parent for the mental agony they have causelessly endured;—still we can do something. We can recall the exiled convict to his country—we can restore the pining captive to his home—we may proclaim the reinstated character of both—and we ought to make them pecuniary reparation. Such should be the law. If one subject imprisons another falsely, he is liable in damages. Why should the State be less amenable for the same wrong inflicted upon those who are deemed its children, and under its protection? This we may do in penalties short of death. We have erred and injured; we can retrieve the error and repair the injury. Should we err, however, (and to err is human,) in the death infliction, the error is fatal, irremediable, irreparable. Alas, who shall call back again the departed spirit? Who can reanimate the lifeless clay? Yet man—proud man—presumptuous as proud, and frail as presumptuous,—dares to usurp the power of the Infallible, and arrogates to himself dominion over life! Audacious pretender—is that

* Bacon.

power legitimate? Evince it now—give back her guiltless husband to the widow, restore the victim parent to his orphans! You have despoiled the hearth, you have destroyed their happiness, you have robbed them of their guardian—their innocent, but martyred guardian—and you have flung them homeless, penniless, and unprotected on the world. And this you have done by a self-asserted authority, which you will not renounce, and cannot justly exercise.

It scarcely required the eloquent pen of the wise author of the Louisiana code to portray the agony of a guiltless man under an unjust conviction. “The consciousness of innocence,” says he, “that which is our support under other miseries, is here converted into a source of bitter anguish, when it is found to be no protection from ignominious death. The wretched convict leaves unmerited infamy to his children; a name stamped with dishonour to their surviving parent; and bows down the grey hairs of his own head with sorrow to the grave. As he walks from his dungeon, he sees the thousands who have come to gaze on his last agony: he mounts the fatal tree, and a life of innocence is closed by a death of dishonour! This is no picture of the imagination.—These legal murders *have been* committed. These horrors not only have happened, but they must be repeated: the same causes will produce the same effects. The innocent have suffered the death of the guilty, and the innocent will suffer.”

And this is the system which men will uphold, with, not the possibility, but the sad experience of such consequences flowing from it! Men of the law—men of the gospel—have done this! We have seen the time when both deluded themselves into the conviction that life might be forfeited for a private theft of five shillings in a shop! These days are gone; but in our own memory, and in our own hearing, a struggle was made, and made by such men, to retain death punishments for such offences. But there is nothing too monstrous for the insanity

of what man calls reason. "Oh, Liberty," said Madame Roland on the scaffold, "what crimes are committed in thy name!" And well she might exclaim so, when it pleased a sovereign philosophy to turn rank and worth and science, and even christianity, into capital offences:—all in the name of Liberty!! Nor let England plume herself; she has more cause to blush. If she has not imitated the tiger ferocity of revolutionary France, she has done worse. Amid the calm solemnity of her courts of justice she has convicted persons of crimes which were impossible, and executed them accordingly—for instance, witchcraft. This—in the name of law! Professing the angelic doctrines of the Gospel, she has dragged its sacred prelates to the stake, and burnt them alive, and scattered their ashes to the winds! and this—in the name of christianity! This is penned in no sectarian spirit; for, Geneva rivalled the atrocities of Smithfield. It is but meant to shew how frantic, how blasphemous, is the usurpation of a power which enables man to perpetrate such crimes in the name of—law and—liberty and—religion, and—in defiance of them all. And yet, in the face of facts such as these, the retention of this authority is demanded! To be sure the fortress has surrendered; but all is not gone—the citadel remains. By the law of the anti-abolitionists, murder is still a capital offence. Let us see what that very law has done, and then the reader may designate it as it deserves. Let us see whether Mr. Livingstone was justified in asserting that innocent persons had been executed. The details are horrible, but they imperatively demand the solemn consideration of every man in England. We commence at a very distant period, because we would shew how early has been our warning, and how protracted our disregard of it; but the list shall extend, even to the day in which we live.

To begin: On the 6th day of August 1660, William Harrison, who was steward to lady Campden, a person of good estate, in Gloucestershire, left his home in order to collect her rents.

There happened to reside in the neighbourhood, an humble family of the name of Perry, a mother and two sons,—Joan, John, and Richard,—of whom, Joan, the mother, was a reputed witch, and John, one of the sons, was known to be half-witted. It so happened that days and weeks elapsed and yet Harrison returned not, nor were any tidings heard of him. Of course the population of the place became excited, and rumours were rife that he had been robbed and murdered. From the mission on which he was known to have left his home, and his prolonged absence, the suspicion was not unnatural. The alarm which ensued and the numberless inventions which were circulated, are supposed to have bewildered what little intellect the poor idiot had; for he actually went before a justice, and solemnly deposed to the murder of Harrison, by his brother Richard, while his mother and himself looked on, and afterwards joined in robbing the deceased of £140. On this the whole three were sent to prison, and at the ensuing assizes were doubly indicted for the robbery and murder. The presiding Judge, Sir. C. Turner, refused to try them on the murder indictment, as the body had not been found; they were, however, arraigned on the charge of robbery, and pleaded guilty on some vague supposition that their lives would be spared. While in confinement John persisted in the charge, adding that his mother and brother had attempted to poison him, in the gaol, for peaching. When the next assizes came, Sir Robert Hyde, considering the length of time which had elapsed, and the non-appearance of Harrison, tried them for the murder. The depositions of John, and the plea on the indictment for robbery, were given in evidence, and the whole three were forthwith convicted. On the trial, John retracted his accusation, declaring that he was mad when he made it, and knew not what he said. They all suffered death; the mother was executed first, it being alleged, that having bewitched her sons, they never would confess while she was living; they both died, however, loudly protesting their inno-

cence. But the disappearance of Harrison, the declarations of John, and the plea of 'guilty' to the indictment for the robbery, seemed to invest the case with every human certainty. Human certainty! we might as well talk of an incarnate phantom:—the only certainty in the whole transaction being, that three innocent persons—quite as guiltless as the Judge who tried them, or the Jury which convicted them—were slaughtered by what they called the sword of justice. This poor, ignorant, deluded family, had for three full years lain in a murderer's grave, when—lo, the murdered Harrison *re-appeared in Gloucester!* He accounted for his absence thus, in a letter to Sir Thomas Overbury. On returning, after the receipt of Lady Campden's rents, he was set upon by a gang, who forced him to the sea-shore, where they hurried him on ship-board, and carried him off to Turkey; they there sold him as a slave to a physician, with whom he lived for nearly two years, when, his master dying, he made his escape in a Hamburg vessel to Lisbon, and was thence conveyed to England.* Gloucester was thrown into the most painful agitation;—no great wonder,—their city had been desecrated. What must have been the feelings of the Jury which convicted, of the Judge who sentenced, of the authorities who executed that hapless family! Yet the blame was not theirs: poor, fallible, benighted creatures, they were not responsible; they were but the blundering administrators of an arrogant and erring legislation. "He," as Sir William Meredith truly told the Parliament of 1777, "he who frames the bloody law, is answerable for the blood which is shed under it." From the grave of the Perrys, a monitory voice should have arisen, repealing, for ever, capital punishments in England. We have heard it said in relation to this case, "Oh, the times were unenlightened, and the jury made a mistake; the wisest men may sometimes make a mistake." Unenlightened times! There were men in those days, out of each of whom, whether in poetry, philosophy,

* Legal Recreations, p. 572.

or statesmanship, half a dozen modern great men might have been carved. Legislation indeed was barbarous, and continued so. Fifty-six years after the slaughter of the Perrys, Judge Powel, at Huntingdon, left Mary Hickes, and her little daughter Elizabeth, *eleven years old*, to die for witchcraft, and die for it they did.* As to the mistake—on that we found our argument: it is precisely because we may make a mistake, that we should revolt at risking one which is irreparable. We have made mistakes enough, and for a time we even fostered them by the promise of reward upon conviction; miscreants tempted by the “pieces of silver,” counted their blood-money upon the coffins of their victims. The foulest accusations, supported by perjury as foul, often proved fatally successful, bewildering the juries into the most terrible injustice. For instance:—

A poor man, named Kidden, a porter in the city, was tried, convicted, and executed at the Old Bailey, on a charge of highway robbery. The man was hard-working and honest, and of untainted character, but, all could not save him from an untimely death; his life was perjured away by three atrocious wretches, named Macdaniel, Berry, and Jones, who shared £40 amongst them for the murder of poor Kidden. He was hanged, however,—and it must have solaced him,—according to the most approved forms of the law. When this sad tragedy had been enacted, it appeared that the victim was entirely innocent. Then came the glorious opportunity—the grand legal expiatory triumph! As Kidden had been slaughtered by mistake, they determined on giving him perfect satisfaction, by hanging, in return, the three who hanged him—a kind of criminal set-off. The conspirators however were tried, convicted, and sentenced for the murder, but executed they were not; a flaw in the indictment let them loose upon society. The murder indictment of those days, which has been consigned by Lord Campbell to the museums of the curious, was a miracle of suicidal

* July 17, 1716.

ingenuity: never before, nor since, did the spiders of special pleading weave a more complicated or defective cobweb. The liberated felons continued to pursue their dreadful traffic, with what success we know not; they were, however, once more detected, and convicted of a similar conspiracy against human life; exposure on the pillory, and seven years' imprisonment seem to have terminated their career. Kidden was executed in 1755.*

Notwithstanding this frightful admonition, the reward temptation was still in full play so recently as 1819, about which time it was abolished through the exertions of Sir Matthew Wood,—a magistrate than whom the city of London has seldom seen a better. Four poor Irishmen were rescued from certain death by this excellent man who proved clearly that they were the innocent victims of a cruel conspiracy, at the head of which was one Vaughan, an officer of the city. The case was called “the blood-money case,” and is still remembered for its remorseless atrocity. Cases enough are unhappily on record of successful conspiracy against guiltless men. In the following wicked one, no professional skill could have averted a conviction. James Harris kept a public house within eighteen miles of York, having in his service a man named Morgan, who, to his other occupations, added that of gardener. It happened that one Grey, a blacksmith, journeying on foot to Edinburgh, supped and slept at this public house. Next morning, Morgan deposed before a magistrate that his master strangled Grey in his bed—that he actually saw him commit the murder—that he in vain endeavoured to prevent it—his master insisting that the man was in a fit, and that he was merely endeavouring to assist him. Morgan further swore, that—affecting to believe this—he left the room; but after retiring, looked through the key hole, and saw the murderer rifling the pockets of the deceased. Harris, as well he might, vehemently denied the accusation, and, haplessly

* Morning Herald, May 3, 1832.

for himself, threatened a prosecution for perjury. As no mark of violence was visible on the body, Harris was on the point of being discharged, when his maid servant demanded to be heard. She swore, that from a wash-house window, as she was descending the stairs, she saw her master take some gold from his pocket, and, having wrapped it carefully up, bury it under a tree in the garden, the position of which she indicated. Upon this Harris turned pale, and the earth under the tree having been searched by a constable, £30 in gold was found wrapped up in paper. Harris then admitted that he had buried the money for security sake, but answered in so confused and hesitating a manner that he was committed. He was tried at York for the murder. The man, the maid, the constable and the magistrate were all examined, and no suspicion attaching to their testimony, a verdict of guilty was at once pronounced. He died, protesting his innocence, and—innocent he was—

The real facts were these:—In a quarrel between Harris and his servant, Morgan received a blow and vowed revenge. Soon afterwards, Grey's arrival furnished the opportunity. Now, as to the part which the maid played in this affair, and its motive. Morgan and she were sweethearts, and seeing her master one day apparently hiding something under the tree, she apprized Morgan, who, on digging, found five guineas concealed there. On this, they agreed to purloin it, when it amounted to a sum which would enable them to set up in business. But Harris's threat of a prosecution for perjury, so terrified her, that she resolved to save her lover by the sacrifice both of the money and of her master's life!—A subsequent feud—the not uncommon consequence of such guilt—betrayed the truth. They died of jail fever on the very day previous to that appointed for their trial. It was afterwards ascertained that Grey had had two apoplectic fits, and never was possessed of five pounds at a time, during his life.

Instances have occurred too, where guiltless men have been

sacrificed to what is called circumstantial evidence. How often have we heard great eulogy on 'the perfection of such proof'—'far better than direct testimony,' which forsooth, may be false, but 'circumstances' constitute a finished train of damnatory facts, where each fact links itself to another so fittingly, that deception is impossible!—Such is the sophistry—the sagacious sophistry of self-conceit. Behold one of *the chains* :—

A man named William Shaw, an artizan of Leith, lived in that town respectably for his station, his family consisting but of an only daughter who resided along with him: she had formed an unfortunate attachment to a young man whom the father found to be of licentious character, and so his addresses were sternly discountenanced. This caused continual dissension, until at last, one day it arose to such a height, that the tenant of an adjoining room could not avoid overhearing the conversation; the voices of father and daughter were recognised, and the words "cruelty," "barbarity," and "death," were over and over again angrily enunciated. The father at last left the chamber abruptly, locking the door behind him, and leaving his daughter a prisoner. After some little time, deep moans were heard from within, which gradually becoming fainter, the alarmed neighbour procured the assistance of a bailiff, and burst open the door. Ghastly, indeed, was the spectacle which presented itself. There lay the young woman on the floor, weltering in her blood—a knife, the instrument of her death, beside her. To the question, whether her father was the cause of it, she made a faint affirmative gesture, and expired. At this moment the father reappeared. His horror may be imagined: every eye was fixed on him, and some specks of blood upon his shirt-sleeve seemed to confirm strongly the dreadful accusation which his daughter's gesture had too clearly intimated. Vainly attempting to account for the stained sleeve, by the rupture of some swathe with which he had bound his wrist, he was hurried off to prison, tried, condemned, and executed: "not a man in Leith," says the report, "having a

doubt as to his guilt." And yet that man was innocent! he was a murdered man: his last dying words—"I am innocent of the murder of my daughter," were true to the very letter. After Shaw had swung for weeks upon his gibbet—for he was gibbeted in chains, exposed to the four winds of heaven, to the gaze of universal horror—an object of disgust, and dread, and indignation to every passer-by, as they hurried away from the assassin of his child; after this butchery of the living, and this insatiable posthumous vengeance on the dead, it was most clearly shewn that—he was not merely guiltless, but that—he fell a sacrifice to his regard for her he was accused of having murdered! The incoming tenant who succeeded Shaw, discovered in some cranny of the room a paper, written by this wayward girl, announcing her intention of committing suicide, and ending with the words, "My inhuman father is the cause of my death," thus explaining her expiring gesture. The hand-writing of the document was indisputably proved. And all this, because an anxious parent sought to avert the misery of his child! What a satire is here upon human self-sufficiency!—"Not a man in Leith had a doubt as to his guilt;" and now—not a man in Leith had a doubt as to his innocence. ! Alas for mankind! tossed about by every breath of circumstance, and yet daring to act as if infallible. The local authorities did all they could; they unchained and ungibbeted their guiltless felon, they laid him in his quiet grave, at last, waving a pair of colours over it in token of his innocence.* Much it signified to the poor clay beneath! Now here was a case in which justice, no doubt, was impartially administered—and where indeed the result appeared inevitable. It appears also to point as inevitable a moral. What are the revelations of innocence such as this, after the perpetration of injustice such as this, but so many solemn admonitions from above—not to tamper with the prerogative enthroned there!

The case of Bradford, an innkeeper in Oxfordshire, rose

* Wilson's Celebrated Trials.

almost to actual demonstration. A gentleman, named Hayes, on his way to Oxford, put up at his house. Joining two other travellers at supper, he foolishly disclosed that he carried about with him a very considerable sum of money, and soon after they retired to their chambers, Hayes having a room to himself, and the others one, with two beds. In his room, a night-light was left burning. About midnight, one of the gentlemen, being awake, thought he heard a deep groan, and on its repetition he softly awoke his friend: the moans increasing, they silently proceeded to the apartment adjoining, whence the noise seemed to issue. On entering, dire indeed was the spectacle they beheld; a man lay on the bed weltering in his blood, while another stood over him—a knife in one hand, and a dark lantern in the other. The murdered man was the stranger who had supped with them, and he who stood over him was their host. Bradford appeared petrified, but, taxed with his guilt, he denied it altogether. His explanation was, that—being awakened by a noise, followed by deep groans—he struck a light, seized the knife for self-defence, and entered the room only just before them. Unhappily for him, his knife and hands being bloody, left no doubt whatever of his guilt. So satisfied of it, was the magistrate committing him, that he allowed himself to reply, in answer to his denials—“ Mr. Bradford, either you or I committed this murder.” At his trial, Bradford repeated this defence; but the jury convicted him, without leaving the box. In the condemned cell the convict denied the perpetration of the crime, but confessed, that tempted by the hope of the plunder, he entered the room for the purpose of committing it; when he found himself anticipated, and the man already dead, he could scarcely believe his senses; to assure himself of the fact he turned down the bed clothes, and in his agitation dropped the knife, and thus it and his hands became besmeared. This, conflicting with his former defence, it is probable the clergyman disbelieved; it was studiously concealed until he had

suffered, and he was executed solely on what appeared in evidence on his trial. He died strongly asseverating his innocence, but, says the report,* “He died disbelieved by all.” No wonder—the case, as proved, almost amounted to ocular demonstration; a stronger one it is impossible to fabricate. Yet, this man died for a crime he never committed. His own vile story was the truth. An object of compassion he certainly is not, for, so far as intention went he was morally a murderer; but he was not tried for the intention,—he was tried for the fact, and convicted of the fact, and of the fact he was not guilty. And thus man, meaning to do justice, sacrifices man to seeming facts, which, after all, are airy fantasies. The murderer of Hayes, was Hayes’ footman—he heard his master’s disclosure at the supper-table, and was tempted: he entered the chamber, stabbed his master to the heart, robbed him of his money, his gold watch and snuff-box, and escaped to his own bed-room scarcely a minute before Bradford approached. In eighteen months after Bradford’s execution, the footman made his death-bed revelation.

We now turn to a most melancholy case which happened in this metropolis, and in our own time. Many remain who, doubtless, recollect it. We refer to it with pain because associated with early days long gone, but never to be forgotten. Who has not heard of poor Eliza Fenning? How often have we hung upon the words of Curran, while he discoursed and dwelt incessantly on her fate! What tears of burning indignation did he shed! With what eloquent wrath did he denounce her condemnation. Thousands upon thousands wept along with him, and a kindred spirit, noble as his own, echoed that indignation.

We transcribe the leading incidents of the trial from a manuscript of Romilly’s, too much condensed perhaps, but faithful in its outline, and unquestionably accurate. Eliza Fenning was a servant girl, very young and very beautiful, living in Chancery Lane. She was but twenty-one years of age,

* Chambers’ Cases of Circumstantial Evidence.

—the dutiful and only child of reputable parents, then alive. “She was tried (says Sir Samuel,) at the Old Bailey, in the month of April, 1815, before the Recorder of London for the crime of administering poison to her master, and mistress, and her master’s father; which by an act of parliament, commonly called, Lord Ellenborough’s act, has been made a capital felony. The only evidence to affect the prisoner was circumstantial. The poison was contained in dumplings made by her; but then she had eaten of them herself,*—had been as ill as any of the persons whom she was supposed to have intended to poison: and her eating of them could not be ascribed to art, or to any attempt to conceal her crime, for she had made no effort whatever to remove the strongest evidence of guilt—if guilt there was—she had left the dish unwashed; and the proof that arsenic was mixed in it, was furnished by its being found in the kitchen—on the following day—exactly in the state in which it had been brought from table.”†

In such a state of things one would have supposed a conviction impossible. “But,” says Sir Samuel Romilly, “the Recorder appeared to have conceived a strong prejudice against the prisoner; in summing up the evidence he made some very unjust and unfounded observations to her disadvantage, and she was convicted.”—Words of dreadful import, falling from such authority! A “strong prejudice against the prisoner,”—“very unjust and *unfounded* observations to her disadvantage;” and from a Judge—a British Judge—and this in a case involv-

* This conclusive fact, which some have affected to question, is evidenced beyond all doubt by the following testimony of Mr. Marshall, the surgeon, given at the trial. “On the evening of Tuesday, March the thirty-first, I was sent for to Mr. Turner’s family. I got there about a quarter before nine o’clock. All the affliction attending the family was produced *by arsenic*, I have no doubt of it, by the symptoms. The prisoner was also ill, *by the same cause*, I have no doubt.”—*Celebrated Trials*, vol. vi, p. 150.—The testimony of this gentleman is substantially the same in Mr. Hone’s Report of the Trial, and in that of the Sessions Paper.

† Romilly’s Diary, vol. ii, p. 411.

ing human life! It is impossible to convey a more terrible imputation, unless indeed it be another—in this very case. Petitions signed, not by hundreds but by thousands, besought the throne for mercy. Application was made to the prosecutor for his signature:—*the Judge dissuaded him!!* Can this be possible? Is it in human nature? Could such a man have filled the office with which, filled as it is now, dignity, and justice, and mercy are associated? * Of our own knowledge we speak not—we give the statement simply as we find it in the words of Sir Samuel Romilly, published under the authority of his sons. That there may be no mistake we give the very words of Romilly, as we find them reported from his manuscript;—“The master of the girl was requested to sign a petition in her behalf; but at the instance of the Recorder, he refused to sign it.” † Sir Samuel calls this “savage conduct,” and well indeed he might, if he believed it. All intercession was fruitless, and Eliza Fenning was executed at the age of twenty-one. She mildly, but earnestly asserted her innocence to the last, and prayed to God, some day to make it manifest. When the religious ceremonies were over, the sad procession moved towards the scaffold. As the last door was opening which still concealed her from the public gaze, Mr. Cotton, the Ordinary, made a final effort—“Eliza, have you nothing more to say to me?” It was an awful moment, but her last words in this world were—“Before the Just and Almighty God, and by the faith of the holy sacrament I have taken, I am innocent of the offence with which I am charged.” ‡ The door then opened, and she stood, robed in white, before the people. Two old men were executed with her, “and,” says a bystander, “as all three stood under the beam, beneath the sun, she looked serene as an angel.” The stormy multitude was hushed at once, and while every eye wept, and every tongue prayed for

* This was written during the Recordership of the Rt. Hon. Stuart Wortley.

† Life of Sir Samuel Romilly, second edition, vol. iii, 236.

‡ Times, July, 1815.

her, she passed into eternity. Poor Eliza Fenning! so young, so fair, so innocent, so sacrificed! cut down even in thy morning, with all life's brightness only in its dawn!—little did it profit thee that a city mourned over thy early grave, and that the most eloquent of men did justice to thy memory!

When the curtain had fallen upon this tragedy, the fury of the people knew no bounds, and the house of the prosecutor was protected only by the presence of a considerable civil force. But her enemies were active also—the sanctity of the grave was not inviolate; they impeached the purity of her previous life—the life of a girl scarcely twenty-one; and a prison official actually made a solemn affidavit,* that *in his presence* (!) her father earnestly implored her to deny her guilt when led out to execution!! The Newgate worthy, by way of settling the matter for ever, swore that this took place at *several* interviews, (as if once was not sufficient!) and that Mr. Cotton, the Ordinary, was *always present!* When we remember the scaffold scene between this very Ordinary and the poor girl about to die in a few seconds, nothing more monstrous than this can be imagined. But its truth was capable of being tested. Did Mr. Cotton make an affidavit? He was openly appealed to—there could have been no delicacy, when a turnkey shared the confidence—a word from him, clothed in such a character, would have calmed the fury of the public mind:—but that word he spake not. Nay more, though there was but little need to contradict so suicidal an accusation, the father did so, also by affidavit. Yet Mr. Cotton, a high prison official—and so, bound to sustain the prison officials, where he could—yet Mr. Cotton—clergyman as he was, and so, from his profession and his office, doubly bound to sustain the cause of truth—remained silent still, and silent for ever. Was ever speech more eloquent than this silence? The temper of the times was such that nothing could prevent a popular demonstration at the

* This affidavit has been since out-heroded by an *alleged* confession said to have been made forty years ago and *only now* published!

funeral, and a mournful and striking one it must have been. The broken-hearted parents led the way, followed by six young females clad in white, and then by eight chief mourners. At least ten thousand persons accompanied the hearse, and thus, every window filled, and every housetop crowded, they reached the cemetery of St. George the Martyr. There—have mouldered ever since, all that remains of the young—and after all, the innocent—Eliza Fenning, another victim of our erring legislation.

After her conviction, and while the error was reparable, Sir Samuel Romilly states that, “an offer was made to prove that there was in the house when the transaction took place, a person who had laboured, a short time before, under mental derangement, and in that state he had declared his fears that he should destroy himself and his family: but—all this was unavailing, and she was executed.” That this statement was made, and made to the Recorder himself, we have also the unquestionable authority of Mr. Basil Montagu. “As (writes that most estimable gentleman) I was wholly ignorant of the merits of the case, I requested the Recorder to inform me ‘whether any alteration could be formed in the opinion respecting the propriety of her execution, if *satisfactory evidence* were adduced, that there was an *insane person* in the [prosecutor’s] house, who had declared that he would poison the family?’—(as it appeared by your letter such evidence could be produced.) The Recorder assured me that the production of such evidence would be wholly useless. I therefore retired. I, at that time, had not read the trial of this unfortunate young woman, and she was executed early the next morning.”* Of this startling fact itself, there could not be any doubt. It was vouched by testimony above all suspicion, and publicly stated, *at the time*. About September or October last, (says Mr. Gibson,) Mr. * * * [he gives the name] called on me in Holborn. He seemed in such a wild and deranged state that I took him into a back room, where he used

* Letter from Mr. Montagu, published with his permission immediately after the event.

the most violent and incoherent expressions—"My dear Gibson, do, for God's sake, get me secured or confined, for if I am at liberty, I shall do some mischief—I shall destroy myself and my wife—I must and shall do it, unless all means of destruction are removed out of my way—therefore do, my good friend, have me put under some restraint—*something from above* tells me I must do it, and—unless I am prevented, I certainly shall do it."* Mr. Gibson felt it to be his duty to communicate this to the poor maniac's family, but he was left at liberty! The illustrious author of the diary† adds, that "the girl died apparently under a strong sense of the truths of religion, but solemnly protesting *to the last moment* that she was innocent."

Instances have occurred too of mistaken identity, where honest witnesses, intent on the truth, have sacrificed the innocent. A celebrated case of this kind is that of the courier of Lyons. A gentleman, named Joseph Lesurques, who had been an officer in the army, removed from his native province to Paris for the education of his children. His character was irreproachable, and he possessed an income of ten thousand francs a-year, moderate, but sufficient for his simple wants. During his residence in the metropolis, the murder of the courier was planned and perpetrated by six conspirators—with whom Lesurques had not even an acquaintance, and yet for whose atrocities he suffered. It so happened that a provincial friend, named Guesno, on repaying Lesurques a previous loan, invited him to breakfast on the next day, and at the same table sat Curiol, one of the assassins, whom Lesurques there saw for the first time, being the only one of them he ever saw at all. Yet this occurrence, happening four days after the murder, was made a prominent feature at the trial! It indeed was true, but it was the only

* Statement of Mr. Gibson printed at the time. Mr. Gibson was for many years connected with the well-known house of Corbyn & Co., 300, Holborn, and highly respected.

† Romilly's Diary, vol. ii, p. 412.

truth proved against the victim. At this time Guesno visited Chateau-Thierry on business, and in the house where he stopped, was Curiol, who alarmed at the noise which the murder made in Paris, had retired there for safety. There—Curiol, Guesno, and the landlord were arrested, but, on the examination of their papers were at once released, with the exception of Curiol. Guesno's papers had however been remitted to the central office, and thither as ordered, he repaired next day, to receive them. On his way there, he met the ill-fated Lesurques, who consented to accompany them. The Juge-de-paix not having arrived, the two friends sat down in the ante-chamber. On his arrival, he was thunderstruck with information that two female witnesses from the country declared that two of the actual murderers were in the house. "Impossible!" (naturally enough exclaimed the magistrate) "guilty men would never voluntarily venture here!" To do this functionary justice, he seems calmly and impartially to have investigated the case. He had the women separately examined. He solemnly warned them that life—or death—might wait upon their answers. He had the accused brought before their accusers, one by one. But the witnesses, consistent and clear, persisted in their statement, and a committal followed. Seven persons were put upon their trial, amongst whom were Curiol, Madeleine Breban, (his mistress,) Lesurques, and Guesno. Lesurques was sworn to most positively by several, as being one of the party, at different places on the road, on the day of the robbery and murder. It should be borne in mind the case was quite conclusive against Curiol. "I attended them (said one witness) at dinner at Mongeron; this one (Lesurques) wanted to pay the bill in assignats, but the tall, dark one (Curiol,) paid it in silver." A stable-boy at Mongeron also identified him. A woman named Alfroy, a florist at Lieursant, and the innkeeper and his wife at the same place, all recognised him as of the party there.—At neither place Lesurques declared had he been present. But the witnesses were positive, were

unimpeached, were believed and—were mistaken. Lesurques and Curiol were convicted. Guesno, though sworn to positively, proved his perfect innocence and was acquitted. Lesurques called fifteen persons of probity to prove an alibi, which was disbelieved in consequence of the folly of one of them, and eighty, of all classes, declared his character to be irreproachable. When sentence was pronounced, rising from his place, he calmly said—“I am innocent of the crime imputed to me. Ah, citizens! if murder on the highway be atrocious, to execute an innocent man is not less a crime.” Madeleine Breban, though compromising herself, wildly exclaimed—“Lesurques is innocent—he is the victim of his fatal likeness to Dubosq.” Curiol then addressed the Judges—“I am guilty—I own my crime—but—Lesurques is innocent.” He afterwards wrote to them from his prison—“I never knew Lesurques; the resemblance to Dubosq has deceived the witnesses.” Proceeding to the place of execution, over and over again, he cried out to the people—“I am guilty, but Lesurques is innocent.” After the sentence had been pronounced, the horror-stricken Madeleine again presented herself before the Judges to reiterate her declaration, and two other witnesses attested—to her having told them so *before the trial*. The Judges applied to the Directory for a reprieve; and the Directory applied to the Council of Five Hundred, requesting instructions for their future guidance, and concluding with the emphatic question,—“Ought Lesurques to die on the scaffold because he resembles a criminal?” The answer was prompt—“The jury had legally sentenced the accused, and the right of pardon had been abolished.” The enlightened advocates of “Liberty and Equality,” while they usurped the prerogative of vengeance, repudiated that of mercy! Left to his fate, poor Lesurques on the morning of his execution, thus wrote to his wife—“My dear friend, we cannot avoid our fate. I shall, at any rate, endure it with the courage which becomes a man. I send some locks of my hair. When my

children are older, divide it with them. It is the only thing that I can leave them." Curiol had disclosed to Lesurques the history of Dubosq, and the fatal mistake which had been made, and accordingly on the eve of his death, he had the following mournful letter inserted in the journals. "Man, in whose place I am to die, be satisfied with the sacrifice of my life; if you be ever brought to justice, think of my three children covered with shame, and of their mother's despair, and do not prolong the misfortunes of so fatal a resemblance."—This wretch was subsequently arrested, tried, and executed (for the murder,) on the 22nd of February, 1802. He had in early years been sentenced to the galleys for life, for stealing the plate of the Archbishop of Besançon, but he broke prison and escaped. On four occasions subsequently, apprehended for various robberies, he each time broke prison, and had been free only a few weeks when he aided in the murder of the courier of Lyons. The hardened criminal denied everything, but the jury unanimously convicted him; and the last of the accomplices, executed soon after, confirmed the declarations of Curiol, and Breban, by the following paper:—"I declare that the man named Lesurques was innocent: but this declaration, which I give to my confessor, is not to be published until six months after my death." The Juge-de-peace also, struck with remorse for having committed Lesurques, (though in so doing he only did his duty,) sparing neither time nor money in the investigation of the facts, thus terminated a memorial to the Government for the revision of the sentence:—"The Calases, the Sirvens, and all the others for whom the justice of our sovereigns had ordered a like revision, had none of them had such presumptions in their favour as the unhappy Lesurques." All was in vain. Lesurques—the guiltless Lesurques died on the scaffold, *the victim of a resemblance*. His widow's sorrows terminated in October, 1842, the eldest son having previously fallen in battle, a soldier in the French army.

The case of John Calas, incidentally alluded to in the memorial

of the Juge-de-*paix*, was another instance of recorded butchery ; but scarcely needs more than the allusion, its narrative having attained a European notoriety through the noble interference of Voltaire. This poor old man, who had brought up his family in credit, and was remarkable for the affection he bestowed on them, was accused of the murder of the son he loved and who it was subsequently shewn had committed suicide. At the age of seventy he was racked with cruel tortures, and broken on the wheel. While writhing on the scaffold, he was thus addressed by a monster, misnamed a magistrate, who exulted in his agonies—"Wretch, *confess your crime*—behold the faggots which are to consume your body." The poor old father had nothing to declare, save that he was about being murdered in the name, the too oft desecrated name—of justice. When the judicial mockery was over, and the wheel and the stake had done their dreadful work, the sentence was annulled,—*Calas and his family were proclaimed innocent*,—the attorney-general was ordered to indict his prosecutors, and a subscription was set on foot for the survivors. This interference, which cost him time and trouble and money, is creditable to Voltaire:—it was a redeeming deed, and worthy of a purer faith than that which he acknowledged. We subjoin with pleasure the letter, appropriately addressed to him on the occasion, by the great Sovereign who had abolished the punishment of death throughout her empire.

SIR,—The brightness of the northern star is a mere *Aurora Borealis*—but the private man, who is an advocate for the rights of nature, and a defender of oppressed innocence, will immortalize his name. You have attacked the great enemies of true religion and science—fanaticism, ignorance, and chicane: may your victory be complete. You desire some small relief for the family. I should be better pleased if my enclosed bill of exchange could pass unknown; but, if you think my name, unharmonious as it is, may be of use to the cause, I leave it to your discretion.

CATHERINE.

We have above recorded a case, in France, of a man losing his life because he was guilty of a likeness! Such cases are not

confined to France. Here is one—out of many—taken from our own criminal courts. Thomas Geddeley, was waiter in a public house at York, kept by a Mrs. Williams. Her desk was broken open and rifled, and Geddeley disappeared. About twelve months after this a man appeared at York, of the name of James Crow, who endeavoured to earn a precarious subsistence as a porter. This hapless man so closely resembled the fugitive Geddeley that many accosted him by the name, the adoption of which he perseveringly repudiated. This however was attributed to his fear of prosecution for the robbery, on which charge he was, at last, formally apprehended. Mrs. Williams selected him from a crowd of others as the person who had robbed her; a maid-servant swore positively to having seen him on the morning of the robbery with a poker in his hand, in the very room in which the desk had been broken open, and several reputable persons deposed without doubt to his identity. To all this he had nothing to oppose but his solemn asseveration that his name was Crow, that he never had been in York before, and that he was not even acquainted with any one of the name of Geddeley. Of course he was disbelieved. How could his defence possibly be true? How could his own mistress be mistaken? how could his fellow-servant be mistaken? how could so many disinterested witnesses who had all known him before, possibly be mistaken? So argued and so, still, argues man,—the very essence of whose nature is its fallibility. And, they were all mistaken, and they all went to their graves, mourning the mistake to which innocence was sacrificed.—The real culprit fled from York to Ireland, was executed in Dublin for another crime, and—with his last breath—confessed the guilt which a guiltless man had expiated. This, say our opponents, in their modern jargon, was “a legal accident”—a mere mistake. No doubt it was so—but how much longer are we to register our mistakes—in blood?

We fear much there are but few circles in which cases are not extant of innocence thus sacrificed. The following communica-

tion, received since our first edition, is from a lady whose name (were we authorized to give it) would be a perfect guarantee for its authenticity. "I have been greatly disturbed all my life by executions which were not preceded by confession; for, when I was but thirteen, I saw a poor woman *with her seven children* fling herself in the snow-covered road of the Minster-close, at Lincoln, to intercept the Judge's carriage, screaming for mercy and protesting the innocence of her husband. He had been convicted of sheep-stealing, and was sentenced to die on the following Monday morning. He was so executed. In the same city, at the spring assizes a murderer was convicted; and on the eve of his execution, he confessed to the perpetration of the crime for which the father of these helpless children suffered. Not only had he committed it, but, with the aid of an accomplice, he had contrived the circumstantial evidence of which a man entirely innocent was made the victim." Such is the system—a system under which such things are not only possible, but practised—which finds "christian" advocates!

It is a mournful proof of man's perverseness that admonition will not wean him from a system, which has so often substituted the innocent for the guilty. These murderous mistakes, unconfined to clime or country, are co-existent with the usurpation whence they spring. We have cited instances from England, Scotland, America and France, and verily believe the catalogue to be inexhaustible. "On the left side of the church of Saint Mark in Venice, (writes Mr. Raikes,) is a little votive chapel on high, constantly lighted with two lamps, as an expiation—ordered by the Senate, for a *hasty judgment* pronounced in former times by which *an innocent man was condemned to death*. After his execution for a murder he never committed, the real murderer was convicted, and so an expiatory chapel was instituted, as a token of retribution to the *poor man's soul*!! They misnamed the monument—it was the memorial of their own sanguinary injustice—they committed the crime of which they accused the

guiltless, and the spirit of "the poor man," whom they murdered and then mocked, carried their own condemnation to the throne of Heaven.

Many cases might be cited in which it seemed morally impossible to entertain a doubt, and where, nevertheless, innocence has suffered. We will cite a sad one, and we select it in answer to the flippancy which derides the enormities of days gone by, with the unfeeling subterfuge—"Oh! these were days of darkness! such egregious errors are not committed *now*—our times are too enlightened!" Poor, heartless pretext! Sophism of the shambles! Enlightened times! forsooth. As if, in any times whatever, past, present, or to come, while man is man, he was, or is, or ever can be, otherwise than fallible. Well, the case we now record was *of our own day*. Tens of thousands still alive in England, might have been present at the trial.

On the 6th of October, 1806, Thomas Wood, a young seaman, was tried at Plymouth, by naval court-martial. The offence charged was an active participation in a mutiny and murder, on board the *Hermione*, in 1797. At the time of his trial, he was only twenty-five years old, and therefore somewhere about sixteen, on the occasion of the mutiny. There was but one witness against him, one however who must have had considerable weight—the master of the *Hermione*. This person most positively identified him as one of those chiefly implicated, and as having gone, when on board his ship, by the name of James Hayes. The identification undoubtedly was strong; but still, considering the personal changes which often occur between the ages of sixteen and twenty-five, and, after an interruption of nine years in the intercourse, scarcely strong enough to warrant a conviction. But all doubt vanished at once before the prisoner's statement, which was in writing. "At the time (his written statement said,) when the mutiny took place, I was a boy in my fourteenth year. Drove by the torrent of mutiny, I took the oath administered to me on the occasion. The

examples of death which were before my eyes, drove me for shelter amongst the mutineers, dreading a similar fate with those that fell if I sided with, or shewed the smallest inclination for mercy."—After this sweeping admission of his guilt, he declared his mental disquiet ever after, and threw himself on the compassion of the court. Of course he was convicted, and, in eleven days after his conviction, Thomas Wood was executed. In vain were his own supplications for compassion. In vain did his brother and sister interfere, proving by a certificate *from the Navy office*, that his written statement was a mere hallucination, for that he was at another place and *in another ship*, when the crime was committed in the *Hermione*! All availed not. How could we err in such enlightened times! Impossible, impossible! And yet our infallible illuminati were mistaken; for, though they hanged the man—the man was guiltless!

Nothing could be more natural than the development of this poor creature's innocence, and nothing more satisfactory than its establishment. A weekly journal, called the "Independent Whig," took the matter very sternly up, and denounced all the proceedings so indignantly from time to time, that the members of the court-martial appealed to the Lords of the Admiralty for protection. Now, unquestionably these gentlemen, at all events, were blameless. They could have found no other verdict on the evidence, and the confession so affirming it. It was no fault of theirs that the law rendered their mistake not merely irreparable, but irretrievable. Nor was it their fault, either, that our imperfect nature too often fancies itself in the noon-day light, when it is bewildered in the fog of ignorance. The Lords of the Admiralty, responded to the appeal, and a prosecution was at once directed. Most fortunately, the then law officers of the crown were Sir Arthur Pigott, and Sir Samuel Romilly. These discreet men deemed it prudent to institute a strict enquiry into the facts, before committing themselves to a public prosecution—"not however (adds Sir Samuel, from whom

we take the facts,) that either of us entertained any doubt as to the man's guilt." We entreat attention to this last averment. These two experienced lawyers had no doubt as to his guilt; neither had the honest master of the *Hermione*, who swore to him so positively; neither had any one of the honourable officers who convicted him—Yet they were all mistaken! What a frightful system! We shall conclude this tragedy in the authentic words of the solicitor-general himself. "An enquiry was accordingly set on foot by *the solicitor to the Admiralty; the result of which was that the man was PERFECTLY INNOCENT*, and was at Portsmouth on board the *Marlborough*, when the crime was committed in the *Hermione*!! He had applied to another man to write a defence for him; and had read it, thinking it calculated to excite compassion, and more likely to serve him than a mere denial of the facts." To those who would found on the folly or fatuity of the victim any mitigation of this foul transaction, our answer is, that this very folly or fatuity to which mankind is subject, constitutes one of our manifold objections to the punishment. Practical men require not to be told that admissions of guilt by men entirely innocent *are* sometimes made. There is, in fact, no safeguard from the arrogance which erects itself into the arbiter of life and death. In this very case there would have been quite enough in the evidence of the master of the *Hermione* to sustain the finding. Yet, we see, how entirely he was mistaken. Nor can there be a doubt, that to the despair induced by that positive and unshaken testimony, the suicidal admission of the prisoner was attributable. But, what can be said as to the official certificate tendered and slighted, and true to the very letter! This certificate was produced in Plymouth *previous to the execution*, and must have proved the poor man's innocence beyond all doubt—had its statements been investigated; but the facts appeared so clear, "that (writes Sir Samuel,) *no regard was paid to it!*" We apprehend all will agree with the great and

gifted writer* that such a case “demands the most serious attention.”

The French courts record numerous instances of these mournful mistakes; so numerous indeed, that their detail might be deemed tedious. Of these, we select *one* of considerable interest, in which, though justice was ultimately done, it was not till after a very foul wrong had been committed.

The Count and Countess de Montgomery rented part of a hotel in the Rue Royale, at Paris. The Count was a person of high rank and considerable property, maintaining a numerous retinue of attendants and an almoner, who formed part of the establishment. On the second and third floors of the same hotel, the Sieur d'Anglade resided with his lady in a style of much respectability. The two families lived on very amicable terms. It so happened that on one occasion the Count and Countess invited these neighbours to accompany them on a visit to one of their country seats. The invitation, at first accepted, was, for some unexplained reason, subsequently declined when the intended hosts were just on the eve of their departure. Many of their suite accompanied the family, and amongst others, the priest-almoner, Francis Gagnard. From some presentiment (it was said) pressing on the Count's mind, they returned to Paris the day before they intended, and received a visit from the d'Anglades in the evening. Next day, however, it was discovered that the Count's strong-box had been opened by a false key and completely plundered. Its contents were, thirteen small sacks with 1000 livres in silver, in each. In addition to these, there were 11,500 livres in gold, some double pistoles, 100 louis d'or—of a new coinage called *au cordon*—and a pearl necklace, worth 4000 livres. All was gone.

