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JAMES  
MILLER  
ESSAYS



1893

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**ESSAYS.**

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# ESSAYS

ON

- I. Government,
- II. Jurisprudence,
- III. Liberty of the Press,
- IV. Prisons and Prison Discipline,
- V. Colonies,
- VI. Law of Nations,
- VII. Education.

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**BY JAMES MILL, ESQ.**

*AUTHOR OF THE HISTORY OF BRITISH INDIA.*

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BY JAMES MITCHELL

Author of "The Law of the Colonies"



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THE ARTICLE

**G O V E R N M E N T,**

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# GOVERNMENT.

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## I.

*The End of Government; viz. the Good or Benefit for the Sake of which it exists.*

**T**HE question with respect to Government is a question about the adaptation of means to an end. Notwithstanding the portion of discourse which has been bestowed upon this subject, it is surprising to find, on a close inspection, how few of its principles are settled. The reason is, that the ends and means have not been analyzed; and it is only a general and undistinguishing conception of them, which is found in the minds of the greatest number of men. Things, in this situation, give rise to interminable disputes; more especially when the deliberation is subject, as here, to the strongest action of personal interest.

In a discourse, limited as the present, it would be obviously vain to attempt the accomplishment of such a task as that of the analysis we have mentioned. The mode, however, in which the operation should be conducted, may perhaps be described, and evidence enough exhibited to shew in what road we must travel, to approach the goal at which so many have vainly endeavoured to arrive.

The end of Government has been described in a great variety of expressions. By Locke it was said to be "the public good;" by others it has been described as being "the greatest happiness of the greatest number." These, and equivalent expressions, are just; but they are defective, inasmuch as the particular ideas which they embrace are indistinctly announced; and different conceptions are by means of them raised in different minds, and even in the same mind on different occasions.

It is immediately obvious, that a wide and difficult field is presented, and that the whole science of human nature must be explored, to lay a foundation for the science of Government.

To understand what is included in the happiness of the greatest number, we must understand what is included in the happiness of the individuals of whom it is composed.

That dissection of human nature which would be necessary for exhibiting, on proper evidence, the primary elements into which human happiness may be resolved, it is not compatible with the present design to undertake. We must content ourselves with assuming certain results.

We may allow, for example, in general terms, that the lot of every human being is determined by his pains and pleasures; and that his happiness corresponds with the degree in which his pleasures are great, and his pains are small.

Human pains and pleasures are derived from two sources:—They are produced, either by our fellow-men, or by causes independent of other men.

We may assume it as another principle, that the concern of Government is with the former of these two sources; that its business is to increase to the utmost the pleasures, and diminish to the utmost the pains, which men derive from one another.

Of the laws of nature, on which the condition of man depends, that which is attended with the greatest number of consequences, is the necessity of labour for obtaining the means of subsistence, as well as the means of the greatest part of our pleasures. This is, no doubt, the primary cause of Government; for, if nature had produced spontaneously all the objects which we desire, and in sufficient abundance for the desires of all, there would have been no source of dispute or of injury among men; nor would any man have possessed the means of ever acquiring authority over another.

The results are exceedingly different, when nature produces the objects of desire not in sufficient abundance for all. The source of dispute is then exhaustless; and every man has the means of acquiring authority over others, in proportion to the quantity of those objects which he is able to possess.

In this case, the end to be obtained, through Government as the means, is, to make that distribution of the scanty materials of happiness, which would insure the greatest sum of it in the members of the community, taken altogether, preventing every individual, or combination of individuals, from interfering with that distribution, or making any man to have less than his share.

When it is considered that most of the objects of desire, and even the means of subsistence, are the product of labour, it is evident that the means of insuring labour must be provided for as the foundation of all.

The means for the insuring of labour are of two sorts; the one made out of the matter of evil, the other made out of the matter of good.

The first sort is commonly denominated force; and, under its application, the labourers are slaves. This mode of procuring labour we need not consider; for, if the end of Government be to produce the greatest happiness of the greatest number, that end cannot be attained by making the greatest number slaves.

The other mode of obtaining labour is by allurements, or the advantage which it brings. To obtain all the objects of desire in the greatest possible

quantity, we must obtain labour in the greatest possible quantity; and, to obtain labour in the greatest possible quantity, we must raise to the greatest possible height the advantage attached to labour. It is impossible to attach to labour a greater degree of advantage than the whole of the produce of labour. Why so? Because, if you give more to one man than the produce of his labour, you can do so only by taking it away from the produce of some other man's labour. The greatest possible happiness of society is, therefore, attained by insuring to every man the greatest possible quantity of the produce of his labour.

How is this to be accomplished? for it is obvious that every man, who has not all the objects of his desire, has inducement to take them from any other man who is weaker than himself: and how is he to be prevented?

One mode is sufficiently obvious; and it does not appear that there is any other: The union of a certain number of men, to protect one another. The object, it is plain, can best be attained when a great number of men combine, and delegate to a small number the power necessary for protecting them all. This is Government.

With respect to the end of Government, or that for the sake of which it exists, it is not conceived to be necessary, on the present occasion, that the analysis should be carried any further. What follows is an attempt to analyze the means.

## II.

*The Means of attaining the End of Government; viz. Power, and Securities against the Abuse of that Power.*

Two things are here to be considered; the power with which the small number are entrusted; and the use which they are to make of it.

With respect to the first, there is no difficulty. The elements, out of which the power of coercing others is fabricated, are obvious to all. Of these we shall, therefore, not lengthen this article by any explanation.

All the difficult questions of Government relate to the means of restraining those, in whose hands are lodged the powers necessary for the protection of all, from making bad use of it.

Whatever would be the temptations under which individuals would lie, if there was no Government, to take the objects of desire from others weaker than themselves, under the same temptations the members of Government lie, to take the objects of desire from the members of the community, if they are not prevented from doing so. Whatever, then, are the reasons for establishing Government, the very same exactly are the reasons for establishing securities, that those entrusted with the powers necessary for protecting others make use of them for that purpose solely, and not for the purpose of taking from the members of the community the objects of desire.

## III.

*That the requisite Securities against the Abuse of Power, are not found in any of the simple Forms of Government.*

There are three modes in which it may be supposed that the powers for the protection of the community are capable of being exercised. The community may undertake the protection of itself, and of its members. The powers of protection may be placed in the hands of a few. And, lastly, they may be placed in the hands of an individual. The Many, The Few, The One; These varieties appear to exhaust the subject. It is not possible to conceive any hands, or combination of hands, in which the powers of protection can be lodged, which will not fall under one or other of those descriptions. And these varieties correspond to the three forms of Government, the Democratical, the Aristocratical, and the Monarchical.

It will be necessary to look somewhat closely at each of these forms in their order.

1. **THE DEMOCRATICAL.**—It is obviously impossible that the community in a body can be present to afford protection to each of its members. It must employ individuals for that purpose. Employing individuals, it must choose them; it must lay down the rules under which they are to act; and it must punish them, if they act in disconformity to those rules. In these functions are included the three great operations of Government—Administration, Legislation, and Judicature. The community, to perform any of these operations, must be assembled. This circumstance alone seems to form a conclusive objection against the democratical form. To assemble the whole of a community as often as the business of Government requires performance would almost preclude the existence of labour; hence that of property; and hence the existence of the community itself.

There is another objection, not less conclusive. A whole community would form a numerous assembly. But all numerous assemblies are essentially incapable of business. It is unnecessary to be tedious in the proof of this proposition. In an assembly, every thing must be done by speaking and assenting. But where the assembly is numerous, so many persons desire to speak, and feelings, by mutual inflammation, become so violent, that calm and effectual deliberation is impossible.

It may be taken, therefore, as a position, from which there will be no dissent, that a community in mass is ill adapted for the business of Government. There is no principle more in conformity with the sentiments and the practice of the people than this. The management of the joint affairs of any considerable body of the people they never undertake for themselves. What they uniformly do is, to choose a certain number of themselves to be the actors in their stead. Even in the case of a common Benefit Club, the members choose a Committee of Management, and content themselves with a general controul.