The lieutenant of the police having been consulted, at once pronounced the crime to have been perpetrated by some one within the house, and seems to have conceived and evinced a

* Romilly's Diary, vol. ii, p. 42.

violent prejudice against the d'Anglade family. On observing this, they immediately demanded that their apartments should be examined, and a strict search was made, their very beds having been ripped up ; but nothing whatever was found to implicate any one in the floors which were inhabited. In an attic however, which had been used as a kind of lumber room, there were discovered in an old trunk filled with parchments and rubbish, 70 louis d'or *au cordon*—wrapped up in a paper on which a genealogical table was printed—both of which Montgomery claimed, although the coin had no peculiar mark and was in general circulation. From this moment, the suspicions entertained by the lieutenant were adopted by the Count. He loudly avouched the honesty of all his servants, and invidiously adverted to the theft of a piece of plate from the Sieur Grimaudet, a former tenant, the d'Anglades at the time living in the hotel. These suspicions were strengthened by the fact that it was known that d'Anglade was fond of play and, that on their desiring him to count the coin, he said in doing so, "I tremble." It was the agitation of innocence under an accusation, false, but plausible. After this, the door of a small room, in which the almoner, a page, and a valet de chambre slept, was discovered to be open ; and here, in a recess in the wall, were found five sacks, containing 1000 livres each, and a sixth from which 200 had been extracted. The d'Anglades were sent to prison and it seems, by the then law of France, the prejudiced police-lieutenant who committed, was the Judge by whom they were to be tried. D'Anglade appealed to the parliament against this foul prejudgment. But he appealed in vain. As it would appear, Montgomery had his misgivings, for he ordered his almoner, the priest Gagnard, to say a solemn mass at the church of Saint Esprit, for the detection of the culprits. And the "good and holy man" so fervently implored of God to aid him, that the prosecutor's conscience was at rest. The almoner was examined as a witness at the trial. All however was in

vain. The public eye was upon the Judge, and on such proofs even such a Judge shrank from pronouncing judgment. But he had an alternative, which man's infernal obstinacy still legalized. What they failed in proving, they might goad him into confessing—so they put d'Anglade to the question, ordinary and extraordinary—they tortured him even to the verge of death; and then covered over with wounds, his back dislocated, his whole frame shattered—all in ruins, save a noble nature, they bore him back to prison beseeching God to manifest his innocence, and to pardon his inhuman prosecutor and his inexorable Judge. In this state of agony, they sentenced him to restore the amount which had been stolen, and to serve for nine years, chained as a galley slave. But death, more merciful than man, emancipated him, and, he sank in his dungeon at Marseilles, having received the eucharist. As to his poor widow and her orphan, plundered even of the bed on which they lay, they were banished from Paris and its precincts, and cast upon the world, heart-broken and abandoned:—

In some weeks after the death of d'Anglade and the utter desolation of his family, their innocence was demonstrated. Enquiry was instituted in consequence of some letters which, at first anonymous, appear to have been written by an Abbé de Fontpierre, and the truth was brought to light. This expounder of the word was a member of a thieves' society, and as such, an associate of one Belestrè, who was the principal in the crime. He could not, however, have completed it without assistance, and such was afforded him by Francis Gagnard—the inmate of Montgomery's house, and his trusted almoner, the reverend divine who actually celebrated the sacred ceremony at Saint Esprit, for the discovery of the crime! This worthy, and Belestrè—both natives of the town of Mons—had been associates from infancy. Gagnard was the jailer's son, had journeyed to Paris as an adventurer, and was eking out a mere subsistence by saying masses at the church of Saint Esprit, when Montgomery

admitted him on his establishment. The return he made—was, the furnishing his friend Belestrè with wax impressions of all the keys he found there. It turned out that Belestrè was a still greater villain than himself, having been in the army, from which he deserted after murdering his serjeant, and was afterwards prowling about the dens of Paris, alternately a gambler, a beggar, and a bully. These worthies, strangely enough, soon found themselves face to face on the same night in the same prison, charged with separate offences. In the mean time, the contents of the anonymous letters having got circulation, it occurred to the authorities to interrogate the prisoners as to the robbery in the Rue Royale. They were examined apart, and an immediate prosecution was the result. The Abbé de Fontpierre gave most important evidence. Amongst other things, he deposed, that being in a room adjoining one in which the accused were holding a revel, he distinctly heard Belestrè say—“Come, my friend, let us drink and enjoy ourselves while d’Anglade is at the galleys.”—“Poor man (answered the almoner)—I can’t help being sorry for him; he is a good kind of man, and was always very civil and obliging to me.” “Sorry (exclaimed the other, with a laugh) sorry for a man who has secured us from suspicion and made our fortune!” A courtesan, named De la Comble, declared that Belestrè frequently shewed her *a beautiful pearl necklace*, which, with large sums of money, he said he had won at play. Upon Belestrè there was found a gazette of Holland in which, after a reference to the d’Anglade case, there was a positive statement that the men who were really guilty of that robbery had been since executed at Orleans, for another crime! Of this, it was supposed, he had himself procured the insertion—in order to lull enquiry. Unfortunately however for him and his confederate, there was also found on him a document—in *Gagnard’s writing*—alluding to the anonymous letters, and advising him by some means or other to quiet or rid himself of the Abbé de Fontpierre. In addition to this it was shewn

that Gagnard, who, on his entering Count de Montgomery's service was almost destitute—and who could have saved but little from his salary—had, on leaving it, a profusion of money which he lavished in feasting and debauchery. Belestrè, also, was proved at the same period to have purchased an estate at Mons, where his father was an humble tanner. Madame d'Anglade cleared completely up the paltry suspicions by which her husband had been sacrificed: but to detail the exculpation here would be superfluous, as the criminals made a full confession of their guilt. Indeed the priest went even farther, and declared, that—had he been closely interrogated during the first enquiry—such was his confusion, he must have admitted everything. But the industry of the Judge was all employed in vindicating the prejudices in which he never should have indulged. This same so-called minister of justice, a few years afterwards, convicted and executed the innocent Lebrun, for the murder of Madame Mazell.

We may be told that the existence of such a Judge is an exception:—a consolation truly to the families of d'Anglade and Lebrun!—But, suppose it an exception:—what *has* been, *may* be; and even the possibility of such a chance should put an end for ever to a punishment irrevocable.

When the curtain fell upon this real tragedy, society did all that society could do—it restored to the bereaved ones their fortune, their station and their character—but it could not restore what it never gave, and had no right to take—Madame d'Anglade was a widow and her child an orphan.

We will conclude these cases with a soul-harrowing one, vouched by Mr. O'Connell, on his own authority. “I myself (says he) defended three brothers of the name of Cremming within the last ten years. They were indicted for murder. I sat at my window, as they passed by, after sentence had been pronounced. There was a large military guard taking them back to jail, positively forbidden to allow any communication

with the three unfortunate youths. But their *mother* was there, and she, armed in the strength of her affection, broke through the guard. I saw her clasp her eldest son, who was but twenty-two years of age; I saw her hang on her second, who was not twenty; I saw her faint, when she clung to the neck of the youngest son, who was but eighteen—and, I ask, what recompense could be made for such agony? *They were executed—and—THEY WERE INNOCENT.*”

We will not mar, with any words of ours, the terrible simplicity of this recital. But we do implore of every English mother—by that holy love which links them to each other, even from the sceptred monarch downwards, to that poor, desolate, children-despoiled peasant—by the love of offspring thrilling through them all—we call on them to contemplate this picture—limned with a pencil dipped in human heart’s blood.

Oh! who that knows not Ireland, can conceive the cares, the vigils, the privations, the anxieties of that struggling, patient, much-enduring creature, as she toiled to rear those children up to manhood. And there they were, at last—the task of love completed—all that a fond mother’s wish could have them; her joy, her pride, her hope, her treasure, the safe and certain props of her old age—and they were torn from her—and they were flung into a felon’s grave: and she, that poor, forlorn, lonely mother had no companion now but memory. “They were executed, and *THEY WERE INNOCENT.*” When the Book of Life seeks to portray the sublime of desolation, it personifies such agony as this. It shews us “Rachel weeping for her children, and she would not be comforted, because they are not.” Surely there can be no greater agony—save in the consciousness of him who causes it.

But why continue this catalogue of mistakes, miscalling themselves certainties? Almost every man’s memory may swell the list. Sir FitzRoy Kelly declared in the House of Commons that he found “seventeen cases in the present century, of accused

men having been sentenced to death, though their innocence had been subsequently established and rendered as manifest as that of any man now living; of these, eight were hanged, and one was within four hours of his execution, when the pardon arrived." We must however advert to a most fearful instance mentioned by Mr. Livingstone in his Report to the legislature of Louisiana: "I have seen," says he, "in the gloom and silence of the dungeon, the deep concentrated expression of indignation which contended with grief; have heard the earnest asseverations of innocence—made in tones which no art could imitate; and listened with awe to the dreadful adjuration poured forth by one of these victims, with an energy and solemnity that seemed superhuman, summoning his false accuser and his mistaken Judge to meet him before the throne of God. Such an appeal to the high tribunal which never errs, and before which he who made it, was in a few hours to appear, was calculated to create a belief in his innocence:—that belief was changed into certainty—the perjury of the witness was discovered, and he fled from the infamy that awaited him. But it was too late for any other effect than to add one more example to the many that preceded it, of the danger and—I may add—impiety of using this attribute of the divine power, without the infallibility that can alone properly direct." This is vivid and eloquent, and wise, and does equal honour to the man who promulgated such truth, and to the State which so beneficially adopted it.

We have now recorded some of the delusions under which we have sacrificed our fellow creatures. Deceptive identity—fallacious circumstances—false accusation prompted by avarice—foul conspiracy suggested by revenge—credulity more monstrous than the crimes it credited—each, and all, have had their guiltless victims. These specimens, too well authenticated, register the results of human arrogance, and register them, alas, in human blood. That innocent blood has not sunk into the silent earth—those who shed, must answer it—no votive

fane can hide—no waving flag can expiate it—and it is only insulted by that hypocritical repentance, which admits and mourns its errors, and—*repeats them.*

So far, in reference to those who have been executed, and whose innocence has been subsequently ascertained. To what a frightful length, however, might not this list extend, but for the exertions of humane and worthy men ! There was a case, said Mr. Harmer in his evidence before the Commissioners on Criminal Law, (Report 1836,) of “ a young man who was capitally convicted upon apparently the clearest possible evidence ; I conducted the prosecution against him, and could not imagine there was any doubt of his guilt ; but the young man protested his innocence, and he communicated facts to the then governor of Newgate, which impressed him with the belief that the young man was innocent—and he begged me to see him. I heard the convict’s statement, and commenced a minute enquiry into the circumstances, and I was at last fully satisfied that he was innocent. I consequently memorialized the Secretary of State ; but it was not without great difficulty I procured his pardon, after he had been in Newgate ten months under sentence of death.” This is a striking case, indeed, from the circumstance that the guiltless prisoner owed his pardon to the Solicitor employed to prosecute him. But it was every way characteristic of Mr. Harmer than whom a kinder-hearted man never existed. Doubtless he was stimulated to this exertion, by the recollection of a mournful case in which he had been concerned for the prisoners. He does not specify the offence, but murder it must have been, because in no other did execution follow so soon upon conviction. “ I remember,” said he, “ a case, where, in a little more than forty-eight hours, enough could have been shown to justify a suspension of the judgment, but the *men were executed before I had time to investigate.* Directly I began to make enquiries, fact upon fact was developed, which would not only have justified a suspension of punishment, but would doubtless have

obtained *for the unfortunate men a free pardon.*" (Page 88.) How appalling! how horrible is this! This cold-blooded system of speedy execution was at last abolished, through the exertions of the late excellent Mr. Aglionby, in the year 1836. It saved England from a further injustice. In the very first case of murder which was tried after the Act passed, an innocent man was convicted at Exeter. It having been clearly proved, during the protracted interval allowed for investigation, that a mistake had been made as to the man's identity, his life was spared! * But well was Mr. Harmer warranted in saying that time for enquiry should be granted; for, what says even a more competent authority,—more so at least during the period of which he speaks?—

"I think," said Sheriff Wilde, in his examination (Report 1836, p. 101,) "many innocent persons have suffered; I think that if the documents at the Home Office are examined, many instances will be found, in which—by the exertions of former sheriffs—the lives of many persons ordered for execution have been saved." He was well authorized to say so. This most estimable gentleman is still alive, so we may not speak of him as we sincerely feel; but we shall chronicle his acts—they are his best eulogy. During the seven months of Mr. Wilde's shrievalty, he saved *the lives* of six innocent persons who had been actually *ordered for execution!* The records and the documents are at the Home Office. The first case was that of Anderson and Morris, accused and convicted of robbery with violence. To avoid prolixity, we omit the particulars, which will be found in the former editions. It was not until the day for their execution was near its dawn the respite was granted. At dark midnight, when on their knees expecting the fatal approach of the

* Report of the Abolition of Capital Punishment Society, 1845.—Edmund Galley, condemned July 28, 1836. His identity had been sworn to by four or five witnesses: but by the indefatigable exertions of Mr. Faulkner, of Bedford Row, he was ultimately proved to have been *in Kent*, when the *Devonshire* murder was perpetrated.

official to warn them that their hour was at hand, mercy's own messenger appeared with the assurance of their safety. It was as the angel's visit, and their chains fell off—they were wholly “pardoned.”

The next is a case so monstrous that it is difficult of credence; still it is true. At a time when juries, aghast at the frequent executions for forgery, insisted upon such strictness of proof as to make conviction almost impossible, and acquitted very often where the proof was perfect, a man named Smith pleaded guilty to the charge. All remonstrance was lost on him; his friends in vain advised him; in vain the Judge urged him to take his trial; he persisted in his plea, and sentence of death was passed on him. In due time he was ordered for execution; the condemned sermon was actually preached. In such a crisis, the indefatigable Sheriff was appealed to by a respectable tradesman of Cornhill, the prisoner's relative. He proceeded to the dreadful cell of the condemned, with a heavy heart, because apparently on a hopeless mission. There, however, he heard the explanation of his plea—the frightful explanation! His case was instituted by the Bankers' Committee. Some short time before the sessions, their solicitor authorized Mr. Cope, then city marshal, to assure Smith that if he pleaded guilty, his life should be saved. He did so—relying on that promise—and now behold him on his truckle bed, within four days of his execution. The Sheriff, scarcely crediting his senses, hurried to the Home Office, and there, as usual, was met by the prompt humanity of Sir Robert Peel. The Minister, as much astounded as the Sheriff, at once solicited the aid of Lord Lyndhurst, then Lord Chancellor—a rare combination. A most vigilant investigation instantly ensued; prosecutor, solicitor, city marshal, and others were summoned to the Lord Chancellor's private room at the House of Lords, and underwent a strict examination. The Sheriff's narrative was true. The life of Smith was saved. This awful detail is on record at the Home Office, and

reader, this occurred in the metropolis of England and in the nineteenth century!

The third case was one of two poor men—humble, destitute Irishmen—convicted on circumstantial evidence, of a revolting crime. On a patient scrutiny at the Home Office, the prosecution was shewn to have been the result of a conspiracy. This appeared, partly by the improbability of the prosecutor's story, and partly by direct evidence submitted to the Secretary of State. The men's lives were saved, and, says the Sheriff, "I had no doubt of their innocence."

The last case was that of a man named Brown, capitally convicted of robbery, and left for execution. He was saved; but not, says the generous Sheriff,—ever seeking to despoil himself of the meed of his humanity,—“until his master, Mr. Lingham, a wine-merchant, had been exerting himself for many days, to procure a remission of the sentence.” Here, then, were the lives of six of his fellow-creatures saved, through the instrumentality of one noble-minded man, in little more than the moiety of a shrievalty.

In these cases, there was, first, a presiding Judge, and the safeguard of a Jury. In the next place, there was the painful consideration of the Recorder's Report, by the King himself personally in Council.* Nothing could be more solemn and deliberate than this proceeding. The Lord Chancellor and the Lord Chief Justice, with other eminent members of the State, always attended to advise the Sovereign. The evidence on each trial was weighed with the gravity commanded by the occasion; the heinousness of the crime, and the justice of the conviction, being the guides of the advisers in awarding the punishment. Of course the penalty of death was not decreed, save where the guilt was deemed to be indisputable; and yet here were six human beings snatched from the scaffold by one

* We speak in the past tense, because the Recorder's Report was, by an Act, passed in 1837, discontinued under a female reign.

earnest man, who proved to demonstration, that judge and jury, and chancellor and chief justice, with all their sagacity, and all their care, were unanimously mistaken! If this happened in London, where there was the intervention of a council—shieldless as it was,—what must have happened in the provinces, where there was none? Should it be said, These men might have been guilty of a portion of the charge, though not of the capital part of it; the answer is, The jury convicted them of the *capital* part, and the judge sentenced them to *death*, and the council agreed with judge and jury, and actually *selected* and ordered them for *execution*; and executed they would have been, every man of them, had it not been for Mr. Wilde. Oh, but the Home Office may—only have had a doubt! What right have we to assume any such thing? In the cases of two out of the six, there could have been no doubt, as these two men,—Anderson and Morris,—were pardoned altogether. Strange to say, too, this was the very case in which the greatest difficulty was made, as the respite was not given till half-past eleven at night, and the execution was appointed for eight o'clock next morning. All the preparations had been perfected. Mr. Wilde states, that four men out of the six he believes to *have been innocent of any part of the charge*. A doubt at the Home Office, forsooth! What kind of assumption is this, where human life is at stake? The jury, the judge, the council, had no doubt. Aye, but the sheriff created the doubt from facts subsequently discovered. Alas! what gambling with men's lives is this! These six men would have been hanged, save for the volunteer philanthropy of this christian man, who gave his time, his talents, his money, and his toil, in behalf of hapless strangers. Where are we to find such men, at once so able and self-sacrificing?* Let Sir Frederick Pollock answer: "Though I believe undoubtedly the Sheriffs of London are, in general, conspicuous for an active, humane, and correct discharge of their duty; they have not all,

* Second Report of Commissioners on Criminal Law, 1836, p. 100.

and cannot have, the means of bringing to the investigation of such subjects the same facility, and the same unsparing exertion that Mr. Wilde afforded, while he was Sheriff. . . . It is impossible to speak in too high terms of the zeal, humanity, unsparing labour and expense, which he bestowed upon those occasions, but the result satisfied me (says Sir Fred. Pollock,) that the parties were *in several instances guiltless of any crime*, and in all, the cases were such as did not justify capital punishment; and Sir Robert Peel, after *much labour* in the investigation, was of the same opinion. . . . My impression, is that several of these cases were cases of *perfect and entire innocence*, and that the others were cases of innocence as to the *capital* part of the charge. I had frequent communication (he adds,) with Mr. Wilde on them as they proceeded.*

Yes, in truth, every man of them would have been hanged, had it not been for Mr. Wilde! We have heard it said—Oh, this is not the fault of the law, but of the administration of the law! Much it matters to butchered men whose fault it is. In the cases quoted, judge, jury, council—all of them were at fault—all of them were elaborately in the wrong. They taxed their understandings to the utmost, and all their wisdom was but foolishness. And this is man's (as we believe,) very best tribunal! Who, after the perusal of these cases, can doubt the dreadful statement made by Mr. Wilde to the Commissioners, that "he believed many innocent men had been executed?" Thanks indeed to him, they were not increased by six. But what right have we to calculate in future on such interposition? Well and truly did the Chief Baron allude to the paucity of such men as this. Allowing to many, all his benevolence, how few there are with courage for so unpromising an enterprise. How few with nerve to endure the dungeon's gloom. How few with

* Second Report of Commissioners on Criminal Law, 1836, p. 85.—Sir Frederick Pollock is the present Lord Chief Baron.

sagacity clearly to discriminate between crime's prevarication, and the wail of innocence. How few in circumstances to incur the cost. How few with perseverance to encounter the suspense, the pain, the gnawing vicissitudes that eat into the heart during such an investigation! A man who dwells amongst us did all this, and chance alone has led to the discovery—and his reward? In ancient Rome, for but one-sixth of this, a civic crown would have proclaimed it. Modern England leaves him to his consciousness; it costs the donor little, but still it is “an exceeding great reward.” Deeds such as these require no recognition. Sublime and self-requiting, they seek no blazonry—they need no memorial. “They are recorded in the heart from whence they sprang, and in the hour of adverse vicissitude—should it ever come—sweet will be the odour of their memory, and precious the balm of their consolation.”*

When such condemnatory cases are adduced, the answer is not wanting: They were in by-gone times—such casualties could not now occur. It is not so very long since Mr. Wilde was Sheriff, and had it not been for him, we know what would have happened. And had it not been for those derided abolitionists, we should have haply seen within the last few months two additional victims to human fallibility. Indeed, indeed, delude ourselves as we will, we are quite as liable to error as our ancestors. We have by no means improved upon those days when our senate hung upon the tones of Pitt, and Fox, and Wilberforce, or those when Mansfield sat in judgment, and Chatham was Prime Minister. Happily, however, modern self-sufficiency has been spared the shame of recording so many of its mistakes, in blood. But to such mistakes we are as liable as ever. Even since the first edition of these pages, two shocking cases of the cruelest injustice have been dragged to light. Alas, how many may remain in darkness! Not many months ago, a man named Markham, while walking openly in the streets of London, was

* Curran.

arrested for uttering a forged note. In his terror, he gave a wrong name—clearly, in his terror; for he gave a right address. There was no use in his firm asseverations that he was innocent. This was no case of circumstantial evidence:—a respectable witness swore most positively to him as the man who passed the note, and, no doubt, swore so conscientiously, declaring that he could not possibly be mistaken. He was tried, convicted, and sentenced to four years of penal servitude. Six months of this punishment he actually suffered.

According to testimony given in another case, at the Mansion-House, six months subsequent to his conviction, it was proved that Markham had been mistaken for the real culprit. Through the exertions of Mr. Rose, the Under-Sheriff, and of Mr. Davis, the Ordinary of Newgate, this was demonstrated, and Markham was discharged from Pentonville—a freeman, and—a beggar. He received “a pardon”!—a pardon for what? Remission of the remainder of his sentence one could understand: but pardon implies guilt, and guilt there was not. Here, then, was an instance in our own boasted day—that perfect day when people cannot err—in which, judge and jury and witness were, all three, mistaken! Alas, perfection is not given to earth, and the day of human nature’s infallibility neither is, nor was, nor ever will be, in this world! Let us not act, then, as if it had arrived. Let us not legislate as if we could not err, when should we chance to do so, our error is irreparable.

Does this case stand alone? Within the last few months, and during the same shrievalty, another innocent man has been convicted and sentenced also to undergo four years of penal servitude. His name was Martin, and the charge was highway robbery. “I heard this man tried (says Mr. Rose), and doubted his guilt.” So did the reverend Ordinary, when he came under his care. These two christian men, therefore, instantly commenced a laborious investigation, the progress and result of which cannot be better stated than in the words of the Under-

Sheriff. "We ransacked Bethnal Green for three days, and got undoubted evidence that he was not guilty: nay more, we discovered who was the guilty man. Martin was pardoned, and, not long since, he stood in my office, *an emaciated wreck of his former self*. Before he went to Millbank, he said he didn't know his own strength, and could work without fatigue the longest day."* Well, this is sad enough, assuredly; but a mistake was made, and we may make atonement. Such has not been the tone of our legislation. We were too intent on devising penalties, to provide compensation when their infliction proved unjust. These guiltless felons, therefore, must find a refuge in the public sympathy, or find it in—a workhouse! Such vile injustice, even when comparatively less oppressive, did not escape the vigilant humanity of the great philanthropist. On the 18th of May, 1808, Sir Samuel Romilly introduced a bill giving compensation at the discretion of the Judge who tried the prisoner, to such as were wrongfully accused and were acquitted. But the county rates, strongly represented in both Houses, at once revolted against such expensive benevolence, and he withdrew the measure. If this proposal was deemed equitable in case of a just acquittal, how much more so should it be considered in that of an unjust conviction!

But revelations such as these of the sufferings of innocence,—and proved demonstratively to have been those of innocence—suggest reflections even still more serious. Not many years ago, these two men, whose cases we have cited, would have been subject to the punishment of death, and, in all human probability, would have undergone it. Markham, beyond all question, would have suffered. His alleged offence was otherwise inexpiable. Their now manifested innocence would have availed not: as in poor Shaw's case, a pair of colours might have been flourished over their graves; but in those felon graves, they would have festered long before their innocence was discovered. For two more victims

* Times, January 10, 1857.

the law would have been responsible. For two!—who can say how many? Well indeed might Sir Robert Peel alarm himself when he reflected from what he had been saved in seven short months, and remembered that he owed it to the volunteer humanity of a kind-hearted official. Our own belief is that many, very many, have been so sacrificed. The journals of this very week record two cases, and one of them—in its circumstances and its consequences, perfectly appalling.* Let us not be told this could not be—in cases which are capital. Far, very far from us be such an opinion! And far from our pure courts of justice be such a reproach! Who can doubt that where the liberty of their fellow-creature is at stake, our judges and our juries strain all their energies to arrive at truth! And yet we have seen, with all the learning and wisdom and experience of the one, and all the patient, pains-taking sagacity of the other, how often it has eluded them. Such are the mistakes, the inevitable mistakes, incidental to humanity; and still, in their despite, it dares to usurp the attribute of the Infallible!

We have been favoured with a sketch of recent proceedings in Ireland, during which the strangling of an innocent man was very near being satisfactorily accomplished, *according to law*. The case in itself is interesting, and not the less so to us, from the attorney-general, who was officially employed in it—Mr. Napier, a name never to be mentioned without respect by all who revere the union of learning, ability and virtue—having been our authority. Coming from such a source, it must command attention. The case was that of the Kellys, two brothers, charged with the murder of Mr. Bateson, a gentleman of station and property in Ireland. The state of the country at the time was such, and the deposed facts were so strong against the accused, that a special commission was issued purposely to try them. Lord Chief Justice Blackburne, (afterwards Lord Chancellor,) and the Lord Chief Justice of the Common Pleas, (Monahan)

* The Times, January 19, 1857.

were the Judges who presided; and Mr. Hatchell, then attorney-general, conducted the prosecution. True bills were found against both the brothers, but only one of them was put upon his trial. The jury disagreed. He was tried again before another jury, and the second jury disagreed. "When I came into office in 1852, (writes Mr. Napier,) these men were still in custody, and I deemed it my duty to follow up the proceedings of my predecessor at the ensuing summer assizes. The case had been removed into the Nisi Prius court, which insured the attendance of a superior class of jurymen, and Mr. Baron Greene presided at the trial. Having previously conferred with Lord Chancellor Blackburne and Mr. Hatchell, I put the two prisoners on their trial, allowing them separate challenges. As the case against the one who had not been tried before, appeared to me inconclusive, I consented to an acquittal. As to the other, *I believed that he was guilty, and this was the strong impression of those with whom I had consulted.* So, I pressed the case against him, but again, the jury disagreed. In the autumn ensuing, after the assizes, some further evidence was brought under my notice, which I was at first disposed to consider as a device merely intended to mislead the prosecutor. However, having directed most diligent enquiry to be made, the case began to assume a different aspect. At the end of the year, my successor came into office. The result was, that full and satisfactory evidence was afterwards obtained *against the real criminals, who were convicted and executed*; and it turned out, that neither of the Kellys was present at the murder at all. It was a clear case of mistaken identity. Had the jury agreed when *I* prosecuted,—as my own impressions would have been so confirmed by those of my sagacious and experienced predecessor, by the able and eminent Lord Chief Justice Blackburne, and each, and all, by the verdict of a record jury of the county with such a judge to preside,—*it is almost certain that the sentence of the law would have been carried out.* How thankful to God I was,

I cannot express; but, it shewed me what wisdom there is—in our law requiring the conviction to be made out, to the satisfaction of a jury, beyond any reasonable doubt.” We would not consider too curiously the amount of doubt which an Irish jury might admit to be ‘reasonable.’ But we would adduce this very case in proof of the peril—peril approaching to an absolute prohibition—of our presumption in tampering with human life. Here were men—men of no common mark—men of lofty and enlightened intellect—straining their every faculty to attain the truth, and yet all of them utterly mistaken. “Reasonable doubt,” forsooth. We have cited instances enough, in which juries declared they had no reasonable doubt—nor indeed did the evidence seem to admit of any—and then, having no doubt of their guilt, they bereaved of life those who, as undoubtedly, were innocent.

There is a case recorded, of the same recent date, curiously illustrative of our administrative uncertainty. In its development we shall find an innocent man convicted of the fact, and a guilty man liberated by the law! On the 7th of Feb., 1851, in the dead of night, the house of David Williams, situate at Truasth, in the county of Brecknock, was broken open by forcing the shutters and window of an outhouse. Williams, an old man—who with his wife alone occupied the cottage—was alarmed by the noise; and going to the head of the stairs, saw—by the light of a candle—the person of a man whom he recognized at once as Tom Williams, a blacksmith living in the neighbourhood, and who had formerly worked in the house. This was only for a moment, as the light was struck out and the burglar attacked old Williams and his wife, in the dark; however they proved too strong for him, and drove him out of the house. Nothing was stolen, but the drawer of a dresser in the kitchen had been ransacked, and some papers of no value taken out and thrown into the coalscuttle. Tom Williams, the blacksmith, was tried at the following spring assizes at Brecon, for

the burglary ; and as the old man, *who had known him from his boyhood*, swore to him most positively, he was convicted and sentenced to transportation. Happily for him, however, a person—named William Morris— was present at the trial, who, on hearing the verdict, at once exculpated the convicted man, and pointed out one Powell to the police, as the real criminal. Strict enquiry was instantly set on foot, the result of which was that Powell was committed. He was tried before the late Mr. Justice Talfourd, and convicted on evidence perfectly conclusive. It seems, old Williams had lent Powell £600, on mortgage, taking as security, certain title deeds. Williams, instituted proceedings to recover principal and interest, and Powell committed the burglary to possess himself of the documents ; hence the ransacking of the dresser drawer, in which he believed they had been deposited. Of course, the poor blacksmith was pardoned on the report of Mr. Justice Talfourd : he was discharged in September, 1851. Up to this point, kind reader, the case presents two results worthy of admiration—one, the conviction of a man entirely innocent—the other, his ‘*pardon*,’ for a crime he never committed :—a felicitous combination ! However, though our hearts may sympathize with a guiltless man pining in his prison-house from spring till autumn, with the prospect of Australia at the end of it—or, as a Chief Justice most picturesquely phrased it, “a summer excursion to a happier and a better climate” *—still we are solaced by the reflection that guilt did not eventually escape. The criminal was transported ? Not he, indeed. The jury convicted him of breaking open the house “with intent to steal the title deeds,”—the indictment charged his intent to be, to “steal the goods and chattels.” The appeal court held the conviction bad, and so, despite of fact, and thanks to law, Powell shook the jail dust from his feet, and walked forth a free-man on the hills of Brecon ! †

These cases and many similar to them, have made, and are

* Lord Ellenborough. † Powell’s case, 2nd Dennison’s C.C. Reserved, p. 403.

making, their impression on the people ; it is impossible that they should not : a system liable to make such mistakes, and inoperative for good where it makes *no* mistakes, must inevitably work its own reform. There can be little doubt such reform would have come ere now, had Sir Robert Peel survived. Indeed we have indisputable authority for stating that those cases which occurred during his secretaryship, made a deep impression on the great statesman's mind. That mind was not one doggedly to cling to error, chained down by the dogma of consistency—a doctrine, which means, that once in the wrong, man is always to remain so, untaught by time, and uncorrected by experience. On their last interview, Sir Robert thus addressed the Sheriff :—“ These repeated applications, and the result of them, give rise to some serious and alarming reflections ! You have interfered in five or six cases. *What am I to think of the course of justice during those years when there have not been the same means which you possess, nor the same exertions which you have used, to investigate the truth ?*” No doubt, indeed, it was in trembling earnestness he asked the question. Had not his own nature been kin with that of the Sheriff—had he not nobly, heartily, and indefatigably seconded his exertions—six innocent fellow-men would have met a premature and ignominious death. And then, alas, how keenly would he have felt the solemn reflections of the great Chancellor of France in the contemplation of such a terrible contingency !—

“ Truth (says D'Aguesseau) lifts up the veil with which probability had enveloped her ; but she appears *too late !* The blood of the innocent cries aloud for vengeance against the prejudice of his Judge ; and the Magistrate passes the rest of his life in deploring a misfortune which his repentance cannot repair.”

In addition to the testimony of Sir Robert Peel, we have the attestation of a still greater Minister against the impolicy of our penal legislation. “ So deeply (says Mr. Wilberforce,)

was Mr. Pitt convinced of the improper severity of our laws that, to my knowledge, that distinguished person had it in contemplation to submit the whole penal code to the revision of some able lawyers, for the purpose of digesting a plan to diminish the sanguinary nature of its punishments,—so inconsistent with the justice and humanity for which this country is peculiarly distinguished.”*

Suppose, however, we never slaughtered the innocent—which has been done, we fear, in but too many undiscovered instances,—what has been the effect of these appalling perpetrations, even where there was reason to believe the guilt unquestionable? We appeal to facts. Only let the crime be monstrous, and its commission clear, does not one of two things invariably follow?—The convict is changed into a hero or a saint! If the first, his sayings and doings are all duly chronicled; he becomes an object of interest—his lunatic desperation is set down as courage—ladies of station, who *sat through his trial*, now seek his autograph, and the rope that hanged him is sold by inches, as relics of the brave! Have we not seen all this? Or, he starts as a candidate for canonization. Forthwith he is proclaimed a model penitent. Fragrant with the odour of sanctity, and refulgent with the radiance of cant, he passes directly from the scaffold into paradise! This interest excited by malefactors, discreditable as it is, has been handed down to us, by the leaders of *ton*, at all events from the time of Horace Walpole. “Robbery (says he, in a letter to a correspondent, in 1750,) is the only thing which goes on with any vivacity, though my friend Mr. Maclean is hanged. The first *Sunday* after his condemnation, three thousand people went to see him; he fainted away twice with the heat of his cell. You can’t conceive the ridiculous rage there is of going to Newgate; and the prints that are published of the malefactors and the memoirs of their lives and deaths set forth with as much parade

* Debate on Romilly’s 40 shillings larceny-from-dwellings bill: May 2, 1810.

as, as,—Marshal Turennes—We have no generals worth making a parallel.”*

Surely, surely, exhibitions such as these can in no way operate on the public mind, save to disgust or to demoralize it. Deter, they do not. There never was an interval in our annals, within which so many murders have been crowded, as within the last five years. Yet there are men so infatuated, as actually to found an argument upon this. What! they exclaim, Is this the time, when murders have become of every-day occurrence—is this the time to abolish capital punishment? The very time. The time of all others. What time so fitting as that, when every district in our city, and every dock in our assize-towns, loudly proclaim the failure of our remedy? It will be abandoned, at last, as it has been abandoned in every case but this; though, as in the others, not until it becomes practically inoperative. Yet, why should we remain unadmonished by experience? In every single instance of repeal, self-deluded men struggled zealously, and too long successfully, to retain the punishment—and behold the consequences! From 1810 till 1845, upwards of 1400 persons were executed for crimes which, within those dates, ceased to be capital.† Fourteen hundred human beings immolated at the shrine of what is now conceded to have been a fanciful expediency! Cut off in the middle of their sins, or it may be, in the dawn of their repentance. Should this have been? Yes, said the civilized inhumanity of England. No, said the humane barbarism of Otaheite. How humiliating the comparison! Let us be rebuked and taught by it. Let Coke’s “accursed tree,” the last remnant of our feudal cruelty, share the fortunes of the stake, the rack, the thumbscrew, and the gibbet. Let Parliament take the grace of the initiative—let it have the credit of, at least one repeal—let it save us from a

* Walpole, Letters to Sir H. Mann, vol. ii.

† Report of the London Committee of the Society for the Abolition of Capital Punishments, May 14, 1845.

repetition of the "pious perjuries," in all ways so disastrous ; let not the desecration of the jury-box again anticipate the country's demoralization. Oaths, as administered in our courts of justice, are meant as the links to bind men's souls to truth ; these links once severed, the sanctity of social life is gone, and with its sanctity, its safety. We are not theorizing ! the most flagrant verdicts have been already cited, returned by juries, rather than hazard a capital conviction ; so flagrant and so frequent, that, as we have seen, law and property could not co-exist—witness the forgery code. Is there no danger that murder may come to be included in the category ? Lamentable to say, such things are in progress. In 1847, a woman, of the name of Sarah Chesham, was indicted at Chelmsford for the crime of poisoning ; all considered the case proved against her, but she was acquitted. The rumour was, that an influential juryman felt scruples about taking away life. Again in 1848, the very next year, she was indicted for the murder, by poison, of her own children, and she was a second time let loose upon society. Encouraged by this conflict between law and conscience, she tried a third experiment and poisoned her husband. For this she was executed. It was said that fourteen victims were sacrificed by this fiend ; society would have been rid of her at the first trial, save as a show and a scarecrow during life, had the punishment been secondary.

"In the case of the Matfen murder, tried on the 27th of March 1856, at Durham, the guilt," said Mr. Ewart, "of one prisoner appeared certain. A juryman, however, told a person who can be produced, that 'they all agreed on a verdict of acquittal, *rather than the man should hang.*' I can," continued the Honourable Member, "produce instances of jurors having stated that they would have found prisoners guilty, as they were bound to do ; but, when they learned from the Judge that the penalty would be death, they resolved on an acquittal." So far Mr. Ewart, who has devoted his public life to the mitigation

of this dreadful code. Let him remember Romilly, and take heart. Branch after branch of the "accursed tree" are lopped away, and the axe is at the root.

There is a class of cases on this subject with which every man's mind must be familiar—cases of death by duelling.* What is death inflicted in a duel, but a murder? Our law so defines it. Our Judges so declare it, And yet, in nine cases out of ten, an acquittal follows in the teeth of proof. How often have we seen the death proved, the cause of it unquestionable, the party identified, the law clear—and no conviction. What expedients have we not seen resorted to! What mystifications as to identity! What affected doubts! What legal quibbles! Does some case of unusual interest occur?—it is then that law asserts its vindication. The vulgar world is all awe and wonder. What solemn parade—what pompous preparation—what a professional array—what judicial paraphernalia! All doubt disappears before the daylight proof—but, lo! a christian name has not been put in evidence—and—*tabulæ solventur*. We remember well an early case in Ireland (The King *v.* Fenton), which struck us at the time for the novelty of its principle. Two young gentlemen, principal and second, were tried for murder in a duel. The case was proved even superabundantly, all by eye-witnesses and actors on the scene. There was no reluctance to answer, lest of self-crimination. Each described his share in the transaction, as if its incidents covered him with glory! The Judge—an able, learned, and, above all, a most humane one—after carefully summing up the evidence concluded thus: "And now, gentlemen, having detailed the facts, it is my duty to expound to you the law. If two persons proceed to fight a duel, and one kills the other, it is murder in him, and murder in all aiding and abetting him. That is the law of England, and so

* In Louisiana, a duellist killing his antagonist is liable to imprisonment for not less than two nor more than four years, and forfeits for ever all his political and certain of his civil rights.

I lay it down to you. If the facts are believed by you, the case amounts to murder—but a *fairer* duel than this I never heard of.” The result was not long doubtful. Such is the consequence, and such must ever be the effect, of setting public opinion and the laws in conflict.

The Judges themselves, ever tardy in countenancing innovation, are opening their eyes to the evils consequent on the system. In 1847, a Committee of the House of Lords solicited their individual opinions on the subject. Some declined to answer a question, which, perhaps, they thought was rather for the Legislature, than the Bench. Amongst these were Lord Denman and Sir William Maule. Chief Justice Wilde refused to pledge himself by a hasty answer, declaring, however, that he “considered the objections to the punishment of death as *very great*.” Baron Richards (of the Court of Exchequer in Ireland,) “had not formed a very decided opinion, but was inclined to think that transportation, attended with stringent regulations, might be substituted for the punishment of death.” Mr. Justice Wightman gave a clear opinion.—“There can be little doubt,” said he, “that a secondary punishment may be made so severe as to be a sufficient substitute for the punishment of death.” What says Mr. Justice Coltman? “I am disposed to think that imprisonment for life, *without any remission of the sentence*, might be substituted for capital punishment. Many guilty persons now escape, who would then be convicted. I do not think the apprehension of death operates much on the mind of a man meditating a great crime.”

To these grave authorities, we add, with pride and pleasure, the reply of a coeval, and also a coequal one, who still adorns the justice-seat in Ireland: our saying that we hope he may continue long to do so for Ireland’s sake, is not merely the aspiration of an ancient friendship, but a proof that neither time nor absence can lessen our interest in the land we love. To the question put to Mr. Justice Perrin—“Do you think any punish-

ment, by transportation or imprisonment, would be a sufficient substitute for death?" he answers thus—"I do; I am convinced that juries acquit or disagree, from an apprehension of taking away life." The preceding pages afford too glaring proofs of the truth of that conviction.

Fortified then by these venerable authorities, we advocate the repeal of capital punishment—

Because—The giving and the taking away of life appertain exclusively to God :

Because—Being fallible, we should not punish, when, if wrong, we have no power of reparation :

Because—The crimes in respect of which it has been repealed, have not increased :

Because—Executions, by hardening and brutalizing the human heart, produce the evil they are intended to restrain :

Because—By inducing juries to evade their oaths, capital punishment defeats the end, and degrades the dignity, of justice :

Because—While its severity deters prosecution, the uncertainty of its infliction gives encouragement to crime :

Because—Our abhorrence of bloodshed often gives immunity to guilt, and our proneness to err but too often sacrifices the innocent ; and

Because—Its discontinuance, in some portions of Europe and America, has been adopted with advantage to their respective communities.

The advocates of abolition have frequently, and not unreasonably, been asked what substitute they would propose for the punishment of death. Our substitute is based on the principle of Beccaria : " It is not the intenseness of the pain that has the greatest effect on the mind, but its continuance. The death of a criminal is a terrible, *but momentary* spectacle, and therefore

a less efficacious mode of deterring others than the *continued example* of a man deprived of his liberty, condemned as a beast of burden, to repair by his labour the injury he has done to society." We would propose, therefore, as a substitute:—

Perpetual Imprisonment—*Certain and Incommutable.*

Hard Labour for Life, its produce being for the public benefit.

The Silent System one day in each month, and on the anniversary of the crime.

A Strict Exclusion from the External World in every way, and the perusal of religious works alone, permissible.

The most Frugal Fare compatible with health.

The prison to be appropriated exclusively to the Convicts for Murder throughout the United Kingdom, to be built on an elevation, visible, but secluded, to have a black flag waving from its summit, and on its front inscribed—

The Grave of the Murderers.

Since these pages first appeared, this substitute punishment has been by some considered rigidly severe. It is so intended. We write in no strain of sickly sentiment, but in a spirit of the utmost sternness. Holding as we do, that the shedding of man's blood by murder, is both sinful and criminal in the highest degree, we know of no *permissible* penalty too severe for such atrocity. And such penalty we would have enforced without a chance of commutation, as we would indeed every other punishment. Deprecating undue severity in our sentences—once passed, they should be carried out. Commutation is a censure on the law, and all uncertainty in the ministration is the source whence its repeated violations spring. Good men and simple men are easily deceived into humane recommendations, and society is constantly imperilled by the "felonious piety" of a counterfeit repentance.

CAPITAL PUNISHMENT

SANCTIONED

BY DIVINE AUTHORITY;

AN ESSAY,

BY ALEXANDER CAMPBELL,

PRESIDENT OF BETHANY COLLEGE, AMERICA.

RE-PRINTED FROM THE AMERICAN "MILLENNIAL HARBINGER."

LONDON:

SIMPKIN, MARSHALL AND CO.; T. KIRK, NOTTINGHAM;
AND ALL BOOKSELLERS.

PRICE FOURPENCE.

GENERAL PRINCIPLES

OF THE

ARTS AND MANUFACTURES

IN GREAT BRITAIN

BY ALFRED R. WALLIS

NOTTINGHAM:

Printed by Thomas Kirk,
St. Peter's Gate.

THE UNIVERSITY OF NOTTINGHAM LIBRARY

1950

LONDON

PRINTED AND PUBLISHED BY
T. KIRK, ST. PETER'S GATE, NOTTINGHAM.

1850

CAPITAL PUNISHMENT

SANCTIONED BY DIVINE AUTHORITY.

THE true philosophy of man, even amongst philosophers themselves, is yet a desideratum. We are all agreed that neither the Egyptians nor the Chaldeans, neither the Medes nor the Persians, neither the Greeks nor the Romans, had attained to the true science of man. They had their astrologers, soothsayers, and magicians. They had their sages, philosophers, and poets, as they had their great generals, heroes, and conquerors. They had their sciences and arts, both useful and ornamental; but they had not the knowledge of themselves; they had not the Bible. Hence their proper origin, relations, obligations, and destiny, were to them alike unknown and unknowable. The profound Socrates, the learned and acute Aristotle, the splendid and mellifluous Plato, the still more enlightened and eloquent Cicero, were as profoundly ignorant of their own moral constitution and moral relations to the great unknown and eternal God, as they were of the grand discoveries and inventions of the present century.

We may, indeed, have as exaggerated views of our own attainments in this our "age of reason," "march of mind," and brilliant electric advances into the mysteries of nature, as they had of themselves and their attainments. Posterity, too, may look back upon our age as we are wont to contemplate ages long since passed away, and wish, as "duteous sons, their fathers had been more wise." Certain it is, that we are not satisfied with ourselves, and that a spirit of inquiry, revolution, and change, is now abroad in the land, which no man can limit or restrain.

We live in the midst of a great moral revolution. Opinions held sacred by our fathers, usages consecrated by the devotion of ages, institutions venerated by the most venerable of mankind, are now subjected to the same cold rigid analysis, and made to pass through the same unsparring ordeal to which the most antiquated errors and the most baseless hypothesis of the most reckless innovators are now so unmercifully doomed. Few, indeed, of the most popular theories of the Pagan schools on the great subject of man's social and moral

relations, have, when cast into this fiery furnace, like Shadrach, Meshach, and Abednego, come out unscathed.