2. **THE ARISTOCRATICAL.**—This term applies to all those cases, in which the powers of Government are held by any number of persons

intermediate between a single person and the majority. When the number is small, it is common to call the Government an Oligarchy; when it is considerable, to call it an Aristocracy. The cases are essentially the same; because the motives which operate in both are the same. This is a proposition which carries, we think, its own evidence along with it. We, therefore, assume it as a point which will not be disputed. The source of evil is radically different, in the case of Aristocracy, from what it is in that of Democracy.

The Community cannot have an interest opposite to its interest. To affirm this would be a contradiction in terms. The Community within itself, and with respect to itself, can have no sinister interest. One Community may intend the evil of another; never its own. This is an indubitable proposition, and one of great importance. The Community may act wrong from mistake. To suppose that it could from design, would be to suppose that human beings can wish their own misery.

The circumstances, from which the inaptitude of the community, as a body, for the business of Government, arises, namely, the inconvenience of assembling them, and the inconvenience of their numbers when assembled, do not necessarily exist in the case of Aristocracy. If the number of those who hold among them the powers of Government is so great, as to make it inconvenient to assemble them, or impossible for them to deliberate calmly when assembled, this is only an objection to so extended an Aristocracy, and has no application to an Aristocracy not too numerous, when assembled, for the best exercise of deliberation.

The question is, whether such an Aristocracy may be trusted to make that use of the powers of Government which is most conducive to the end for which Government exists?

There may be a strong presumption that any Aristocracy, monopolizing the powers of Government, would not possess intellectual powers in any very high perfection. Intellectual powers are the offspring of labour. But an hereditary Aristocracy are deprived of the strongest motives to labour. The greater part of them will, therefore, be defective in those mental powers. This is one objection, and an important one, though not the greatest.

We have already observed, that the reason for which Government exists is, that one man, if stronger than another, will take from him whatever that other possesses and he desires. But if one man will do this, so will several. And if powers are put into the hands of a comparatively small number, called an Aristocracy, powers which make them stronger than the rest of the community, they will take from the rest of the community as much as they please of the objects of desire. They will, thus, defeat the very end for which Government was instituted. The unfitness, therefore, of an Aristocracy to be entrusted with the powers of Government, rests on demonstration.

3. THE MONARCHICAL.—It will be seen, and therefore words to make it manifest are unnecessary, that, in most respects, the Monarchical form

of Government agrees with the Aristocratical, and is liable to the same objections.

If Government is founded upon this, as a law of human nature, that a man, if able, will take from others any thing which they have and he desires, it is sufficiently evident that when a man is called a King, it does not change his nature; so that when he has got power to enable him to take from every man what he pleases, he will take whatever he pleases. To suppose that he will not, is to affirm that Government is unnecessary; and that human beings will abstain from injuring one another of their own accord.

It is very evident that this reasoning extends to every modification of the smaller number. Whenever the powers of Government are placed in any hands other than those of the community, whether those of one man, of a few, or of several, those principles of human nature which imply that Government is at all necessary, imply that those persons will make use of them to defeat the very end for which Government exists.

#### IV.

#### *An Objection stated — and answered.*

One observation, however, suggests itself. Allowing it may be said, that this deduction is perfect, and the inference founded upon it indisputable, it is yet true, that if there were no Government, every man would be exposed to depredation from every man; but, under an Aristocracy, he is exposed to it only from a few; under a Monarchy, only from one.

This is a highly important objection, and deserves to be minutely investigated.

It is sufficiently obvious, that, if every man is liable to be deprived of what he possesses at the will of every man stronger than himself, the existence of property is impossible; and, if the existence of property is impossible, so also is that of labour, of the means of subsistence for an enlarged community, and hence of the community itself. If the members of such a community are liable to deprivation by only a few hundred men, the members of an Aristocracy, it may not be impossible to satiate that limited number with a limited portion of the objects belonging to all. Allowing this view of the subject to be correct, it follows, that the smaller the number of hands into which the powers of Government are permitted to pass, the happier it will be for the community; that an Oligarchy, therefore, is better than an Aristocracy, and a Monarchy better than either.

This view of the subject deserves to be the more carefully considered, because the conclusion to which it leads is the same with that which has been adopted and promulgated, by some of the most profound and most benevolent investigators of human affairs. That Government by one man, altogether unlimited and uncontrolled, is better than Government by any

modification of Aristocracy, is the celebrated opinion of Mr. Hobbes, and of the French *Economists*, supported on reasonings which it is not easy to controvert. Government by the many, they with reason considered an impossibility. They inferred, therefore, that, of all the possible forms of Government, absolute Monarchy is the best.

Experience, if we look only at the outside of the facts, appears to be divided on this subject. Absolute Monarchy, under Neros and Caligulas, under such men as Emperors of Morocco and Sultans of Turkey, is the scourge of human nature. On the other side, the people of Denmark, tired out with the oppression of an Aristocracy, resolved that their King should be absolute; and, under their absolute Monarch, are as well governed as any people in Europe. In Greece, notwithstanding the defects of Democracy, human nature ran a more brilliant career than it has ever done in any other age or country.

As the surface of history affords, therefore, no certain principle of decision, we must go beyond the surface, and penetrate to the springs within.

When it is said that one man, or a limited number of men, will soon be satiated with the objects of desire, and, when they have taken from the community what suffices to satiate them, will protect its members in the enjoyment of the remainder, an important element of the calculation is left out. Human beings are not a passive substance. If human beings, in respect to their rulers, were the same as sheep in respect to their shepherd; and if the King, or the Aristocracy, were as totally exempt from all fear of resistance from the people, and all chance of obtaining more obedience from severity, as the shepherd in the case of the sheep, it does appear that there would be a limit to the motive for taking to one's self the objects of desire. The case will be found to be very much altered when the idea is taken into the account, first, of the resistance to his will which one human being may expect from another; and secondly, of that perfection in obedience which fear alone can produce.

That one human being will desire to render the person and property of another subservient to his pleasures, notwithstanding the pain or loss of pleasure which it may occasion to that other individual, is the foundation of Government. The desire of the object implies the desire of the power necessary to accomplish the object. The desire, therefore, of that power which is necessary to render the persons and properties of human beings subservient to our pleasures, is a grand governing law of human nature.

What is implied in that desire of power; and what is the extent to which it carries the actions of men; are the questions which it is necessary to resolve, in order to discover the limit which nature has set to the desire, on the part of a King, or an Aristocracy, to inflict evil upon the community for their own advantage.

Power is a means to an end. The end is, every thing, without exception, which the human being calls pleasure, and the removal of pain. The grand instrument for attaining what a man likes is the actions of

other men. Power, in its most appropriate signification, therefore, means, security for the conformity between the will of one man and the acts of other men. This, we presume, is not a proposition which will be disputed. The master has power over his servant, because when he wills him to do so and so,—in other words, expresses a desire that he would do so and so, he possesses a kind of security that the actions of the man will correspond to his desire. The general commands his soldiers to perform certain operations, the King commands his subjects to act in a certain manner, and their power is complete or not complete, in proportion as the conformity is complete or not complete between the actions willed and the actions performed. The actions of other men, considered as means for the attainment of the objects of our desire, are perfect or imperfect, in proportion as they are or are not certainly and invariably correspondent to our will. There is no limit, therefore, to the demand of security for the perfection of that correspondence. A man is never satisfied with a smaller degree, if he can obtain a greater. And as there is no man whatsoever, whose acts, in some degree or other, in some way or other, more immediately or more remotely, may not have some influence as means to our ends, there is no man, the conformity of whose acts to our will we would not give something to secure. The demand, therefore, of power over the acts of other men is really boundless. It is boundless in two ways; boundless in the number of persons to whom we would extend it, and boundless in its degree over the actions of each.

It would be nugatory to say, with a view to explain away this important principle, that some human beings may be so remotely connected with our interests, as to make the desire of a conformity between our will and their actions evanescent. It is quite enough to assume, what nobody will deny, that our desire of that conformity is unlimited, in respect to all those men whose actions can be supposed to have any influence on our pains and pleasures. With respect to the rulers of a community, this at least is certain, that they have a desire for the conformity between their will and the actions of every man in the community. And for our present purpose, this is as wide a field as we need to embrace.