Times of revolution are, however, more or less, dangerous times. For, as in the tumultuous rage of passions long pent up, and in the fitful frenzy of an inflamed multitude long trodden down, the innocent with the guilty are sometimes immolated on the same altar, reared to the presiding genius of revolt; so truths rightfully enthroned in the judgment of the intelligent, and deeply cherished in the hearts of the faithful, are, in times of great excitement, and in the reign of an indiscriminating scepticism, repudiated as reprobate silver, and sacrificed at the shrine of a licentious and indiscriminating innovation.

Ours, however, is an age of invention, rather than of discovery—the arts, more than the sciences, are cultivated and improved. The invention of printing, the discovery of America, and the Protestant reformation have imparted to the human mind an impulse so vigorous and so enduring, that neither time nor space seem able to impair. Stimulated by the many errors already exploded, and the new discoveries since made, the human mind seems intent on carrying on war against false assumptions and unwarranted conclusions—determined to advance from victory to victory over every species of error and delusion, that we may not unreasonably anticipate a day when the last error shall be exploded, and the last baseless assumption shall be entombed in the same unfathomable abyss with the vortices of Descartes, or in the nethermost hollow sphere of the speculative and hypothetical, though ingenious, Captain Symmes.

But there are many things already and immoveably established. The human mind is not wholly at sea without pilot or compass. The mariner's compass has been invented. And many truths are immoveably fixed and certain in every well cultivated and intelligent mind.

Physical nature is, indeed, still open to investigation in some of her most interesting and sublime departments. Astronomy is yet in progress of development. Geology is a new science, yet incomplete and imperfect. The physical constitution of man has yet numerous mysteries sealed from the most discriminating eye. Not only several of its most sublime and delicate tissues are yet unexplored, but the design, as well as the peculiar structure of some of its organs, are yet unappreciated and unknown. The human head has only recently been explored and developed by the mighty genius and indefatigable toils of a Gall and a Spurzheim. That men have souls as well as bodies, and spirits as well as souls, seems likely soon to be satisfactorily proved, not by metaphysical reasoning, but by ocular and sensible demonstrations submitted to the outward senses of man. Nor is the day far distant, when it is presumed that all parties will agree that, as God has made the world, he should govern it.

There are, indeed, two sciences, and but two, wholly unsusceptible of improvement. These, the Author of the universe, by a patent which no man can invade but at the peril of his eternal destiny, has both wisely and kindly reserved to himself. I need not say that these are the sciences of Religion and Morality. No finite being who surveys not the universe in all its infinite and eternal dimensions, nor man in all his mysterious and sublime organization and capacities, with his immortal interests in all the creation of God, could possibly project or develop these. They are sciences which, by an insuperable and stern necessity, must be not merely superhuman, but supernatural and divine. There is a world above us and a world within us for which no man nor angel could legislate. A moral code beyond the capacity and supervision of man,—extending, too, in its requisition into a kingdom over which no human tribunal can extend any jurisdiction,—is as necessary to moral government as oxygen to combustion, or caloric to human life. There is an empire in the human heart over which no man or angel can preside, and a throne in the midst of it on which no king can sit but the King of Eternity. For this one reason alone, which is as good as a thousand, and to which the addition of a thousand could give no weight, religion and morals are sciences wholly supernatural and divine.

Civil government is itself a divine appendix added to the volumes of religion and morality. Though neither Cæsar nor Napoleon, neither Nicholas nor Victoria, were, "*by the grace of God,*" king, emperor, or queen; still the civil throne, the civil magistrate, and, therefore, civil government, are, *by the grace of God,* bestowed upon the world. Neither the church nor the world could exist without it. God himself has, therefore, benevolently ordained magistrates and judges. Men may call them kings, emperors, or presidents, (for much of politics, like much of speculative theology, is but a mere logomachy—a war of ill-assorted words)—but they are God's ministers, executioners of his will and of his vengeance, ordained to wait upon him and to execute his mandates. They are a sort of viceroys—vicegerents under law to God, and to govern according to his revealed will. The Bible is of right, and it ought to be, just as much a law to kings, and governors, and presidents, as it is to masters and servants, to husbands and wives, to parents and children. Those magistrates, therefore, who will not be governed and guided by it in the faithful execution of God's laws, God himself, in his own proper person, will judge and reward.

Since the days of Plato men have been imagining republics. They have been inventing new orders of society, new theories of socialism, and new names to things. But these are mere demonstrations of human weakness and of human scepticism. The Bible has sanctioned

republics, and commonwealths, and kingdoms, without affixing any peculiar name to them. It prescribes no form of human government, because no one form of government would suit all the countries, climes, and people of the earth. But the Bible, in the name and by the authority of its Author, demands of all persons in authority that they protect the innocent, that they punish the guilty, and that they dispense justice to all. It also demands of the governed that they submit to, "THE POWERS THAT BE," however denominated, as an ordinance of God; and that, too, not through the fear of the sword, but for the sake of conscience. It inhibits them also from treason, insubordination, and rebellion.

In the freedom of debate, and in harmony with that spirit of innovation of which we have just now spoken, a question has been mooted, and is now before the American public a matter of very grave discussion. A question, too, than which, in my humble judgment, no one pertaining to this life is worthy of a more profound deliberation, nor whose decision is fraught with more fearful and transcendent results, affecting the whole community, involving the foundation of civil government, all the fixtures of society, the extent of all earthly sovereignty, and all the principles of international law, commerce, and responsibility. That question I need scarcely more formally propose than as already propounded in the solemn interrogatory, *Is CAPITAL PUNISHMENT SANCTIONED BY DIVINE AUTHORITY?* or, in other words, *Has man a right to take away the life of man on any account whatever?*

If he have not a divine right, I frankly admit that he has no human right—no warrant or authority derived from man, that will authorize such a solemn and fearful act. Though we are not, in the first instance, to take into account the consequences of any decision, as having any direct authority to influence our reasonings upon the question, still it is important that we have some respect to the conclusions as an argument and incentive to a very calm, discreet, and patient investigation of the premises from which conclusions are to be adduced, so comprehensively and deeply involving the interests of the world.

And what, let me inquire, would be the consequences should it be decided that man has no right to take away the life of man on any account whatever? Is not the right to inflict upon him any penal pain whatever involved in this question? A single stripe may kill; nay, a single stripe, inflicted by an officer of justice, and that no very violent one, has sometimes killed. A man has no right to punish at all in any way, if he may not, in that punishment, lawfully take away the life of him that is subjected to it. He has not even the right to imprison or confine a person to a jail, workhouse, or penitentiary, if he

have not, in any case whatever, the right to kill. How many die in jails, workhouses, and penitentiaries, from causes to which they would not have been exposed but in those places of punishment!

But farther, if man has not the right to kill, nations, being men, acting in masses, have no right to go to war in any case, or for any purpose whatever. We argue that whatever power a government has is first found in the people; that men cannot innocently or rightfully do that conventionally, or in states, which they cannot do in their individual capacities. True, when a government is organized and in being, the citizens or subjects of it cannot use or exercise the powers to legislate, to judge, to punish, which, in the social compact, they have, for wise purposes, surrendered, or transferred to the government. Still the fundamental fact must not be lost sight of—that *nations can only do those things which every individual man had a right to do, anterior to the national form of society*. If, then, man had not originally a right to kill him who killed his brother, society never could, but from a special law of the Creator, have such a right. And such, we may hereafter show, was originally the divine law. For the natural reason of man, or a divine law, enacted that the blood of the murdered should be avenged by the blood of the murderer, and that pre-eminently the brother of the murdered was the person to whom the right of avenging his blood belonged.

Wars are either defensive or aggressive. But, in either point of view, they are originated and conducted on the assumption that man has a right, for just cause, to take away the life of man. For certainly it needs no argument to convince any one, however obtuse, that man cannot rightfully kill by the thousand, or by the million, if he cannot lawfully kill one individual. I wonder not, then, that peace-men are generally, if not universally, in favour of the total abolition of capital punishment for any crime whatever.

What an immense train of consequences, then, hang upon the final and correct decision of this question! Wars would, from an insuperable necessity, cease. We should then, indeed, "beat our swords into ploughshares and our spears into pruning hooks." We would then hang the war trumpet in the halls of peace and study war no more. The cannon, military establishments, standing armies, mighty navies, extensive arsenals, and all the munitions of war, would no longer be the *ultima ratio regum*. No longer would governments rely upon the arm of flesh for defence of themselves or for any redress of wrongs. What millions of gold would be saved, and what oceans of blood would be prevented!

It is true, however, that wars might cease and universal peace spread its halcyon wings all over the earth, and still the murderer be rightfully, and, by the supreme authority, put to death. There is no

incompatibility whatever in arguing for another way, than by war, of settling national controversies. We may settle them as we pacifically settle individual and corporate misunderstandings, and still argue against the abolition of capital punishment. But our argument is—that an end of all wars, offensive and defensive, follows instantly upon the national conviction that men have no right to kill those who have killed their neighbours. For certainly no one would place himself in the absurd attitude of defending wars for territory—for mere depredations on trade and commerce—in defence of chartered rights or violated treaties,—if it can be shown that we ought not to wage war against the most savage tribes and barbarous nations for having butchered our wives and children.

Again, if nations may not rightfully go to war—if man cannot, in any case, lawfully take away the life of man, in what dishonourable attitude stands the sainted patriots of all Christian lands—their Hampdens, their La Fayettees, their Washingtons? And where stands the men of faith, the men of sacred fame—the Joshuas, the Sampsons, the Baraks, the Gideons, the Davids?

And what shall we say of the morality of those who do honour to their memory? Of those who are always approbating, applauding, and eulogizing our own revolutionary heroes—of those who distinguished themselves in the Indian wars—in wars against untutored savages, desirous to retain and defend their patrimonial inheritances from English and European invasion and aggression—of those, a very numerous host of patriotic contemporaries, who have no civil honours to bestow, no civic wreath prepared, but to adorn the brows of military chieftains whose garments have been rolled in the blood of vanquished enemies; and especially of those who desire new wars for manufacturing new generals and new heroes, the idols of a nation's worship, to fill those yet empty niches in the temple of its heroic devotion!

Such are a few of the consequences that must follow the decision of the question before us in the negative. Still, as before said, we only use these as arguments for a calm, dispassionate, and thorough investigation of the subject. It must be tried by some law and before some tribunal having supreme authority in the case. But what shall be that law, and where shall that tribunal be found? It is not the law of phrenology—of expediency—of tradition—of our common statute books—of even public opinion. None of these have legitimate jurisdiction over a question that has so much of the temporal and eternal fortunes of human kind at stake.

We may, indeed, listen, either for instruction or amusement, to the pleasing fancies of poets—to the visions of enthusiastic philanthropists—to the decisions of various sects of philosophers, or to the

codes and enactments of olden times and long since fallen empires ; but from their speculations or their decisions we can derive neither argument nor authority.

Some of the most dogmatical of the new schools of philosophy assume that the sole end of punishment is the reformation of the offender ; that the murderer must be sent to a school of repentance and be better educated ; and finally, when properly instructed and honorably graduated, he shall have his passport into the confidence of society, and be again permitted to develop himself in the midst of more favourable circumstances. Such is one of the most popular substitutes for capital punishments. Plato's favourite dogmas—that man was made for philosophy, and not philosophy for man—that a perfect civil code would make a nation virtuous—and that offenders could be reformed by wise and benevolent exhortations, are not more whimsical and ridiculous than the theories of such abolitionists of capital punishment. They are, indeed, but an ingenious preface to the Elysian hell of some Universalian philanthropists, who imagine that place of punishment to be but a portico to heaven—a purgatorial antechamber, in which men are purified by gentle flames for an introduction into the inmost sanctuary of the universe.

We agree with those who affirm that punishments ought, in all cases, to be enacted and enforced with a very special regard to the reformation of transgressors ; but we cannot say with an *exclusive* regard. Emphatic and special, but not *exclusive* regard, should be shown to the reformation of the criminal. There must also be a very special and a supreme regard to the safety of the state, the protection of the innocent and unoffending. The laws of every civilized community should connect, as far as possible, the reformation and salvation of the offender with the safety of the state.

But how these two may be best secured, is a matter not yet agreed. A sentence of perpetual imprisonment is no guarantee of protection or safety to the state. The sentence, in the first place, may not be executed. It seldom is in the case of persons holding a high place in society. Governors sometimes reprieve. Political demagogues too, will not very conscientiously demur at the offer of many suffrages for a gubernatorial chair, on a private understanding that certain persons, of very influential connexions, sentenced to perpetual imprisonment, shall on their election, be pardoned. But again, it is no guarantee that the monster who has been guilty of one murder may not murder some of his attendants or fellow-prisoners in hope of escape, or that he may fire his prison or in some way elope. He may be confined for life, and yet once and again perpetrate the same foul deed. Are not numerous instances of that sort on record ! And has not the professedly reformed and pardoned criminal, on many occasions, been

guilty of a second, and sometimes of a third murder? Such instances, have been pronounced in our own country and in our own memory. A sentence of perpetual confinement is not at all an adequate security against any murderer in any view that can be taken of it, whether faithfully executed or not. Society demands a higher pledge of safety—a more satisfactory guarantee. It demands the life of the murderer.

And, strange though it may seem, we affirm the conviction that the certainty of death is, upon the whole premises, the most efficient means of reformation. When, I do not say the *unfortunate*, (a name too full of sophistry, though unfortunate he may be) but the *malignant and wicked murderer*, has been tried, convicted, and sentenced to die, after so many days or weeks; and thus when all hope of pardon is clean gone for ever, then the ministration of evangelical instruction is comparably more likely to effect a change than the chances of a long or short life within the walls of a penitentiary. It is, therefore, I must think, more rational and humane, whether we consider the safety of the state or the happiness of the individual, that the sentence of death be promptly and firmly executed.

So we reason against the reasonings and assumptions of those who would, from their phrenological or some other developments, abolish capital punishment, on the ground, that all punishment should be for the salvation of the transgressor, and that his imprisonment for life, or till evident reformation, is an ample pledge for the safety and security of the state.

As illogically reason they against capital punishment who assume that imprisonment for life is a greater punishment than death. Satan, more than three thousand years ago, reasoned more logically than they. He then argued in the face of high authority, on the trial of a very distinguished man, that man would give the world for his life—"Skin for skin, all that a man hath," said the Devil, "will he give for his life." The Lord himself admitted his plea.

I was reminded the other day of one of the fables of Æsop in the only speech I ever read in favour of the abolition of capital punishment, so far as my memory bears witness. The writer, in disproof of the assumption that imprisonment for life is a greater punishment than death, adduces the following fable:—"Æsop has finely satirized the prevalent disposition to complain of life as a burden, when we are oppressed by the ills to which humanity is heir. We are all familiar with the fable of the poor man, who was groaning under the weight of the faggots which he was carrying to his home. Weary and exhausted, he threw his load from his shoulders, and sat down by the way side, and loudly invoked Death to come and relieve him from his misery. Instantly the greedy tyrant stood before him, and, with uplifted dart, inquired,

unrevoked argument
 than love?

‘What wouldst thou have with me?’ ‘Good Death,’ exclaimed the poor man, in terrified amazement, ‘I want thee to help me to get this bundle of sticks upon my back!’ The fable needs no interpreter. Its moral is obvious.” Were imprisonment for life a worse punishment than death, it would not be lawful to exact it, so far as the divine law indicates what is just and equal. Neither the *lex talionis*, nor the Bible, nor right reason, so far as I can judge, would authorize any punishment severer than death.

But we can very sincerely sympathize with many good men in their aversion to capital punishment for any other crime than murder. Indeed, much of the excitement and indignation against capital punishment, arises from two sources:—The many crimes that have been judged worthy of death; and from the fact, that the innocent sometimes suffer while the guilty escape. In noticing the various topics from which men reason against the exaction of life for life, our design is to demonstrate how doubtful and inconclusive all mere human reasonings and statutes on this subject must be, rather than to enter into a full investigation of all that may be alleged from these sources of reason and argumentation.

We cheerfully admit our criminal code is not in unison with the spirit of the age, nor with the presiding genius of European and American civilization. Christian justice, humanity, and mercy have, indeed, in some countries, and in none more than in our own, greatly modified and improved political law and political justice.

Public opinion for more than a century has been vascillating between two extreme systems of punishment; one of which punishes more than a hundred varieties of offence with death; while the other inflicts death on no transgressor for any crime whatever. During the reign of sanguinary law in England, as Blackstone very correctly observes, “It is a melancholy truth, that among the variety of actions which men are daily liable to commit, no less than one 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,” adds the learned jurist, “increases the number of offenders.”

Such a criminal code was, indeed, very likely to lead to another extreme. It has, therefore, been yielding in severity to the more humane genius of modern civilization. The human mind, ocean-like, has its ebbings and its flowings, its high tides and its low tides, on all exciting subjects. Time was when an Englishman lost his life for a very paltry theft—for the mere purloining of twelve pence sterling. That there ought to be a correspondence between offences and their punishment, is an oracle of reason and common sense, so obvious to all, that it may be regarded in the light of a primary truth—a sort of

self-evident proposition, that only needs to be stated to any person of reflection to secure his immediate assent.

We advocate a discriminating tariff of penalties and punishments, not for the sake of revenue alone, but for the sake of protecting innocence and virtue. We have no faith either in the justice or expediency of a horizontal tariff, awarding one and the same punishment to each and every one of a hundred crimes. We would not hang one man for stealing a shilling, and only hang another man for treason, sacrilege, rape, or murder. We believe in the scriptural phrases, "worthy of stripes," "worthy of a sorer punishment," and "worthy of death." These forms of speech occur in both Testaments, but more frequently in the New than in the Old. A phrase from which a sound and irrefutable argument in support of capital punishment may be deduced; but a phrase which no one opposed to it dare on any occasion to employ.

With the profound Montesquieu, I argue, that "the severity of laws prevents their execution; and, therefore, whenever punishment transcends reasonable limits, the public will not unfrequently prefer impunity to inhumanity, or to excessive punishment." Nay, with a greater than Montesquieu, I believe that an eye should not be taken for a tooth, nor a few years imprisonment for a man's whole life.

The penal code of every community ought to be an index of its moral sense and of its moral character. It ought to be regarded as a licensed exposition of its views upon the comparative criminality and malignity of every action affecting the life, the liberty, the character, or the prosperity of its citizens. It ought, indeed, to be a polished mirror from which may be reflected upon its own citizens and upon surrounding society, a nation's intelligence, moral taste, and moral excellency. Should it affix the same punishment to various and numerous offences, irrespective of their peculiar criminality, it will confound and bewilder the moral perceptions of the people, and exhibit to the world a very fallacious test of the comparative atrocity and malignity of human actions.

It may, indeed, be assumed that all sins are equally violations of the law of God—equally dishonourable to his majesty—equally obnoxious to his displeasure; and, therefore, equally to be punished. But be this view abstractly right or wrong, it is alien to our subject; for sin as *respects man* in its injurious tendency, is that alone with which human legislation and human punishment have to do. The Lord has reserved to himself the right to punish sin as committed against himself; and has delegated to man the authority to punish sin only in so far as it is pregnant with evils to the human race. In this view alone are sins to be estimated more or less atrocious, and more or less severely to be punished. The doctrine of sound reason,

as well as that of revelation, is, "that every transgression and disobedience of the divine law, should receive a just and adequate recompence of reward."

From such considerations and reasonings as these, we would advocate a scale of punishments in harmony with the most correct views of well defined grades of criminality and wickedness of human actions, ascending up to capital punishment, only in the case of wilful and deliberate murder, not to be extenuated in any case by passion, intemperance, or any temptation whatsoever. And to obviate the exceptions not unfrequently taken to capital punishment on the ground that sometimes the innocent may suffer, while the guilty escape, might there not be such legal provisions as would prevent the possibility of any one being convicted without such a plurality of witness and proof of guilt as would not leave the shadow of a doubt? We doubt not the practicability of such a provision.

Thus we reason with those that reason from their conceptions of the congruity, expediency, and rational propriety of human theories and codes as respects penal statutes in general, and capital punishment in particular. Should we, then, claim no more authority for our reasonings than those who differ from us claim for theirs—(though, of course, we suppose we have the stronger and the better reasons)—we have gained this point, that they demurring to our conclusions, then we must both appeal to a higher court, and await the decision of the Supreme Lawgiver and Judge of the universe. This is all we have sought in these preliminary views and reasonings, and certainly it will be conceded to us by those who may dissent from the positions we have already assumed.

In this present erratic world there are two ultra schools of philosophy: the one takes nothing, the other takes almost every thing on credit. With the one, the fathers are wiser than their sons; with the other, the sons are wiser than their fathers. The antiquity of an opinion is a passport into the favour of one; while the novelty of it secures for it a favourable introduction to the confidence of the other. The tendency of the one school is to a blind devotion; that of the other, to an absolute scepticism. We will not abide by the decision of either school. We prefer to carry up this question to a higher court—to a Judge that perfectly comprehends the whole constitution of man as an animal, intellectual, and moral being—by whom the fundamental laws of the moral universe, and man in all his mysterious and sublime relations to that universe are contemplated—not, indeed, in the dim light of time, but in the clear and bright effulgence of a glorious and awful eternity. We, therefore, appeal from all human reasonings and from all human codes, to the infallible decisions of that court as registered in the faithful records of the Old and New Testaments. The question before us is,

What punishment does the Supreme Lawgiver and Judge award to the murderer? This is a mere question of fact, and not of a philosophic theory. We must, then, decide it by testimony. We shall, therefore, make a direct appeal to the divine record, and endeavour to find an answer for it from an induction of the cases and statutes therein recorded; or at least, so many of them as will satisfactorily indicate the divine will on the subject.

The first case in the annals of time brought before this court, was that of Cain, indicted for the murder of his brother Abel. Abel's blood, thus shed, in the judgment of God called for vengeance upon him that shed it. His words are—"The voice of thy brother's blood crieth unto me from the ground." He immediately added, "Thou art cursed from the earth," dooming him to become "a fugitive and a vagabond."

This excommunication beyond the pale of the divine protection, Cain understood to be a license given to any person to kill him. His language clearly indicates this:—"It shall come to pass," said he, "that every one that findeth me shall kill me." A single question on this case, it seems, might decide the matter, viz:—Was this the voice of reason, the voice of conscience, or the voice of God! Rather, was it not the voice of them all? If so, then, is not the crime of murder, on its first appearance, judged worthy of death?

Does any one doubt it? Let him place the matter before his own mind in the form of a trilemma. Either Cain's own natural reason and conscience, or an antecedent law, or the sentence God pronounced upon him, decreed his death for that crime. Can any one assign any other reason than some one of these three, as extorting from Cain the declaration that "every one who now findeth me will kill me?" The whole three may, indeed, have conspired to produce the conviction; but certainly some one of them did; and this is enough to prove, that, in the sight of God, his crime was worthy of death: for none of the three could exist without a revelation from God. Such was the decision of the first case. God, indeed, for reasons growing out of the then condition of the world, was pleased to reprieve him for the time being, and gave him a pledge that no one should kill him.

Some may ask, Why did not God himself immediately kill Cain, seeing that his brother's blood called for vengeance? To which several answers may be given; such as, God, who knows the hearts of all men, and whose prerogative it is to show mercy, may have known that Cain did not intend to kill his brother, but only to humble him; or he may have judged it expedient to give proof of his mercy in the exercise of his sovereignty in the beginning of the world, waiting till farther developments of the violence of human passion would

justify him before the universe in inflicting adequate penalties upon transgressors; and also, in demonstration of another truth, viz:—that a government all mercy would not promote the safety or happiness of man: for this experiment resulted in the earth's being so filled with violence that God was finally constrained to punish the antediluvians by one common death inflicted by his own hand. This was capital punishment in the superlative degree.

What numerous and various acts of violence characterized the antediluvian world, we are not informed. What laws were promulgated by divine authority, we are not told. But the silence of antiquity is no proof that such laws were not enacted. For, although we have no published code of antediluvian laws, we have allusions to existing institutions which could not have been introduced without laws. A priesthood, altars, victims, and sacrifices, could not have existed without positive law. The distribution of animals into clean and unclean with regard not to food, but to sacrifice, presupposes very clear and positive enactments. Neither Abel, nor Seth, nor Enoch, could have pleased God, or walked with God, without law. The light of nature, too, could not have originated altars, victims, and priests. Indeed, the fact that the earth was filled with violence, is no inconsiderable argument that the will of God had been revealed; for where no law is, there is no transgression; or no violation, no violence.

But besides what is affirmed of vengeance in the case of Cain, we have, so late as the time of his great-great-grandson, Lamech, another very direct reference to the punishment of murder. Lamech, of the family of Cain, has the honour of having been the first of polygamist known to history. His evil-foreboding wives, Adah and Zillah, apprehensive of the vengeance of murder falling upon their husband, so excited him as to have called forth from him the oldest poem in the world. It may be translated as follows:—

Adah and Zillah, hear my voice;
Wives of Lamech, hearken to my speech:—
For I have slain a man for wounding me,
A young man for having beaten me.
If Cain be avenged sevenfold,
Surely Lamech seventy and seven.

This being written in hemisticks in the original, is generally, by the learned, regarded as the oldest poetry in the literature of the world. There is, to my mind, but one ambiguity in the passage. It respects the punctuation of the third line. It may be read interrogatively or indicatively:—

Either— “I have slain a man for wounding me:
Or— Have I slain a man for wounding me,
A young man for having bruised me?”

*A. potter
can be
in this
matter
take
place
argum
nor alle
that of
proor*

Read indicatively, it intimates that Lamech killed a man in self-defence. Read interrogatively, it denies he killed any person. In either case, he rebukes the evil forebodings of his wives; for if any one killed him, not being guilty of murder, seventy-seven fold vengeance would be inflicted upon him more than on Cain. Beyond which we know of nothing more terrible. On the above version I may say I have the Jewish Targums, Adam Clark, and other Rabbies of distinction, with me. The whole case, taken complexly, indicates that death for murder was the established justice of the antediluvian world.

From this fragment of antediluvian history handed down to us, we shall next look into the more copious details of postdiluvian records. In this investigation it is worthy of special consideration that the first act of legislation in setting up the new world, while the whole human family was Noah's family, was *an act against murder*. This was an act not for Jew or Gentile—not for Egyptian, Chaldean, Greek, or Roman; but before any of them existed, for the whole human race. It was not an act against any particular kind of murder—such as parricide or fratricide—but an act against murder, simply on its own account.

The occasion and circumstances accompanying the enactment of many laws are necessarily explanatory of them. The circumstances and occasion of this law are emphatically worthy of attention. The whole world, one household excepted, had been destroyed by the immediate hand of God. This destruction was made necessary because of the unparalleled violence that filled the earth. One family was wholly destroyed. This family was that of Cain, to which all cases of murder, or of punishment for it, named in the old world, belonged. The earth being thus depopulated, the family of Cain and of Lamech being wholly destroyed—to prevent the increase of crime and the necessity of such another catastrophe, God gave to man, by a positive and express precept, the power, the authority, and the injunction to cut off all murderers.

The occasion of this act of legislation, and the positive and peremptory terms in which it is expressed, alike commend it to our consideration and regard. It is expressed in the following words:—“*At the hand of every man's brother will I require the life of man. Whoso sheddeth man's blood, by man shall his blood be shed: for in the image of God made he man.*” No statute was ever more free from ambiguity, or more intelligible to all minds, than this one. I never met with any one who seemed to misunderstand it. Why, then, is its divine obligation not universally felt and acknowledged!

To one unacquainted with the power of enthusiasm, especially when its victim is seized with a morbid philanthropy, or charmed with the fascinations of a new theory, it will appear somewhat mysterious how

a precept so express, so authoritative, and peremptory, could be disposed of or evaded. It is all done by the magic of a single assumption—"Christianity is more mild, and generous, and philanthropic than the law of Moses." But is this a provision of the law of Moses? That, indeed, is assumed on the simple ground that Moses the lawgiver wrote the book of Genesis! One might as justly assume that Noah's ark or Melchizedeck's pontificate was a part of the law of Moses, because Moses is the only person that writes their history. Since the age of spiritual Quakerism down till now, the abolitionists of capital punishment generally occupy this ground. Indeed, as there is no dispute about the meaning of the precept, the only way to dispose of it is to locate it amongst the Jewish rites and usages which have been abolished. But the simple fact that this precept was promulged in the year of the world 1658, and that Moses gave not the law till the year 2513, that is, full eight hundred and fifty-five years after, is a fact so prominent and so indisputable, as to render any other refutation of the assumption a work of the most gratuitous supererogation. I wonder why the same romantic genius that embodies with the Jewish code a precept given to the whole human family, almost a thousand years before there was a Jewish nation, did not also embody with the same code, and appropriate to the same people, the right to eat animal food, then for the first time given to man; the covenant of day and night, of summer and winter, of seed time and harvest, indicated and confirmed by the celestial arch which God erects upon the bosom of a cloud in token of his "covenant with all flesh." The constitution that guaranties the continuance of day and night and the seasons of the year, also secures and protects the life of man from the violence of man, by a statute simultaneously promulged and committed to the father of the new world for the benefit of the whole human race. Why not also represent this, too, as done away, and thus place the world without the precincts of the covenanted mercies given to Noah for his family, and recorded by Moses the man of God? There is not, then, the shadow of a reason for the assumption that the present human family is not obliged to enforce the statute abovenamed. The right to eat animal food, to expect the uninterrupted succession of seasons, and the obligation to put the murderer to death, are of equal antiquity and of the same divine authority. Every one claiming any interest in the world, because of his relation to Noah, and God's charter of privileges granted to him, must either show by some authority equally express and incontrovertible, that God has abolished one part of it and perpetuated the remainder, or advocate capital punishment upon divine authority.

But, still more convincing and decisive, the reason assigned by the Divine Author of the statute commanding capital punishment. It is

in these words:—"FOR IN THE IMAGE OF GOD MADE HE MAN." A reason, indeed, for the statute worthy of God to propound and worthy of man to honour and regard. Why a reason so forcible and so full of eloquence and authority, could be so frequently disparaged by an intelligent and Christian community, is, to my mind, greatly indicative not merely of the want of piety, but of humanity and self-respect. The reason here assigned for this precept places the crime of murder in an entirely new attitude before the mind. Much, indeed, has been said of this crime—of its enormous dimensions—of its moral turpitude—its appalling guilt—its diabolical malignity; but here it is presented to us as the greatest insult which man can offer to his Creator—to the Supreme Majesty of the universe, apart from all its bearings upon human society and its unfortunate victim.

The worst thing ever said of Satan was said by the Messiah. On one occasion he said that he "was a liar and a murderer from the beginning." It is impossible, then, that we can exaggerate the wickedness and malignancy of murder. No one yet has been able to do it justice. It desecrates in effigy, and, as far as the impotent arm of flesh has power, it destroys the once brightest image of the invisible and eternal God, that adorned any province of his vast and glorious universe. Man is yet great in his ruins. Once the most exact and beautiful similitude and copy of the Great Original of universal being, he is still to be revered; and, when renewed again in the moral image of his Maker, he is to be loved and admired as the noblest work, not only of almighty power, but as the special and exclusive object of redeeming grace and mercy. But it is enough for our present purpose to know that in making it the permanent duty of society to avenge this crime, God makes its dishonour to his own image the paramount reason why the life of the murderer should be taken from him. The Most High God gives not many reasons for his precepts; but when he gives one, it is worthy of himself and of the occasion, and claims the profound respect of every discerning and moral man.

Before we dismiss this divine statute, which has never been repealed, which never can be abolished, we must add one other remark in the form of an argument against the possibility of its abrogation. The reason given for slaying the murderer is one of perpetual validity. If it was ever good and obligatory, it must always be so. So long as it stands true that man was created in the image of God, so long it will bind every religious and moral people to take away the life of the murderer. It is, therefore, of immutable and perpetual obligation.

We shall now briefly glance at the criminal code of the Jewish nation, merely to see whether it harmonizes with the prominent statutes of the postdiluvian, if not of the antediluvian, age. It is often

very properly observed, that the Jewish nation was placed under a theocracy. Punishment by death was, under it, somewhat extended beyond the single crime of murder. Various crimes affecting human life, endangering or implying murder, were, under the special government of God, amongst a people whose ecclesiastic and political constitution were one and the same, doomed to punishment by death. According to the latest, and one of the most respectable treatises yet written on *The Elements of Moral Science*, by one of the yet living ornaments of Trinity College, Cambridge, the Jewish code took a proper view of polity. For, as Mr. Whewell very profoundly observes, "It is to be recollected that one requisite for our advancing towards a state of society so generally satisfactory, is the establishment of moral rules as realities; and to this, at present, *there appears to be no way, except by making ignominious death the climax of our scale of punishments.*" It is, indeed, the climax of several categories in the Jewish code. Not only he that *mortally* smote a fellow-citizen; but he that smote his father or his mother, whether mortally or not; he that stole a man and sold him; he that cursed his parents; the reckless owner of an animal that killed, when through his neglect life was lost; all that practised witchcraft, blasphemy, incest, sodomy, bestiality, &c. were doomed worthy of death. Both the letter and the spirit of the Jewish code on the subject of murder, and the reasons given for exacting life for life, demand our special attention; we shall, therefore, copy a few of the more prominent statutes of that institution.

The fullest summary of the ordinances concerning manslaughter and murder, enjoined upon the Jews, is found in the Book of Numbers, chap. xxxv., with some of the reasons annexed, indicative of the philosophy of the divine requisitions. We shall read the whole passage:—

"9. And the Lord spake unto Moses, saying,

"10. Speak unto the children of Israel, and say unto them, When ye be come over Jordan into the land of Canaan;

"11. Then ye shall appoint you cities to be cities of refuge for you; that the slayer may flee thither, which killeth any person at unawares.

"12. And they shall be unto you cities for refuge from the avenger; that the manslayer die not, until he stand before the congregation in judgment.

"13. And of these cities which ye shall give, six cities shall ye have for refuge.

"14. Ye shall give three cities on this side Jordan, and three cities shall ye give in the land of Canaan, which shall be cities of refuge.

"15. These six cities shall be a refuge both for the children of Israel, and for the stranger, and for the sojourner among them; that every one that killeth any person unawares may flee thither.

"16. And if he smite him with an instrument of iron so that he die, he is a murderer: the murderer shall surely be put to death.

"17. And if he smite him with throwing a stone, wherewith he may die, and he die, he is a murderer: the murderer shall surely be put to death.

"18. Or if he smite him with an hand-weapon of wood, wherewith he may die, and he die, he is a murderer: the murderer shall surely be put to death.

"19. The revenger of blood himself shall slay the murderer; when he meeteth him, he shall slay him.

"20. But if he thrust him of hatred, or hurl at him by laying of wait, that he die;

"21. Or in enmity smite him with his hand, that he die: he that smote him shall surely be put to death; for he is a murderer: the revenger of blood shall slay the murderer, when he meeteth him.

"22. But if he thrust him suddenly without enmity, or have cast upon him any thing without laying of wait,

"23. Or with any stone, wherewith a man may die, seeing him not, and cast it upon him, that he die, and was not his enemy, neither sought his harm;

"24. Then the congregation shall judge between the slayer and the revenger of blood according to these judgments:—

"25. And the congregation shall deliver the slayer out of the hand of the revenger of blood, and the congregation shall restore him to the city of his refuge, whither he was fled; and he shall abide in it unto the death of the high priest, which was anointed with the holy oil.

"26. But if the slayer shall at any time come without the border of the city of his refuge, whither he was fled;

"27. And the revenger of blood find him without the borders of the city of his refuge, and the revenger of blood kill the slayer; he shall not be guilty of blood;

"28. Because he should have remained in the city of his refuge until the death of the high priest; but after the death of the high priest the slayer shall return into the land of his possession.

"29. So these things shall be for a statute of judgment unto you, throughout your generations, in all your dwellings.

"30. Whoso killeth any person, the murderer shall be put to death by the mouth of witnesses: but one witness shall not testify against any person to cause him to die.

"31. Moreover, ye shall take no satisfaction for the life of a murderer, which is guilty of death, but he shall surely be put to death.

"32. And ye shall take no satisfaction for him that is fled to the city of his refuge, that he should come again to dwell in the land, until the death of the high priest.

"33. So ye shall not pollute the land wherein ye are; for blood it defileth the land: and the land cannot be cleansed of the blood that is shed therein, but by the blood of him that shed it."

The ordinance for erecting the cities of refuge and the police under which they were placed, like every other part of the Mosaic institu-

tion, commend the wisdom, justice, and benevolence, of the Lawgiver and King of Israel. Two great objects were contemplated and secured by that institution—a refuge for the innocent, and a *caveat* against manslaughter.

When any one was killed by a mere accident, without any malice or evil intent on the part of him that did it, he was, when admitted into any one of these cities, legally secure against the avenger of blood. This right of avenging blood from Adam to Moses, during the whole patriarchal age, seems to have been, with divine approbation, conferred upon the nearest kinsman of the deceased. It is very evident, not merely from the silence of the law, but from the retention of the ancient official name, that the erection of these cities created no new officer in the land, other than he to whom, from the beginning, it had always belonged. The next in blood, not only antecedent, but subsequently to the erection of these cities, still retained the right to avenge his murdered relative. These cities were, therefore, intended to protect the innocent from rash and unjust executions. Before that time the altar, it appears, (Ex. xxi. 14,) had been the sanctuary of refuge for the unfortunate manslayer.

But, in the second place, the cities of refuge were a sort of penitentiaries, to which even an innocent manslayer must, at the peril of his life, be confined until the death of that high priest under whose administration he had killed any one. This sometimes happened to be all his life. If at any time during the pontificate of the high priest, he presumed to go out of the city, it was at the hazard of his life. This was placing a new guard around human life. A wise provision, truly, against manslaughter, even by accident. He that was so unfortunate as to kill any person by the veriest accident, incurred two imminent risks;—that of being killed before he got into the city of refuge by the avenger of blood; and, if not killed, that of being confined for years, perhaps all his life, within its walls, away from his family and home.

But in case of murder, whether premeditated or from exacerbation of passion, the cities of refuge afforded no asylum whatever. On trial and conviction they were, in all cases, taken from them and put to death. To the guilty murderer there was no escape. If he escaped the hand of the avenger of blood while fleeing to the city, if perchance he fled there for trial, when convicted he always expiated the blood that he shed by his own.

It is scarcely necessary to remark how often and with what clearness and authority it is promulged—"The murderer shall surely be put to death;" and again, "The avenger of blood himself shall kill him when he meeteth him." No one will, I presume, after a single reading of this statute, require any other evidence that capital punish-

ment was divinely ordained during the whole period of Old Testament history—that it was an essential part of the Jewish institution, and during its continuance extended much beyond the patriarchal requisition.

But there is a reason connected with these ordinances that demands our special consideration. A reason there is, which, like that given to Noah, has no respect to time, place, or circumstance. It exclusively belongs to no age, to no nation or people. It is a reason, too, why murder shall not be pardoned. It is a reason why the Lord so solemnly and so positively said, “You shall take no satisfaction for the life of a murderer”—he must not be ransomed at any price. Why, does any one ask, no ransom, no commutation, no pardon!! The answer, the reason, is one of fearful import. It is this:—“*The land cannot be cleansed of the blood that is shed therein BUT BY THE BLOOD OF HIM THAT SHED IT.*” So God Almighty has ordained in his infinite wisdom, justice, and benevolence. It is enough. HE has said it. There are no tears of repentance, no contrition of heart, no agony of soul, that can expiate the sin of murder. Lebanon is not sufficient to burn, nor all the beasts thereof, for one burnt offering to cleanse from defilement a land polluted with the blood of one single unexpiated murder. As soon could the breath of a mortal melt the polar mountains of ice, dissolve the Siberian snows, and fill the dreary wastes with the verdure, the beauty, and the fragrance of ancient Eden; as soon would the sigh of despair quicken into life the ashes of all the murdered dead, or a single penitential tear extinguish the fire of hell, as any expiation or ablution of mortal hand, other than the blood of the murderer, atone to God's violated law, do honour to his insulted majesty, and purify the land from the dark defilement of unavenged blood.

I cannot but tremble for our country, if this be the decision of the Governor of nations, when I reflect upon the multitude that have, in single combat, sacrificed each other, in purpose or in fact, at the shrine of a false and factitious honour; and of those who, in the sullen dark malice of the dastardly assassin, avenged their imaginary wrongs by the blood of their fellow-citizens; and of those who sought to conceal their infamous crimes of lust and passion—of burglary, arson, and rapine—with the blood of those who might have been witnesses against them; I say, when I reflect upon the hundreds and the thousands thus murdered all over this land, whose blood yet unexpiated still pollutes our soil; but through the vagueness and ambiguity of our laws, through the venality, corruption, or incompetency of our tribunals, or the servility or self-willedness of our chief magistrates, yet cries to heaven for vengeance, not merely upon the head of him that shed it, but upon that government and that people that still suffer

for which God has
cleansed there is no
government.

him to live, methinks I see a most portentous cloud, dark, swollen, and lowering, surcharged with the fires of divine indignation, ready to burst in accumulated vengeance upon our blood-polluted land.

But in extenuation of our apathy, or as apologetic for our indifference, it is sometimes assumed that the Messiah has for ever abolished the bloody code of Moses and the patriarchs, and has preached more benevolence and forgiveness to the nations. What a baseless assumption!! What an outrage upon the character of the Messiah!! True, indeed, he came not to judge the world, to act the civil magistrate, the civil lawgiver; or to assume the regal authority over any nation or people of this world. His kingdom was spiritual and heavenly. In it he would not have an eye for an eye, tooth for tooth, or stripe for stripe. He would not have his followers to go to law for any violence, fraud, or wrong inflicted on them on his account. They might indeed, sue those out of his kingdom for civil wrongs in civil courts; or they might consent to be sued for unjust demands upon them in their political and civil relations; but for any wrong, violence, or compulsion, inflicted on them for their religion, their conscientious allegiance to him, they were to endure it cheerfully, and rejoice that they were counted worthy to suffer wrong, or even shame for his name's sake. But he that hence argues for the abolition of civil government—of civil penalties—or for the abrogation of statutes given to mankind by God himself, founded on his own perfections and the immutable relations of things, not merely typical and adumbrative in their natures, but jurisprudential and for the safety of society, shocks all common sense. As well might we say that morality and the moral character of God are mutable things. The New Testament abolishes nothing that was not in its own nature temporal, local, and prospective of better things. It enacts no civil statutes. It does not even designate the persons between whom the institution of marriage may be consummated. It abrogates nothing in the Old Testament that was not substantiated in Christ, or that was not peculiar to the twelve tribes. But we have shown that the precept in discussion belonged not to any institution, Patriarchal, Jewish, or Christian; but to the whole family of man.

Does not an Apostle say, that "the law is good if a man use it lawfully!" Does he not say, that "the law was not made for a righteous man; but for the lawless and disobedient:" for murderers, man-slayers, man-stealers, thieves, liars, perjured persons, &c. &c.; and surely for all these evil doers it has, or ought to have, its penalties. In executing these on their proper subjects the law is used lawfully.

Again, does not Paul teach that the "powers that be are ordained of God?"—that the magistrate "is his minister," and that he right-

fully wears a sword not his own, but God's? And, in the name of reason, why have a sword in the State, and worn by the civil magistrate, if it be unlawful or unchristian to put any one to death on any account whatever! That would, indeed, be to "bear the sword in vain;" a thing which the Apostles themselves would have reprobated. Christians, then, must remember that the magistrate is God's armed minister, and that he must be obeyed by every Christian man, not merely through the fear of his wrath, or of his avenging sword, but for the sake of a conscientious regard to God's authority, whose minister of justice he is. The civil magistrate is now the civil avenger of blood. Paul calls him "*a messenger of wrath upon him that doeth evil.*"

There is not, then, a word in the Old Testament or New inhibiting capital punishment, nor a single intimation that it should be done away. On the contrary, reasons are given as the basis of the requisition of life for life, which never can be done away—which are as forcible at this hour as they were in the days of Cain, Noah, Moses, and Jesus Christ. We reiterate the statute with clearer conviction of its obligation and utility on every consideration of the broad, deep, solid, and enduring premises on which it is founded;—"Thou shalt take (no ransom,) no satisfaction for the life of the murderer"—"He that sheddeth man's blood by man shall his blood be shed; for in the image of God made he man"—"The land cannot be cleansed from blood but by the blood of him that shed it." For this purpose the magistrate is "God's minister, an avenger, to execute wrath upon him that doeth evil."

The necessity, utility, and importance of capital punishment, we must regard, on the premises already considered, as unequivocally and irrefragably established, so far as divine authority can require or establish any thing. And although the most plain and striking passages, found in the Patriarchal, Jewish, and Christian institutions, have been adduced and partially considered, the half has not been told, nor the argument fully developed. A single address on such an occasion as the present, is not sufficient for a subject so comprehensive and important. It would, indeed, require a volume rather than one short lecture. Conscious of our inability fully to discuss such a question on such an occasion, we shall, therefore, add but a few remarks farther.

It has been said, not by them of old time, but by them of our time, that "*thou shalt not kill,*" the sixth precept of the Decalogue, inhibits all taking away of human life. A sect of extreme pietists somewhere on Long Island, as report saith, gave to the precept a broader interpretation; and, therefore, forbade the killing of any living creature for food. As consistent they as he who says the precept "*thou shalt*

not kill " prohibits capital punishment. It is the very precept which calls for the blood of him that violates it.

Moses did not himself so interpret this precept: for on the very day he descended from the mount with the autograph in his hand, he commanded the sons of Levi to gird on their swords and kill the idolators that had eaten and drunk and danced to an idol: of whom no less than three thousand fell that day.

I introduce this case for another purpose—to repudiate an objection urged against capital punishment. It is asked, What Christian man, what saint, or what man of delicate moral sensibility, could execute such a sentence—could despatch to the judgment throne a criminal crimsoned with the blood of his fellow-man?

It is not the Sheriff's hand—it is not the sword of the executioner. It is the hand of God—it is the sword of his justice that takes away that life which he himself gave, because it has murderously taken away a life which it could not give.

Is the hand of a man purer than the hand of an angel? And who was it, that, in one memorable night, passing through the land of Egypt, by a single stroke smote to death the first born of all the realms of Pharaoh, from the royal palace down to the cottage of the meanest serf that breathed upon his soil? And who was it, that, on another fatal night, while passing through the camp of the insolent Assyrian chief, killed one hundred and eighty-five thousand of his most valiant men? *Was it not an angel of the Lord?* Nay, rather, who was it, that, in the days of Noah, inflicted with his own hand capital and condign punishment upon a world filled with violence and with blood! Who was it that rained down fire and brimstone from the heavens on the devoted cities of the Plain, saving, as in the former case, but a single family? Was it not the Lord himself in person?

And what shall we say of the Father of the Faithful, returning from the slaughter of the confederate kings? Of Moses, as the messenger of God, slaying not only a single Egyptian, but smiting with his rod in the depths of the Red Sea, the strength, the pride, and the glory of Egypt? Of Joshua, the son of Nun, destroying seven idolatrous nations? Of Samuel, the pure and pious Samuel, hewing to pieces with his own hand the king of Amalek? Of David and his hundred battles? Time would fail me to name all the instances in which God has made the purest, the holiest, and the best of men, as well as angels, the executioners of his justice. I shall mention another case—the case of Joab—one that, before I understood the statutes of the Lord on the subject of murder, often perplexed me. There lay king David, the beloved of his God, on the bed of death; and while making his last will and testament, he remembered Joab—the brave, the

valorous, the mighty Joab—than whom no king could boast of a truer friend, or a greater or more successful general. His own kinsman, too—his own sister's son. He names him to his son Solomon, his successor to the sword of Israel. And what is his will concerning Joab? What honours or rewards has he in store for him? Hearken to his words:—"Solomon, my son, thou knowest also what Joab, the son of Zeruah, did to me, and what he did to the two captains of the hosts of Israel; to Abner the son of Ner, and to Amasa the son of Jether; whom he slew, and shed the blood of war in peace, and put the blood of war upon his girdle that was about his loins, and in the shoes that were upon his feet. Do, therefore, according to thy wisdom, and let not his hoary head go down to the grave in peace." So willed the dying David. And what did Solomon his son? There was no city of refuge for Joab: but flying into the tabernacle, and taking hold of the horns of the altar, Joab said, "Here will I die." And what said the king? "Go, Benaiah, do as he hath said. Fall upon him and bury him, that," adds the king, "thou mayest take away the innocent blood which Joab shed from me and from the house of my father." Was there ever such a comment on such a text as the following:—"The land cannot be cleansed of the blood that is shed therein, but by the blood of him that shed it!"

But we have yet a stronger case. The case of "David's son and David's Lord." His words are oracles from which there is no appeal; his example an argument to which there is no response. Is he, or is he not, on the side of capital punishment? While on earth he was a *saviour*. In heaven he is now a *king*. Hereafter he will appear in the character of a *judge* and an avenger. We ask not what he will do then in finally and eternally punishing the impenitent. We ask not what he did while on earth, a Saviour; for then "he came to save men's lives, and not to destroy." But we ask, What did he when he became king, when exalted to be the prince and the governor of the universe? He intimated the leading principles of his government before he was crowned Lord of all, to those Jews who were intent on his destruction. "I will," said he, "send you prophets, wise men, and scribes. Some of them you will kill and crucify; others you will scourge in your synagogues and persecute from city to city, that upon you may come all the righteous blood shed upon the earth, from the blood of Abel to the blood of Barachias whom ye slew between the temple and the altar. Verily, I say to you, all these things shall come on this generation." Did he, when king, execute this threat? Ask Josephus, Tacitus, and a hundred other witnesses. As governor of the world, he despatched Titus with a Roman army, and laid siege to Jerusalem and other cities in Judea. In the whole of these various wars and sieges—in the destruction of the city and the temple, he killed

more than one million of them, and sent the remainder into exile. But this is not the only case. It is the first one of notoriety in his reign of justice. Ever since he ascended the throne his promise is, "All that take the sword shall perish with the sword." As king of nations and governor of the world, he executes wrath in the temporal punishments which he awards, and by his ministers executes upon men. According to king David, in the second psalm, when the Messiah should be placed as king on Mount Zion, he was to "rule the nations with a rod of iron, and to break them in pieces like a potter's vessel." This he has already done in more than one instance, and will yet do in many more. But he does it not in person, but by his ministers. Still he does it.

It being evident, as we suppose, that capital punishment is not only countenanced by innumerable biblical precedents, but that it is also most positively enjoined upon all persons to whom God has revealed his will, who are entrusted with the government of the world, we shall henceforth regard it as a divine precept and requisition, to which we are bound to yield our cordial assent; not because it chances to fall in with our theories of what is expedient, useful, or consonant, to the genius of our age and government; but because of the supreme authority that enacts it—because it is a degree of the King of the Universe, the ultimate Judge of the living and the dead, and because he himself has practised it, and still continues to practice it, as moral governor of the world.

Though not disposed to appear paradoxical, I hesitate not to avow the conviction that the divine ordinance is as merciful as it is just—that, for example, it was most humane and merciful on the part of David to command his son Solomon to take away the life of Joab. I cite this case and avow this conviction, for the sake of those opposers of capital punishment, who, under the pretence of a more refined and enlarged philanthropy and humanity, are, now-a-days, declaiming both eloquently and impassionedly against capital punishment, because of its alleged cruelty and inhumanity. That those who thus inveigh against it, are philanthropic in purpose and feeling, I doubt not. But that they are so, in fact, is not quite so evident.

In seeking to abolish capital punishment, do they not invest human life of one of its main pillars of defence? In all countries, and, I believe, in all ages, murders increase and diminish in the ratio of the certainty or uncertainty of the exaction of life for life. It must, in the nature of things, be so. Everything is safe or unsafe as it is guarded or not guarded by education—by law—by the magnitude and certainty or uncertainty of rewards and punishments. In abolishing capital punishment, the main bulwark against the perpetration of murder is fallen to the ground. The broad shield of a nation's safety and defence

from violence and blood, is broken to pieces, and the honourable and virtuous citizen, naked and defenceless, left exposed to the murderous assaults of malice and envy. Of what avail is the bare possibility of a punishment infinitely less than the injury inflicted on the individual and the state; enfeebled, too, as it must be, by a hundred chances of escape against one of apprehension and conviction? Who could feel himself safe under a government where there is no protection of his life against the furious passions which not unfrequently display themselves in the most appalling forms, in some of those terrific monsters, with which human society more or less abounds? Exile, confinement in prisons or workhouses, are, to such demons, as an act of Congress to a South American tiger, or as the stubble to Job's Leviathan.

In saving a murderer from death, through a morbid compassion, society acts with more indiscretion than the fabled husbandman, who, in commiseration, carried home to his hearth a congealed serpent, which, when warmed into life, fatally struck the children of its benefactor. In saving from the penalty of God's law a single murderer, society sins against itself, as well as against God; and occasions, or may occasion, the destruction of one or more of its citizens. If every one convicted of murder in any of its various forms, was uniformly and infallibly put to death, can any intelligent citizen imagine that crimes of this sort would not rather diminish than increase? The strong probability of escape, disarms every legal punishment of its terror to evil doers.

It has been observed that murder and robbery more frequently accompany each other in all states that punish the robber, as well as the murderer, by death, than in those that never visit theft or highway robbery with capital punishment. As true it is that in those states where murder is very seldom punished with death, the crime, so far as my reading and observation go, is more frequently perpetrated, than in those states in which its proper punishment is much more certain. We cannot, therefore, but think that the court of Judge Lynch would not have held its sessions so frequently in late years, had it not been that other courts so often failed to hold their sessions, with that certainty of capital punishment for capital offences, which right reason, human prudence, and God's holy law so clearly and authoritatively demands. We cannot but trace the present appalling increase of murders in our country to those morbid philanthropists, who, in the form of judges, juries, and chief magistrates, in these days of new theories, experiments, and irreverence for God's law and authority, are, ever and anon, making void our laws, lame though they be, by suffering the convicted murderer to live.

The master-spirits of France, now, and at former times, have been much addicted to theorize against capital punishment. Robespierre

in early life published a treatise against capital punishment, but when grown into power, became the presiding genius of the guillotine. Strange that such a theory should have been popular in France before the reign of terror began. France, however, is not the only country that has theorized against the Bible and its justice. Nor is it the only one that suffers for it. Indeed, all states that have more or less theorized against capital punishment, have been signally punished by an increase of the crime. In truth, it is as some poet says—

“Mercy murders in pardoning him that kills.”

The protection and safety of human life, is the first and paramount concern of every intelligent and moral community on earth. The first statute ever enacted by the heavenly Father in the present world, as before observed, was a statute *for preserving life*. I am not singular, I hope, in appreciating the civilization of every community by the care it takes of human life. May not the religious and moral character of a community be very fairly estimated by the value it puts upon human life, and the care it takes of it, as indicated in its statute books, its courts of justice, its general police, and its numerous and various means of defence against the accidents and dangers which may imperil it? And may not these be learned from its public highways, its public conveyances, its public buildings, and from the character and capacities of the officers to whose fidelity these great interests are committed, as well as from the various exactions of service, and the extent of the penalties inflicted upon them for delinquency or malfeasance in the discharge of their duties.

In countries long settled, do we see the public highways bordered with dead trees, whose ponderous and decayed branches are bending over our heads? Are the streams that run across them unbridged; or, if bridged, are these bridges decayed and dilapidating under the wasting hand of time, permitted to betray the unwary traveller into danger? Are their dread precipices unwallled, their deep ravines uncovered, their miry sloughs unpaved? Are their public conveyances by land and sea, by lake and river, uncomfortable or unsafe, as far as science or art can promote either safety or comfort? If so, must we not regard such a people as imperfectly educated—as but partially civilized—as essentially defective in the pure and excellent morality of the Christian religion?

If the Lawgiver of the universe, when acting as King of Israel, found that man guilty of blood, on the roof of whose house there was no defence against falling over, when it became necessary to walk upon it;—if he said to every subject in the kingdom, “When thou buildest a house, then shalt thou make a battlement for thy roof,

that thou bring not blood upon thy house, should any man fall from thence,"—and if he held every man liable for the damage accruing from a pit which he had digged and left uncovered, what should we think of those Christian philanthropists that pay so little regard to the life of man, as not only to subject him to all the dangers of bad roads, bad bridges, bad coaches, bad boats, and bad officers, but when his life is taken by the hand of a duellist, or an assassin, extenuate the offence, and abolish the proper punishment, and allow this wretch again to go at large and hazard other deeds of violence and blood!!

In conclusion we would only ask, who can form a just estimate of the value of the life of one man, either to himself or to society. No one lives or dies to himself alone. The unhappy victim of a murderer's fear or hate has not only lost his life, but the world has lost it too. And what is life? Aye, what is life to its possessor, to his relatives, to his country, and to the world? How much would he himself take for it! Ask not the princes and nobles of the earth in the morning of life—in the enjoyment of all the honours, pleasures, and possessions of the earth that imagination can body forth, or passion can desire. Ask not the men of genius, who dwell in enchanted palaces, who drink the pleasures of imagination from the purest and the loftiest fountains of creation. Ask not poets, orators, and philosophers, who find a heaven in the admiration of their contemporaries, and an eternal reward in the worship and envy of posterity. Ask not the military chieftain, returning from the field of blood, flushed with the victories he has won, and crowned with the laurels of a hundred battles. But ask that poor, old, decrepid galley-slave, who has seen his fourscore years, what posthumous fame he would accept what sum of money would satisfy him for the pittance of days that might yet be allotted to him. One's life might be safely staked on it, that neither the wealth of a Cræsus nor the fame of a Napoleon would be accepted by him for his chances of another year.

Again, what immense stakes has society in the lives of some men! What great interests and honours are often deposited in the life of a single individual! It is not the interest of one city, one state, or one empire; it is not the interest of an age or of one generation of men; but the interests of a world, and of ages yet to come, that sometimes providentially hang upon the life of a single individual. Let any one conversant with the history of only the last three or four centuries, consider how much interest had the world in a few individuals—in such men as Christopher Columbus, Martin Luther, Sir Francis Bacon, Sir Isaac Newton, Benjamin Franklin, Robert Fulton, George Washington, and many others. Suppose that each of these had fallen in with some Aaron Burr, as did Alexander Hamilton (a name of no

inferior fame; whose death, as a national misfortune, no living man can estimate), what would have been the present condition of the world? Can any man form a proper estimate? Can any one subtract from science, and art, and society, the exact amount of our indebtedness to any one of them, much less to them all! It is from such a sacrifice as this, laid upon the altar of the implacable demon of a false honour, immolated at the promptings of malice and envy, that we learn the demerit of the murderer,—what the world may lose by permitting him to live, and why the fiercest thunderbolts of almighty wrath are treasured up for him.

From this view of the subject (and who, that venerates the authority of the Bible, can reasonably dissent from it?) may we not entreat every patriot, philanthropist, and Christian in our country, to use his best endeavours to create a sound public opinion on the obligations resting on every state government to exterminate the crime of murder by a firm, persevering, and uniform execution of the murderer, according to the divine precept. Every one can aid this cause, more or less. And now is a most important crisis. While so many are for taking away the greatest restraint and for substituting a less one, under the most preposterous assumption that man is wiser than God, and that a minor punishment will be more effectual than a greater one, it is high time that the real friends of man should speak out.

And should I not more especially address myself to the softer, more sensitive, and humane portion of my audience—to that sex into whose soul-subduing counsels and fostering hands, the God of nature and of society has so wisely and kindly assigned the formation of human character, and to whose influence, direct and indirect, he has almost entirely consigned the destiny of man under the most endearing and fascinating of all titles and associations—those of *Mother, Wife, and Sister*.

If the ladies in this our age of civilization will only concur with us in opinion, and lend their mighty aid in propagating right views on this subject;—if they will combine their irresistible energies in this cause of genuine humanity, and frown from their presence not only the reckless duellist, but every one who pleads his cause or countenances in any way his factitious code of ignoble honours,—if they will for ever discard from their admiration and esteem every candidate for their favour, who is known to wear upon his person any weapon whatever, fabricated with a view to violence against the life of man—the mighty work is done. Then may be averted the vials of divine indignation which must be poured out on every government and country deaf to the demands of God's righteous law, and regardless of the true safety and happiness of society.

I can only add my earnest prayer that a timely repentance may dissipate that dark and portentous cloud that yet lowers over our beloved country; that by a just consideration of the dignity of man as created in the image of God;—the value of human life as respects the eternal destiny of its possessor—the interest which the state has in all its citizens—the solemn requisitions of the divine law, exacting in all cases the life of the murderer—those having it in their power to form, direct, and govern society, may perceive that it is alike an oracle of reason, of justice, and of mercy, that “whosoever sheddeth man’s blood by man shall his blood be shed;” and that, therefore, no ransom nor substitute shall be taken for the life of the murderer, inasmuch as by the eternal and immutable law of God, “the land cannot be cleansed of the blood that is shed therein, but by the blood of him that shed it.”

NOTE.

ALL who desire a more intimate acquaintance with the clear, scriptural, and convincing writings of A. Campbell, who, in our judgment, is one of the master-minds of this age, may obtain their object by a perusal of the *CHRISTIAN MESSENGER AND FAMILY MAGAZINE*, published monthly by Simpkin, Marshall and Co. In the October number of this periodical, we inserted an address on “Common School Education,” by the same author, a copy of which, in connexion with this one on “Capital Punishment,” will be sent to several distinguished individuals of the British Senate. This lecture is the leading article in the *Christian Messenger and Family Magazine* for November, 1846.—ED.

THE CONTROVERSY

BETWEEN

ENGLAND AND SCOTLAND

ON

THE QUESTION OF DIVORCE

STATED;

WITH AN ADDRESS TO THE PUBLIC

TO REFLECT ON THE SUBJECT ERE THEY COMMIT THEMSELVES IMPLICITLY INTO
THE HANDS OF THE LAWYERS.

BY

TERENCE HUGHES, Esq.,

BARRISTER-AT-LAW, GRAY'S INN, LONDON.

"All those who have written of laws, have written either as philosophers or as lawyers—none as statesmen.—As for the philosophers, they make imaginary laws for imaginary commonwealths, and their discoveries are as the stars which give but little light, because they are so high. For the lawyers, they write according to the State where they live—what is received as law, and not what ought to be the law; for the wisdom of a lawmaker is one, and of a lawyer another."—*Bacon's Essay on the Advancement of Learning.*

GLASGOW:

DAVID ROBERTSON.

LONDON: LONGMAN, GREEN, LONGMAN, & ROBERTS.

EDINBURGH: OLIVER & BOYD.

1861.

GLASGOW:
C. L. WRIGHT, PRINTER,
DUNLOP STREET.

THE CONTROVERSY
BETWEEN
ENGLAND AND SCOTLAND
ON
THE QUESTION OF DIVORCE
STATED.

CHAPTER I.

INTRODUCTION.

IN laying these few observations before the public, through the medium of this brochure, on the vexed question of conflicting jurisdictions between the English and Scottish Courts on the subject of Divorce, it is hardly necessary for me to say that, they are not intended for the legal profession, but for the public at large. When the question comes before the legislature, as we are assured it will, we may be satisfied that, so far as the former is concerned, no aid which can be derived from the profound knowledge of our ablest jurists, and the practiced skill and acumen of our most accomplished advocates, will be wanting in the solution of any difficulty which may arise in the progress of debate, on any question that may be introduced in either House of Parliament, in relation to it. But so far as the public interest is involved in the question, it does not appear to be consistent with the dictates of prudence or good sense to confide its guardianship to their exclusive keeping, after the unceremonious and far from conciliatory manner in which the subject was treated in the House of Lords in the last session of Parliament. It is impossible to conceive that, when the public are made aware of the disappointment and discontent which such treatment has engendered on the Caledonian side of the Tweed, it will look listlessly on, and permit a question in which their dearest interests are concerned, to be made the instrument of exciting bitter

rivalries, and unprofitable contentions between the two integral portions of the British nation, which we would fain have hoped had long since passed away, and been obliterated in a cordial and an abiding union; but, in fact, the people themselves are not to blame, they have never been consulted in the matter. In all such cases they are, for the most part, treated like so many men on a chess-board, as so many automatons or time-pieces, which receive their semblance of volition or vitality from the hand of him who winds them. The Law Lords in the House of Peers have generously thrown the ægis of their transcendent wisdom over the discussion, but in a spirit ill consorting with the dignity and importance of the measure, and betraying a singular oblivion of consequences, in imperilling the harmony and good will which has hitherto subsisted between the English people and their chivalrous fellow-subjects on the other side of the Border.

That we may be able at a glance, before we go further into the conflict of jurisdiction, to see what the evil is, for which a remedy was sought in the present state of the law, we shall turn to the speech made by Lord Campbell in the House of Lords on the 23d of August last. He says—“At present, if a marriage was celebrated in England, and the divorce took place in Scotland, the divorce had full operation in Scotland, but not in England; and the parties still remained husband and wife upon one side of the Tweed, though they were separated on the other,—they might marry again and their children would be legitimate in Scotland, but bastards in England. That was an anomaly most disreputable to the law of the United Kingdom.”

In order to provide a remedy for this state of the law, unquestionably “most disreputable to the law of the United Kingdom,” the Lord Advocate of Scotland, towards the close of the session of Parliament, brought a bill into the House of Commons, entitled “The Husband and Wife’s Relation Law Amendment (Scotland) Bill.” The forms and pressure of business there, did not admit of hope that it would be in time for consideration in the House of Lords, if proceeded with in the Commons. It was therefore withdrawn, with a view to its being introduced into the House of Lords. Lord Campbell accordingly took the matter up. The first thing his Lordship did was to change the title of the bill to that of “The Conjugal Rights (Scotland) Amended Bill,” and so eviscerated clause 19 of the Lord Advocate’s bill, so withdrawn, as to deprive the Court of Session in Scotland of any jurisdiction whatsoever, save in

the solitary case of the defendant having his or her domicile of succession in that country.

To this unscrupulous treatment of his bill, the Lord Advocate, as might be expected, took objection, and finding, it is presumed, that the restoration of the altered clause to its original form or substance was not to be obtained, and that the bill, in its obnoxious shape, had passed the House of Lords and was sent up to the House of Commons, the Lord Advocate moved the rejection of the clause from the bill; and this being effected, the bill, in its altered form, was sent back to the House of Lords, and Lord Campbell then moved the House to disagree to the amendments of the House of Commons, carried the motion, and thus was defeated, a measure which, in its original form, would have gone far to heal, if not altogether reconcile, the differences which this disreputable state of the law in the United Kingdom had long produced.

But after all, however, it is not so much in the rejection of the measure as in the unmistakeable tone and animus in which the dénouement was effected that Scotland sees an intentional insult and an invasion on what she conceives to be her undoubted right of international consideration in the exercise of an independent jurisdiction in her Courts of Law, as secured to her by her union with England. Looking at it from an English point of view, and through the contracted powers of vision of the "Noble Peers, great pillars of the State," who gave this healing measure the *coup de mort*, it may be considered to be a masterpiece of wisdom, a triumphant assertion of a superior legal intelligence in the practical solution of the conflict; but scanned by the shrewd intelligence and keen susceptibilities of her Majesty's lieges north of the Tweed, it wears a very different aspect indeed; and trivial as the matter may, to the unreflecting, at first sight appear, it has occasioned more estrangement of kindly feeling and good will there, than the English people can well conceive, and with which they have just about as much to do as Pio Nono, with all his infirmities upon his head, had to do with the looting of the Celestial Palace of Yuen-Ming-Yuen, which erst belonged to that heaven-born Monarch, the Emperor of China.

A painful illustration of this feeling is given in a treatise on this subject from the able pen of Mr. Fraser, of the Scottish Bar, entitled, "The Conflict of Laws in Cases of Divorce," in which he says—"It is something very emphatic, no doubt, to treat foreign decrees as waste paper; but it is not international law—*C'est magnifique mais Ce n'est pas la guerre.*" He then apostrophises with intense causticity,

“Will the English ever forgive Bannockburn?” On the north of the Tweed, their old enemies have long forgiven, though not forgotten, Flodden. No Scotchman, indeed, can think of the one without elation, or of the other without tears; but there is in this sensibility none of the insolence of triumph or the rancour of undying revenge. The case appears to be different in England.”

Now, when we have such scathing bursts of indignation as these coming upon us from such a source, with a vehemence only equalled by the earnestness and sincerity which pervade them, can we help asking ourselves—unless, indeed, we are lost to every generous and kindly impulse—Is it not a pity that two such countries, united to each other in the sacred and indissoluble bond of fellowship and good feeling, as one great family, with one creed, one nation, and one sovereign to defend, whose courts of law derive their jurisdiction from the same supreme power and authority, should be thus arrayed against each other in rancorous hostility and hate, merely because different views are taken of international law by their forensic gladiators on either side of the border? Again, we see that, sure as effect follows cause, or shadow substance, a signal retaliation on the part of the Scottish Courts has followed this conflict of jurisdiction, as exemplified in the case of the youthful Marquis of Bute, which to every lover of public order and decorum, and to every one who would uphold the dignity and majesty of the law, is most painful to witness; and in allusion to which, the Lord Advocate of Scotland, at the Social Congress assembled in Glasgow in August last, said—“This is not a state of things which should be allowed to go on between England and Scotland: the inconvenience is so great that it ought to be put an end to by Act of Parliament.”

It would therefore appear to be high time that an end should be put to the unseemly controversy, and to trample out the *parva scintilla* ere it kindles and expands into a breadth and volume that may baffle our best efforts to extinguish. There is but one way of effecting this, and that is, by the combined influence of the press and the intelligent portion of the community taking the matter into their own hands ere it comes before the Legislature, and by calmly and dispassionately weighing it, not in scales whose beam vibrates with every gust of impassioned jealousy or angry feeling which may assail it, but in a balance so nicely poised as to be free from every preponderating influence save that of justice and good faith, and thus achieve an adjustment which will satisfy alike the wants, the wishes, and wounded *amour propre* of each country.

Looking at the matter in a merely legal point of view, which is out of the question, the people, no doubt, would be but sorry advocates—they do not know the law. In the world's wide range of cultivated intelligence, from the humblest aspirant for literary fame to the accomplished scholar, the Cynosure of every eye in every circle in which he moves, we look in vain for that *rara avis*, the man who knows the law—to find him is simply an impossibility. Nor need we a Caligula to hang its edicts out of sight—it is too dry and uninteresting in its study, too costly and inaccessible in its pursuit, from the ponderous tomes in which its mysteries lie hid, from the number of its enactments framed to meet the growing exigencies of time and progress—to hope for even a superficial knowledge of it in the educated man, but for the world beyond, as well might we expect a learned treatise on the mineral wealth entombed in the bowels of the earth from a man who has never peered beneath its surface, as to hope for a knowledge of the law from the people at large. Assured of this, and the difficulty in the administration of justice which would arise, if men were permitted to plead their ignorance in extenuation of crime, the Sages of the law have established the maxim, that every man is presumed to know the law, “for he shall not be heard to say that he does not know the law; inasmuch, as, if you allow him to say he does not know the law, you have no certain rule to ascertain whether he knows it or not,” (*Lord Brougham*). But it is for this very reason, because of the penalty he pays for his ignorance, this “*ignorantia juris neminem excusat*,” that he has a right to be consulted in the framing of measures by which he is to be bound, before they have assumed the force and form of law. It is one thing for a man not to know the law as a science, to lose his way in its labyrinth of maxims, enactments, sophistries, and refinements,—to know less of Coke upon Littleton, than he does of the Book of Life, the rights and moral duties of man in a social state, or the business of common life, and the unprofitable stir and fever of the world; but, it is quite another thing for that man to have rights, his free and unfettered exercise of thought, his common-sense, his wants, and feelings set aside and trampled on as nought, or arbitrarily usurped in the framing of laws, by which all these may be compromised, and to which he is compelled to yield implicit obedience. Yet, for this the people must blame themselves, for as long as they resign themselves blindly and implicitly into the hands of the lawyers in the British senate, who are admirable expounders of their own subtleties and sensitive-

ness to the passing triumphs of the hour, but weak reflectors of the public will, so long will they have to deplore the mischievous consequences which cannot fail to flow from such a mistaken course, "for the lawyers they write according to the states where they live;—what is received as law, and not what ought to be law,—for the wisdom of a law maker is one, and of a lawyer another;"—(*Lord Bacon*).

CHAPTER II.

A CURSORY VIEW OF MARRIAGE AND DIVORCE FROM THE CHRISTIAN ERA TO THE REFORMATION.

It would be a very unpardonable as well as an unprofitable waste of time, in addressing ourselves to the law of divorce, as it prevails and affects one of the most sacred of all human contracts, to indulge in vain speculations as to the sanction it derives from Holy Writ or the approving consciences of men, even were this the proper place for such an investigation. We might as well go back to the dark ages when superstition reigned around, and consecrated bigotry held enslaved within its iron grasp the mighty workings of the human mind, in the advancement of philosophical inquiry, and moot anew the laws of gravitation and attraction, or, in our own day, doubt the power of steam, or repudiate the notion of the electric messenger as he wings his way with the velocity of the lightning's flash from pole to pole, as to enter upon such an investigation; for, like them, divorce is an accomplished fact—it is the law, and as such we must treat it.

At the time of the Roman Republic, when it was governed by the habits and manners of Pagan nations, and during the early part of the Christian era, the institution of marriage was reduced to such a barbaric state that to dignify it with the name of a contract "instituted by God himself, having its foundation in the law of nature—a contract to which

Heaven itself is made a party, and the vow which individuals make to each other is ratified and consummated by a vow to God himself" * would be a wanton profanation, and we can hardly feel surprised at the facilities afforded in those days for the severance of a union uncemented as it was by one redeeming or ennobling feature, human or divine. It was, indeed, no Gordian knot which bound the parties to each other. The *coemptio*, or purchase of wives—the *usu-capion*, or acquiring by use the same right of property in the person of a wife as a man would in any imaginable chattel—not to speak of the hideous power over life itself, conferred on the husband by the Roman law—bear ample, and at the same time painful testimony to the fearful state of society which then obtained, and the wicked ingenuity which could be brought to bear in devising means for the divorcement of such unholy alliances.

Rome, the once proud mistress of the world, from whose laws "on account of the equity of their precepts and the justice of their reasonings," † we have so largely borrowed in the construction of the venerated fabric of our own common law, was then engulfed in a profound abyss of immorality—the institution of marriage "inaugurated as it was by God himself," was rudely desecrated. There were "none so poor to do it reverence." A man might put away his wife with as little remorse and with the same *nonchalance* as in our day he would discard the frail partner of an unwedded amour. They worked all kinds of wantonness in form of law; and, as if to cap the climax of the intense depravity which prevailed, the most reckless caprice and unreasoning pretences were as safe, certain, and powerful instruments in the hands of a wicked man as were the most cogent and well-founded objections, to get rid of his wife, without even the semblance or the shadow of a crime alleged against her by him, but merely to subserve his own whim, aversion, private interest, or the indulgence of a newly-conceived passion. He might marry again and abandon his former wife and offspring to the tender mercies of a world as steeped in wickedness and lost to every feeling of decency or shame as he was himself.

In the moral government of all social systems we find it to be an unerring rule, true as the needle to the north, that in imitation of their virtues or their vices, the people follow the example set them by those who have reached a higher elevation in the community to which they belong than themselves; while at the same time, we may see

* Lord Stowel—*Dalrymple v. Dalrymple*, 2 Hagg. † Erskine, I., i. 27.

men, who, by the force of genius and talent, have been lifted upwards from amidst the throng to the highest pinnacle of earthly fame; nay, even the monarch himself, and who by the moral influence of their example, we would be led to hope would shine as burning lights for the guidance of men, and yet behold in them the painfully humiliating spectacle of dignity degraded, morality insulted, and vice enthroned. Cæsar and Cicero divorced their wives, simply because in vulgar phraseology they were tired of them, and Tiberius Nero, in base submission to the lustful longings of Augustus, divorced his wife, simply because the Emperor violated the tenth commandment, and "coveted his neighbour's wife." Nor should it be forgotten, that the arbitrary dissolution of the marriage tie was not the peculiar or exclusive privilege of the lords of the creation; their example, became contagious, and the fair daughters of Eve resented the indignities practised upon them, and retaliated by divorcing their husbands upon pleas which had no better foundation in reason or justice than those to which we have already adverted; the only additional feature was the intense frivolity for which they were remarkable; for the absence of even personal attraction, an obtrusive wrinkle, or any unseemly innovation of time, which detracted from former perfection in an unfortunate husband, relieved him at once from Benedictine slavery for the rest of his life. His spouse, by an easy transition, conferred her favours on some one more congenial to her tastes and feelings, and contributed her portion of morality, of which she had given such striking proofs to an admiring and approving world.

As a natural result of this state of things, the social fabric seemed to totter to its base, and to sink under the accumulated weight of its own enormities. The advent of Constantine to the throne of the Cæsars seemed to promise better things; he set some limits to this arbitrary power of divorce-ment, and confined it to cases of adultery and other transgression against conjugal propriety in the wife, and an end was put to divorce by mutual consent. Justinian also made further amendments; but this was not destined to last long, for unfortunately the abiding tendency to Pagan habits and manners had not yet relaxed its hold on society, and the practice of the horrible divorcement by the poignard of the assassin or the poisoned bow, gave to his successor no other alternative than to re-enact the law of voluntary divorce; and thus society relapsed once more into the barbarity from which it was fast emerging, and thus did this distracting question struggle on with varied fortune till the decline and

fall of that great empire upon whose faded glory the sun had set for ever.

In the early dawn of Christianity, the struggle for existence amid the darkness which reigned around, "the Church," says Mr. Erskine, "in place of being protected, was persecuted by the State. Dying persons, from the great confidence they reposed in the clergy, frequently committed to them the care of their estates and orphan children. During that period, the Church—to shun appearing before the courts of idolators—invariably referred their differences, in point of private right, to one of their own members, of approved integrity; for the most part to the Bishop."*

Here, then, we can point with certainty to the origin and foundation of that gigantic ecclesiastical power which in after ages swayed the destinies of Europe, and with equal certainty can we perceive that to this antagonism between Christianity on the one hand, and Paganism on the other—in which, during the Empire, the latter obtained the mastery—must we attribute the moral desolation which prevailed. "The year after (399)," continues Mr. Erskine, "the same Emperors, Arcadius and Honorius, granted to the bishops a proper jurisdiction in cases concerning religion, but excluded them from any power of judging in points of civil right. At last they were authorised by the same Emperors to judge in all questions where the parties voluntarily brought their differences before them without distinguishing between civil and religious, and their judgments were not subject to the review of any civil court. In proportion to the growth of papal authority, the clergy had the address to establish in themselves a proper jurisdiction, not only in questions of tithes, patronage, scandal, breach of vows, and other matters which might with propriety be styled ecclesiastical, but in every concern in which they could find the smallest colour to give that name to; thus, because they had been early entrusted with the administration of certain legacies bequeathed to pious uses, they gradually assumed the exclusive right, not only of proving and confirming all testaments, but of naming administrators for management of the moveable estates of all who died intestate."

With such an extensive jurisdiction, as was thus conferred on the clergy, together with their own assumption of power, it will require no great stretch of imagination,—allowing for the ambitious yearnings after power and authority so deeply rooted in the human breast,—to conceive, that men so favoured, and with such "address," would not be over

* Erskine, i. 5.2c.

scrupulous about the means they employed to encroach upon the power of the civil magistrate, and arrogate to themselves an almost boundless jurisdiction. In every matter involving the administration of an oath, they had power to judge, because an oath was an act of religious worship addressed to the Diety. They also assumed the right of adjudication in questions of divorce, bastardy, and adultery, because marriage was accounted a sacrament; and also in the restitution of *tochers*, which they said were given in view of marriage. In truth, no stratagem, no artifice which human ingenuity could devise, was left unpractised or untried by the Church to usurp to herself an arbitrary and unlimited jurisdiction in all questions, civil or ecclesiastical, affecting the interests, the liberties, or consciences of men. A remarkable instance of the exercise of this power of the Church, is to be found in the declaration of the Council of Trent, that marriage was a sacrament, and should be thenceforth held to be indissoluble; but with this qualification, that to the sovereign Pontiff, the Pope of Rome, as Christ's Vicar upon earth, was reserved the power of emancipating men from matrimonial bondage.

This was a bold measure on the part of the Church, and may find its defence in the moral debasement of the age in which it was introduced. On the one hand, it tore up, as it were, by the roots the foul cancer of divorce, as it then obtained, which had eaten its way into the very heart of the sacred institution of marriage. It had a powerful tendency to the maintenance of the sacred text—"What, therefore, God has put together, let no man put asunder;" but on the other hand, the exclusive power vested in the sovereign Pontiff, whilst it destroyed the principle of indissolubility itself, makes one shudder for the infallible administration of such a trust. Yet it was a choice of evils, the balance of advantage leaning to the side of public good; and in point of fact, it was a power rarely exercised by the Pope, whilst, at the same time, the law of indissolubility would have put an end to divorce, so far as it applied, were it not for the unspeakable depravity which still prevailed. The sacred obligation which had hitherto become the sport of reckless and disgusting frivolity, had now become a prey to the exercise of the most abandoned profligacy. Parties now approached the hymeneal altar with the most wicked and consummate hypocrisy, with some latent flaw in their title, some *arrière pensée* to fall back upon, to break the bond, whenever it might suit their purpose. A former carnal familiarity with a relative, or an affinity even in the 7th degree, or a previous betrothment secretly nurtured

in the breasts of the contracting parties, was a potent talisman to dissolve the union at the will or pleasure of the parties on the first approach of discord, or when they grew tired of each other, and she who once was looked upon as

* * * * An angel,
Or if not, an earthly paragon,

Was not ashamed to proclaim her immorality to the world as her reason for shaking off the thralldom of the wedded state.

There is a very painful instance of this in the case of Margaret, the wife of James the Fourth of Scotland. After the death of that Monarch, she married Lord Methuen; and, in order to release herself from this alliance, which had become irksome to her, she set up the plea of a criminal intercourse she had had with the fourth cousin of his lordship previous to her marriage with him. From that hour she was free. Amongst the kings and lords of the creation, we have our own Henry the Eighth of pious, immortal, and immoral memory, defender of the faith, and so forth—this ruthless monarch, whose will was law and whose nod was death—who imbrued his hands in the blood of those whom at the altar of God he had vowed to cherish, with as little remorse as if he had but bruised a spider in its web—did not disdain to avail himself of such foul alternatives. He had determined, in his horrid hate, to get rid of his Queen, Anne Boleyn; and whether that was to be accomplished, through the instrumentality of a mock trial for infidelity on her part, or infamy on his own, would appear to have been to him a matter of supreme indifference. He alleged as a reason for his divorce from her, that previous to their intermarriage he had had carnal knowledge of her sister Mary, and also that she had been previously betrothed to the Duke of Northumberland; but he needed not this foul device. Her doom was sealed, and history records the rest.

Although, as we have already stated, a divorce *a vinculo matrimonii* could not be obtained even for adultery without a dispensation from the Pope of Rome for the commission of that offence, still the law of divorce *a mensa et thoro* obtained, which in effect was nothing more than the judicial separation of man and wife from the society of each other always in the hope of their coming together again when reflection had calmed down, or chased away all angry feeling, and time had softened the acerbities, which their mutual shortcomings, failings, or infirmities had created towards each other.*

* M'Queen, Practice, House of Lords, p. 441

The growing power of the clergy to which we have already adverted, had by this time, in the early part of the sixteenth century become so great, that it had usurped to itself an almost universal jurisdiction in things civil as well as ecclesiastical—in all things relating to marriage, no matter how remote. Appeals to Rome, attended as they were with enormous expenses and vexatious delays, skilfully contrived and artfully practised to harass suitors, and defeat the ends of justice at the same time that they filled the coffers of the Roman Pontiff, became at length too much for human patience, however tolerant and submissive to endure, and the British people, as if with one voice, determined to shake off the yoke.

And now we behold gradually and majestically rising above the horizon the morning sun of freedom, heralding in the light of the Reformation, to dispel the darkness which prevailed, and to teach man to break the fetters which the insatiable and grasping tyranny of ages had forged to enslave the intellect, imperil the happiness, and hold exclusive empire over the hearts and consciences of men, and with its advent have been swept away the sacramental indissolubility of marriage, the infamous and immoral pleas set up, and sanctioned to make it void, and the arrogated power of the Roman Pontiff as Christ's vicar upon earth to set his hand to a dispensation from the sacred obligations it enjoined.

CHAPTER III.

THE CONTROVERSY;

WITH

A GLANCE AT THE LAW INTRODUCTORY TO THE SUBJECT.

IN entering on our inquiry into this important question of divorce, and the conflicting jurisdictions unfortunately growing out of it on either side of the Tweed, it would betray a very great want of candour, indeed, if, when speaking of the Canon Law, we did not at once admit, whatever may be the prejudice to the source from whence it springs,

that that law, with all the faults which blemish its fair proportions, was, at the time of the Reformation, and long after it, the law which obtained in cases of divorce, and held unquestioned supremacy over the greater part of civilized Europe. We cannot wonder at this—it was the work of ages, the slow but gradual accumulation of a world of thought and human wisdom, flowing down to us with the stream of time, bearing with it in its course those rich treasures of legal lore on which, in conjunction with the Roman law, whereon it is founded, we have largely drawn to build up a jurisprudence of our own. It is true that it is sadly defaced by the extravagant provisions it contains in favour of ecclesiastical authority; but it must not be forgotten, that it was “formed to conciliate authority to that ecclesiastical jurisdiction which the Pope had usurped over the civil rights as well as the consciences of men, and it contains rules, not only for informing the conscience, but for the fixing of private property, civil as well as ecclesiastical. It was compounded, on the one hand, of beautiful principles of equity, chiefly borrowed from the Roman law; and on the other, of an absurd collection of canons and rescripts extolling church authority above the highest secular powers.”* That it has been held in veneration in England by her judges in Ecclesiastical Courts to the present time cannot be doubted—for, although we have seen that the religion of the State was changed, that marriage was no longer looked upon as a sacrament, after the Reformation, became an established fact, and that the power of granting divorce *a vinculo matrimonii* reserved to the Legislature alone, would lead us to expect it would become the law; still we are unable to find one solitary case in which the Ecclesiastical Courts in England granted a decree of divorce, dissolving the marriage tie, from that great epoch in our country’s history to the passing of the English Divorce Act in 1857—they felt themselves bound by the Canon Law, which maintained the indissolubility of the marriage contract, and from which, notwithstanding the Reformation, “they had never been released.”†

In the reign of Henry VIII., a commission was opened, at which Archbishop Cranmer presided, the object of which was to examine into the propriety of granting divorce, *a vinculo matrimonii* for two causes—namely, adultery and desertion—but this commission fell to the ground; the religious zeal, or rather the animosity, of the religious disputants of the day rendered it impossible for them to bring their

* Erskine, i. 28.

† M’Queen, Practice, House of Lords, p. 466. Sir Wm. Scott, 2 Hagg, 301.

minds calmly to the task of an impartial investigation into the matter. Henry died; and in the following reign—that of Edward VI.—this commission was revived, but it met with a similar fate. In the reign of Elizabeth, the question of divorce was resumed, and the Church recommended divorce *a vinculo*, and that the injured spouse might marry again; but a very remarkable case occurred—that of Foljamb, which came before the Star Chamber—the decision in which set the question at rest, and held that adultery was only a cause of divorce *a mensa et thoro**; and this continued to be the law down to the passing of the late Divorce Act. No divorce *a vinculo* could be obtained except by an act of the Legislature.

It is not a very easy matter to discover upon what principle it was that the Legislature reserved to itself this right of granting divorce in direct opposition to the law which maintained in the Ecclesiastical Courts of the realm, and the decision in Foljamb's case. It would appear to have had its foundation in no better reason than that of a compromise at the expense of principle, a propitiation, as it were, to conflicting opinions on the subject between the Church and the people; for, by this skilful arrangement of a paramount jurisdiction in the Legislature, together with the heavy expenses and vexatious delays (amongst the rest, the obtaining the verdict of a court of law) by which every access or approach to the legislative temple was fenced, possessed in themselves an assurance that the principle of indissolubility would not be often, and by the humbler classes of society, not at all, called into question. Be this as it may, however, we find that from thenceforth (1601) were established in England two kinds of divorce—the one judicial, and the other parliamentary—the former represented by the Ecclesiastical Courts, and the latter by the Legislature. The Ecclesiastical Courts had jurisdiction over all cases of legal impediment or conjugal transgression, but were confined in their decrees to divorce *a mensa et thoro*, except in the case of legal impediment, which, of itself, would dissolve the marriage, whilst the Legislature granted divorce *a vinculo* for the proved commission of adultery.† This Court had no power to grant divorce for wilful desertion, whilst, in Scotland, desertion was looked upon as an offence against the conjugal state, entitling the aggrieved party to relief by divorce equally with that of adultery.‡

The divorce of the Marquis of Northampton, in the reign

* Salkeld, 138. + M'Queen, Practice, House of Lords, p. 465. Bills of Divorce.

‡ Statute of 1573, c. 56—hereafter referred to.

of Henry VIII., is the first in point of chronological order on legal record, as a divorce *a vinculo matrimonii*; but it hardly deserves the unenviable distinction,—for, following the example of that Monarch, and taking the law into his own hands, he divorced himself.

The next divorce *a vinculo*, by Act of Parliament regularly obtained, was pronounced in the year 1669, in the case of Lord and Lady Roos, and his Lordship was declared entitled to marry again. This was the first practical ignoring of the decision in Foljamb's case—"that adultery was only a cause for divorce *a mensa et thoro*," yet it was in the power of the legislature alone to take this course; the Ecclesiastical Courts could not follow its example.