With respect to the community, then, we deem it an established truth, that the rulers, one or a few, desire an exact conformity between their will and the acts of every member of the community. It remains for us to inquire to what description of acts it is the nature of this desire to give existence.

There are two classes of means by which the conformity between the will of one man and the acts of other men may be accomplished. The one is pleasure, the other pain.

With regard to securities of the pleasurable sort for obtaining a conformity between one man's will and the acts of other men, it is evident, from experience, that when a man possesses a command over the objects of desire, he may, by imparting those objects to other men, insure, to a great extent, conformity between his will and their actions. It fol-



laws, and is also matter of experience, that the greater the quantity of the objects of desire, which he may thus impart to other men, the greater is the number of men between whose actions and his own will he can insure a conformity. As it has been demonstrated that there is no limit to the number of men whose actions we desire to have conformable to our will, it follows, with equal evidence, that there is no limit to the command which we desire to possess over the objects which ensure this result.

It is, therefore, not true, that there is, in the mind of a King, or in the minds of an Aristocracy, any point of saturation with the objects of desire. The opinion, in examination of which we have gone through the preceding analysis, that a King or an Aristocracy may be satiated with the objects of desire, and, after being satiated, leave to the members of the community the greater part of what belongs to them, is an opinion founded upon a partial and incomplete view of the laws of human nature.

We have next to consider the securities of the painful sort which may be employed for attaining conformity between the acts of one man and the will of another.

We are of opinion, that the importance of this part of the subject has not been duly considered; and that the business of Government will be ill understood, till its numerous consequences have been fully developed.

Pleasure appears to be a feeble instrument of obedience in comparison with pain. It is much more easy to despise pleasure than pain. Above all, it is important to consider, that in this class of instruments is included the power of taking away life, and with it of taking away not only all the pleasures of reality, but, what goes so far beyond them, all the pleasures of hope. This class of securities is, therefore, incomparably the strongest. He who desires obedience, to a high degree of exactness, cannot be satisfied with the power of giving pleasure; he must have the power of inflicting pain: He who desires it, to the highest possible degree of exactness, must desire power of inflicting pain sufficient at least to insure that degree of exactness; that is, an unlimited power of inflicting pain; for, as there is no possible mark by which to distinguish what is sufficient and what is not, and as the human mind sets no bounds to its avidity for the securities of what it deems eminently good, it is sure to extend, beyond almost any limits, its desire of the power of giving pain to others.

It may, however, be said, that how inseparable a part soever of human nature it may appear to be, to desire to possess unlimited power of inflicting pain upon others, it does not follow, that those who possess it will have a desire to make use of it.

This is the next part of the inquiry upon which we have to enter; and we need not add that it merits all the attention of those who would possess correct ideas upon a subject which involves the greatest interests of mankind.

The chain of inference, in this case, is close and strong, to a most un-

usual degree. A man desires that the actions of other men shall be instantly and accurately correspondent to his will. He desires that the actions of the greatest possible number shall be so. Terror is the grand instrument. Terror can work only through assurance that evil will follow any want of conformity between the will and the actions willed. Every failure must, therefore, be punished. As there are no bounds to the mind's desire of its pleasure, there are of course no bounds to its desire of perfection in the instruments of that pleasure. There are, therefore, no bounds to its desire of exactness in the conformity between its will and the actions willed; and, by consequence, to the strength of that terror which is its procuring cause. Every, (the most minute, failure, must be visited with the heaviest infliction: and, as failure in extreme exactness must frequently happen, the occasions of cruelty must be incessant.

We have thus arrived at several conclusions, of the highest possible importance. We have seen, that the very principle of human nature upon which the necessity of Government is founded, the propensity of one man to possess himself of the objects of desire at the cost of another, leads on, by infallible sequence, where power over a community is attained, and nothing checks, not only to that degree of plunder which leaves the members (excepting always the recipients and instruments of the plunder) the bare means of subsistence, but to that degree of cruelty which is necessary to keep in existence the most intense terror.