It is a very remarkable fact that, from this date down to the year 1801, a period of 130 years, there is not a single instance to be found of an application by a wife to Parliament for a divorce from her husband on account of adultery. In this year, a Mrs. Addison applied to the House of Lords for a divorce on that ground, and obtained it. The Lords were very reluctant in granting it, but yielded to the powerful impression made upon them by the speech of Lord Thurlow, and granted it.*

It would appear to have been the practice, whether as the result of settled principle, or of accident, that a wife could not, or did not, avail herself of redress by way of divorce for conjugal infidelity on the part of her husband. According to Lord Brougham, the wife had no such remedy; whilst Mr. M'Queen, who has made the subject his especial study, contends that, this state of things was partly the result of accident†; but whatever doubts may have existed on that point, they are set at rest by the English Divorce Court, which divests the husband of this immunity, if he ever possessed it, and visits him, with the consequences of his infidelity to the marriage vow, just as it does in the case of the wife.

With regard to divorce in England on the ground of adultery, and the guilty parties intermarrying with each other,—it would appear that, whilst there has been no positive law giving sanction to such an union, the policy of the law seems always to have been in favour of it. The clause inserted in the Bill of Divorce prohibiting it, was invariably struck out when it came before the Lords' Committee; and, says Mr. M'Queen,—“for this reason, all the feelings of humanity, and all the dictates of policy suggest that the

* M'Queen, Practice, House of Lords, 476, 477.

† M'Queen, Prac., H.L., 484.—Lord Brougham's Speeches, Vol III., 446.

guilty parties ought not to be debarred from making amends to social order, by entering into matrimony. To prevent marriage in such a case, would be but to prolong the unseemly spectacle of adultery, and to inflict bastardy on the innocent and helpless offspring.”* In Scotland, such a marriage was forbidden by positive enactment of 1660, cap. 20. †

Such is a brief sketch or outline of the law of divorce in England, from the Reformation down to our own time.

We shall now turn for a moment to Scotland, and take a view of the law of divorce there, from the same period to the early part of the present century, when the controversy between the two countries and the conflict of jurisdiction in relation to that law, seem to have arisen.

That the two countries have been equally indebted to the Canon Law as the source from which their consistorial jurisprudence has chiefly flowed, admits of little question; England adhered more closely to its maxims, whilst Scotland perhaps, may have departed more widely from them. Each country had her own provincial councils, which, whilst at the same time, that they kept the Roman Canon Law before their eyes as their model for observance, shaped and fashioned it in accordance with the wants and genius of their own people, different as they were in habits, manners, and modes of thought, from those of Rome. According to Mr. Erskine, “the Canon Law must have been, at least, of as great authority in Scotland as the Roman, before the Reformation. That law had originally no proper authority in instances regulating civil property unless where the Pope was temporal Sovereign. In the course of time, however, it became the law of Scotland in most articles of private right, civil as well as ecclesiastical.”‡ Mr. Fraser, in his admirable book, entitled “Law of the Personal and Domestic Relations,” after speaking of the two adverse theories on the subject of the Canon Law being the source of the Consistorial Law of Scotland, says—“Amid the controversial speculation, one point is settled, that whatever was the Consistorial Law during Roman Catholic times, the same law, with a few exceptions, expressly declared by statute or modified by subsequent decisions of the Courts, remain unchanged, and now forms the common law of Scotland upon that subject.”§

Without going further into the subject in a passing treatise like this, it may not be too much to say that, with the

* M'Queen Prac., H. L., 509. † Erskine, I. vi, 43. ‡ Erskine I. i, 42.

§ Fraser, Personal and Domestic Relations, vol. I. p. 20.

exceptions mentioned, the Canon Law is the source from which the Consistorial Law of Scotland is derived.

With the Reformation in Scotland, as in England, came a total change in the religion of the people; but with it, unlike England, also came a total change in the law of divorce. "Previous to the Reformation," says Mr. Fraser, "no decree or canon of a Scotch court or council has ever been produced in favour of the doctrine that marriage could, by the ordinary courts of law, be dissolved *a vinculo* in Scotland prior to the Reformation." As direct evidence on this point, he cites a passage from the Catechism of Archbishop Hamilton,— "The band of matrimonie ains lauchfully contrackit, may nocht be dissolvit and lowsit agane be ony divorcement or practising, but allanerly it is lowsit be the dede of ane of thame."* There was an end, of course, to the indissolubility of the marriage. The Reformed Church, founding their argument on the Scriptural grounds,† determined on divorce *a vinculo*, and Scotland then took a marked and very decisive course in relation to the commission of adultery: she not only gave to the innocent party a right of redress, by a dissolution of the marriage tie for that offence, but to the guilty,—if a notorious transgressor,—she awarded the highest punishment known to the law—death. By statute of 1563, it is ordained "that all notorious or manifest committers of adulterie in ony time to cum sall be punished with all the rigour, unto death, as weil the woman as the man, doer and committer of the samin." There is another species of moral delinquency which she brought within the pale of the law of divorce, and which had hitherto been unknown to it—namely, desertion of either of the spouses from the society of the other, without a just cause, or sufficient reason for the abandonment. And by a statute passed in the year 1573, taking its stand on the Scriptural authority of St. Paul, i. Cor., 7, 15, it enacted "that when any of the spouses shall desert from the other without sufficient grounds, and shall remain in his or her malicious obstinacy for four years, the party injured may sue the offender for adherence before the Judge Ordinary."‡ The Church was then to proceed to excommunicate the offender, if no answer was made by him to the complaint; but this part of the proceeding savouring too strongly of the Popish supremacy of former days, for the willing observance of reformed minds, even if the offender had remained to brave the withering sentence of the Church, fell into disuse, and the deserted spouse had relief by divorce

* Fraser, Per. and Dom. Relations, vol. I., pp. 653, 654. † Matthew xix. 9.

‡ Erskine I. vi. 44.

a vinculo, just as he or she would have in a case of adultery. It does not necessarily follow that, in all cases, there must be a severance *a vinculo matrimonii* for adultery,—the injured party may sue for the milder remedy of judicial separation *a mensa et thoro* as a sufficient redress to his or her wounded feelings for the infliction of that wrong. This measure of 1573 passed into a law through the influence of the then Duke of Argyle, whose Duchess remained obdurate and deaf to all the appeals of her noble partner to return to the conjugal roof—the *Agapomene* of all her love, where he was but too anxious to receive her. This incident in social legislation furnishes us with a pointed illustration of the great events which spring from little causes, and of the homage which the wounded feelings of the high-born and great exact from every community. The necessity of this measure, however, had been long and severely felt by the public at large, but there was no Duchess of Argyle to give it *éclat*, or to invest it with the charm of melodramatic interest.

In Scotland, the administration of the law of divorce *a vinculo matrimonii* for adultery, or for desertion, was not, as in England, confined to and rigidly vested in the Legislature, but was confided to the hands of her Judges or Commissaries in her Ecclesiastical Courts, to which the poor man and the rich had equal facility of access—for in that country, it was really intended that these remedial measures of divorce should be fully carried into practical operation, and should be within the reach of all alike, and this is the law of Scotland at the present hour.

In the year 1707, England and Scotland were, by treaty of union, made one nation under one King and one Legislature; but “all the laws of Scotland concerning private rights, whether statutory or customary, were reserved to her entire, not to suffer any alteration, but for the general utility of the subject.”* From this time down to the early part of the present century, each country seems to have appreciated the aphorism of Lord Bacon, “that, for Courts to quarrel and contend about jurisdiction, is a piece of human frailty,” and to have administered her own peculiar laws in relation to “private right, statutory or customary,” in a dignified and undisturbed repose, until the law affecting questions of divorce and the jurisdictions called into action in relation to them, most unfortunately brought them into collision with each other; and from that time to the present, except with some temporary cessation of hostilities, the controversy, so far from presenting a sanguine hope of a

* Erskine I., i., 48.

solution of the difficulties by which it is beset, assumes a more discouraging aspect than ever, and it is impossible, having regard to the harmony and good understanding which should always prevail between the two countries, that it can be permitted to last any longer.

It will now be necessary, for the purpose of understanding this controversy, to enter at once into an illustration of the practical operation of the law of divorce in the various cases calling for its application, and of the jurisdiction exercised by the Scottish Courts in the administration of it. Scotland claims jurisdiction on the following grounds:—

1. *Ratione domicilii.*
2. *Ratione delicti.*
3. *Ratione originis.*
4. By reason of a forty days' residence in Scotland.*

Now, as to the 1st, jurisdiction by reason of domicile—the doctrine in relation to which we shall examine more fully as we proceed—let us take an instance: Suppose that a married couple, being English and *bona fide* domiciled in Scotland (always bearing in mind that the domicile of the wife follows that of her husband wherever he goes), that the wife, happening to be in England, commits adultery there, or in any other country, and that the husband seeks redress by divorce from the Court of Session in Scotland—the Court will grant the divorce on being satisfied of the integrity of the case, that the wife is personally cited to appear, and that the husband has a *bona fide* domicile within her territory at the time of his suing for the divorce, notwithstanding that the adultery took place in England; but suppose that the husband has not a *bona fide* domicile in Scotland within the territory, then, and in that case, he must acquire one before he can raise his action to found the necessary jurisdiction, for a forty days' residence within the territory will not suffice to raise it, and he will be without a remedy in that country.

Again, let us suppose the husband, an Englishman, to be the guilty party, that he commits the adultery in England, or anywhere else, and is domiciled there, but afterwards goes to Scotland and resides there for forty days; in this case, the redress by divorce, at the suit of his wife, will be granted by the Court of Session, provided he is cited to that Court whilst so resident for forty days within its territory.

Secondly, as to the jurisdiction *ratione delicti*—that is, the commission of the adultery within the Scottish territory—the Court of Session exercises jurisdiction in all such cases, duly proved of course; and grants a decree to the parties seeking relief, if the offender is personally served with citation whilst in the territory, if he be there only for a day, and this, too, though he has no domicile in Scotland whatever.

Thirdly—as to the jurisdiction *ratione originis*—If a Scotchman born, leaves Scotland and acquires a domicile in a foreign land, commits adultery there, and returns to his own country again, for no matter how short a space of time, and is there personally cited to the Court of Session at the suit of his wife, jurisdiction will then arise and empower the Court to grant the divorce.

Fourthly—as to the jurisdiction arising from a residence of 40 days within the territory—this has been already explained in connection with the other branches of jurisdiction.

In the year 1812, the celebrated case of Lolly* occurred (*et hinc illæ lachrymæ*). He was an Englishman, who married in Liverpool, afterwards went to Scotland, and committed adultery there. His wife sought relief, by divorce, from the Scottish Court, and obtained it. After being so divorced, he went to England, and married again there, conceiving himself free and at liberty so to do, by reason of the Scottish divorce. He was indicted for bigamy in England, found guilty, and sentenced to transportation for seven years. This was the first time that the jurisdiction of the Scottish Court of Divorce was ever questioned by England. This jurisdiction would, of course, come under the head of *ratione delicti*. The decision of the English Court, in annulling the decree of divorce pronounced in Scotland, did not rest upon the ground of any undue administration of justice, for want of merit or defective proof, but emphatically “because that no sentence or act of any foreign country or State could dissolve an English marriage *a vinculo*, on the grounds on which it was not liable to be dissolved *a vinculo* in England, and that no decree of an Ecclesiastical Court was within the exception in section 3, 1 James I., ch. xi., unless it was the decree of a Court within the limits to which the 1 James I. extends.† It has been often sought to rest this decision on the grounds of domicile, although it is impossible to discover this in the judgment

* Russel and Ryan, Criminal Cases, p. 237.

† Edinburgh Review, vol. xlviii., p. 112.

given in the case. It would appear that the doctrine which prevailed at this time, and subsequently, was, that indissolubility was of the essence of the marriage contract, and ought not to be interfered with, that the place of the contract being entered into was the only place for the adjustment of all matters affecting it. On the other hand, Scotland contended that the place where the adultery was committed was the *forum competens* in the matter, or that if the party offending against conjugal fidelity even abroad, were fairly brought within her jurisdiction, she had a right to grant relief to the innocent sufferer who sought it. Now, to common apprehensions, stripped of the metaphysical jargon of essence and incident, the essence of the contract would seem to be, the keeping of the vow which the wedded couple made to God and to each other at His altar; and that, so long as this remained unbroken, should indissolubility have its binding force; but, when its essence is destroyed in the violation of the sacred obligation, which gave it vitality, by the commission of adultery, then the tie is justly severed by legal divorce founded on God's law. To ordinary minds, too, it is difficult to conceive that the moral atmosphere which ought to be as free and as expansive as the air we breathe, should be zoned and girded about by the artificial boundaries of a domicile, or the strictures of an Act of Parliament. One ludicrous feature in the matter, notwithstanding the decision in Lolly's case, however, was, that although Englishmen could not be relieved by Scottish law from the galling pressure of the hymeneal chain, forged no matter where, yet, with marvellous alacrity, they thronged to wear the vulgar fetters forged for them by the rude hands of the blacksmith of Gretna Green.

The next case which occurred to fan the quarrel was that of *Conway v. Beazley*. A domiciled Englishman contracted marriage with an English woman in his own country; went to Scotland, committed adultery, and was divorced there. He was married again in Scotland, and his wife not approving of the alliance she had made, turned round and applied to the law of England to set it aside, upon the plea that her husband's divorce from his former wife was founded on a Scotch decree, and therefore void, and that the marriage with that wife still continued. She succeeded in her suit, and Dr. Lushington, in giving judgment, said, he felt himself bound by Lolly's case, and set aside the Scotch decree, but added, "My judgment, however, must not be considered to go one step beyond the present case, nor in any manner to touch

the case of a divorce *a vinculo* pronounced in Scotland between parties, who, though married when domiciled in England, were at the time of such divorce *bona fide* domiciled in Scotland." Thus stood the law of England in relation to decrees of divorce pronounced by Scottish Courts till the institution of the English Divorce Court, under the Act of 1857. In that year, we find the case of *Dolphin v. Robins** decided in that Court, and afterwards confirmed by the House of Lords. The husband was a domiciled Englishman, and married an English woman in his own country. He committed adultery in Scotland, after a residence of many months in the country, and was there divorced at the suit of his wife. She afterwards married a Frenchman, resided in France, and died there. Her will was contested in England; and the question turned on the validity of the Scotch divorce. The Court held the divorce void, on the ground that the husband was a domiciled Englishman at the time of pronouncing the decree. Here, again, the adultery was committed in Scotland, and the parties resided for several months within her territory; and yet we find those facts which would fully establish the right of jurisdiction in the Scottish Courts are altogether ignored, and her decree is set at nought.

The next case in point is the case of *Tollemache v. Tollemache*,† which was tried in the English Divorce Court, and in which a decree of the Scottish Court was also treated as a nullity. The plaintiff in this case was a domiciled Englishman, who went to Scotland, and there married a Scotch lady, who committed adultery. He appealed to the Court there for a divorce and obtained it. On the husband returning to England, he was advised to apply to the English Court of Divorce for a decree of divorce, notwithstanding the Scotch decree already had; inasmuch as, from the decisions of the English Courts so frequently given, it was considered very probable that the Scotch decree would be treated as a nullity also. He petitioned accordingly, and the Court set aside the decree of the Scotch Court, and he obtained what he petitioned for, an English divorce. The judge said, in giving judgment, "That the Court could not recognise that divorce as putting an end to the marriage bond of a domiciled Englishman." Again, we find in this case, that Scotland is not only the *locus contractus*, but also the *locus delicti*, and yet they count for nothing in the English Divorce Court as founding a jurisdiction in the Scotch Court to pronounce decree of divorce. This is certainly a strange and startling doctrine.

* *Law Times.* † *Law Times.*

Now, before we go further, let us see how this conflict stands. In Lolly's case it was decided that a marriage solemnized in England is indissoluble by any sentence, whether at home or abroad, or by any authority, except by an Act of the Legislature. After the lapse of twenty years, the judgment in it is sustained by the decree pronounced in *Conway v. Beazley*, by Doctor Lushington, with the important suggestion, "that his decree was not to go one step beyond that case, nor in any manner to touch the case of a divorce *a vinculo matrimonii* pronounced in Scotland between parties, who, though married when domiciled in England, were at the time of such divorce *bona fide* domiciled in Scotland; still less between parties, who were only on a casual visit in England at the time of their marriage, but were both then, and at the time of the divorce, *bona fide* domiciled in Scotland." The conciliatory tone and spirit pervading this decision would lead us to hope that, a reconciliation was at hand; and that, as the controversy was now narrowed to a faithful or intelligible interpretation of this mysterious sphinx-like enigma, domicile, a solution of the difficulty was within our grasp. But in this we are disappointed, for there the question remains; and after the lapse of a quarter of a century, it would appear to be as far from adjustment, as it was when the adverse judgment in Lolly's case was pronounced; and we find the determination of the English Divorce Court in 1860, to give to the decree of the Court of Session in Scotland no greater validity or efficacy, than that of waste paper, no matter on what jurisdiction founded, (even though the contract be made, the adultery committed, and the Englishman resides within the territory,)—to be as firm and uncompromising as it was in 1812, when the controversy had its origin.

We shall now turn our attention to this legal enigma—domicile. There is not, nor has there ever been, a Jurist who can or could give to it anything like a standard signification, or even such a definition as would embrace one half of the cases calling for its application. The task has been essayed by many, without success;* but, in our difficulty, we may be pretty safe in adopting as an interpretation of the meaning of it, that given by Doctor Storey. He says, "In a strict and legal sense, that is properly the domicile of a person, where he has his true, fixed, and permanent home, and principal establishment, and to which, whenever he is absent, he has the intention of returning."† This definition is, perhaps, as clear and comprehensive as any other to be

* Vesey, Jun., 789.

† Storey's Conflict of Laws.

found in the authorities on the subject; but plain and simple as it appears to be, the difficulty in each given case is, to bring it within its *purview*.

There are three kinds of domicile,—1st, There is domicile of origin; 2d, domicile of choice; 3d, domicile by construction of law. The domicile of origin of a legitimate child, is that of its father at the time of its birth; if illegitimate, it is that of its mother. The domicile of choice, is that which any man may elect, in preference to his domicile of origin; and the domicile by operation of law, is the matrimonial domicile, or place wherein the parties, after the celebration of the marriage, take up their permanent residence; and by operation of law, also, the domicile of the husband is that of the wife.*

As to the domicile of origin, so long as the man remains in it, and that he is content to live in his native land, no question can, of course, arise in relation to it; but to expect that the exception to this quiescent, aboriginal state of society, this love of locality and fatherland, will not influence the mass of mankind, in their onward progress in the pursuit of happiness and independence throughout the world,—would be vain, indeed. And here begins our difficulty in the interpretation of the domicile of each and every man, as we find him in the varied phases of his chequered fortunes. Many a man of an ardent and enterprising turn of mind,—not content to trudge on, and wear out his life in partial sloth, or unremunerative toil in his native land,—embarks his fortune in some perilous venture in the new world, in search of an independence which he could not find at home. He commits his property to the guardianship of some faithful steward in his absence, he leaves his dear old home,—the household gods of his idolatry, and the land of his affection,—with the full intention, and fixed resolve if he is spared, of returning to them at some future day, laden with the hard earned reward of his enterprise, and skill; but, the speculative mind is on the stretch, new engagements spring up, and around him on every side, necessity controls him in the exercise of his will, and prolongs his stay, or fixes him to the spot; and in his endeavour to push his fortune to success, he still clings to the land of his adoption,—sickness comes upon him, and he dies. Where was this man's domicile? Was it in the new world or the old? It is impossible to say, for, measured by intention and facts, which are the key to the right interpretation of

* Robertson on Personal Succession.—*Somerville v. Somerville*, 5 Vesey, Jun.; *Warrender v. Warrender*, 2 Sh., and M.L.

domicile, we have, in this case, evidence of his intention to return to his native land ; but, we also have the fact of his residence in another, with pursuits and objects wearing all the appearance of a permanent home ; and we must always bear in mind that, residence without intention of permanency is not domicile, it is but presumptive evidence of it, though domicile with intention to return may exist, without actual residence.

Again, let us take the instance of a man of wealth or easy circumstances, tired of the dull routine and wearisome monotony of life at home, resolves to migrate, for a while it may be, to "La belle France," or the margin of some tranquil lake in sunny Italy. The attractions of the scene protract his stay—a new world, fresh as the morning of life, which he seems to begin again, brings with it new associations and charms, which lure him on and make him forget his home—he has an expensive establishment there. Years pass away, and he, too, dies—and that which commenced in the indulgence of a mere temporary gratification, ripens into a seeming intention to abandon the old home and give permanency to the new. In these two cases, the evidence of intention, as collected from surrounding circumstances, is so nicely balanced, and the persons from whom you would wish to gather the true intention being dead, any two minds, however astute, or however anxious they may be to solve the difficulty, may find it a hopeless task.

Although, as we have already said, that domicile, with the intention to return, may exist, without actual residence, this is to be understood of a man who has never abandoned his *bona fide* domicile, but intends to return to it, even though he resides abroad ; but intention alone cannot acquire or constitute a domicile—there must be residence along with it—so that, if a man leaves his old domicile in search of a new one, and dies before he can carry his intention of acquiring it into effect, the old domicile, and not the intended one, will be his domicile at the time of his death. But if a man abandons his acquired domicile, and, intending to return to his domicile of origin, dies on the way, the old domicile of origin will revive by intention alone. This is an exception to the general rule of intention, in favour of the domicile of origin.*

It is hardly necessary to say that, persons absent from their permanent domicile at home, for purposes in their nature manifestly temporary, such as those who travel in a foreign country for pleasure or for health—military or naval

* Fraser's Personal and Domestic Relations, vol. I., p. 723.

men on duty abroad in the service of their country—Ambassadors at foreign Courts, and Members of Parliament, who, in order to attend more regularly to their senatorial duties at Westminster, have their establishments in London—form an exception to the necessity of proving intention; for it is plain that in their departure from their *bona fide* domicile there is no intention of abandonment to acquire a new one.

The difficulties with which we have to contend in arriving at a right conclusion as to the intention of parties in abandoning the old and acquiring a new domicile, are far from being removed by any assistance we may derive from the evidence of the parties themselves in solving disputed questions of domicile. We know very well that, in every relation of life, men are always influenced by that strongest of human motives, self-interest, and this is a powerful instrument in their hands to defeat the ends of justice, as their self-interest may be imperilled or advanced by the inquiry. In the case of divorce, there is nothing to prevent a guilty party—suppose an Englishman, who has committed adultery in Scotland, and who, to all appearance, had made that country his *bona fide* domicile—from turning round and pleading to the charge, in order to defeat the jurisdiction of the Scottish Court, that he never had any intention to acquire a domicile in that country.

In thus glancing at the law of domicile, it is by no means presumed to do more than to give a few leading features, in order to show the difficulty that must arise from making it the basis of jurisdiction in cases of divorce within the Scottish territory.

We shall now turn our attention to the Lord Advocate's "Husband and Wife Relation Law Amendment (Scotland) Bill"—the 19th and 20th clauses were in these words:—

XIX.—“It should not be competent to raise and prosecute an action of divorce, unless—1st, the defender has his or her domicile in Scotland; or, 2dly, *the action being one for divorce on the ground of adultery, the adultery was committed in Scotland, and the defender has been personally cited in Scotland*; or, 3dly, the action being one for divorce, on the ground of desertion, the defender has deserted the pursuer at a time when the pursuer had a domicile in Scotland, the pursuer continuing to reside in Scotland until the action is raised, and the domicile herein referred to shall be held to be the domicile according to the law of which the succession to moveable estate would be regulated in cases of intestacy.

XX.—“A decree of divorce, pronounced after the passing of this Act by the Court of Session, in terms of this Act, shall be recognised

and given effect to as a valid decree, dissolving the marriage to all intents and purposes whatever in all parts of Her Majesty's dominions, notwithstanding that the marriage thereby dissolved may not have been celebrated in Scotland."

Now, it would appear that the 19th clause was framed with a view of putting an end to the jurisdiction in the Court of Session, in cases of divorce, founded on a residence of forty days within the Scottish territory, for it emphatically provides that the domicile therein referred to shall be held to be the domicile, according to the law of which the succession to moveable estates would be regulated in cases of intestacy; and it would not, perhaps, be going too far to state that, if this were the only point to which the controversy were reduced, there would have been a very reasonable prospect of a final and amicable settlement of it, so far as the Court of Session was concerned, for clause 19 preserves to that Court, substantially, all the jurisdiction to which it lays claim, with the exception of the jurisdiction raised by reason of the residence of 40 days within the territory, and clause 20, would give validity to decrees of divorce pronounced by that Court, notwithstanding that the marriages thereby dissolved were not celebrated in Scotland. The Bill, however, in which these clauses were incorporated was, for the reasons already given, unfortunately withdrawn, and the alterations, partaking largely of obliteration made by Lord Campbell in relation to that clause in his Bill, entitled, "Conjugal Rights Amendment Act (Scotland)," will be seen in the following, clause 18 of that Bill:—

XVIII.—"It shall not be competent to raise and prosecute an action of divorce, unless the defender has his or her domicile in Scotland, or, the action being one for divorce on the ground of desertion, the defender has deserted the pursuer at a time when the pursuer had her domicile in Scotland; the pursuer continuing to retain such domicile or reside in Scotland until the action is raised, and the domicile here referred to shall be the domicile according to the law of which the succession to moveable estate would be regulated in cases of intestacy."

On perusing this clause, we find that three out of the four grounds on which the Court of Session found jurisdiction, are completely swept away. These three are — *ratione delicti*, *ratione originis*, and jurisdiction by virtue of a residence of forty days within the Scottish territory, and the only jurisdiction left in cases of divorce is, when the defender has his or her domicile of succession in Scotland. This clause is certainly not very remarkable for the perspicuity or

artistic skill which seems to have guided the framer of it, who cannot have been the noble and learned Lord. In the first place, it does not seem to contemplate desertion by the wife at all; for it says—"The action being one for divorce, on the ground of desertion, the defender has deserted the pursuer at a time when the pursuer had *her* domicile in Scotland;" but it also goes on to say—"the pursuer continuing to *retain* such domicile, *or* reside in Scotland until the action is raised." Now, were it not for this disjunctive "or," the sentence, legally speaking, would be unintelligible. When a husband deserts his wife, and acquires a new domicile in another place, and when the law says that the domicile of the wife follows that of the husband, it is surely, with the greatest possible respect, something like an absurdity, to say that the wife shall continue to retain the domicile to which her husband has put an end, and over which she has no control.

When Lord Campbell carried his motion in the House of Lords, to disagree to the alleged amendments in the Conjugal Rights Amendment Act, the House of Lords sent to the House of Commons their reasons for objecting to the amendments, and amongst them were the following:—

"Because a suit to dissolve the tie of marriage ought to be instituted only by the Courts of the country in which the parties whose marriage is to be dissolved are *bona fide* domiciled, according to the well-known law by which the succession to moveable estates is regulated in cases of intestacy."

Now, this objection, coming from so high a source, must command our profound respect; but we must not permit our deference to carry us beyond the bounds of reason, or blind us to the weakness and inconsistency which seems to pervade it. Let us examine it, and see how far it consists with the law of divorce, as it now obtains and is practically administered in the Divorce Court of England. If a suit to dissolve the marriage tie ought to be instituted only in the Courts of the country in which the parties so married are *bona fide* domiciled, what becomes of the law "*ratione contractus*?" Let us put a case. An Englishman marries in England, and, after the marriage, goes to Scotland and acquires a *bona fide* domicile there. His wife commits adultery there; he sues for a divorce in Scotland and obtains it. Will the English Divorce Court recognise the validity of this divorce, or would it reject it on the authority of *Mallac v. Simonin*? (2 *Law Times*, 327). The parties in this case were both French, and domiciled in

France. The marriage, which was contracted in England, was made void in France, because of its being contracted in violation of the rules prescribed for Frenchmen marrying in foreign countries. In the year 1860, the wife being advised, it may be, that the English law not did recognise the validity of a French divorce, petitioned the Matrimonial Causes Court in England to nullify the marriage, but failed in the application. The Court held her bound by the contract she had made, and Sir Creswell Creswell, in pronouncing judgment, said — “It was unfortunate for the petitioner that she should be held a wife in England and not so in France. If she had remained in her own country, she might have enjoyed the freedom conferred on her by a French tribunal; having elected England as her residence, she must be contented to take English law as she finds it, and to be treated as bound by the contract which she had made.” In this case, the man, a foreigner, had no domicile whatever in England, nor was he personally cited within her territory—he was served in Naples; and yet in the face of these facts, the Court, presided over by one of the ablest judges who adorn the English Bench, adheres to the law of the “*locus contractus*,” and by its efficacy binds the parties to their contract. And so it would be in the case of the Scotchman marrying in England and committing adultery in Scotland. England would assert her jurisdiction, if applied to for a divorce by this man’s wife, notwithstanding his domicile of origin was Scotland. Where, then, is the reason, consistency, or justice, in insisting upon domicile of succession as the *only* basis upon which to found jurisdiction in Scotch Courts of divorce? If this be good law for England, and few can doubt it, why should it not be equally so for Scotland? Why should she be confined to jurisdiction *ratione domicilii* alone?

Again, the House of Lords finds fault with the jurisdiction *ratione originis*, and says—

“Because if the domicile of origin has been abandoned, and a new domicile has been acquired in a foreign country by a native of Scotland, he ought not to be considered domiciled in Scotland, unless he should have duly recovered his domicile in his native country,”

Let us now apply the doctrine here laid down to the jurisdiction exercised by the Court of Divorce in England, and take the case of an Englishman coming within its operation, and what is the result? If an Englishman has abandoned his domicile of origin, and acquired a new one in another country, the Court can at once fall back on the doctrine of

perpetual allegiance; or, if the facts of the case warrant it, the *locus contractus*. We have already seen the force of the latter, and as to the former, we have only to turn to the case of *Deck v. Deck*, (2 *Law Times*, 542,) to satisfy ourselves of its potency, when other elements are wanting to establish jurisdiction. In this case, the husband and wife were of English origin, and had their domicile in that country, and were married there. The husband went to America, abandoning both wife and domicile, acquired a new domicile in America, and married there,—this act, of course, involved the offence of adultery. The first wife sued for a divorce in the English Divorce Court, had her husband served with the usual citation in New-York, and having proved her case, obtained her decree for divorce; but upon what grounds did the Court sustain its jurisdiction, seeing that, according to the objection of the Lords, the domicile of origin being lost, there should be an end to all jurisdiction in the matter?—it sustained it upon the ground of perpetual allegiance! The Court in pronouncing judgment said, “Both parties owed allegiance to the Crown of England: that allegiance could not be shaken off by change of domicile, the husband, therefore, although he became domiciled in America, continued liable to be affected by the law of his native country.” That this has been the law of England for ages, there cannot be a doubt. It is equally the law of Scotland, that a man cannot shake off his obligation to the laws of his country, by the abandonment of his domicile of origin. Why then seek to deprive her of a jurisdiction founded upon it, whilst, at the same time, the law of perpetual allegiance is maintained by the English Court of Divorce, as conferring upon it the undoubted right of exercising jurisdiction in cases of divorce, when the element of domicile of origin is altogether wanting to raise it? How then, with the utmost deference, we would ask, can Lord Campbell call it “unreasonable, and contrary to all principle,” for Scotland to claim jurisdiction over her sons who abandon the domicile of origin, when England asserts that right for herself? England says, she does so on the ground of perpetual allegiance. Scotland says she claims it *ratione originis*, and upon the same reasoning as that upon which England founds her doctrine of perpetual allegiance—namely, “that those who are born within the kingdom, though they should be afterwards settled abroad, without an intention of returning home, cannot shake themselves loose from the obligations due by them to the laws or to the country.”* Lord Campbell in his late speech,

* Erskine, i, 2. 16.

moving for a committee, has said, that the Scotch Court founds its jurisdiction *ratione originis* "on citation," with the greatest respect, this would seem to be a very great mistake, for, the reason just given by one of the ablest institutional authorities on the subject of jurisdiction.

Another reason given by the House of Lords, is—

"Because jurisdiction over adultery *ratione delicti* applies, when adultery is to be prosecuted as a crime, and not to a suit to dissolve the marriage tie."

We cannot for a moment imagine that the idea ever entered into the minds of the noble Lords, of suggesting to Scotland a return to the sanguinary and pre-eminently cruel statute of 1563, which doomed the offender to death, as the only expiation to outraged morality, for the commission of adultery; for although that statute has lain dormant in its vengeful slumber for centuries, it still preserves a fearful vitality. When that Act was passed, it would appear that the offence had become so prevalent and notorious, as to call up a fiery zeal, and furious severity, in the minds and hearts of the moral regenerators of their time for its repression, and the establishment of public order and decency; they gave to it the character of the foulest crime, and assigned to it the awful penalty of death; but, whether this remedy was too severe for the evil it sought to redress; whether there was a marked improvement in the creed and morals of the land; or, whether the austere avenging spirit of the age gave way and paled before the advance of more humane and Christian influences, it is certain that this Act of 1563 fell into utter desuetude. But almost *pari passu* with this Act, we must recollect existed, the remedy by divorce for adultery committed by either of the spouses, as it is at the present hour. And if Scotland has foregone the application of this cruel remnant of a penal code, and reserves for practical purposes that, and that only, which she conceives to be sufficient to mark her condemnation of the crime committed on her soil, namely, a jurisdiction in her Court to punish it by divorce, at the instance of the injured party,—of what has England to complain in this? But the *exquisite naïveté* with which it is declared "that jurisdiction over adultery '*ratione delicti*' only applies when adultery is to be prosecuted as a crime," is positively refreshing—it is humour in repose, there is a quiet facetiousness in it which is admirable. Why, there is not one law lord in the House of Peers, who is not aware that there is no such thing in Scotland, practically speaking, as a prosecution for divorce, nor has there been for many years.

The Procurator-Fiscal, to whose peculiar province it was entrusted, is no longer a reality; he, along with the Commissary Court in Edinburgh, passed away with the things that were in 1830.

The House of Lords also says, it is inexpedient Scotland should possess the jurisdiction *ratione delicti*—there is no domicile of succession in the case, and we look upon a divorce as a remedy for a civil trespass, not for a crime. Surely this is a matter which may be fairly left to the people of Scotland to determine for themselves. She must be the best judge of what conduces most to the maintenance of public order and morality within her own territory. “Every nation,” says Mr. Justice Creswell, “has a right to impose on its own subjects restrictions and prohibitions as to entering into marriage contracts either within or without its own territory; but what right has any one independent nation to call on any other nation, equally independent, to surrender its own laws, in order to give effect to those of the other?”* This exposition of international law, so lucidly propounded by the learned Judge, accords precisely with Scotland’s notion of her right to the jurisdiction she claims, and is her best reply to those who would seek to deprive her of it. If she substitutes the milder sentence of the Civil Court for the draconic vengeance of the penal code, can this give England a right to call upon her to surrender the jurisdiction she has founded on the delict? Looking at the proposition from a strictly legal point of view, doubtless, it is far from being a well-deduced conclusion to say that, the divorce of a Civil Court is the punishment awarded to the crime of adultery, which, as a crime, should be the subject of indictment in a Criminal Court; still this is the light in which Scotland sees it—it is the punishment, she says, is mitigated; but the crime, as such, is still the same—it is the form, and not the substance, which is changed—the crime of the highwayman and the burglar is the same it ever was, though the punishment is changed, and forgery will be forgery still, though there be not a single Fontleroy to offer up his life upon the gibbet as an atonement to the Moloch of commercial credit.

But let us admit, for a moment, that this jurisdiction *ratione delicti* is altogether swept away, and that a domiciled Englishman goes to Scotland, and, whilst there, leads one of her fair daughters to the hymeneal altar—his constancy, yielding to the influence of a faithless and capricious nature, betrays itself in a *mauvaise liason* with another, and

* *Mallac v. Simonin*, 2 *Law Times*.

he abandons his wife. She sues for a divorce in Scotland, and obtains it. Will England recognise the validity of the decree? She will not—although here we have the *locus contractus* and the *locus delicti* within the territory which grants it, and this simply because the Englishman has not blessed the country with his domicile of succession; yet, let the lady go to England and make her complaint there, and, on the single ground of the husband's domicile being in England, she will be divorced, although neither the adultery was committed or the contract made in that country. In the name of justice and common sense, then, is it reasonable to expect that Scotland can willingly submit to this?

Now, let us turn to another reason given by the House of Lords:—

“Because, if the residence for forty days in Scotland is sufficient to give jurisdiction to dissolve a marriage between parties married and domiciled in another country, a facility is afforded of obtaining collusive divorces, and a scandal is brought on the administration of the law of marriage.”

How this conclusion is arrived at, it is not easy to comprehend. Collusion, if it exist at all, may lie at the bottom of a case instituted by virtue of a suit founded on a *bona fide* domicile, as well as in a case of a residence of forty days. Of course, if the latter opens a door with such fatal certainty to collusion, it must, undoubtedly, bring scandal on the administration of the law of marriage; but, in Scotland, there is no case of petition for divorce in which the oath of calumny, as it is called, is not administered to the party seeking relief. “In all actions of divorce, whether for adultery or wilful desertion, the pursuer must swear that the action is not carried on by collusion, otherwise parties might, contrary to the first law of marriage, at pleasure, disengage themselves from that sacred tie by their own consent.”* Still, looking at this question, we must not confine ourselves to the narrow and debateable ground of collusion, nor whether a residence of 40 days is sufficient to give jurisdiction; for, without arguing the point in relation to the special case of divorce, it is an inflexible rule of Scottish jurisprudence, that there must be a residence of some kind in the territory to raise it. In a civil case, “unless the defender resides within the Judge's territory, or be possessed of some estate or subject within it,” the Judge cannot act, neither can he pronounce sentence in a criminal case unless the

* Erskine, i. 6-45, i. 2-19.

accused "is found within the territory;" but the substantial question is this—Presuming, for the sake of argument, that the jurisdiction was never so well founded, ought one country, having regard to the comity of nations, exercise a jurisdiction in a particular class of cases, the non-interference with which could never compromise its dignity, or wound its self-respect, and in which, besides, we look in vain for any of those cardinal elements and solid principles of jurisprudence on which the other branches of jurisdiction depend, continue to uphold the practice, whilst, in doing so, it perils the harmony, which it should be its object, as well as its interest, to preserve? That seems to be the question. The forty days' jurisdiction seems to wear the attenuated features of a forced growth—of a sickly exotic—as compared with the sound constitutional strength and massive development which are the marked characteristics of the other branches of jurisdiction; for, where a man makes a contract, there he is supposed to know the law. There are the witnesses to the compact, and in that place should he be bound to perform it. Where a man commits a crime against the laws of the country in which he resides, there should he pay the penalty. It is but just to maintain, too, that the allegiance we owe to our Sovereign, and the obligations we are under to the laws of our country, should follow us like a shadow and never be shaken off. All these seem to be founded in the law of an immutable justice. But that a man should be allowed to "hawk his wrongs, as beggars do their sores," from the source of the transgression to other climes, in search of justice which is not denied him at home, does not seem consistent with our notions of propriety, the vindication of offended justice, or conducive to the amity of neighbouring States. If a Patagonian or an Ethiopian resides amongst us, and claims our aid in helping him to a divorce, for the infidelity of his sable spouse, committed on our soil, let him prove his case and have redress. But if, with himself, we allow him to import his private wrongs, and if he is permitted to call upon our tribunals for the vindication of them, we shall find that our generosity in such an extension of comity has gone beyond the bounds which prudence would suggest in assuming to ourselves the thankless and unprofitable office of the *arbiter morum* of the world.

And, now that we have passed in review before us the causes which have produced and the effects which have followed this unworthy controversy, we cannot fail to perceive, or if we are not wholly blinded by prejudice, candidly

to admit, that, weighed in the moral balance, Scotland is not found wanting, so far as the principle for which she contends affects the wellbeing of social order and decorum. If she is in fault, her errors lean to virtue's side; and if parties must continue husband and wife, on one side of the Tweed, it is not she who separates them on the other. If children are legitimate in Scotland, but have a mark of infamy set upon them, and lose their fair inheritance on earth the moment they set foot on English soil, to Scotland cannot in justice be attributed "this anomaly so disreputable to the law of the United Kingdom." As long as England maintains that a marriage solemnised in her territory is indissoluble by any sentence at home or abroad, except by a decree of her own court, or that a Scottish tribunal shall never dissolve the marriage of a domiciled Englishman, even though he pollutes her soil by the commission of adultery, which her law emphatically calls a crime, so long must the present state of the conflict remain. We cannot expect that Scotland will resign a jurisdiction which she conceives to work in harmony with the law of our moral world, that punishment shall overtake the offender on the spot where the still, small voice of conscience awakes in his soul all the harrowing recollections of the home he has made desolate, the fair fame he has ruined, and the heart he may have broken, and where the stern behests of outraged justice and morality alike demand the retribution. Where man first fell, there was he doomed to pay the penalty of his transgression, and there the eternal sentence was pronounced, which gives a sacred and a solemn sanction to the usage. But why, in the name of common sense, should this term domicile, the most indefinite and undefinable in legal phraseology, be set up as the sole test and standard of jurisdiction in cases of divorce. A thing of which a man can as easily divest himself and fling away, as he can an old garment, of which he is tired, for one more fashioned to his whim or taste, accompanied, as it is, by the cruel mockery of that legal figment, that the domicile of the husband is that of the wife, for she has none of her own. Why should not this myth be scattered to the winds like his perfidious vow, the moment he commits the adulterous act? Why should not the domicile he has left, and where his wife resides, be hers, for the purpose of obtaining redress for the wrong inflicted upon her? Why should she be left to the hopeless task of hunting out the new abode of her heartless husband, or why should she not, as in America, be allowed to choose a separate domicile for herself under such peculiarly painful and difficult circum-

stances? There, the law of domicile is flexible, and bends to circumstances. Why should this not be so with us? One would suppose that the husband, by his misconduct, had forfeited his right to all the benefit of the figment; but then it is said that, the law invests him with a *status personarum*, which, in his absence, you cannot touch. In a land of liberty like our own, this law of *status* is, no doubt, invaluable, and should be guarded with a scrupulous and jealous care; but, on the other hand, are we justified in holding out a premium to crime, and chartering a man with an immunity from the consequences, which should follow on his own misdeeds. What claim to our sympathy, for his personal *status*, can a man have, whose misconduct compels him to flee from justice at a time, and when, if innocent, he would have remained to defend it. What magic power—what sacred virtue can this thing domicile possess, that arms a man with a charmed life and freedom from the law in every wicked phase of a criminal existence, and flings the mantle of protection over him in his flight from the hands of justice. There is a morbid sentimentality, a sickly affectation of regard, for the liberty of the subject in this, palpable at every turn. Look at it, test it by the true criterion—the animus of the man—and what is it? Does he abandon his old domicile with the *bona fide* intention of acquiring a new one elsewhere, so as to come fairly within the law of domicile, such as it is? assuredly not. He abandons his wife and home, and wanders about the earth wrapped up in some mysterious disguise, which he must assume to escape detection—to pursue him seems to be an endless labour—like an *ignis fatuus* he mocks your approach, and baffles you at every step, and this is the man whose moral *status* we would preserve. As long as this obtains, in form of law, so long will it be idle to say, that even-handed justice holds the scales, or that the effort to procure redress, is other than a profitless delusion, and a vain conceit.

The House of Lords would seem to convey to our minds, that there is something in the law of Scotland as affects divorce contrary to all principle, and which brings scandal on the administration of the law of marriage; but to candid and impartial minds, that country, where it is an established principle of the administration of the law of marriage that, an acknowledgment once made in good faith, shall remain an accomplished fact,—a realisation, in spite of the perfidy of him who would try to evade it; and where a man, who, on the faith of such a pledge, triumphs over woman's virtue, and then hovers and hesitates between truth and falsehood in

adhering to his vow, will not be permitted which of the two to choose, a mistress or a wife,—that country can never, in truth, be said to bring scandal on the law of marriage. No: it is she who upholds the sacred character of the contract; she will have no paltering in a double sense, she is inexorable, and knows no other propitiation than the fulfilment of the contract. But is this so on Albion's soil? or can it have escaped those noble Lords, that there the sacred promise is weighed in golden scales, and that he who can afford to pay the sordid arbitrament of twelve jurors of his country, escapes the meshes of the hymeneal toil, even though that promise were as palpable, and bore upon it—

Marks as legible
As proofs of Holy Writ."

Away, then, with these unseemly rivalries, and vain contentions, which have been nursing their wrath for years, in an undignified struggle for worthless pre-eminence. Every nation has her idiosyncracies and, so to speak, a genius of her own. In the Scottish nation, there is an inborn unbending stubbornness of character, a tenacity of principle, and an inflexibility of purpose, peculiarly her own; keen and susceptible of insult, she is jealous of her honour, and proud of her country, and of that which still remains to her of independence in the administration of her ancient laws; and vain will be the effort of those who would attempt to wrest from her one shred of that jurisdiction, sanctioned, as it is, by time, and respected and approved, as it is, by her people. If England will continue to treat the decrees of the Scottish Court of Divorce as vain and empty edicts, not worth the paper on which they are written, so long will they be pronounced, and so long will the evil continue; and parties must be contented "to be married on one side of the Tweed, and separated on the other;" but if the two countries will lay down their angry feeling as a peace-offering on the altar of concord, and approach the subject in a spirit of amity and sincere good-will, there can be but little doubt of the result. One simple clause can effect the consummation. If England will recognise and give validity to any decree of divorce hereafter to be pronounced by the Court of Session in Scotland, under and by virtue of the several jurisdictions now exercised by it, as dissolving a marriage to all intents and purposes, whether celebrated in England or in Scotland, *save and except* a decree of divorce pronounced by virtue of the jurisdiction raised upon a residence of forty days, in lieu

whereof shall be substituted a residence of twelve calendar months within the Scottish territory, Scotland, it is fair to presume, will, on her part, with a becoming dignity, and in a spirit of conciliation, submit to the exception, and thus will an end be put to a controversy, which every true lover of his country, on either side of the Border, must in his heart deplore should have ever arisen.

4

ADDRESS

ON THE

PLACE OF ANCIENT GREECE

IN THE

PROVIDENTIAL ORDER OF THE WORLD:

DELIVERED BEFORE THE UNIVERSITY OF EDINBURGH,
ON THE THIRD OF NOVEMBER, 1865.

BY THE

RIGHT HON. W. E. GLADSTONE, M.P.,

CHANCELLOR OF THE EXCHEQUER,
AND FOREIGN ASSOCIATE OF THE INSTITUTE OF FRANCE.

LONDON:

JOHN MURRAY, ALBEMARLE STREET.

EDINBURGH: OLIVER AND BOYD.

1865.

Lately Published,

MR. GLADSTONE'S FINANCIAL STATEMENTS of the years 1853, '60, '63, and '64. With Speeches on Tax-Bills, 1861, and Charities, 1863. Second Edition. 8vo. 12s.

The following can be had separately,

FINANCIAL STATEMENT, 1863, 1864 & 1865. 2s. each.

SPEECH ON CUSTOMS & INLAND REVENUE BILL, 1861. 1s.

CHARITIES, 1863. 1s.

EXTENSION OF SUFFRAGE IN TOWNS. 1s.

WEDGWOOD THE POTTER: AN ADDRESS. 1s.; or with Woodcuts, 2s.

ADDRESS AND SPEECHES AT MANCHESTER, 1862. 1s. 6d.

LETTERS TO LORD ABERDEEN, on the State Prosecutions of the Neapolitan Government. 1s.

JOHN MURRAY, ALBEMARLE STREET.

A D D R E S S,

&c. &c.

MR. VICE-CHANCELLOR, PROFESSORS, AND GENTLEMEN :

The subject on which I desire to address to you my parting words, is, the place of ancient Greece in the providential order of the world.

Even the pointed announcement of such a subject may seem to partake of paradox. No one, indeed, would think of denying that the people, who inhabited that little cluster of rugged mountains and of narrow vales, played a part, and a great part, upon the stage of history, and left a mark, not deep only, but indelible, upon the character of the human race. No one would deny that they have delivered to us brilliant examples of energy in action, and matchless productions of the mind and hand, models in letters and in art. Nor is there any doubt about the fact, that Christian Europe has during many generations assigned to Greece the largest share in the cultivation of the human mind. But this age, which questions much, questions naturally enough the propriety of the judgment, which has thus awarded her the place of honour in the career of general education. Her language, her history, her literature, and her art, are regarded as the privileged delight and separate entertainment of the few; but there is no

clear perception in the majority of minds, that all these have entered deeply into the common interests of mankind. Lastly, they are distinguished in so broad a manner from the teaching of the Gospel, nay in certain points and instances they are so much in conflict with the spirit of the Evangelical code, that there is a disposition to regard them as belonging exclusively to the secular order, as well as to the secondary, and if I may so speak ornamental, interests of life. To its secondary interests, because Greece does not propose to teach us how to choose a profession, or to make way in the world :—

“τί δέ μ' ὠφέλησουσ' οἱ ῥυθμοὶ πρὸς τάλφιστα;” *

To the secular order, because it is beyond doubt that we cannot obtain from her the lessons of true religion. Nay, she has sometimes almost assumed the attitude of its rival; for both the period of the revival of learning, and also more modern times, have supplied signal instances, in which her fascinations have well-nigh persuaded men of genius or of letters, Christian-born, to desert their allegiance to their faith, and endeavour to revive for themselves, at least in the region of the fancy, the worship once in use at her long-abandoned shrines.

Other reasons besides these have produced a practical indisposition to regard ancient Greece as having had a distinct, assignable, and most important place in the providential government of the world. Something that may be called religionism, rather

* Aristoph. Νεφ. v. 648.

than religion, has led us for the most part not indeed to deny in terms that God has been and is the God and Father and Governor of the whole human race, as well as of Jews and Christians, yet to think and act as if His providential eye and care had been confined in ancient times to the narrow valley of Jerusalem, and since the Advent to the Christian pale, or even to something which, enforcing some yet narrower limitation at our own arbitrary will, we think fit to call such. But surely He, who cared for the sixscore thousand persons in ancient Nineveh that could not distinguish between their right hand and their left, He without whom not a sparrow falls, He that shapes, in its minutest detail, even the inanimate world, and clothes the lily of the field with its beauty and its grace, He never forgot those sheep of His in the wilderness, but as, on the one hand, He solicited them, and bore witness to them of Himself, by never-ceasing bounty and by the law written in their hearts, so on the other hand in unseen modes He used them, as He is always using us, for either the willing, or if not the willing, then the unconscious or unwilling, furtherance and accomplishment of His designs. The real paradox then would be not to assert, but to deny or even to overlook, the part which may have been assigned to any race, and especially to a race of such unrivalled gifts, in that great and all-embracing plan for the rearing and training of the human children of our Father in heaven, which we call the Providential Government of the world.

Such preparation, ascertained and established upon the solid ground of fact, may be termed prophecy in action; and is, if possible, yet stronger for the confirmation of belief, and yet more sublime in aspect as an illustration of Almighty greatness, than prophecy in word.

But in this Providential government there are diversities of operations. In this great house * there are vessels of gold and silver, vessels of wood and earth. In the sphere of common experience we see some human beings live and die, and furnish by their life no special lessons visible to man, but only that general teaching, in elementary and simple forms, which is derivable from every particle of human experience. Others there have been who, from the time when their young lives first, as it were, peeped over the horizon, seemed at once to

“Flame in the forehead of the morning sky;” †

whose lengthening years have been but one growing splendour, and at the last who

“leave a lofty name,
A light, a landmark, on the cliffs of fame.” ‡

Now, it is not in the general, the ordinary, the elementary way, but it is in a high and special sense, that I claim for ancient Greece a marked, appropriated, distinctive place in the Providential order of the world. And I will set about explaining what I mean.

I presume that all philosophy, claiming to be

* 2 Tim. ii. 20.

† Lycidas.

‡ Moore.

Christian, regards the history of our race, from its earliest records down to the Incarnation and Advent of our Lord, as a preparation for that transcendent event, on which were to be hung thereafter the destinies of our race.

Let us, however, examine more particularly that opinion which has prevailed in the world, sometimes sustained by argument, oftener by sufferance, sometimes lurking underground, and sometimes emboldened to assert itself in the face of day, that although the Divine care extends in a general way to all men, yet we are to look for this preparation, at least for the positive parts of it, nowhere except in the pages of the Old Testament, and in the history and traditions of the Patriarchs and the Jews. This opinion has what some of our fathers would have termed "a face of piety;" it has undoubtedly been held by pious persons, and urged in what are termed the interests of religion. But that face I am persuaded is a face only, a mask which ought to be stripped off, as it hides the reality from our view.

According to this theory, we are to consider the line of the patriarchs and the descendants of Abraham as exclusively the objects of any Divine dispensation which, operating in the times before the Advent, is to be reckoned as part of the preparation for the great event. To them we are to look as the guardians of all human excellence in all its infinite varieties; and when we seem to find it elsewhere, we are either to treat the phenomenon as spurious, or else, believing without sight, we are to consider it as

derived, through some hidden channel, from the stores communicated by Divine revelation to the favoured race. This theory found perhaps its fullest, nay even its most properly fanatical, development in the 'Paradise Regained' of Milton. There the works of the Greek intellect and imagination are depreciated in a strain of the utmost extravagance; and, what is worse, the extravagance is made to proceed from those Divine lips, all whose words were weighed and measured in the exactest balances and lines of truth. First, the proposition is advanced by the poet that divine inspiration precludes the need of any other knowledge, even "though granted true:" "but these," so proceeds the speech—

"But these are false, or little else but dreams,
Conjectures, fancies, built on nothing firm."

The Greek philosophers are dismissed, as a body, with wholesale condemnation: while Homer and the tragedians are stated, with a gravity in itself wonderful enough, to have learned the art of poetry from the Jews:—

"All our law and story strewed
With hymns, our psalms with artful terms inscribed,
Our Hebrew songs and harps, in Babylon
That pleased so well our victors' ear, declare
That rather Greece from us these arts derived."

The orators are set to compete with the Hebrew prophets:—

"Herein to our prophets far beneath
As men divinely taught, and better teaching
The solid rules of civil government."*

A competition this, which would probably have

* 'Paradise Regained,' Book iv. 291, 334, 356.

caused the greatest astonishment to those to whom the prize in it is awarded.

It is difficult to understand how Milton's genius could have prompted him thus to pit against one another things really, in the main, incommensurable; or how his learning, which must have made him acquainted with the Greek philosophy, could have failed to impress him with the belief that men like Aristotle and Plato were earnest seekers after truth.

Warburton observes upon these passages, that they were in accordance with the fashion of the time. And it appears that, especially in the later years of Milton's life, there were a number of learned men, English and foreign, such as Bochart, Huet, Voss, Gale, and Bogan, who busied themselves in showing correspondences between the Hebrew and the Pagan traditions, and who in some instances, particularly that of Huet, Bishop of Avranches, pushed their undertaking into undue and fanciful detail. But I have not found that they propounded any doctrine in reference to the derivation of heathen literature from Jewish sources, either to the sweeping extent, or in the cynical spirit, of the 'Paradise Regained.' Their object appears to have been a different one, namely, to fortify the historical credit of the sacred records by tracing elsewhere matter essentially corresponding with their contents; either as clothed in contemporary disguises, or as flowing from a common fountain-head.

In truth, the seed-plot of this peculiar learning belongs to a much earlier and a more interesting

and important literature. Paganism, which had been for the two greatest races of the ancient world in their infancy a creed, and in their riper age a profession, did not, when assailed by the victorious advance of Christianity, retire from the intellectual battle-field without a desperate struggle, carried on in its behalf with all the resources of powerful and subtle intellects. As a revelation of the designs of God for the recovery and moral renovation of mankind, the Gospel was not unfairly required to give an account, not only of itself, but of everything else in the world that preceded or opposed it. The Pagan system, if it had nothing else, had at least one important advantage in the controversy. It represented a continuous unbroken tradition, dating from beyond the memory of man : it had come down from father to son through more than a hundred generations with an ostensible sameness and a very widely-extended sway ; and none could name the day when, in the two far-famed peninsulas that had given the breath of life to the ancient world, it did not exist and prevail.

Under these circumstances, it was most difficult for the Christian apologists to admit that there lay in the old religions of the world, and particularly in the Greek or the Latin mythology, any nucleus or germ of the primeval truth. For the logical consequence of such an admission might have seemed to be that they should not sweep the old religion off the face of the earth, but endeavour to reduce it to some imagined standard of its purer infancy : that they should not

destroy it, but reform it : whereas, on the contrary, their purpose was, and could not but be, not to reform but to destroy. They met, then, the traditional claims of Paganism by taking their stand upon the purer, clearer, and still older tradition of the Hebrews. They parried the negative value in argument of an undefined antiquity with the positive record of the creation of the world, and with the sublime exordium of the human race, propagated in a definite line from man to man, down to the firm ground of historic times. So far so good. But still they were obstinately confronted by a system conterminous both in space and in duration with the civilised world, and able, too, to say of itself, with some apparent truth, that when civilisation and culture themselves began they did not make or bring it, but found it on the ground before them. Thus upon the merely historic field the battle might have looked, to the ordinary spectator, like a drawn one ; while it seemed needful for the dignity and high origin of the new religion to conquer not at one point but at all. Hence perhaps the tendency of the Christian apologists, in unconscious obedience to the exigencies of controversy, after they had proved by reasoning the truth and authority of the Gospel, and had smitten their enemy, as they did smite him, to the dust, by their moral arguments against Paganism, to accelerate its end, and to demolish the very last of its seeming titles, its antiquity of origin, by refusing to affiliate any part or parcel of it, at any point of time, to the stock of a primeval religion, and by contending that so

much of truth as was scattered through the rolls of its literature had been filtered in detail through successive media, from Greece to Rome, from Egypt to Greece, but was ultimately to be traced in every case to the ancient people of God, and to the records and traditions which had had an historical existence among them.

I turn now to the remarkable work of Eusebius, commonly called the 'Præparatio Evangelica.' In that work he sets forth the moral impurity, imbecility, impiety, and falseness of the Pagan system. He contrasts with it the marvellous prerogatives of the older Scriptures. In what lies beyond this province, he is not so injudicious as to depreciate the intellectual development of the Hellenic race, alike original and vast. But, he says they learned, in its elementary form, the "superstitious error" of their religion, which by their own genius they afterwards recast and adorned,* from Egyptian, Phœnician, and other foreign sources: but their glimpses of the Godhead, and whatever they had of instruction for the soul's health, they obtained, by importation mediate or immediate, from the Hebrews only, except in as far as it was supplied them by the light of nature.†

The question here arises, if the Hellenic race got their religion from Phœnicia and Egypt, from whence did Egypt and Phœnicia obtain it? And here it is that we come upon the chief error into which Eusebius

* Note I.

† Note II.

was led by the controversial exigencies of his position. He treats the religions of the world as having been purely and wholly, even in their first beginnings, errors and inventions of the human mind, without any trace or manner of relationship to that Divine truth which, as he truly tells us, had been imparted to the Hebrews long before the days of Moses and the composition of the Pentateuch. According to him, the old religions were made up of worships offered to the heavenly bodies, to the powers of nature, to the spirits of departed men, to useful or important arts and inventions, and to the demonic race in its two families of the good and the evil.

He admits, in every part of his work, that he appears in the arena to maintain and justify the Christians as the authors of a schism in the religious world; and this admission it is, which, by the nature of his propositions and his argument, he converts into a boast.

The view taken by Eusebius was I apprehend that generally taken by the Christian apologists. Saint Clement of Alexandria* not only denies the originality of the Greeks in what they possessed of truth, but treats as a theft their appropriation of Hebrew ideas:† and fancifully, I might say whimsically, supports the charge by instances of plagiarism perpetrated by one Greek author on another. Justin Martyr‡ allows no higher parentage to the Greek mythology than the poets, who were bad enough, or,

* Strom. B. vi. p. 618, ed. Col. 1688.

† Note III.

‡ Cohortatio ad Græcos, 43, 51, 52.

still worse as he says, the philosophers. Lactantius* ascribes to fallen angels, or dæmons, the invention of image-worship. Theophilus† affirms that the gods of the heathen were dead men : Lactantius,‡ that they were *reges maximi et potentissimi*. But time does not permit and the argument does not require me to pursue this part of the subject into greater detail.§ Suffice it to say that the early Christian writers, not the narrow-minded men that many take them for, did not deny or disparage the intellectual prodigies of the great heathen races, of those marvellous philosophers as Eusebius often calls them, that Plato so eminently commended by his intellectual debtor the great Saint Augustine : || nor did they make light of the voice of nature in the soul of man, nor of the Divine Government over the whole world at every period of its existence, nor of the truths to be found in ancient writers. But the defiled and putrescent system of religion which they found confronting them, formidable as it was from antiquity, wide extension, general consent, from the strength of habit, and from the tenacious grasp of powerful interests upon temporal possessions and advantages, this evil system they hunted down in argument without mercy, and did not admit to be an historical and traditional derivation from a primeval truth, which the common ancestry of the Semitic and the European races had once in common enjoyed.

* Div. Inst. ii. 16.

† Ad Autol. i. p. 75, A.

‡ Div. Inst. i. 8.

§ Note IV.

|| De Civ. Dei, viii. 4, and Contra Acad. iii. 37.

It can hardly be said that there was intentional unfairness in this proceeding. The Christian writers laboured under the same defect of critical knowledge and practice with their adversaries. They took the lives, deeds, and genealogies of the heathen deities, just as they found them in the popular creed, for the starting-points of their argument. Their immediate business was to confute a false religion, and to sweep from the face of the world a crying and incurable moral evil: not to construct an universal philosophy of the religious history of man; for which the time had not then, and perhaps has not yet, arrived. But we have new sources of knowledge, new means of detecting error and guiding inquiry, new points of view open to us: and the more freely and faithfully we use them the more we shall find cause to own, with reverence and thankfulness, the depth, and height, and breadth of the wisdom and goodness of God.

Meantime, it is easy to perceive the polemical advantage which was obtained by this unsparing manner of attack. He brought the case straight to issue, not between differently shaded images of a Deity confessedly the same, with their respective champions ready to uphold their several claims amidst the din of contending preferences and of interminable dispute, but, taking his stand on the threshold of the argument, and like a soldier in fight disencumbering himself of all detail, between the God of the Hebrews on the one side, worshipped from the beginning of mankind, and pretended gods on the other, which could render no distinct account of their origin, and were in truth

no gods at all. And, to estimate the greatness of this advantage, we must take into view the nature of the adverse arguments. The Pagan champions did not too much embarrass themselves by defending the popular forms and fables of the old religion. Perhaps, to the credulous villager, the religion of Porphyry might have been as unintelligible or as odious as that of St. Paul. All these incumbrances were at once disposed of by being treated on the Pagan side as allegorical, figurative, secondary manifestations of the true Deity, or even as having been in many cases due to the intrusive and mischievous activity of the spirits of evil. The Pagan champion, then, was himself contending, not for the forms, but for the one great unseen Deity, which, driven to his shifts, he affirmed to lie hid within the forms. To admit, under circumstances like these, that any principle of inward life, under whatever incrustations, was latent in the mythology as it lay before their eyes, would have been to betray the truth. And any seeming approach to that admission, such as allowing that that foul and loathsome corpse had once been alive in youthful health and beauty, might have sorely hindered and perplexed the Christian argument on its way to the general mind.

As respects the religious ideas of the Greeks, properly so called, and their philosophic tenets, the scholars of the seventeenth century seem to have occupied much the same ground with Eusebius and the early Christian writers. But as respected their mythological personages, not having the Pagans to

argue with, they had no prejudices against finding for them a lineage in Scripture. I am not competent to determine how far in the prosecution of their task they went into excess. But those who admit the truth of the Sacred Records, must surely decline to say that they were wrong in principle. We are not called upon to believe that Neptune was Japhet, or that Iphigenia was Jephthah's daughter; or that Deucalion was Noah, or that Bellerophon was really Joseph in the house of Potiphar, notwithstanding certain resemblances of circumstances by which these and some other such cases are marked. But if we believe in the substantial soundness of the text of Scripture and in the substantial truth of its history, we must then also believe that the Hamitic and Japhetic races, as they in their successive branches set out upon their long migrations, brought with them, from the early home which they had shared with the sons of Shem, the common religious traditions. They could not but go, as Æneas is fabled to have gone from Troy—

“Cum patribus populoque, Penatibus, ac magnis Dis.”*

But if there be those who would strangely forbid us to appeal to what may be called, by the most modest of its august titles, the oldest and most venerable document of human history, the argument still remains much the same. The progress of ethnological and philological research still supplies us with accumulating evidence of the chain of migrations, north and westwards, of the Turanian, and especially of the Aryan races, from points necessarily undefined but in close

* Æn. viii. 679.

proximity with the seats of the patriarchal nomads; and has not supplied us with any evidence, or with any presumption whatever, that their known traditions sprang from any fountainhead other than that which is described in the Book of Genesis as the three-branching family of Noah. If, then, upon this ground, there is, to say the least, nothing to exclude or to disparage, but so much to support, the doctrine of the original intercommunion of these races with the Semitic tribes, which could not but include religion, the question recurs in all its force, how was it even possible that they could leave behind them their religious traditions upon the occasion of their first local separation from their parent stock? They did not surely, like the souls in transmigration,* drink of the river of forgetfulness, and raze out from the tablets of the brain, as a preparation for their journey, all they had ever known, or heard, or felt. The obscuration and degeneracy of religious systems is commonly indeed a rapid, but is necessarily a gradual process. *Nemo repente fuit turpissimus*; and no tribe or nation passes either from light to darkness, or from the possession of a religious belief to the loss of it, at a moment's notice.

It was therefore antecedently probable that, in examining the actual religious systems of later times, and of countries at a distance from the earliest known seat of mankind, but connected with it by the great current of human migration, we should find remaining tokens of affinity to any religious system, which upon

* Plat. de Rep. B. x.

competent evidence we might believe to have prevailed among the races most closely and directly connected with that seat. And this antecedent probability is sustained by a mass of evidence running through the whole web of the Hellenic mythology, obscure indeed in its latest and most darkened ages, but continually gaining in force and clearness as we ascend the stream of time, and so strong in itself as to be, I am firmly persuaded, incapable of argumentative confutation.

To collect and present this mass of evidence, with a careful and strict appreciation of the respective value of its parts, is a work not to be attempted within the limits, however extended by your indulgence, of what is termed an Address. But I will now endeavour to bring to a head what has been stated, and to apply it to the purpose which I announced at the commencement.

I submit then to you, that the true *Præparatio Evangelica*, or the rearing and training of mankind for the Gospel, was not confined to that eminent and conspicuous part of it, which is represented by the dispensations given to the Patriarchs and the Jews, but extends likewise to other fields of human history and experience; among which, in modes, and in degrees, varyingly perceptible to us, the Almighty distributed the operations preliminary and introductory to His one great, surpassing, and central design for the recovery and happiness of mankind. So that, in their several spheres, some positive, some negative, some spiritual, some secular, with a partial consciousness, or with an absolute unconsciousness, all were

co-operators in working out His will ; under a guidance strong, and subtle, and the more sublime, perhaps, in proportion as it was the less sensible.

In the body of those traditions of primitive religion which are handed down to us in the Book of Genesis, and which I shall make no further apology for treating as records of great historic weight, there was manifestly included what I may term an humanistic element. It was embodied in the few but pregnant words which declared that the seed of the woman should bruise the serpent's head.* The principle of evil was to receive a deadly shock in its vital part, and this at the hands of One who should be born into the very race that He would come to deliver.

The next observation I would submit is this : that there was no provision made, so far as we are aware, at any rate in the Mosaic system, for keeping alive this particular element of the original traditions, otherwise than as an anticipation reaching into the far distant future. On the contrary, every precaution was apparently taken to prevent any human being, or any human form, from becoming the object of a religious reverence. To this aim the abstraction of the body of Moses † from the view of the people seems to be most naturally referred : and the stringent prohibitions of the Second Commandment of the Decalogue appear to have been especially pointed against the execution by human hands of the figure of a man. For we hear in Holy Writ of the serpent ‡

* Gen. iii. 15.

† Deut. xxxiv. 5, 6.

‡ Num. xxi. 8, 9 ; John iii. 14.

made by Moses and exhibited to the nation : and the brazen sea of the Temple * rested upon twelve brazen oxen. There were cherubim in the Ark framed by Moses ; † and “ cherubim of image-work ” were made by Solomon for the Temple : ‡ but they were not, it is commonly believed, in human figure : and the four living creatures of the vision of Ezekiel had each the mixed character of man, lion, ox, and eagle. §

And it would appear, that these measures were effectual. Ready as were the Jews to worship the serpent or the golden calf, their idolatry never was anthropomorphic. The majesty of the Deity was thus kept, in the belief of the Hebrew race, effectually apart from that one form of lowering association, which, as we see from the experience of Paganism, was by far the subtlest, the most attractive, and the most enchaining. A pure Theistic system was maintained : a redemption to come was embraced in faith : and, in a religion laden with ritual, and charged with symbol, no rite, no symbol, was permitted to exhibit to the senses, and through the senses to the mind, of the people, the form of Him that was to be the worker of the great deliverance. Thus was kept vacant until the appointed time, in the general belief as well as in the scheme or theory of religion, the sublime and solitary place which the Redeemer of the world was to fill. Counterfeits there were, but they had not that dangerous resemblance to the truth, which would enable them to make head against the Messiah when He

* 2 Chron. iv. 2-5.

† Exod. xxv. 17.

‡ 2 Chron. iii. 10.

§ Ezek. i. 5-10.

should arrive. And so, after He had come, His only rivals and competitors in Judæa were conceptions, distorted in the abstract, of His character and office; far different from those solid formations of an embodied and organised religion, whose dangerous contact the Gospel had not to encounter, until the life and work of its author, and the foundation of the Christian society with all its essential powers, were complete.

Let us now turn to the religion of the Hellenic race; and we shall find that, as matter of fact, it appropriated to itself, and was intensely permeated by, that very anthropomorphic* element which the Mosaic system was so especially framed to exclude, and to which the other religions of antiquity gave, in comparison, but a doubtful and secondary place.

If I am asked to point out a link which especially associates the early Greek mythology with the humanistic element of primitive tradition, I venture to name the character of Apollo as pre-eminently supplying such a link. He is born of Zeus, but he is not born of Herè. Through him the divine counsels are revealed to the world as the God of prophecy and of oracle. This lamp of knowledge, burning in him, establishes an affinity between him and the sun; but the anthropomorphic energy of the religion is jealous of the absorption of Deity into mere nature-power. At what period the identification of Apollo with the sun took place in the Hellenic system, we cannot say; but this we know, that it had not taken place in the

* Note V.

time of Homer, with whom Apollo and the Sun are perfectly distinct individuals. To him is assigned the healing art, and the general office of deliverance. To him again, who remains to the last the perfect model of masculine beauty in the human form, is assigned by tradition the conquest alike over Death and over the might of the rebellious spirits. In his hands we find functions of such rank and such range, that we cannot understand how they could pass to him from Zeus the supreme deity, until we remember that they are the very functions assigned by a more real and higher system to the Son of God; the true Instructor, Healer, Deliverer, Judge, and Conqueror of Death, in whom the power and majesty of the Godhead were set forth to the world.*

The character of this deity, whom Eusebius calls "the most venerable and the wisest" † of the whole Olympian order, affords, in my opinion, the most complete and varied proof of the traditional relationship to which I now refer. Abundant evidence, however, of the same character, might be adduced under many other heads. But I do not refer to this weighty subject at present with a view of leading you to affirm the existence of such a relationship: that could not legitimately be done, except upon a scrutiny, both deliberate and minute, of a great mass of evidence, gathered from many quarters, and dependent for much of its force upon careful comparison and juxta-position. I now advert to the question only as

* Note VI.

† Prep. Evang. iv. 17.

casting light upon matter which will follow. What I take, however, to be indisputable, apart from all theorising upon causes, is this fact—that the Hellenic mythology is charged throughout with the humanistic element, in a manner clearly and broadly separating it from the other religions of the ancient world. It has anthropomorphism for the soul and centre of all that is distinctive in it; and that peculiar quality seems to enter, more or less, into the religion of other tribes nearly in proportion as they were related to the Hellenic race.

Let us now shortly contemplate that mythology, such as it appears in the works of Homer, its prime and most conspicuous author, and himself the true representative of the purely Hellenic spirit in its largest and most authentic form.

The theology of Homer is variously composed. He seems to have lived at the critical moment in the history of the Hellenic, or, as they were then called, Achaian families or tribes, when the different ethnical elements or factors with which they were to assimilate—Pelagic, Ionian, Egyptian, Phœnician, and the like—settled down and compounded themselves into the firmly-knit and sharply-defined character of a people, and they were no longer a chaotic assemblage of unassorted or even conflicting units, but as a people were born into that world on whose fortunes they were to exercise an influence almost immeasurable.

The theology of Homer is the Olympian system; and that system exhibits a kind of royal or palace-life

of man,* but on the one hand more splendid and powerful, on the other more intense and free. It is a wonderful and a gorgeous creation. It is eminently in accordance with the signification of that English epithet—rather a favourite apparently with our old writers—the epithet *jovial*,† which is derived from the Latin name of its head. It is a life of all the pleasures of mind and body, of banquet and of revel, of music and of song; a life in which solemn grandeur alternates with jest and gibe; a life of childish wilfulness and fretfulness, combined with serious, manly, and imperial cares; for the Olympus of Homer has at least this one recommendation to esteem,—that it is not peopled with the merely lazy and selfish gods of Epicurus, but its inhabitants busily deliberate on the government of man, and in their debates the cause of justice wins. I do not now, however, discuss the moral titles of the Olympian scheme; what I dwell upon is, its intense humanity, alike in its greatness and its littleness, its glory and its shame.

As the cares and joys of human life, so the structure of society below is reflected, by the wayward wit of man, on heaven above. Though the names and fundamental traditions of the several deities were wholly or in great part imported from abroad, their characters, relations, and attributes passed under a Hellenising process, which gradually marked off for them special provinces and functions, according to laws which appear to have been mainly original and

* Grote's 'History of Greece,' vol. i. pp. 4 seqq. and 462 seqq.

† Note VII.

indigenous, and to have been taken by analogy from the division of labour in political society. As early as in Homer, while the prerogatives of Apollo and Athenè are almost universal, yet the Olympian society has its complement of officers and servants with their proper functions. Hephaistos moulds the twenty golden thrones which move automatically to form the circle of the council of the gods; and builds for each of his brother deities their separate palaces in the deep-folded recesses of the mighty mountain. Music and song are supplied by Apollo and the Muses: Gany-mede and Hebe are the cup-bearers: Hermes and Iris are the messengers: but Themis, in whom is impersonated the idea of deliberation and of relative rights, is the summoner of the *κατακλησία* * or Great Assembly of the Twentieth Iliad, when the great issue of the war is to be determined. Nothing nearer this on earth has perhaps been bodied forth by the imagination of later poets than the scene, in which Schiller has described the coronation of Rodolph of Hapsburg, with the Electors of the Empire discharging their several offices around him: I quote from the only translation within my reach:—

“ The ancient hall of Aix was bright :
 The coronation-board beside
 Sate king Rodolph’s anointed might,
 In Kaiser’s pomp and pride :
 His meat was served by the Palatine,
 Bohemia poured the sparkling wine ;
 The seven Electors every one
 Stood, fast about the wide-world’s king,
 Each his high function following,
 Like the planets round the sun.”

* Note VIII.

But a still deeper trace of humanitarianism lay in the transportation of the family order into heaven. Only the faintest rudiment of such a system could have been drawn from Semitic sources; but it was carried by the Hellenes to its furthest consequences, and used for the basis of their supernatural structure. The old Pelasgian deities of the country, the importations from Thrace, Phœnicia, Egypt, or elsewhere, and the traditions proper to the Hellenic tribes themselves, were all marshalled and adjusted in a scheme formed according to the domestic relations familiar to us on earth. The Nature-powers of the older worship received the honorary distinction of being made parents and grand or great-grand sires to the ruling dynasty; but, while thus tricked out with barren dignity, they were deprived of all active functions, and relegated into practical insignificance. Still the very arrangements, which are anomalous in the abstract, testify to the strength of that anthropomorphic principle, to which they owed their recognition. For the elder deities were not the more powerful; and parents were supplanted by their sons. Oceanus the sire of the whole family, and Tethys their mother, have for practical purposes no power or place in the Olympian system. They exercise no influence whatever on the life or destinies of man. As the mere representations of certain physical forces, they were ejected from their old supremacy by the more aspiring and truer tendencies of the first Hellenic creed; but that same creed, still copying earth in heaven, found for them a place, as the

decrepit and superannuated members of the system, who had passed from the exercise of sovereignty into retirement, like Laertes* on his rural farm in Ithaca. More or less of the same domestic structure is ascribed without doubt to the theogonies of some other countries; but our accounts of them may have been influenced by Greek sympathies, and besides I am not aware that in any of them the domestic theory was worked out with the same genial feeling, and almost universal consistency.

In one respect indeed, at the least, there was a conflict of contending sentiments. The early Hellenes seem to have had a peculiar horror of incestuous connection. But the notion of unity of descent among the gods excluded the possibility of arranging them in the family order except by nuptial relationships which, upon earth and for themselves, Greeks would have abhorred. The strong repugnance gave way under the bidding of a necessity yet stronger: their profound sense of the natural order was less disturbed by having Zeus a polygamist, with his sister for his principal wife, than it would have been by abandoning that scheme of propagation from parent to child upon which the whole Olympian hierarchy was arranged. The acknowledgment of what was forbidden on earth as established in heaven represents, in all likelihood, the concessions which were necessary in order to prevent a breach in the framework of the popular creed, and to weld into one system elements that belonged to many.

* *Odyss.* xxiv., 205 seqq.

The materials for the old religions, outside of Greece and the Greek races, were in great part afforded first by the worship of nature, and secondly by the worship of animals. Both of these the early Hellenic system steadily rejected and eschewed; and their religion took its stand upon the idea, which inseparably incorporated deity in the matchless human form. This, and much besides, obscured in the later and more mixed traditions, stands out clearly in the earliest records of the Greeks. The 'Theogony' of Hesiod, which must be regarded as a work of very great antiquity, exhibits to us the elemental and the Olympian gods in groups clearly enough distinguished. The poems of Homer, far more Hellenic in their spirit, may be said to exclude and repel from the sacred precinct alike the heavenly bodies and the elemental powers. The plague in the first Iliad bears evident marks of solar agency: but, without the least allusion to that luminary, it is ascribed to Apollo in one of the noblest anthropomorphic passages of the poems. The Sun* only once appears as a person in the Iliad, when he reluctantly obeys the command of Herè that by setting he shall end the day, which was the last day of Trojan success; thus indicating the side to which, as an elemental deity, he inclined. Again, Xanthos, a river god, appears in the Theomachy: but he appears on the side of Troy; and he seems also to have had one name as a deity with the Trojans,† another with the Greeks or Achaians as a

* Note IX.

† Note X.

stream. When Agamemnon offers solemn sacrifice for his army only, he invokes Zeus alone, and invokes him as dwelling in the sky.* But when he offers the joint sacrifice of the two parties in the Third Book, then he invokes Zeus as governing from the hill of Ida, which was in his view, and invokes with him the Sun, the Earth, and the Rivers.† The Rivers are summoned to the Olympian assembly of the Twentieth Book; but it is an assembly in which the gods are to take their several sides. It is a mistake to suppose that Poseidon was an elemental god: he was the patron of the sea, as he was of the horse, but he was more the god of navigation than of water. The sea had its elemental god, the hoary Nereus, with Amphitrite seemingly for his wife; but Amphitrite is always the moaning Amphitrite, and Nereus never emerges from the depths; nor, though he is frequently referred to, is he ever named on the Hellenic page of Homer.‡ I turn to another head.

Loath on the one side to admit the imposing elements of Nature-worship on the grand scale, the Olympian system is yet more alien to the other favourite form of religious illusion, the worship offered to animals, and particularly to the ox; of which Egypt seems to have been the head-quarters. In the full exhibition, which the poems of Homer afford us, of the religion in its earlier forms, there is not a trace of animal worship. In the *Odyssey*, indeed, an awful and mystic sacredness attaches to the Oxen of the

* Il. ii. 412.

† Il. iii.

‡ Note XI.

Sun. In the island of Thrinakiè, detained by adverse winds, the companions of Odysseus are warned that under no extremity should they supply their wants by the destruction of these animals. Accordingly they resort to birds and fish, unusual food with the Homeric Greeks; they finally put some of the animals to death, only to avoid dying themselves by famine; and for this offence the entire crew, except Odysseus, who had not shared in it, are drowned when next they take to sea. Now, although there is no animal worship here, there is what may be called animal sanctity; but it is in connection with a deity not even recognised at the time in the Hellenic system; and introduced as it is during the voyage in remote parts, which must have been based upon the tales of Phœnician mariners, it appears certainly to belong to the Phœnician circle of mythology.

And here we find an example of the manner in which the immense plastic power of the Hellenic mind dealt with foreign ideas of all kinds, so as to make them its own. What their sculptors did with the rude and formless art of Egypt, what their philosophers did with the shreds of Eastern knowledge picked up on their travels, their theology did with the many and crude varieties of superstition, which flowed in upon them from the numerous quarters that furnished by sea and land immigrants for the Hellenic peninsula. The old Pelasgian gods, not rudely overthrown, but gently taken from their pedestals, were set down harmless in the shade of a mellow distance; and the animals, before which lower

types of men were content to bow down the godlike head, were not, when the traditions that deified them set foot on Grecian soil, thrust wholly out of view ; but they were put into appropriate and always secondary places. The eagle of Zeus, the falcon of Apollo, the peacock of Herè, the owl of Pallas, stood no higher in Greece than as accessories to the figures on which they attend.

In the scheme of Homer, not all even of these are found. And while in Homer we should look in vain for anything beyond the faintest and most ambiguous trace of a connection between Apollo and the wolf, we find that connection full-blown in the Egyptian mythology, as it is reported by Diodorus, where Horos, his counterpart in the system of that country, is rescued from death by Osiris in the form of that animal ; and on the other hand, the later Greek tradition, more deeply charged with foreign elements, abounds with traditions of the wolf,* which in Athens was the protective emblem of the courts of justice. But, even thus far down the stream, the rule seems to hold, that when the figures of the brute creation are allowed to appear in the Hellenic system, they seem to be reduced to subordinate and secondary uses.

Saint Clement, indeed, charges † upon the Greeks certain instances both of nature-worship and of the worship of animals ; but in a manner, and with particulars, which show how slight and local were the instances of either. It will not be expected that in

* Müller's 'Dorians,' i. 273, 325. (Tufnell and Lewis's translation.)

† S. Clem. Admonitio ad Gentes, p. 16, B.

an Address of this nature I should attempt those minuter shadings, which general statements like the foregoing must require in order to perfect accuracy. Besides, a common substratum of ideas runs through the mass of the old religions of the world: but we trace the genius of each nation, and it may be the Providential purpose for which that genius was imparted, in its distinctive mode of handling the common stock, here enlarging, there contracting, here elevating, there depressing, so as to produce a distinctive and characteristic result.

And now I will endeavour to point out, in rude and rapid outline, some of the remarkable results of this *idée mère* of the Greek religion, the annexation of manhood to deity, and the reciprocal incorporation of deity into manhood: which made the human form the link between the visible and the invisible worlds, the meeting-point of earth and heaven. And here my object will be only to give you a sample of the redundant materials which seem to rise up around me thickly piled on every side; most of all, perhaps, in the Homeric or Achaian period.

First I will remark a profound reverence for human life and human nature, which even the fiercest passions of war would but rarely, and only for a moment, violate. Hence we find the highest refinements of the manners of the gentleman existing at a time, when, among the Greeks, the material appliances of civilisation were in their infancy, and when writing and the alphabet were practically unknown. The sentiment of honour is indicated, at

this epoch, by a word (*αἵματος*) too delicate for our rendering by a single term in the English, perhaps in any modern tongue. A catalogue of horrors that have stained the life of man elsewhere, sometimes even in the midst of the triumphs of culture and refinement, were unknown to the Achaian period. I will dwell for a moment on one of these, the practice of human sacrifice.

You will find* from a charming volume, the *Miscellanies* of Lord Stanhope, that a few years ago, some of the most famous men of our day were brought by him into correspondence on the interesting, but to many startling, question whether human sacrifices were in use among the Romans: not the unlettered semi-barbarians of Romulus or Tarquin, but the Romans of Rome in its highest political power and its palmiest civilisation. Naturally enough, a considerable repugnance was manifested to entertaining this supposition: but as the inquiry proceeded, a younger yet profoundly learned scholar, Sir John Acton, was brought into the field. His full and varied researches do not appear in the pages of Lord Stanhope. But they range well nigh over all space and time. His conclusions are that “we find traces of it, that is of human sacrifice, throughout almost the whole Hellenic world, in the *cultus* of almost every god, and in all periods of their independent history.”† That among the Romans it was still more rife: and that, though attempts were

* Stanhope's 'Miscellanies,' p. 112.

† Acton, p. 19.

made to restrain or put down the practice, even the famous edict of Adrian, to which Eusebius allows the honour of its extinction, failed to effect it : nay, more, that “ in every generation of the four centuries, “ from the fall of the Republic to the establishment of “ Christianity, human victims were sacrificed by the “ Emperors ” themselves.

The conclusions of Sir John Acton are not admitted in their full breadth by other great authorities ;* but it seems impossible to doubt the wide-spread and long-continued, or often recurring prevalence of the practice, in contact, more or less, with civilised times and nations, and sustained in various degrees by perverse but accepted ideas of religion.

Notwithstanding this terrible and too well sustained indictment against the unenlightened and the enlightened world, it is pleasing to observe that this horrible rite did not originally belong to the usages of Greece. It seems to have come in by a late contagion from abroad : and human sacrifice is not found in Homer. The slaughter of some Trojan youths by Achilles, in his unsated vengeance, has none of the marks of a religious rite, and no relation to a deity. Of the tradition of Iphigenia, sacrificed in Aulis for the welfare of the Achaian host, Homer is wholly ignorant : and Agamemnon in the Iliad speaks of his daughters as open to the option of Achilles, as many fathers may since have done who had two or three of them ready to marry, but so as

* Milman's 'Hist. of Christ.,' i. p. 27, 1st edition.

almost to supply sufficient evidence that no such blood-stained gap had been made in the circle of his family. It is many centuries later, when the tradition reaches us in the works of the tragedians. In that grandest of all Greek dramas, the 'Agamemnon' of Æschylus, his murderous wife Clytemnestra seeks an apology for her act partly in the immolation of Iphigenia by her father's hand: and the tone of the play is so condemnatory as to suggest that an Athenian audience, of the middle of the fifth century before Christ, did not allow religion to be an adequate apology for the deed.

At a somewhat later period, the 'Iphigenia in Tauris' of Euripides supplies us with more direct evidence that the practice, while not indigenous in Greece, was foully rife among other races. The scene is laid abroad in barbaric territory: and the chorus of Greek attendants on the doomed Princess, addressing the Deity, says, "Receive, O venerable one, this sacrifice, if it be a sacrifice agreeable to thee, which the law of us Greeks declares to be unholy." Thus showing that the tradition of the foreign origin of the abominable rite, and the original freedom of the Hellenic system from it, was cherished in the memory of the people.

I have already had to observe that the Achæians eschewed both incest and polygamy. I may add that even the unconscious incest of Œdipus and Jocasta drew down the heaviest calamities: and further that we have no trace, among the Homeric records, not only of cannibalism but of violence to nature in any

form. The crimes of abortion and the exposure of infants, authorised and commended by Plato in his ideal State,* have no place in the Homeric poems: nor do they afford the slightest indication of those shameless lusts, which formed the incredible and indelible disgrace † of Greece in the time of its consummate supremacy in Art, and at the climax of its boasted civilisation.

If I am right in my estimate of the place which the human form held in its relation to the Hellenic religion, we may naturally expect to find it attested, among other ways, by the following signs:—an intense admiration of personal beauty: ‡ a resentment against and avoidance of deformity, as a kind of sin against the law of nature: and a marked disposition to associate ignorance with vice.

I cannot now undertake to exhibit the remarkable manner in which these anticipations are realised in Homer: whose appreciation of the beauty of the human form appears from unequivocal signs to exceed that of any author in any age or country: while upon the other side, introducing but one vicious character, Thersites, among the Greeks of the Iliad, he describes his personal appearance with a degree of detail foreign to his habit, in order, seemingly, that, even as we read, we may see him before us in his hideous deformity. The same topics might be illustrated in detail from the later history of Greece, in modes inconsistent or questionable enough, yet

* Plat. de Republ., B. vi.

† Note XII.