The world affords some decisive experiments upon human nature, in exact conformity with these conclusions. An English Gentleman may be taken as a favourable specimen of civilization, of knowledge, of humanity, of all the qualities, in short, that make human nature estimable. The degree in which he desires to possess power over his fellow-creatures, and the degree of oppression to which he finds motives for carrying the exercise of that power, will afford a standard from which, assuredly, there can be no appeal. Wherever the same motives exist, the same conduct, as that displayed by the English Gentleman, may be expected to follow, in all men not farther advanced in human excellence than himself. In the West Indies, before that vigilant attention of the English nation, which now, for thirty years, has imposed so great a check upon the masters of slaves, there was not a perfect absence of all check upon the dreadful propensities of power. But yet it is true, that these propensities led English Gentlemen, not only to deprive their slaves of property, and to make property of their fellow-creatures, but to treat them with a degree of cruelty, the very description of which froze the blood of those of their countrymen, who were placed in less unfavourable circumstances. The motives of this deplorable conduct are exactly those which we have described above, as arising out of the universal desire to render the actions of other men exactly conformable to our will. It is of great importance to remark, that not one item in the motives which led English Gentlemen to make slaves of their fellow-creatures, and to reduce them to the very worst condition in which the negroes have been

found in the West Indies, can be shown to be wanting, or to be less strong in the set of motives, which universally operate upon the men who have power over their fellow-creatures. It is proved, therefore, by the closest deduction from the acknowledged laws of human nature, and by direct and decisive experiments, that the ruling One, or the ruling Few, would, if checks did not operate in the way of prevention, reduce the great mass of the people subject to their power, at least to the condition of negroes in the West Indies.\*

We have thus seen, that of the forms of Government, which have been called the three simple forms, not one is adequate to the ends which Government is appointed to secure; that the community itself, which alone is free from motives opposite to those ends, is incapacitated by its numbers from performing the business of Government; and that whether Government is intrusted to one or a few, they have not only motives opposite to those ends, but motives which will carry them, if unchecked, to inflict the greatest evils.

These conclusions are so conformable to ordinary conceptions, that it would hardly have been necessary, if the development had not been of importance for some of our subsequent investigations, to have taken any pains with the proof of them. In this country, at least, it will be remarked, in conformity with so many writers, that the imperfection of the three simple forms of Government is apparent; that the ends of Government can be attained in perfection only, as under the British Constitution, by an union of all the three.

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## V.

*That the requisite Securities are not found in a Union of the Three simple Forms of Government;—Doctrine of the Constitutional Balance.*

The doctrine of the union of the three simple forms of Government is the next part of this important subject which we are called upon to examine.

The first thing which it is obvious to remark upon it, is, that it has been customary, in regard to this part of the inquiry, to beg the question. The good effects which have been ascribed to the union of the three simple forms of Government, have been *supposed*; and the supposition has commonly been allowed. No proof has been adduced; or if any thing have the appearance of proof, it has only been a reference to the British Constitution. The British Constitution, it has been said, is an union of the three simple forms of Government; and the British Government is excellent. To render the instance of the British Government in any degree a proof of the doctrine in question, it is evident that three points must be established; 1st, That the British Government is not in show,

\* An acute sense of this important truth is expressed by the President Montesquieu; "C'est une expérience éternelle, que tout homme qui a du pouvoir est porté à en abuser; il va jusqu'à ce qu'il trouve des limites."—*Esp. de Loix. L. xi. c. 4.*

but in substance, an union of the three simple forms; 2dly, That it has peculiar excellence; and 3dly, That its excellence arises from the union so supposed, and not from any other cause. As these points have always been taken for granted without examination, the question with respect to the effects of an union of the three simple forms of Government may be considered as yet unsolved.

The positions which we have already established with regard to human nature, and which we assume as foundations, are these: That the actions of men are governed by their wills, and their wills by their desires: That their desires are directed to pleasure and relief from pain as *ends*, and to wealth and power as the principal means: That to the desire of these means there is no limit; and that the actions which flow from this unlimited desire are the constituents whereof bad Government is made. Reasoning correctly from these acknowledged laws of human nature, we shall presently discover what opinion, with respect to the mixture of the different species of Government, it will be incumbent upon us to adopt.