‡ Note XIII.

abundantly significant. Courtesans of extraordinary beauty were sometimes chosen to march in the processions of the gods. By the side of the evil tradition of Aphrodite the promiscuous, there lingered long the rival tradition of an Aphrodite the heavenly. On the other hand, with respect to deformity, I do not remember that Aristophanes,* in his campaign against Socrates, makes the use which we might have expected of the ugliness of the philosopher. And though jests were freely passed upon actual eccentricity of feature, I have not seen it proved, in such partial examination of the subject as has lain within my power, that the Greeks were wont to make use of that which we call caricature ; which I understand to be, the founding upon some known or peculiar feature a representation of deformity that does not exist, for the purpose of exciting ridicule or hatred. Among the moderns this practice appears to have been employed even to stimulate religious animosity or fury : and the rarity or absence of it, among a people possessed of such high sarcastic power as the Greeks, suggests that it may have been excluded by the predominating force of a traditional reverence, grown into instinct, for the beauty of the human form ; having its origin nowhere with greater likelihood than in the early and continued association of that form with the highest objects of religion.

I will now refer to the feeling of the Homeric period concerning the sacredness of the human body

* Note XIV.

against both violation and exposure. The horror of Priam in anticipating his own death at the coming sack of Troy rises to its climax, when he brings into the picture the tearing and defilement by dogs of his own exposed and naked figure.* And the extremest point of punishment threatened to the degraded Thersites appears to be the stripping of his person for the disgust and derision of the camp, and the seaming it with "indecorous" wounds.† Nor was this respect for decency a shallow or shortlived tradition. It was indeed rudely tried; since it came into conflict with the eagerness of the race for high physical activity and athletic development, stimulated to the uttermost by the great national institution of the Games, in which, as Horace said with little exaggeration, the palm of the victor uplifted even the lords of earth to the honours of the gods. Yet, important as it was for perfection in those unparalleled contests to free the person from the restraints of clothing, Thucydides ‡ in his Preface tells us that the athletes were formerly covered: that the Lacedæmonians were the first to strip in the arena, and that it was not many years before his time when the fashion reached its height.

But when we are seeking to ascertain the measure of that conception which any given race has formed of our nature, there is perhaps no single test so

* Il. xxii. 66-76.

† Il. ii. 261-64; *ἀεικέεσσι πληγῆσιν*. To appreciate the force of the remark, the passages should be consulted in the original.

‡ Thucyd. i. c. . See Aristoph. *Νεφ.* 972 seqq., on the garb of youths when with their master of gymnastics.

effective as the position which it assigns to woman. For as the law of force is the law of the brute creation, so, in proportion as he is under the yoke of that law, does man approximate to the brute: and in proportion, on the other hand, as he has escaped from its dominion, is he ascending into the higher sphere of being, and claiming relationship with deity. But the emancipation and due ascendancy of woman are not a mere fact: they are the emphatic assertion of a principle: and that principle is the dethronement of the law of force, and the enthronement of other and higher laws in its place, and in its despite.

Outside the pale of Christianity, it would be difficult to find a parallel, in point of elevation, to the Greek woman of the heroic age. Mr. Buckle candidly acknowledges that her position was then much higher than it had come to be in the most civilised historic period of Greece; and yet he was a writer whose bias, and the general cast of whose opinions, would have disposed him to an opposite conclusion. Again: if the pictures presented by the historical books of the Old Testament and by Homer respectively be compared, candour will claim from us a verdict in favour of the position of the Greek as compared with that of the Hebrew woman. Among the Jews polygamy was permitted; to the Greeks, as has been said, it was unknown. Tales like that of Amnon and Tamar,* or like that of the Levite and his concubine,† are not found even among the deeds of the

* Judges xix.

† 2 Sam. xiii.

dissolute Suitors of the *Odyssey*. Among the Jews the testimony of our Lord is that because of the hardness of their hearts Moses suffered them to put away their wives: but that "from the beginning it was not so."* Apart from the violent contingencies of war, manners seem to have been, in the momentous point of divorce, not very different among the Greeks of the heroic age, from what they had been in "the beginning." The picture of Penelope waiting for her husband through the creeping course of twenty years, and of Odysseus yearning in like manner for his wife, is one of the most remarkable in the whole history of human manners; and it would lose little, if anything, of its deeper significance and force, even if we believed that the persons, whom the poet names Odysseus and Penelope, have never lived. It must be observed, too, what, in the mind of Homer, constitutes the extraordinary virtue of the royal matron. It is not the refusal to marry another while her husband is alive, but her stubborn determination not to accept the apparently certain conclusion that he must have ceased to live. Not even the Suitors suggest that, if he be indeed alive, any power can set her free.

Scarcely less noteworthy, for the purpose of the present argument, are the immunities which she enjoys even in her painful position. She is importuned, but she is not insulted. She feels horror and aversion, but she has no cause for fear. Such, in the

* St. Matt. xix. 8.

morning of Greek life, was the reverence that hedged a woman, as she sat alone and undefended in the midst of a body of powerful and abandoned men.

Again: the famous scene of Hector and Andromache* is not more touching by its immeasurable tenderness, than it is important for the proof which it affords, with reference to the contemporary manners, of what may be called the moral equality of man and wife. And the general effect of the poems is, to give an idea of a social parity, and of a share borne by women in the practical and responsible duties of life, such as we seek in vain, notwithstanding some charming specimens of character, among the Jews. Still less can it be found among the Greeks of the more polished ages. In their annals, we scarce ever hear of a wife or mother, though the names of mistresses and courtesans are entered on the roll of fame, and Phryne† dedicated in a Phocian temple a gilded statue of herself, which was wrought by the hand of Praxiteles. Indeed, not to speak of the poetry of Euripides, even the most solid and impartial judgments, such as those of Thucydides and Aristotle, were unfavourably warped in their estimate of women.

It would, I have no doubt, be possible to illustrate in great detail from ancient records the high value set by the Greeks upon man, in his mind, life, and person. I will mention two instances from Pausanias. An Arcadian, named Skedasos, living at

* Il. vi. 390 seqq.

† Pausanias, x. c. 14, sub fin.

Leuctra, had two daughters, who were violated by Lacedæmonian youths. Unable to bear the shame, they put an end to their lives. Their father, also, having in vain sought justice from the Spartan authorities, sternly recoiled from the disgrace, and destroyed himself. In after times Epaminondas, about to join battle with the Spartans at the place, made offerings and prayers to the insulted maidens and to their parent; and then won the victory which laid low the power of Sparta.

The other is of a different, and a yet more singular, character. The statue of Theagenes, the Thasian athlete,* after his death, fell upon an enemy of his, and killed him. The sons of the man, who thus lost his life, brought an action against the statue; and it was thrown into the sea, under a law of Draco, which made inanimate objects punishable for destroying human existence. Nor was this law peculiar to Athens, where it was maintained in the legislation of Solon. For, as we see, it was recognised in Thasos. Now there is an apparent resemblance between this law and the English law of deodand, which involved the forfeiture, says Blackstone,† of “whatever personal chattel is the immediate cause of the death of any reasonable creature.” But I think that, with much seeming similarity, the cases are essentially different. Deodand was originally a payment to the Sovereign to be applied to pious uses, and seems to have passed into a manorial right, or, in the

* Pausanias, vi. 11, 12.

† Blackstone's Commentaries, i. 8, 16.

Germanic codes,* into a compensation for homicide, payable to the surviving relatives. But it proceeded upon the principle of making owners pay; though they paid in respect of homicide effected through a material instrument. The Greek law inflicted punishment upon the inanimate matter itself, for having violated the sanctity of human life. In this essential point it exactly corresponded with the remarkable law of Moses, which said, "If an ox gore a man that he die, the ox shall be stoned, and his flesh shall not be eaten."† But even this provision falls greatly short of the full spirit of the Greek law, since even the animal that kills is conscious, and gores from excited passion.

I pass, however, to a subject of larger scope, and I venture to suggest that the anthropomorphic spirit of the Greek religion was the source of that excellence in art, which has become to after ages a model for imitation, and a tribunal without appeal.

All are aware that the Greek religion was eminently poetical; for it fulfilled in the most striking manner that condition which poetry above all requires, harmony in the relation between the worlds of soul and sense. Every river, fountain, grove, and hill, was associated with the heart and imagination of the Greek; subject, however, always to the condition that they should appear as ruled by a presiding spirit, and that that spirit should be impersonated in the human shape. A poetical religion must, it seems, be favourable to art. The beauty of form which so much

* Grote's 'History of Greece,' ii. 10, and iii. 104.

† Exodus xxi. 28.

abounded in the country was also favourable to art. The Athenians, however, are stated not to have been beautiful; and at Sparta, where art was neglected, beauty was immensely prized. And, indeed, the personal beauty of a race is by no means usually found sufficient to produce the development of the fine arts: and as to the poetry of religion, and its bearing upon art, while a general connection may be admitted, it is very difficult to define the manner and degree. The practice of image-worship promotes the production of works, first rude and coarse, then more or less vulgar and tawdry. Over the whole continent of Europe there is scarcely at this moment an object of popular veneration, which is worthy to be called a work of art. Of the finest remaining works of Greek art, not very many, I imagine, bear the mark of having been intended for worship. The great size required for statues like the Athenè of the Parthenon and the Zeus of Olympia, seems unfavourable to the exhibition of fine art in the highest sense.* In Pausanias we find notices of an immense number of statues in and about the temples: they are not commonly, I think, praised for excellence in this respect; and the mixture of materials, to which we find constant reference, could hardly have been chosen by the artist for the sake of his own proper purpose. I have heard Lord Macaulay give his opinion that this mixture in the Zeus of Phidias at Olympia, made of ivory and gold, simple as was that form of combination, may probably have

* Note XV.

been due to the necessity of condescension to the popular taste in connection with an object of worship. Although, therefore, the highest artists were employed, it does not appear probable that they derived any part of their higher inspiration from the fervour or the multitude of the worshippers in the temples. Neither will it avail to urge the great esteem in which the professors of the arts were held. High indeed it was; and the successions of sculptors in the different schools* seem to have been recorded apparently with almost as much care as the Archons of Athens, or the Priestesses of Herè at Argos, those landmarks of the history of States. But the question recurs, was their estimation the cause of their excellence, or was their excellence the cause of their estimation; and if the estimation flowed from the excellence, whence came the excellence itself? Both the one and the other were perhaps due to another cause.

That many accessories contributed to the wonderful result I do not doubt. But mainly and essentially, every art and method, every device and habit, in the language of Aristotle, has an end; and is modelled upon the end at which it aims; and by that end its greatness or its littleness is measured. Now the climax of all art, it seems to be agreed, is the rendering of the human form. What, then, could be so calculated to raise this representation to the acmè of its excellence, as the belief that the human form was not only the tabernacle, but the original and proper

* Pausanias, in divers passages.

shape, the inseparable attribute, of Deity itself? In the quaint language of George Herbert,

“He that aims the moon
Shoots higher much, than he that means a tree.”

And again as Tennyson has sung :

“It was my duty to have loved the highest :
We needs must love the highest when we see it,
Not Lancelot, nor another.”*

It was this perpetual presentation of the highest to the mind of the Greek artist, that cheered him, and rewarded him, and yet, while it cheered him and rewarded him, still ever spurred him on in his pursuit. Whatever he had done, more remained to do,

“Nil actum reputans dum quid superesset agendum.”

The desire of ambition was fulfilled : he had always more worlds to conquer. The divine was made familiar to him, by correspondence of shape : but on the other side, its elements, which it was his business to draw forth and indicate to men, reached far away into the infinite. And I know not what true definition there is for any age or people of the highest excellence in any kind, unless it be perpetual effort upwards in pursuit of an object higher than ourselves, higher than our works, higher even than our hopes, yet beckoning us on from hour to hour, and always permitting us to apprehend in part.

I venture then to propound for consideration the opinion, that the fundamental cause of the transcendent excellence of the Greek artist lay in his being, by his birth and the tradition of his people, as well

* Idylls of the King : Guinevere.

as with every favouring accessory, both in idea and in form, and in such a sense as no other artist was, a worker upon deity, conceived as residing in the human form.

It is hardly necessary to observe how the rich and many-sided composition of the Greek mythology favoured the artist in his work, by answering to the many-sided development of the mind and life of man.

Unconsciously then to himself, and in a sphere of almost parochial narrowness, the Greek not only earned himself an immortal fame, but was equipping from age to age a great School of Art, to furnish principles and models made ready to the hand of that purer and higher civilisation which was to be; and over the preparation of which, all the while, Divine Providence was brooding, like the Spirit on the face of the waters, till the fulness of time should come.

But besides the Art and the Poetry of the Greeks, there were other provinces in which their achievements were no less remarkable; and, with reference to the present argument, I must shortly touch upon their philosophy.

The first philosophers of the Greek race were not for the most part natives and inhabitants of Greece, nor subject exclusively to Greek influences. Their speculations turned mainly on the nature of the first principle, and partook of an eastern spirit. But when philosophy took up her abode in the country where Hellenism was supreme and without a rival, that human element, which lay so profoundly em-

bedded in the whole constitution of the Hellenic mind, unfolded itself in the region of speculative thought; and the true meaning of the famous saying that Socrates called down philosophy from Heaven would seem to be, that he gave expression to the genius of his country by propounding, as the prime subject for the study of man, the nature, constitution, and destiny of man himself. And the illustrious series of disciples, some of them probably greater than their master, who followed his example, were not therein aping or adopting the mere peculiarity of an individual, but obeying a congenial impulse that sprang from the depths of their being. Whatever philosophy was to be indigenous in Greece could not but be predominantly and profoundly human; and their power and fame, as analysts of our unfathomable constitution, are fresh and unabated at the present hour. Fashion may wave her wand, but it is with small result. Idolatrous veneration of course has at times begotten temporary reaction and neglect; but the power of Greek culture seems again and again to assert itself by virtue of the law which makes all things find their level, and since it came into existence it has never ceased to be in the most instructed periods the chief criterion and means of the highest intellectual training: not, of course, necessarily for each individual, but for classes and for countries.

The point, however, to which I wish to draw particular attention at this moment, is the large and

well-balanced view, to which Greek Philosophy attained, of the compound nature of man.

Never, probably, has there appeared upon the stage of the world so remarkable an union, as in the Greeks, of corporal with mental excellence. From the beginning of the race, Homer shared the privilege of his most gorgeous epithet* between battle and debate. The Odes of such a poet as Pindar, handing onwards the tradition of the Twenty-third Iliad, commemorate, so to speak, the marriage of athletic exercise with the gift of Song. We do not trace among the Greeks that contrast, which is found so rude and sharp elsewhere, between energy in the body and energy in the brain. The Greek was in this respect like Adam in the noble verse of Milton,

“For contemplation and for valour born.”

And the Greek philosophy was for nothing more remarkable than the manner in which it not only asserted but felt, as an elementary law, the place of the Body in human education.

This was with no exclusive or peculiar view to what we should call utilitarian purposes, such as those of defence or industry, or even art. It seems to have been rather an ample recognition of the right of the body to be cared for, and to be reared in its various organs up to the highest excellence it is capable of attaining, as being, what indeed it is, not

* *κυδιάνερα*. Il. i. 490; iv. 225, *et alibi*.

a mere vesture, or tool, or appendage of the soul, but, like the soul, an integral part of man himself.

This plenitude and accuracy of view on such a subject is the more to be regarded on some special grounds. In general, the philosophies of the world, outside of Christianity, have shown a tendency to fluctuate between sensuality on the one hand, and on the other a contempt and hatred of matter, and a disposition to identify it with the principle of evil. The philosophy of Socrates, of Plato, and of Aristotle, seems to have steered clear and safe between this Scylla and this Charybdis. But again, the Greek saw, as all men see, the body parted from the soul at death, and hastening rapidly, as by the law of its nature, to corruption. To none could this severance, and its mournful and painful incidents, be more repulsive than to him, with his delicate perceptions and his lively emotions. Of a future existence in any shape he usually knew or even surmised little; of the revival of the body, or of the reunion hereafter of the two great factors of the human being, he had yet less conception. We may say then that he lay under every temptation to a disparaging view of the body and of its office. Yet, in spite of his immense disadvantage, it fell to him to find a place for the body in the philosophy of human nature, and to incorporate the principle thus conceived in laws, usages, and institutions, with a clearness and general justness of view, by which Christian learning has done and will yet do well to profit. What with us is somewhat dubious and fluctuating both in theory and in practice, with

him was familiar and elementary in both; and the teachers of mental accomplishment taught also the science, if not the art, of bodily excellence.

Thus for example Plato, in his Treatise on the State, has to consider what men are fit to be chosen for rulers. They should if possible, he says, have the advantage of personal beauty. They must be energetic: and he therefore proceeds to treat of the character of the *φιλόπρονος*,* or diligent man. He must be ready and keen in study: for human souls are much more cowardly in strong studies than in exercises of corporal strength: as in the former they bear all the burden, instead of sharing it with the body. But philosophy itself, he admits, has fallen into some dishonour, from a tendency to partiality in handling this question. The truly diligent man, then, must not be halt or one-sided in his diligence. If he be fond of athletic exercise and of sports, but not apt for learning and inquiry, then he is but half-diligent. And no less "lame" will he be, says the philosopher, if, addicted to mental pursuits, he neglects the training of the body, and of the organs with which it is endowed. This may serve for a sample, but it is a sample only, of the large and complete grasp of the Greek philosophy upon the nature of man: and I connect this largeness and completeness with the fact that the Greek, from the nature of his religion, cherished in a special degree the idea of the near association of human existence, in soul and body,

* Plat. de Rep. B. vii. p. 535.

with that existence which we necessarily regard as the largest and most complete, namely with the Divine.

It may indeed be said, that the Greek lowered and contaminated the Divine idea by weak and by vile elements carried into it from the human. Yes : this and much more may be said, and said with truth. Nothing can be more humbling or more instructive, than the total failure of the Greek mind with all its powers either to attain or even to make progress towards attaining the greater ends of creation by rendering man either good or happy. This is the negative but most important purpose, which the Greek of old may have been destined to fulfil; the purpose of casting down the strongholds of our pride, by first showing us how great he is, and then leaving us to see how little, when standing alone, is all his greatness, if it be measured with reference to its results in accomplishing those ends of life, without which every other end is vain. But I am not now engaged in endeavouring to ascertain what Greek life or what the Greek mind was in itself, and for itself; nor for what negative or secondary uses the study of it may be available. I wish to point out in some degree what it was for a purpose beyond itself, what materials it was preparing for our use, how it was, if I may so express myself, the secular counterpart of the Gospel; and how it became, in one word, the great intellectual factor of the Christian civilisation.

Now it is not I think difficult to see that materials and instruments, such as it furnished, were required.

I will not attempt by argument to show, that all the powers and capacities of man, being the work of God, must have their proper place in His designs ; and that the evil in the world arises not from their use but from their misuse, not from their active working each according to its place in the Providential order, but from their having gone astray, as the planets would if the centripetal force, that controls their action, were withdrawn.

We see then in the Greeks, beyond all question, these two things : first, a peculiar and powerful element of anthropomorphism pervading their religion, and giving it its distinctive character : secondly, a remarkable fulness, largeness, subtlety, elevation, and precision in their conception of human nature ; taking form in, or at least accompanying, an immense vigour both of speculation and of action ; a language of marvellous reach, elasticity, variety, and power ; a scientific excellence in art never elsewhere attained ; and an eminence in the various branches of letters which has given to them, for more than two thousand years, the place of first authority in the cultivated world. The Latin literature, though it has both a character and a purpose of its own, is, in its most splendid elements, derivative from the Greek.

Now, if we survey with care and candour the present wealth of the world—I mean its wealth intellectual, moral, and spiritual—we find that Christianity has not only contributed to the patrimony of man its brightest and most precious jewels, but has likewise been what our Saviour pronounced it, the salt or

preserving principle of all the residue, and has maintained its health, so far as it has been maintained at all, against corrupting agencies. But, the salt is one thing, the thing salted is another : and, as in the world of nature, so in the world of mind and of human action, there is much that is outside of Christianity, that harmonises with it, that revolves, so to speak, around it, but that did not and could not grow out of it. It seems to have been for the filling up of this outline, for the occupation of this broad sphere of exertion and enjoyment, that the Greeks were, in the councils of Providence, ordained to labour : that so the Gospel, produced in the fulness of time, after the world's long gestation, might have its accomplished work in rearing mankind up to his perfection, first in the spiritual life, but also, and through that spiritual life, in every form of excellence, for which his varied powers and capacities have been created.

If this be so, it is quite plain that the Greeks have their place in the Providential order, ay, and in the Evangelical Preparation, as truly and really as the children of Abraham themselves.

But indeed there is no need, in order to a due appreciation of our debt to the ancient Greeks, that we should either forget or disparage the function which was assigned by the Almighty Father to His most favoured people. Much profit, says St. Paul, had the Jew in every way. He had the oracles of God : he had the custody of the promises : he was the steward of the great and fundamental conception of the unity of God, the sole and absolute condition under

which the Divine idea could be upheld among men at its just elevation. No poetry, no philosophy, no art of Greece, ever embraced, in its most soaring and widest conceptions, that simple law of love towards God and towards our neighbour, on which "two commandments hang all the law and the prophets," and which supplied the moral basis of the new dispensation. There is one history, and that the most touching and most profound of all, for which we should search in vain through all the pages of the classics,—I mean the history of the human soul in its relations with its Maker; the history of its sin, and grief, and death, and of the way of its recovery to hope and life, and to enduring joy. For the exercises of strength and skill, for the achievements and for the enchantments of wit, of eloquence, of art, of genius, for the imperial games of politics and war, let us seek them on the shores of Greece. But if the first among the problems of life be how to establish the peace and restore the balance of our inward being; if the highest of all conditions in the existence of the creature be his aspect towards the God to whom he owes his being, and in whose great hand he stands; then let us make our search elsewhere. All the wonders of the Greek civilisation heaped together are less wonderful than is the single Book of Psalms. Palestine was weak and despised, always obscure, oftentimes and long trodden down beneath the feet of imperious masters. Greece for a thousand years,

"Confident from foreign purposes," *

* King John, ii. 1.

repelled every invader from her shores, and, fostering her strength in the keen air of freedom, she defied, and at length overthrew, the mightiest of empires; and when finally she felt the resistless grasp of the masters of all the world, them too, at the very moment of her subjugation, she subdued to her literature, language, arts, and manners.* Palestine, in a word, had no share of the glories of our race; they blaze on every page of the history of Greece with an overpowering splendour. Greece had valour, policy, renown, genius, wisdom, wit,—she had all, in a word, that this world could give her; but the flowers of Paradise, which blossom thinly, blossomed in Palestine alone.

And yet, as the lower parts of our bodily organization are not less material than the higher to the safety and well-being of the whole, so Christianity itself was not ordained to a solitary existence in man, but to find helps meet for it in the legitimate use of every faculty, and in the gradually accumulated treasures of the genius, sagacity, and industry of the human family.

Besides the loftiest part of the work of Providence entrusted to the Hebrew race, there was other work to do, and it was done elsewhere. It was requisite to make ready the materials not only of a divine renewal and of a moral harmony for the world, but also for a thorough and searching culture of every power and gift of man, in all his relations to the

* Note XVI.

world and to his kind ; so as to lift up his universal nature to the level upon which his relation as a creature to his Creator, and as a child to his Father, was about to be established.

And the question arises whether, among the auxiliaries required to complete the training process for our race, there were not to be found some which were of a quality, I will not say to act as a corrective to Christianity, but to act as a corrective to the narrow views and the excesses which might follow upon certain modes of conceiving and of applying it. Doubtless the just idea of their general purpose is that they were a collection of implements and materials to assist in the cultivation of the entire nature of man, and to consecrate all his being to the glory and the designs of his Maker. Yet in part they might have a purpose more special still,—the purpose of assigning due bounds to the action of impulses springing out of Christianity itself.

Now, that narrow conception, which I have mentioned, of the Jews as virtually the sole object of the Providential designs of God, while it began doubtless in a devout sentiment, passed into superstition when it led men to assign to the Jewish people every imaginable gift and accomplishment, and into virtual impiety when it came to imply that the Almighty had little care for the residue of His creatures. And certainly it was not to Scripture itself that opinions like these were due. In a Dissertation ‘On the Prophecies of the Messiah dispersed among the Heathen,’ Bishop Horsley has shown what a large amount of

testimony is yielded by the Sacred Books to the remaining knowledge of the true God among the races in the neighbourhood of Judea. With them religion seems to have been for long periods, as was also to no small extent the religious practice of the Jews, an inconsistent combination of lingering and struggling truth with rampant error. Melchisedec, the type of Christ, Job, one of the chosen patrons of faith and patience, were of blood foreign to the patriarchal race; and the same agency of the prophetic order, which was employed to correct and guide the Jew, was not withheld from his neighbours: Balaam, among the Moabites, was a prophet inspired by the Most High. Of the minor prophetic books of the Old Testament two are expressly devoted to setting forth the burden of Nineveh and the dealings of God with its inhabitants: and Eastern Magi were, in the words of Bishop Horsley, "the first worshippers of Mary's Holy Child."*

A system of religion, however absolutely perfect for its purpose, however divine in its conception and expression, yet of necessity becomes human too, from the first moment of its contact with humanity; from the very time, that is to say, when it begins to do its proper work by laying hold upon the hearts and minds of men, mingling, as the leaven in the dough, with all that they contain, and unfolding and applying itself in the life and conduct of the individual, and in the laws, institutions, and usages of society.

* 'Dissertation,' &c., p. 117.

In the building up of the human temple, the several portions of the work, while sustaining and strengthening each other, confine each other also, like the stones of a wall, to their proper place and office in the fabric.

Divine truth contained in the Gospel, is addressed to the wants and uses of a nature not simple but manifold, and is manifold itself: though dependent upon one principle it consists of many parts, and in order to preserve reciprocally the due place and balance of those parts, means that we call human are available, as well as means more obviously divine; and secular forms and social influences, all adjusted by one and the same Governor of the world, are made to serve the purposes that have their highest expression in the Kingdom of Grace. The Gospel aims not at destroying this equilibrium, but at restoring it: and in the restoration it accepts, nay courts, and by natural law requires, the aid of secondary means.

It is manifest indeed that there was in Christianity that which man might easily and innocently carry into such an excess, as, though it would have ceased to be Christian, would not have ceased to seem so, and would under a sacred title have tended to impair the healthful and complete development of his being.

Rousseau* objects to the Christian system that it is opposed to social good order and prosperity, because it teaches a man to regard himself as a citizen of another world, and thus diverts him from

* Rousseau, 'Contrat Social,' b. iv. c. viii.

the performance of his duties as a member of civil society. "Far from attaching the hearts of the citizens to the state, it detaches them from it, as from all other earthly things. I know nothing more opposed to the social spirit. . . . A society of true Christians would no longer be a society of men. . . . What matters it to be free or slave in this vale of misery? The one thing needful is to go to Paradise, and submission to calamity is an additional means of getting there."

In an age and in a country such as this, it is not required, it is scarcely allowable, to seem to depreciate those various forms of self-restraint and self-conquest which the spirit of man, vexed in its sore conflict with the flesh and with the world, has in other times employed to establish the supremacy of the soul, by trampling upon sense and appetite and all corporal existence. Even in the time of the Apostles, it seems to have been manifest that a tendency to excess in this direction had begun to operate in the Christian Church. As time passed on, and as the spirit of the unrenewed world became more rampant within the sacred precinct, the reaction against it likewise grew more vehement and eager. The deserts of Egypt were peopled with thousands upon thousands of anchorites;* who forswore every human relation, extinguished every appetite, and absorbed every motive, every idea, every movement of our complex nature in the great but single function of the relation to the unseen world.† True and earnest in their

* Note XVII.

† Note XVIII.

Christian warfare, they notwithstanding represent a spirit of exaggeration, which it was requisite to check, uprooting what they ought rather to have pruned, and destroying what they ought to have chastised, and mastered, and converted to purposes of good. That internecine war with sin, which is of the very essence of Christianity, seems to have been understood by them as a war against the whole visible and sensible world, against the intellectual life, against a great portion of their own normal nature: and though as regarded themselves, even their exaggeration was pardonable and in many respects a noble error, yet its unrestricted sway and extension would have left man a maimed, a stunted, a distorted creature. And it would have done more than this. By severing the Gospel from all else that is beautiful and glorious in creation, it would have exposed the spiritual teacher to a resistance not only vehement but just, and would have placed the kingdom of grace in permanent and hopeless discord with the kingdoms of nature, reason, truth, and beauty, kingdoms established by the very same Almighty Hand.

Those principles of repression, which were indispensable as the medicine of man, were unfit for his food. What was requisite, however, was not to expel them, and thereby to revert to the mental riot and the moral uncleanness of heathenism, but to check their usurpations, and to keep them within their bounds; and this was to be effected not by prohibition or disparagement, but by vindicating for every part, and power, and work, of human nature, and for

every office of life, its proper place in the Divine order and constitution of the world. The seed of this comprehensive philosophy was supplied by the words of the Apostle: "Whatsoever things are true, whatsoever things are honest, whatsoever things are just, whatsoever things are pure, whatsoever things are lovely, whatsoever things are of good report: if there be any virtue, and if there be any praise, think on these things."* And so the solid and fruitful materials of the Greek civilisation came in aid, by a wise Providence, of the humanising principles and precepts of the Gospel, to assist in securing a well-balanced development of the powers of the Christian system, and to prevent the instruments designed for eradicating the seeds of disease from subverting the yet higher agencies appointed for the fostering and development of life in every region of our being and our activity.

Volumes might be written with profit to trace the application of the principles touched upon in this Address to the whole history of the Church, and of the Christian civilisation, down to the present day; and the more we said, the more there would remain to say. That which I have now attempted is no more, in effect, than a suggestion, which may open the way for others into a wide and ever-widening field. And if that suggestion be just it will be difficult to deny its importance. Let us glance in a few concluding words at some of its results.

First, it places on high and safe grounds that genial

* Phil. iv. 8.

primacy of the Greeks in letters and in human culture, to the acknowledgment of which Christian Europe has been guided not so much by a logical process, or a definite forethought, as by a sure instinct with the after confirmation of a long experience. Nor can this primacy be justly disturbed by the multiplication, and the energetic and growing pursuit, of those branches of knowledge for which this age has been so remarkable. For Aristotle it was excusable to regard the heavenly bodies as objects nobler than man. But Christianity has sealed and stamped the title of our race as the crown and flower of the visible creation : and with this irreversible sentence in their favour, the studies, well called studies of humanity, should not resent nor fear, but should favour and encourage all other noble research having for its object the globe on which we live, the tribes with which it is peopled in land, air, and sea, the powers drawn forth from nature or yet latent in her unexplored recesses, or the spaces of that vast system—

“ *Ultra flammantia mænia mundi,*”

to which our earth belongs.

But more than this : we live in times when the whole nature of our relation to the unseen world is widely, eagerly, and assiduously questioned. Sometimes we are told of general laws, so conceived as to be practically independent either of a Lawgiver or a Judge. Sometimes of a necessity working all things to uniform results, but seeming to crush and to bury under them the ruins of our will, our freedom, our

personal responsibility. Sometimes of a private judgment, which we are to hold upon the hard condition of taking nothing upon trust, of passing by, at the outset of our mental life, the whole preceding education of the world, of owning no debt to those who have gone before without a regular process of proof, in a word of beginning anew each man for himself: a privilege which I had thought was restricted to the lower orders of creation, where the parent infuses no prejudices into its litter or its fry. Such are the fancies which go abroad. Such are the clouds which career in heaven, and pass between us and the sun, and make men idly think, that what they see not, is not, and blot the prospects of what is in so many and such true respects a happy and a hopeful age. It is I think an observation of Saint Augustine, that those periods are critical and formidable, when the power of putting questions runs greatly in advance of the pains to answer them. Such appears to be the period in which we live. And all among us, who are called in any manner to move in the world of thought, may well ask who is sufficient for these things? Who can with just and firm hand sever the transitory from the durable, and the accidental from the essential, in old opinions? Who can combine, in the measures which reason would prescribe, reverence and gratitude to the past with a sense of the new claims, new means, new duties of the present? Who can be stout and earnest to do battle for the Truth, and yet hold sacred, as he ought, the freedom of inquiry, and cherish, as he

ought, a chivalry of controversy like the ancient chivalry of arms? One persuasion at least let us embrace: one error let us avoid. Let us be persuaded of this, that Christianity will by her inherent resources find for herself a philosophy equal to all the shifting and all the growing wants of the time. Let us avoid the error of seeking to cherish a Christianity of isolation. The Christianity which is now and hereafter to flourish, and, through its power in the inner circles of human thought, to influence ultimately, in some manner more adequate than now, the masses of mankind, must be such as of old the Wisdom of God was described.

“ For in her is an understanding spirit, holy, one
 “ only, manifold, subtil, lively, clear, undefiled, plain,
 “ not subject to hurt, loving the thing that is good,
 “ quick, which cannot be letted, ready to do good,
 “ kind to man, steadfast, sure, free from care, having
 “ all power, overseeing all things. . . .

“ For she is the brightness of the everlasting light,
 “ the unspotted mirror of the power of God, and the
 “ image of His goodness.”*

It must be filled full with human and genial warmth, in close sympathy with every true instinct and need of man, regardful of the just titles of every faculty of his nature, apt to associate with and make its own all, under whatever name, which goes to enrich and enlarge the patrimony of the race. And therefore it is well that we should look out over the

* ‘Wisdom of Solomon,’ viii. 22, 23, 26.

field of history, and see if haply its records, the more they are unfolded, do or do not yield us new materials for the support of faith. Me at least, for one, experience has convinced that, just as fresh wonder and confirmed conviction flow from examining the structure of the universe and its countless inhabitants, and their respective adaptations to the purposes of their being and to the use of man, the same results will flow in yet larger measure from tracing the footmarks of the Most High in the seemingly bewildered paths of human history. Everywhere, before us, and behind us, and around us, and above us and beneath, we shall find the Power which—

“Lives through all life, extends through all extent,
Spreads undivided, operates unspent.” *

And, together with the Power, we shall find the Goodness and the Wisdom, of which that sublime Power is but a minister. Nor can that wisdom and that goodness anywhere shine forth with purer splendour, than when the Divine forethought, working from afar, in many places, and through many generations, so adjusts beforehand the acts and the affairs of men, as to let them all converge upon a single point, upon that redemption of the world, by God made Man, in which all the rays of His glory are concentrated, and from which they pour forth a flood of healing light even over the darkest and saddest places of creation.

Mr. Vice-Chancellor, Professors, and Gentlemen, I

* Pope's 'Essay on Man,' iv,

commend to your notice and your impartial research the subject of the foregoing remarks. It is at least a less unworthy offering than the mere commonplaces of taking leave. Yet I claim one remaining moment to convey to you my gratitude for your confidence, to assure you that I shall ever feel a lively interest in all that pertains to the welfare of your famous University, and to bid you respectfully farewell.

NOTES.

NOTE I., p. 12.

This appropriating power of the Greeks is well expressed in a passage quoted by Eusebius from Diodorus, who is describing the view taken of that power by the Egyptians (Præp. Evang. ii. 6) καθόλου δέ φασι τοὺς Ἕλληνας ἐξειδιάζεσθαι τοὺς ἐπιφανεστάτους Ἀιγυπτίων ἡρώας τε καὶ θεούς.

NOTE II., p. 12.

These sentiments are not only contained in particular passages of the 'Præparatio,' but run through the whole work. See for instance :

On the foreign origin of the Greek religion, B. i. 6, i. 10, ii. 1, and ii. 3. The Hellenic μυθολογίαi κάτωθεν ὀρμῶνται, iii. 4.

On the composition of the old religions, v. 3.

On the commendation of the Greek genius and the philosophers, i. 6 (τά σεμνὰ τῆς γενναίας Ἑλλήνων φιλοσοφίας), i. 8, i. 10, xi. 1, and ii. 6 (ὁ θανμάσιος Πλάτων . . . ὁ πάντων ἄριστος), v. 33.

On the light of nature, ii. 6 (φύσει καὶ αὐτοδιδάκτοις ἐννοίαις, μᾶλλον δὲ θεοδιδάκτοις), and elsewhere φυσικαὶ ἔννοιαι.

On the appropriations from the Hebrews, Books ix. and x.

NOTE III., p. 13.

Celsus appears to have used the same imputation of being copyists against the Hebrews: and to have been confuted by Origen on account of the greater antiquity of the Jewish histories. Stillingfleet, Orig. Sac. ch. i. (vol. i. p. 16, Oxf. ed.)

NOTE IV., p. 14.

Saint Augustine traced the prophecies of Christ in the Sibylline Books (De Civ. Dei, B. xviii. c. 23). Like the other Christian apologists, he commonly treats the heathen deities as real spirits of evil. He seems, in part, like Eusebius, to resolve the personages of the Greek and Roman Mythology into, 1. Men deified after

death, 2. Elements or Nature Powers, 3. Dæmones (De Civ. Dei., B. xviii. c. 14). He recognises divine aid given to the philosophers of Greece (de Civ. Dei, B. ii. c. 7): and in tracing the history of the two *Civitates*, the *Cælestis*, and the *Terrestris*, he says (B. xvi. c. 10), that probably there were children of the former in the latter, as well as of the latter in the former.

NOTE V., p. 22.

Mr. Grote remarks upon this anthropomorphic genius of the Hellenic religion, under the name of an universal "tendency to personification."—'History of Greece,' i. 462. Mr. Ruskin has some striking observations on the same subject.

NOTE VI., p. 23.

Apollo. Mr. Max Müller says, in his most able work on 'Language,' vol. ii. p. 433, that Apollo drew to himself the worship of the Dorian family, Athenè of the Ionian, Poseidon of the Æolian, but that the worship of Zeus reached over all. I venture to doubt the accuracy of this classification. The Greek mythology was eminently favourable, as one of popular idolatry, to the development of particular local worships, and the preferences were much associated with race. But it would surprise me to see any proof that the worship of Apollo, or that of Athenè, was anything less than universal among the Greeks. The invaluable work of Pausanias, with its careful and patient enumerations, appears to form a conclusive standard of appeal on this subject.

On the character of Apollo, see C. O. Müller's 'Dorians,' Lewis and Tuffnell's translation, i. 329.

NOTE VII., p. 25.

The word "jovial" appears to be one of that group of words, too little noticed, which have come into the English tongue direct from the Italian, and to abound in our old authors. It is explained by Johnson as meaning, 1. Under the influence of Jupiter, 2. Gay, airy, merry. But I do not find in any of our dictionaries or word-books which I have consulted any notice of what appears to be its *differentia*, and to make it reflect the idea of the Olympian life: namely, that in its proper use it does not mean merriment simply, but an elevated or royal kind of merriment. Thus Drayton speaks

of the "princely jovial fowl:" and the sense is exactly touched in a speech of Lear (Act iv., Scene 6)—

What?

I will be jovial : *come come, I am a king,*
My masters, know you that.

This distinctive flavour of the sense has been in part rubbed out : yet jovial is not even now synonymous with merry : we should more properly say jovial men, merry children, than *vice versa*.

NOTE VIII., p. 26.

It is worthy of remark, that in Homer the political life of man is reflected even as to some portion of its detail by the divine life. The institution of the βουλή, or council, was already well marked off from that of the ἀγορή, or Assembly. So the ordinary meeting on Olympus seems to be the βουλή, but this, which precedes the Theomachy, to correspond with the Assembly.

NOTE IX., p. 29.

The Sun in the 'Iliad,' see II. xviii.—

ἥελιον δ' ἀκάμαντα βοῶπις πότνια Ἥρη·
πέμψεν ἐπ' Ὠκεανοῖο ῥοᾶς ἀέκοντα νέεσθαι.

Why being thus passive, and scarcely animate, is the planet represented as unwilling? The answer must be founded on conjecture. But I conceive it to be probably this. The Trojan worship seems to have been more elemental than the Greek: so the Sun was unwilling to cut short that famous day, which was to be the last day of prosperity to the Trojan arms.

In the 'Odyssey' we have no mention of the worship of the Sun by the Greeks: and when Eurypulos in Thrinakiè persuades his companions to slay the oxen of that deity for food, he says, "when we return to Ithaca, we can make him a rich temple and precinct, with abundant votive gifts" (Od. xii. 346).

πίονα νηὸν

τεύξομεν, ἐν δέ κε θεῖμεν ἀγάλματα παλλὰ καὶ ἐσθλά,

thus raising the inference that he had none already existing in that very small island.

NOTE X., p. 29.

On the Invocation of Rivers.

It is probable that these may have been admitted more or less into purely local worship: Achilles in Troja not only invokes his

own Spercheios, but mentions his father's prayer and vow to offer an hecatomb to the stream, in the place where was its glebe and altar. In this class of cases, the anthropomorphic force of the Greek system showed itself by investing the rivers with human forms. Achelous, the most famous of them, fought against Herakles for Deianira, sought her hand, and had many other wives. Odysseus invokes the river in Corfu, but then he is in the sphere of the outer geography, and of a theology differing from the Greek. Asteropaios, a Pæonian hero, is grandson to the River Axios.

NOTE XI., p. 30.

The single clear trace that I remember to have perceived in Homer of the elemental creed is this, that, in one single passage, he calls the sacrificial fire by the name of Hephaistos, the god of fire. II. ii. 426.

NOTE XII., p. 37.

On this subject, as a testimony *instar omnium*, see the passage in Aristophanes Νεφ. 1087-1100.

NOTE XIII., p. 37.

“Philippus of Crotona was actually deified by the inhabitants of Segeste, and had sacrifices offered to him in his lifetime on account of his beauty. Cypselus instituted prizes for beauty: while such was the honour conferred by its possession, that Elpinice, the sister of Cimon, did not hesitate to sit as model to Polygnotus.”—Falkener's ‘Dædalus,’ p. 33, note.

NOTE XIV., p. 38.

On the contrary, in the Clouds, v. 540, Aristophanes takes credit to himself because his play made no jest upon baldness—

οὐδ' ἔσκωψε τοὺς φαλάκρους,

and this is believed to be a rebuke to Eupolis for having condescended to ridicule Aristophanes himself on the score of baldness (Mitchell in loc.). The conclusion I have stated in the text as to caricature, seems to me, on the whole, to be supported by the collection of instances in the work of Champfleury. On the use of caricature for religion, see Lecky's ‘Rationalism,’ vol. ii., p. 1.

NOTE XV., p. 45.

The Zeus of Phidias at Olympia is stated to have been sixty feet high, and the Athene of the Parthenon forty.—Falkener's 'Dædalus,' p. 94.

NOTE XVI., p. 57.

It has been, perhaps, too little noticed that the expedition of Alexander, by carrying not only the political, but especially the intellectual, dominion of Greece through the East, was no less signally a Preparation for the Gospel than was the growth of the Roman Power, which placed the civilised world under the sway of a single sceptre (S. Aug. De Civ. Dei, B. xviii. c. 22). The dissolution of Alexander's empire after his death has made us take for a short-lived, meteor-like phenomenon, what really was a great work, with results not less permanent than wide-spread. Its importance reached a climax in the Translation of the Jewish Scriptures executed by the Seventy.

NOTE XVII., p. 61.

Vividly described by Lecky, 'Rise and Influence of Rationalism in Europe,' vol. ii. p. 28. The same principle runs through Church History: as where the admirable Mère Marie-Angélique Arnauld describes the Infirmarys in her convent as "basses et humides comme des caves," making the nuns ill, and yet "cela ne les dégoutoit point. Dieu nous en envoya plusieurs." (Relations du Port Royal, p. 30.)

NOTE XVIII., p. 61.

Saint Augustine says of the body, *ad ipsam naturam hominis pectinet* (De Civ. Dei, i. 13). Eusebius in his account of the Hebrew religion shows a tendency to depreciate this constituent part of man, when he relates that they viewed it simply as a space for the soul to dwell in ($\tau\acute{o}$ δὲ, *τούτον χώραν περιβολῆς ἐπέχειν*), and says all bodily pleasures are no higher than those of the brute creation (B. v. c. 4). Saint Augustine had felt deeply the influence of the Greek philosophy, and hence perhaps it is that with his warmly-coloured views he combined so much breadth of conception.

LONDON:
PRINTED BY W. CLOWES AND SONS, STAMFORD STREET,
AND CHARING CROSS.

THE CHURCH OF SCOTLAND:

WHAT IT IS, AND WHAT IT DOES.

A LECTURE

DELIVERED IN HUTCHESONTOWN CHURCH

BY THE

REV. R. K. MONTEATH, B.A.,

GLASGOW,

On SABBATH EVENING, 6th JUNE, 1869.

*The Subject is Illustrated by special reference to the Proceedings of
the recent General Assembly.*

"If I forget thee, O Jerusalem, let my right hand forget her cunning. If I do not remember thee, let my tongue cleave to the roof of my mouth; if I prefer not Jerusalem above my chief joy."—PSALM cxxxvii. 5, 6.

GLASGOW:
THOMAS MURRAY AND SON,
81 BUCHANAN STREET.

1869.

NOTE.

THE Author, in preparing these observations, had no view to their publication. At the request of friends he has consented to publish them, though well aware they are in many respects deficient. He has committed them to the press as they were delivered from the pulpit; a few verbal alterations only, having been made upon them.

His desire in framing them was that they might prove useful, in perhaps giving a little information, and exciting a little more interest in and enthusiasm about the matters of which they treat. That they may be useful in these ways at least, among his own people, and among those into whose hands they may chance to fall, is his most fervent prayer.

THE CHURCH OF SCOTLAND: WHAT IT IS, AND WHAT IT DOES.

PSALM cxxxvii. 5, 6.

“If I forget thee, O Jerusalem, let my right hand forget her cunning. If I do not remember thee, let my tongue cleave to the roof of my mouth; if I prefer not Jerusalem above my chief joy.”

THE observations which I am about to address to you might, perhaps, have been more correctly entitled, “Remarks on the proceedings of the recent General Assembly of the Church of Scotland;” for indeed they have mainly and principally to do with what was transacted there. But as the view I am now to submit to you of our National Church, in reference specially to the late General Assembly, may be said to be a reflection of what the Church is in the mission appointed to her, and the work she actually performs, the title which I have placed at the head of this Lecture may rightly be regarded, as indicating correctly enough, the nature of the subject of which I am about to treat.

I. The General Assembly, I may be allowed to remark to you, is the supreme court of the Church of Scotland—the Church of the Reformation in Scotland, the Church of our fathers, and one of the most stanch representatives of the Presbyterian form of church government in the land. It is not a mere meeting; nor is it a mere congress or convocation, which we read of in connection with the Church of England; it is a court, with certain legislative and judicial functions to discharge within a certain defined sphere, that is, the sphere of religion, and of the arrangements that may be connected with it; it is a court, not a popular assembly; and it is the highest court of those through which the government and arrangements of the Church are carried on. The *lowest* of the *inferior* courts, as they are entitled, are the Kirk-Sessions, which are made up of the minister and elders of each parish or congregation; and of these there are from 1200 to 1300. The next above the Sessions are the Presbyteries, each of which is made up of the

ministers of charges within certain bounds laid down by the General Assembly, and of one elder from each of the Kirk-Sessions within the same bounds; so you will see that in the Presbytery, as we call it, there is an equality in numbers between ministers and elders; the lay, or ruling elders, being as numerous as the ministers or teaching elders; and of these Presbyteries there are, according to present arrangements, eighty-four. The next ecclesiastical court above the Presbytery is what is properly entitled the Provincial Synod. This is principally a court of review, and may be regarded as being chiefly intended for collecting the opinion and mind of the Church within certain larger and wider areas; for a Synod is constituted of all the ministers of certain Presbyteries within certain boundaries defined by the Assembly, and of the same elders who sit in these Presbyteries, as representing their several parishes or congregations, and who are sent there by the Kirk-Sessions; so in the Synod, again, you will see there is equality in numbers between ministers and elders. It can never be said, then, that Presbyteries and Synods are merely gatherings of ministers, or mere ministerial cliques; the lay element, as it is called, having as much to say in all Church matters in these courts of the Church as the ministers have themselves. So much is this the case, that on occasions, very important matters have been, and are, and can be decided for *us* ministers, by the action of the lay element in the inferior courts of our Established Church; and of the Synods which I have just now been speaking of, there are sixteen in number, which have their meetings, some of them once, but the greater number of them twice, in the course of every succeeding year.

And these are the inferior courts, as they are called, of the Church—the arrangements by which the government of the Church is carried on within certain specific boundaries; and above all these comes the supreme or the highest court, namely, the General Assembly, which is constituted of representative ministers and elders, in certain proportions, from every Presbytery, and of elders sent by the universities, by town councils, and by certain royal burghs. The number of the members of the Assembly is presently 406, though the number of those who put in appearance at its meetings is considerably short of this. Such is the supreme court of our Church, to which Synods, and Presbyteries, and Kirk-Sessions are amenable. It is a court supreme in the strictest

sense, with which the civil magistrate, as represented by Queen, Lords, and Commons, and courts of law, have no right to interfere *when it is acting in its legitimate province*, and in the concerns which do rightly belong to it. And when collision has taken place between our Church courts and those of the civil law, it has been when the Church has gone beyond what she had strictly a right to do, or, it may be, when the civil law courts have been desirous to intrude into what rightly and constitutionally appertained to the courts of the Church alone. It is from no desire to draw invidious distinctions that I crave your attention to the free action, and the independence of all civil interference, that are claimed and are possessed by the courts of the Church of Scotland, and by her supreme court especially, as contrasted and compared with the Church of England. You read in the newspapers of the Convocations of the Provinces of Canterbury and York, or, it may be, of a certain association which calls itself the Church of England Congress; and when you read of such things, you read of assemblies which have in themselves no right to meet, and, at all events, they have no power of free action—they have no power to do anything but to speak. When you mention to your English friends that we in the Church of Scotland would have been rid of such an exerescence or poisonous fungus as Bishop Colenso years upon years ago; when you tell them that in *our* Established Church he would have been libelled, as the phrase is, for heresy by his Presbytery; that if the libel had been found proven, and he had appealed to the Synod; that if the Synod had found it proven, and an appeal had been taken to the General Assembly; that that supreme court, at its first sitting, would have entered upon the case; that without doubt the libel would have been found proven there; and that sentence of deposition and deprivation would then and there have been pronounced; and that the Church would have been quit of him for ever; when you tell them all this, why, they look perfectly aghast; they don't understand it; they wonder where your Church got the power. Of course your Church got the power where the Church of England never sought it: in the independence, as to religious matters, the complete independence of the Church, of everything like control on the part of the temporal or civil power. We have good reason to value very highly the General Assembly of our Church. It has done much in time past for even our civil liberties, as any one may find out from the page of his own country's history; and it

has contributed very materially, by its action in time past, to make Scotland what it is, whether in its strictly temporal or in its religious privileges.

II. And now, secondly, I desire to take you along with me into the General Assembly, that we may all have an idea of the appearance that is presented by this supreme court—this last court of appeal of our time-honoured Established Church. And in the season now past I may say I have completed my acquaintance with the Assembly; as, for the first time in my life, I was present at the opening of it; and made it a point also of being present, when it was brought to its touching and its impressive close. It will, of course, be consistent with the knowledge of every one of you that it meets at Edinburgh, in a place that is appointed to it,—which being a church as to form, is made use of as such on Sabbaths, and on other occasions, like all other places similar.

Well, then, let us suppose that the day has arrived when the General Assembly is to begin its sittings. We find, in this year, at all events, that the day is the one appointed for the celebration of the birth of our most gracious Sovereign. This being so, it is a general holiday, and as every one is intent on some species of recreation, the streets are thronged with the many who are at leisure; and many have it in view to witness the proceedings of a public nature, which accompany and are connected with the sitting down of our General Assembly. Let us suppose that it is now twelve o'clock noon of the 20th of May last. The Lord High Commissioner, as the representative of the Queen to the General Assembly, is called, arrives with his long train, from the palace of Holyrood, at the High Church of Edinburgh; where public worship is conducted by the Moderator of the Assembly of the preceding year, who preaches to a large audience what is called the opening sermon of the supreme court of this Church of ours. Public worship over, the whole audience move to the Assembly Hall, where the Lord High Commissioner with his procession very soon arrives, and takes his seat on the throne which is immediately behind the chair of the Moderator. The Moderator of the preceding year having taken the chair, constitutes the Assembly by engaging in devotional exercises; the roll of members is then adjusted; and the Moderator rises to nominate, as the custom is, a person who may fitly occupy the place which he has filled for a year himself. The *custom* is, for the retiring Moderator to do this;

while at the same time the freedom is possessed, by any one member of the Assembly, to nominate whom he may think worthy of having this highest honour conferred on him which our Presbyterian—our Republican Church, as we may term it—has it in its power to give; and on the recent occasion, as every one knows, on the nomination of the retiring Moderator, and by the acclamations of the members of the Assembly, Dr Norman Macleod of our own city was raised to the high and important post.

There is no delay whatever when this step has been taken; for the Assembly proceeds at once to the business that is before it; the Commissioner delivers his commission to appear in the capacity in which he is to be present; the Queen's letter is read—the Assembly in the meanwhile standing—and a Committee appointed to frame a reply to the words of Her Majesty, and to return thanks for the royal gift which always comes along with the royal missive. And while *some* of these things may be said to be peculiar to the opening meeting of the Assembly, there are others of them which are common to all of its meetings during the time it sits. Every meeting is opened and closed with religious exercises. In the morning, the Lord High Commissioner having taken his seat, the Moderator gives out the psalm, which is sung by the General Assembly standing—(the attitude of *standing at singing*, you will observe, then, is no *innovation* where it has been adopted)—the Scriptures are read, and earnest devotion is offered up; and in the course of the term of its sitting, special seasons are appointed for religious exercises; as, for example, in the proceedings of the second day of its meeting, two diets of prayer were appointed, at which members of Assembly were called on by the Moderator to conduct the exercises of the House.

And as to the closing meeting of this high court of our Church, there is much about it to attract, and to touch even, as there is, in connection with the inauguration of the important gathering. The day on which it closes is a most busy day. A vast array of business has to be overtaken. It is very late in the afternoon before the House can adjourn for a little space; and after it meets again at eight o'clock—as on the evening of Monday the 31st May last—it is very late before the closing proceedings can be entered upon. It is a quarter-past eleven before the Moderator rises to give his closing words of exhortation, of encouragement, and advice; and for two hours—that is, till a quarter-past one on the morning of Tuesday—he keeps us enchained by his eloquent

and useful, his burning and earnest words. To the close the interest of the vast audience is maintained; and the touching words at the end of the address were listened to in breathless silence, which was broken at the last by loud and prolonged manifestations of approbation from every corner of the overcrowded hall. The Amen is pronounced to the address, and the Moderator, in the name and by the authority of the Lord Jesus Christ, dissolves the Assembly, and appoints its next meeting to take place on the 19th of May in the succeeding year; after which he turns to the Commissioner, thanks him for his courtesy and kindness to the Court during its meetings, expresses the hope that he will be able to report favourably as to the proceedings which he has witnessed; and his Grace, on the other hand, says a few words indicative of the approbation with which he has looked on and listened to everything; and in the name of the Sovereign dissolves the Assembly, as the Assembly of the STATE Church—(thus recognising THE CHURCH as distinct and separate from, and independent altogether of the State)—and indites it to meet on the day previously appointed by the General Assembly itself through its freely-elected Moderator. The benediction is pronounced, and the General Assembly of 1869 is concluded; and at half-past one in the morning of the first day of June, we find ourselves in the open air.

And to the short statement I have tried to give you of the nature and order of the meetings of our General Assembly, perhaps it may be well to add this, and to mention that its meetings are largely attended by strangers from a distance, and by the public at large. It is not, as I have said, a mere popular assembly; it is a judicial court. Owing to this, the accommodation for a general audience is not very extensive; but notwithstanding the judicial nature of its proceedings generally, it is very largely resorted to; and on the closing evening, or rather morning, especially, there could be no fewer present than 1500 persons; and as many more might have been present at the scene, which was indeed so interesting, had there been the space to assign to them where they could have sat or stood.

Now such is our General Assembly, and I trust I have been able to give you, at all events an idea, of the reality. In the view of such a fact as the Assembly itself; of the solemnities at the beginning and closing of it; of the religious services which have an important place in it; of the debates and discussions, so earnest and, at the

same time, on occasion, so very keen; in view of the interest in it which is called forth among those near at hand, and at a distance too; surely it is befitting that we give some little attention to it; surely it would not be befitting if we turned entirely away from it; and surely as we ask, in regard to our own Church, the Church of Scotland, What is the nature of it, and what work does it do, as represented in the recent General Assembly? by the answer we receive our knowledge may be increased as to what our Church is and does, and our interest may be deepened in those things which our Church, through its General Assembly, its Presbyteries, its other courts, its elders, and its congregations severally, is seeking to engage in, and is desirous to carry out.

III. But now, in the third place, it may come perhaps to be asked, How does the General Assembly conduct its business? what business has it to do? and what relation to, and influence on the Church at large, has the business that may be transacted by this, the supreme court of the Church of Scotland, the last court of appeal in all matters which properly pertain to and belong to her? An answer to this question, or rather to this collection of questions, is what I must now attempt. Now, in endeavouring to answer this collection of questions, I would at the outset remark, that the supreme court of our Church conducts the work, which it is its object to accomplish, by means of committees on the various subjects or objects, on which it considers it of importance to fix the attention, and to which to direct the efforts and energies of the Church as a united whole. These committees are appointed from year to year; sometimes they are discharged, if it seem good to a majority of the Assembly to discharge them; or if the object contemplated by their appointment is seen after a little not to be so very useful a one, or not to be very practicable; or when they have accomplished the object for which they were appointed. They have to report to the Assembly, through their conveners, as to what they have been doing in the preceding year; and so particular is the Assembly upon this point, that, in its recent meeting, a committee which had been in existence for some years in reference to a Gaelic edition of the Scriptures, and which failed to give in a report when it was called for, was *ordered* to give in its report to the Assembly next ensuing. On the reports which are in this way given in, there are always discussions, and in some cases there are

divisions; and the result is a deliverance as to what the General Assembly think of what has been done for the accomplishment of the object by any one committee in particular, and what it wishes to be done in the ensuing year; and such deliverance has its influence through that committee, very plainly at times on the ministers of the Church, and on its congregations generally. Such deliverance has its influence in many cases, and at times, in directing the energies of the ministers of the Church; and in shaping the nature, character, and number of the objects on which the attention of the Church is to be fixed in the progress of the ensuing year; and of reports of committees which had been appointed for various objects, the late Assembly listened to, and discussed, and gave substantial deliverances on no fewer than 45.

Allow me to specify a very few of the matters in connection with which committees had been appointed:—There are those, for example, which have to do with the management of what are called the six schemes of the Church of Scotland—the Home Mission, the Colonial, the Education, the Foreign or India Mission, the Jewish, and the Endowment Schemes. Besides these there is the committee upon intemperance, and one, too, as being closely allied to intemperance, the committee on pauperism—of which there is too much in Scotland. Looking over the list of the business, I find that there are Committees which reported upon the Small and Diminished Livings of many of our parishes; upon hymns to be used in public worship; upon lay patronage—its evils, and the remedies to be applied to them; on Fast Days, as they are called, or days of prayer and humiliation, as they should be called—their observance, and the best way of removing evils connected with the observance of them; on correspondence with foreign churches and continental chaplains; on Sabbath schools; on the training of ministers and missionaries; on the statistics of the Church; on psalmody; on aids to devotion; on the marriage law; on baptismal vows; on the eldership; on applications for admission to the Church by ministers of other churches; on immorality; and on other subjects and matters akin to and allied with these.

But while the General Assembly conducts its business through committees which give in their reports, which are discussed and decided on, there are other ways by which it comes to be occupied. It sometimes happens that in the Presbyteries some subject has come to attract attention; it has attracted the attention of the

Presbytery as a body, or of, perhaps, only an individual, and it is discussed in the Presbytery, and a representation is agreed to be sent upon the particular subject, to be considered by the General Assembly of the Church. Representations of this kind are called *overtures*, and ask the interference and aid of the highest court of the Church for various important ends; and these come to be discussed by the Assembly, and many discussions, and keen ones too, they give rise to. Of such representations, or *overtures*, at the late General Assembly, there were no fewer than seventeen. It was thus that lay patronage came to be discussed a second time in the Assembly, and that a petition, I may say for its abolition, was agreed to be presented to Parliament; it was thus, too, that the introduction to Parliament of a bill affecting the City Churches of Edinburgh came to be discussed; it was thus, also, that a discussion arose upon the Irish Church, which *I* think had better have been omitted altogether (a representation or *overture* on this matter was presented by several members of the General Assembly when it was sitting); it was thus that the question of union with other churches came to have attention bestowed on it; and that the proposal of a pastoral address to the people on the subject of domestic devotion came before the Assembly, and was adopted. It was the result of an *overture* that a resolution was come to, to frame, through the committee on Aids to Devotion, a definite statement of the vows connected with the privilege of baptism; that there came to be a discussion on the contributions of the Church to missionary enterprises, and the circulation of the *Missionary Record*; and so on. Now, these *overtures* which come, it may be, from a Presbytery, or from a few individuals in the Assembly itself, bring important subjects into public notice through the discussions which they give rise to. They are sometimes so dealt with as to be dismissed, as the phrase is; that is, the General Assembly does not approve of them, and they are laid aside; or they are approved of, and it is resolved to act upon them; or, perhaps a committee is appointed to consider and to report upon them; and if the subjects of them are such that it is thought of importance that the mind of the Church should more fully be ascertained, they are sent down to Presbyteries for their consideration and their advice—such consideration to be given in the course of the year, and such advice to be reported to the General Assembly when it assembles next; when, according to the unanimity of Presbyteries on the subjects of the *overtures*, they are

turned into acts, or are again transmitted to Presbyteries for further consideration, or are sent into the land of forgetfulness as not likely to be conducive to the good, in the meantime, of the country and Church at large. Many important results come out of and have arisen from overtures. They may be said to be the expression of the mind of the Church in all parts of the country. What has occupied the attention of one Presbytery, or of even an individual, may come in this way to be brought under the notice of the whole Church and country. They lead to important discussions, and they lead to important steps being taken by the General Assembly, as this year, for example, have been taken on the subject of lay patronage. Too much value cannot be placed upon these overtures, which afford to the General Assembly the occasion for many deliberations, and for resolutions and proceedings of a highly important kind. And then it happens very unfortunately that ministers, like others, go a good deal astray. They sometimes so conduct themselves as to render it necessary for the Presbytery they belong to, to libel them, as the phrase is, and to conduct a process against them which has for its object the proof of certain charges which they are said to be open to. Such cases usually pass from Presbytery to Synod, and from Synod to General Assembly, in consequence of appeals being taken by one party or by another. A case of this kind is considered, and gone into by the Assembly; and the result is, it may be, a remitting of the case to the inferior courts for further consideration, or the suspension, and, in some cases, the deprivation and deposition of the minister who, by his folly, may have placed himself in a position so painful and very sad. Very fortunately there was little need for the exercise of this kind of discipline by the last General Assembly. But there was one case of the kind, which ended in the mournful and solemnising result of the deposition from the office of the holy ministry of one of our parish ministers. There are also appeals from the inferior courts of various kinds which give work to the Assembly, and call for the strong hand of its interference, and the exercise of its judicial power. For example, a minister had received an appointment to another parish, to which he had not only been presented, but called; but the Presbytery he is meanwhile connected with have refused to translate him, and he has appealed in consequence. The Assembly, after inquiry, order the Presbytery to proceed with the translation, according to the rules of the Church.

But there are other things still which take up the time and occupy the earnest attention of the court of our National Church. A person is present one day, who comes as commissioned from the American Missionary Association, and to make a statement in reference to its operations among the free negroes of the Southern States of America. This person is Mr David M'Crae, a well-known citizen of our own, who, as you may know, was recently in America; and he is invited, as thus commissioned, to address the House. His statement is listened to, and expressions of sympathy and desire to help are entered upon the records of the Church. And then there are present deputations from the Synod of the Church of Scotland in England, and also from the Protestant Church of France; they both have messages to give from their respective bodies, and they have something to ask; and their statements being finished, the Moderator addresses the deputations severally. The interchange of words and of feelings is very profitable and very pleasing; and one's sympathies are drawn out and extended, and have given to them a yet wider range in the act of holding out the hand of brotherly help and encouragement to those who have thus come into the midst of us.

Now, such is the method by which the Assembly conducts its business; such is a sort of outline of the business which the Assembly has to conduct, and of the work that it has to do; and one thing which may occur to any one in the view of these things is this, that the ten days over which the General Assembly's meeting extends are not idle—that they are, on the contrary, very busy days. They would require to be busy, to overtake the important, not to say the vast variety of subjects which we have just been hinting at. There is enough in what I have just now been giving you as a species of summary of the work of our last Assembly, to show that its meeting is no mere formality, that it is not a mere scene of meetings of friends, and parting without any purpose having been served by their coming, many of them great distances, to the General Assembly of the Church. That they were busy days is to be witnessed by the fact of the long sittings which had to be undergone. Committee meetings had to be attended by many in the early forenoon; and from eleven in the forenoon to half-past five in the afternoon, and from half-past seven in the evening till long after midnight, would the court sit at its business. On two occasions, at all events, it sat very late, or rather till it was very early; for

on one of the occasions it was half-past one, and on the other half-past two o'clock in the morning. On the latter of these occasions daylight was coming in as we were leaving the Assembly Hall, and before we got to bed the daylight had chased away the darkness of the night.

But as any one considers what has been sketched as to the manner, the nature, and the amount of the business of the last General Assembly of the Church of Scotland, he may learn with the greatest certainty the anxiety that is cherished, on the part of the courts of the Church he belongs to, for the personal and living Christianity of all of those who make a profession of being the members of it; for you cannot but notice that the Assembly had an overture before it on the subject of the Christian life and work of the Church, and that while time failed to attend to the subject in the way of having a conference on the matter, it commended it most earnestly to the members, and pressed it on the attention and notice of the Church in general, and upon the ministers of the Church especially. And any one may see the truth of the statement which I have just now been making as to the anxiety of the highest court of the Church for the spiritual life of all that belong to her communion, when he considers that an overture, having reference to a pastoral address on domestic devotion, engaged the attention of the Assembly, and that a pastoral letter is to be issued by a committee appointed for the purpose, which I hope to have the privilege of reading from this place, at no very distant date.

Another thing which may be noticed, as may be learned from what I have already said as to the business of the last Assembly, is, that while it gave attention to, and urged attention, through its ministers, to the great duty of seeking to be replenished with all spiritual blessing; while it besought attention to personal religion, and the means for promoting it, it at the same time showed zeal for the purity of those who minister at the altar. The religious and moral character of the ministers of the Church is shewn to be of importance in the eyes of the high court of our Church, by the existence of its committee on the training of ministers and missionaries, and by some of the proceedings which were engaged in no further back than Monday last, the 31st May. The General Assembly, as I have already signified, deposed, on the day above named, one of the Church's ministers from the office of the ministry. There is thus

signified the abhorrence of conduct in a minister unbecoming a Christian, and not befitting the office of the ministry; there is in this way declared the Church's determination, through her highest court, that those who minister at her altars, that those who have to deal with the holy things of the sanctuary, must truly themselves be clean. I hardly know anything more affecting and solemnising than a deposition by the General Assembly of one from the position of a minister of the Church. Perhaps the two things which I think to be the most affecting and solemnising are an ordination to the office of the ministry by the laying on of the hands of the Presbytery, and a deposition of a minister from that very same sacred office. On the occasion I refer to, the case came before the Assembly in rather a peculiar way. Because of some peculiarity it had been found needful for the Assembly to cite the minister to appear before the high court of the Church on this particular day. He did not make his appearance, nor after having been cited three times at the door of the Assembly was any appearance made for him; and the Assembly therefore proceeded to the consideration of the case as it was brought before them by the Presbytery of which the minister in question was a member. It certainly was a very bad case, and the Presbytery had been very forbearing in it. The whole matter is gone into and sifted; and when parties are removed, as the technical phrase is, a motion is made by a member of Assembly that the Assembly do find him guilty of the charges laid against him, and that the punishment should be, and could only be, deposition. The motion is seconded; and the case is so very clear that there is no other motion; no, not even one for a mitigated sentence; and so the motion is agreed to unanimously. The principal clerk of the Assembly records the decision of the Assembly, and reads it so soon as he has completed it; and upon this the Moderator of the Assembly calls on a member of the House to lead the devotions of the Assembly, who offers up prayer that the step about to be taken may be sanctified, that the scandal of the misconduct of a minister may be put away and over-ruled, and that the unfortunate one himself may have grace given to him for repentance. The prayer being completed, the Moderator, amid breathless silence and suppressed emotion—the members in the meanwhile standing, and doing so till the close of the solemn act—reads the sentence of the House, prohibiting and discharging the Rev. ——— from exercising the functions of the ministry in all time coming, under pain of the

highest censure of the Church, and declaring the church and parish of — vacant from the date of the sentence which was then being read. The act, so thrilling from the very simplicity of it, is really most terrible as to its consequences. This person is no longer a minister of the Church; and Church, and stipend, and manse, and glebe, are truly no longer his. Such is the power your Church has. The Church of England has it not; and it is perhaps well for other bodies which have not the same vantage ground as you to stand upon, to go no further than suspension; and what is the glory of your Church is this, that from a sentence like this even, there is, and there can be, no appeal to any one civil court.

And then, again, while we learn from the business which occupied the attention, and took up so much of the time of the General Assembly, the anxiety of the Church for the prosperity of personal religion, and the purity and good conduct of her ministers, we surely must learn too, the interest that is taken in the prevalence of a true and a pure morality. It is intent not only on the increase of personal religion, but it is intent on the protection and advancement of the true fruit of religion—a true and a pure morality. Witness you how the General Assembly has its committee upon intemperance; how it has its committee on immorality; and enjoins in its deliverance all due attention to the best means that can be devised on the part of ministers, of elders, and even of all alike, for the putting down the degrading vice of drunkenness, of every form of sensuality, and for the discouragement and suppression of everything that can be branded with the title of immorality. It becomes all, then, the faithful adherents of the Church of Scotland—not only out of hearts that are right with God, and that are replenished with all of redemption blessing—to be cultivating temperance in all things, and at the same time a becoming purity; but also to be doing everything whereby the interests of such things may be truly and really benefited. All ought to be religious, and all show that they are truly religious by giving all heed to that purity of life of which it is the root and spring.

And while, in token of the attention bestowed, and which the Assembly desires to be bestowed on vital religion, I might have referred to the special religious services on the Sabbath, and at other times, of the Assembly as a whole; I believe that, guided by the proceedings of the Assembly, you and I may very safely

and easily gather as to some of those things, in which our Church, as represented in her General Assembly, desires we should take an interest. The business which the Assembly does, as well as the manner in which it does it, is fitted and is intended to show us this. Not only does our Church wish us to take a practical interest in vital personal religion, and in the discouragement of vice and immorality; but it is desirous at the same time that we should take an interest in other things which have a relation to the practical work of our Christianity. It wishes us to take an interest in our own spiritual well-being, but it wishes us to give heed to the well-being of others as well. It puts it before us as our duty to do what we can for missions—for missions at home, and for missions abroad likewise; it wishes us to take thought, in every way that we can, for bringing Christianity to bear on the outlying masses of our countrymen, and upon the dark recesses of heathenism and idolatry; it commends too, as worthy of interest, the Jew and the Gentile, the fellow-countryman and the colonist, the young in life and the older and more mature; and so then we are invited to do what we can, and to contribute of our means as we may, for the Home Mission, the Foreign or India Mission, the Colonial Mission, the Jewish Mission, the Education Scheme, and the Scheme for the Endowment of Churches which have been already built and which are still unendowed. Such are a few of the objects in which, as Christians, and in which, as members and adherents of the Church of Scotland, we are invited by the General Assembly, as the highest representative court of our Church, we are called on and invited and expected to take an interest.

You will surely say, too, as you take thought of the work with which the recent General Assembly were so much taken up and occupied, that our Church is possessed of, and *shows* that it is possessed of, *life*. While we make no claim to having a monopoly of godliness and usefulness, we can with all charitableness assert that neither have those a monopoly of such essentials, who are outside of us, as some would fain have us and all others to understand. We think our Church has still within the mass of it a *little salt*, and that that *salt* has not lost its savour. Only let us walk worthy of our calling, and worthy of our advantages, and we shall have many tokens that God, even our Saviour, even now is upon our side, and we shall reach on to

yet more advanced stages of Christian living, and to yet greater abounding in everything that is useful, and that tends to advance the glory of the Saviour and the good of our fellow-men.

IV. But I would now, in the fourth and last place, single out one or two of the matters which were brought under the notice of the Assembly, and that are worthy of special mention. Perhaps the first thing, which at this point I may remark upon, is the report which was given in by the Committee on the Statistics of the Church, and the deliverance of the Assembly which was given on the report. This committee bears to have been appointed for the purpose of ascertaining such matters as the number of communicants, of baptisms, and, among others, the sums contributed by the Church of Scotland voluntarily, for education and missions, and works of Christian charity of various kinds. During the past year the usual schedules were sent out inviting replies, so as to enable the committee to make up something approaching to a complete return. The schedules shared the fate of a great number of documents of the same description; for of 1254 which were issued, only some 744 were returned with answers, leaving 510 which were not returned, and some of these which would have contained reports of what had been done by some of the largest and strongest of the congregations of the Church in every part of the country. Confining ourselves to the money column of the statistics, we find that these 744 reporting congregations return as the sums voluntarily contributed by them—they return as their free-will offerings for home and for foreign objects, the total of £154,000; but as it was ascertained that some items had been omitted in the returns, these items bring up the total of the free-will offerings of these 744 congregations to £170,000. And be it remembered that if returns had been received at all, or in some cases, in time, from the other 510, among which I mentioned are to be found some of our largest and strongest congregations, and these in all parts of the country, the sum total of £170,000 I have mentioned above would be considerably increased. We have no reason to think that the average of these 510 would have been less than that of the 744; but taking a lower average, we have not the slightest hesitation in affirming that, with the aid of proper statistics, it would be found that £200,000 would more correctly represent the free-will offerings of the old mother Church.

Be it remembered, too, that in this sum there is not included the amount of the stipends of the parish ministers. It represents the pure free-will offerings for the spread of Christianity, for the promotion of education, and of other charitable and other most useful purposes. Now, perhaps, there may be some now hearing me, who may feel inclined to say, that they had not the slightest idea that there was so much contributed by their Church in the way of free-will offerings; that it looks, in fact, as if the Church of Scotland might be able to compete in free-will giving with any other body of professing Christians; and they may feel inclined to say further, that did we require over all Scotland to raise stipends for the support of the ministry, we might be able to add as much again as the sum mentioned to what we already give. Very well, to such as say they had no idea of the amount of their own Church's free-will offerings, let me observe, that they must in some measure have themselves to blame. They might have had some idea, if they took greater interest in the working of the schemes and committees of their respective congregations, if they would take a livelier interest in the affairs of the Church at large, if they would avail themselves of the help of the *Missionary Record* of the Church, which so few of them read, and which every one can get for the trifling amount of one-and-sixpence a-year. Yes, I must say that our people are much themselves to blame, if they have so imperfect ideas of the money results of their own Church's doings, as to be wonderfully surprised, when they come to be told that the Kirk gives in free-will offerings something like the large and the handsome total of £200,000, or just one-fifth part of a million of money, for religious, charitable, and philanthropic purposes. At the same time, I may remark, that our people may not be *altogether* to blame for the want of an adequate idea of their own Church's free-will offerings to the cause of God. It may arise, in some measure, from the manner in which the Church deals with this particular portion of her work. You know we are not in the habit of trumpeting what we do, as are some others, whom we could name. We are not in the habit of crying out now and again, and frequently, "Behold what have we wrought!" Perhaps we are wrong in saying so little, as a Church, about what we do; and perhaps we might give a little more publicity to our doings, without incurring the charge of boasting, and of being filled with a vain desire to be making the most of it. But so it is; we don't trumpet our doings; and very likely, from the want, perhaps, of greater publicity, there is not the same breadth of information among our people as to what

is done by our Church at large. At the same time, however, I am inclined to suggest that, if the interest were more lively, little difficulty would be experienced in attaining to a knowledge of what is done, and so to be stirred into greater activity and more earnest desires for usefulness.

To speak for myself, I would say, that the blowing of the trumpet, even by any body of Christians, that for a Church to blow its trumpet, is not a course that is in favour with me at all; more especially for a Church to be forcing itself on attention as the gatherer of great sums of money, does not appear to me to be exactly the right and the proper thing. A Church, or *the* Church, exists for another purpose than to collect money. It is not the great object, or even a principal object, for which the Saviour founded, and for which He preserves the consecrated, the saintly and holy company. It appears to me, too, that the vitality of a Church, or of a congregation of a Church, is not to be judged of by the money that it may raise. To a worldly-minded person it may appear very right to judge after this fashion; but there may be a great deal of true Christian life where there are but humble offerings; and there may be a great *appearance* of life—and there may be only the appearance of it—where there is much money-giving. The money-giving may, in the eyes of some, be an equivalent for the want of some more fundamental and some more important thing. I deprecate the prominence that is given to the money element in the working of our churches in the times we are passing through; and what *I* desiderate is, that our people were in such a state spiritually, that it needed not to appeal to them constantly in behalf of this, or that, or of the other thing; but that out of hearts realising the greatness of that love wherewith *He* hath loved us, there would be ready to flow out a stream of an active and true benevolence towards any purpose or object of a Christian, or charitable, or philanthropic character whenever it is announced.

But to pass from this, on which I have dwelt, I am afraid, too long; a second topic I may remark on, in connection with which the General Assembly gave forth one of its deliverances, is the report of the committee on what are called Fast Days, or what ought rather to be called days of prayer and humiliation, as preparatory to the celebration of the Lord's Supper. This committee was appointed in consequence of a representation having been made to a preceding Assembly, or an overture having come before it, as to the partial observance of these days of prayer and

humiliation in many places; as to their often being turned into holidays by even our professing Christian people; and as to the abuses connected with them in many ways. The committee thus appointed has reported once or twice, suggesting remedies of various kinds. Their report, given in to the last General Assembly, contained the following suggestions—

“1. That the Fast Day be kept, where practicable, on the Friday, and, where this is impracticable, brought as near as possible to the Lord's Day, for the services of which it is intended as a preparation. 2. That the Fast (and consequently the communion) be observed on the same day throughout Presbyteries, counties, or other large districts, so as to lessen as much as possible the inconvenience resulting from the keeping of the Fast on different days in contiguous parishes, and the temptation to wander on that day from one parish to another, and to go from town to country, or *vice versa*. 3. That, to facilitate this system, the custom be encouraged of ministers occupying their own pulpits on the Fast Day, thereby preparing their own flocks for the solemn service; and also, where the same is attainable and expedient, adopting the practice of simultaneous communion.”

And on this report, the deliverance of the Assembly, which was of course prepared and proposed by sympathisers with the views and purposes of the committee, was—

“That the Assembly receive the report, approve of the diligence of the convener and of the committee, and recommend the suggestions made by them to the earnest and favourable consideration of ministers and kirk-sessions, in the hope that these suggestions may be found useful in diminishing the evils and inconveniences existing in various parts of the country, in connection with the day of humiliation and prayer preparatory to the Lord's Supper, and to increase the comfort and benefit of that holy ordinance.”

Now, I would observe that had I been, on the occasion, a member of the Assembly, I should certainly have been one of those who disapproved of the report, and were desirous of a deliverance by the Assembly of another kind. I have no faith whatever in the recommendations of the committee. I fail to discover, indeed, how their adoption would contribute much or even anything to the attainment of the object—namely, the better observance of Fast Days, and the removal of abuses connected with them. But I think I can see that the adoption of their proposed *little* changes in connection with Fast Days strictly, would only end in failure, and that that failure might in due time be made the occasion of some other recommendations by this or a similar committee, even to the length of abolishing these few extra and week-day services of our Church. Anything which would lead in that direction I would be inclined, at all events at present, most decidedly to oppose. And as to that

part of the third recommendation of the Committee, in which simultaneous communion is spoken of as a practice worthy to be adopted, I cannot say that I at all approve of it. The committee, for one thing, were not asked to report on the *mode of the observance* of the communion—they were only asked to report on Fast Days, as connected with the communion; and I wonder that so little notice was taken of the fact, that the subject had not been remitted to them. I have no desire for simultaneous communion, as it is termed—that is, the abolition of Tables in succession to one another. I think the practice is open to many objections, looking at it from the point of view whether of the minister or the people. I think it a pity that the Assembly permitted itself to be led to resolve as it did; but it seemed as if members were anxious to pass on to the next business, which was the report of the committee on Foreign Missions; that they might have the privilege of hearing the Moderator speaking, who is the convener of that important branch of the mission work of the Church; and in consequence of this, the deliverance, as proposed, was allowed to pass. And I think that this committee on Fast Days would better have served the end of its appointment, if it had directed attention to one or two things which lie a little deeper than those almost simply external circumstances, which they were content to dwell on; for example, they might well have directed attention to the worldliness of the times, and not a mere unsuitableness of days, as lying at the root of the bad observance of special religious seasons. Surely, too, they might have recommended, as consistent with the object of their appointment, the propriety of calling attention to the intent and use of such days of prayer and humiliation, as preparatory to communion. Are they not these, that, in our deeper humiliation and sense of our necessities, we may long after more eagerly, the fulness of blessing exhibited in the ordinance of the Supper? And surely they might have taken notice of the utter ignoring of these week-day religious services by our steamboat and railway companies; nay, the worse than the ignoring them—I should rather say, the insulting them and the trampling them under foot. What right have those railway and steamboat companies to head their advertisements for pleasure sailings and excursions with the name of our religious solemnities? The thing is monstrous to see staring you on every hand, at these seasons, bills headed by the titles, “Fast Day Sailings,” “Fast Day Pleasure Excursions,” and such like. Let the companies I refer to run additional trains and

steamers if they will; we cannot keep them from doing that: but I think that we are wanting to ourselves, and that we omit to take one measure at all events, for the better observance of our days of prayer and humiliation, if we do not lift up our voices in loud remonstrance against the insult that is offered to the religious public, by the improper use that is made, of even the very name that is attached, to these seasons of solemn worshipping.

I have just a word or two to offer upon two subjects now, both of which were discussed, and on which decided action was taken, by the General Assembly of our Church, which has been brought to a close but recently. Another of the matters, then, which occupied the Assembly, and in connection with which it did something of importance, was that which every one in name is tolerably familiar with, namely, lay patronage. A committee appointed regarding it, at a former Assembly, reported concerning it; and there were one or two overtures or representations concerning it, from some of the Synods and Presbyteries of the Church. The report was first taken up, and then the overtures; and so there were two debates—two very keen discussions and decisive divisions upon the subject. But the most important step was taken after the debate which took place upon the overtures. I just wish to read to you the motion, which was carried by a majority of 105, approving of, and adopting the report of the committee which had been given in. The motion really explains the nature and the contents of the report itself; it is as follows:—

“The General Assembly having heard the report of the Committee on Patronage appointed last year, approve the diligence of the committee, and adopt the said report, in so far as it indicates the evils which have arisen from the existing law of patronage, the advantages which would arise from the abolition, with such compensation to patrons as may appear just and expedient, and generally in so far as it recommends that the nomination of ministers should be vested in heritors, elders, and communicants, leaving the details, both as to the constitution of the nominating body, and as to the respective powers of the nominating body and the congregation at large, to be arranged so that there should be conferred on the permanent male communicants in each parish the greatest amount of influence in the election of ministers which may be found consistent with the preservation of order and regularity in the proceedings.”

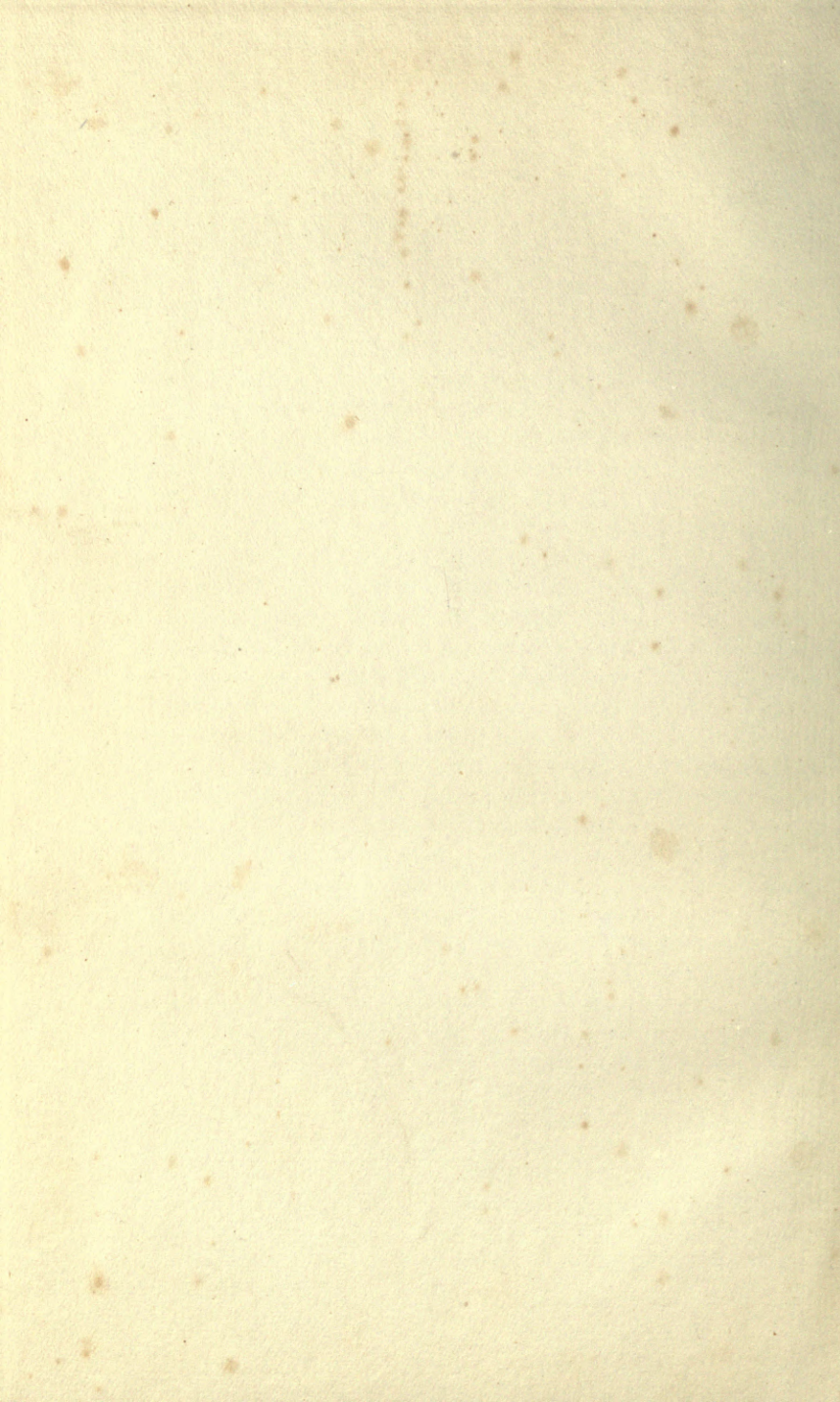
And I would also read to you the motion which was carried by a majority of 111 over another motion, after the discussion on the overtures which I have referred to. And be it remembered that the majority in this case against patronage as it exists, was greater than any majority in connection with the same subject, previous even to the famous, and ever to be lamented, 1843. The motion which was carried by such a majority is as follows:—

“The General Assembly having considered the overtures anent patronage, in respect that the provisions of the Barrier Act are not applicable to the resolution as to patronage come to at a prior diet of the Assembly, dismiss the overtures; and having in view the aforesaid resolution, and the expediency of taking steps to carry out the same without delay, resolve to petition both Houses of Parliament for the removal of patronage in terms of the petition, the draft whereof is now submitted to the House, and authorise the Moderator to sign the same; further, appoint a committee to take the other necessary steps for carrying this resolution into effect, and attend to the progress of any legislative measure on the subject of patronage which may be introduced into Parliament.”

And I have to remark that a petition, in accordance with the motion, has been drawn out, and signed, and has been already presented to the House of Commons; the result we await with hopefulness. For my own part, I trust that what we know too well by the name of lay patronage in this country, has got its death-blow. It has been the cause of sore divisions in the past, and I would look forward to its abolition, in the manner that is proposed, or in some manner similar, as the fruitful source of peace and of quietness, and of a prosperity unequalled in the good days of old.

And, now, only a word on another subject. Our General Assembly has had under its consideration, and has given forth a deliverance on, a report from the committee on Sabbath schools. This committee has existed for many years; and it reported on this recent occasion, that the Church of Scotland has, in the Sabbath schools which are connected with it, 150,000 scholars; and that these 150,000 scholars are taught by nearly 13,200 teachers. It is no exaggeration to say, and it is in no boasting spirit that I say, that the Kirk stands foremost in the strength of its Sabbath schools. It has not failed to recognise the importance of having due attention paid to the religious instruction and training of those who are young in years; and we wonder not that the General Assembly resolved as it did, to prosecute the work, encouraging all who are taking an active part in it.

And now, imperfectly, I fear, the work I proposed is done. I have no hesitation in saying that the Church of which such things can be spoken is worthy of your acceptance, your confidence, and your most earnest help. I would not ask these from you if I did not feel in my own heart that they ought to be conceded to the Church of Scotland, which I humbly do represent, and of which I am an unworthy minister. “For Sion’s sake will I not hold my peace, and for Jerusalem’s sake I will not rest, until the righteousness thereof go forth as brightness, and the salvation thereof as a lamp that burneth.”



UC SOUTHERN REGIONAL LIBRARY FACILITY



A 000 106 651 3