The theory in question implies, that of the powers of Government, one portion is held by the King, one by the Aristocracy, and one by the people. It also implies, that there is on the part of each of them a certain unity of will, otherwise they would not act as three separate powers. This being understood, we proceed to the inquiry.

From the principles which we have already laid down, it follows, That of the objects of human desire—and, speaking more definitely, of the means to the ends of human desire, namely, wealth and power—each of the three parties will endeavour to obtain as much as possible.

After what has been said, it is not suspected that any reader will deny this proposition; but it is of importance that he keep in his mind a very clear conception of it.

If any expedient presents itself to any of the supposed parties, effectual to this end, and not opposed to any preferred object of pursuit, we may infer, with certainty, that it will be adopted. One effectual expedient is not more effectual than obvious. Any two of the parties, by combining, may swallow up the third. That such combination will take place, appears to be as certain as any thing which depends upon human will; because there are strong motives in favour of it, and none that can be conceived in opposition to it. Whether the portions of power, as originally distributed to the parties, be supposed to be equal or unequal, the mixture of three of the kinds of Government, it is thus evident, cannot possibly exist.

This proposition appears to be so perfectly proved, that we do not think it necessary to dwell here upon the subject. As a part, however, of this doctrine, of the mixture of the simple forms of Government, it may be proper to inquire, whether an union may not be possible of two of them.

Three varieties of this union may be conceived; the union of the Monarchy with Aristocracy, or the union of either with Democracy.

Let us first suppose that Monarchy is united with Aristocracy. Their power is equal or not equal. If it is not equal, it follows, as a necessary

consequence, from the principles which we have already established, that the stronger will take from the weaker, till it engrosses the whole. The only question, therefore, is, What will happen when the power is equal.

In the first place, it seems impossible that such equality should ever exist. How is it to be established? Or by what criterion is it to be ascertained? If there is no such criterion, it must, in all cases, be the result of chance. If so, the chances against it are as infinite to one. The idea, therefore, is wholly chimerical and absurd.

Besides, A disposition to overrate one's own advantages, and underrate those of other men, is a known law of human nature. Suppose, what would be little less than miraculous, that equality were established, this propensity would lead each of the parties to conceive itself the strongest. The consequence would be that they would go to war, and contend till one or other was subdued. Either those laws of human nature, upon which all reasoning with respect to Government proceeds, must be denied, and then the utility of Government itself may be denied, or this conclusion is demonstrated. Again, if this equality were established, is there a human being who can suppose that it would last? If any thing be known about human affairs it is this, that they are in perpetual change. If nothing else interfered, the difference of men in respect of talents, would abundantly produce the effect. Suppose your equality to be established at the time when your King is a man of talents, and suppose his successor to be the reverse; your equality no longer exists. The moment one of the parties is superior, it begins to profit by its superiority, and the inequality is daily increased. It is unnecessary to extend the investigation to the remaining cases, the union of democracy with either of the other two kinds of Government. It is very evident that the same reasoning would lead to the same results.

In this doctrine of the mixture of the simple forms of Government, is included the celebrated theory of the Balance among the component parts of a Government. By this, it is supposed, that, when a Government is composed of Monarchy, Aristocracy, and Democracy, they balance one another, and by mutual checks produce good government. A few words will suffice to show, that, if any theory deserve the epithets of "wild, visionary, chimerical," it is that of the Balance. If there are three powers, how is it possible to prevent two of them from combining to swallow up the third?

The analysis which we have already performed, will enable us to trace rapidly the concatenation of causes and effects in this imagined case.

We have already seen that the interest of the community, considered in the aggregate, or in the democratical point of view, is, that each individual should receive protection, and that the powers which are constituted for that purpose should be employed exclusively for that purpose. As this is a proposition wholly indisputable, it is also one to which all correct reasoning upon matters of Government must have a perpetual reference.

We have also seen that the interest of the King, and of the governing Aristocracy, is directly the reverse; it is to have unlimited power over the rest of the community, and to use it for their own advantage. In

the supposed ease of the Balance of the Monarchical, Aristocratical, and Democratical powers, it cannot be for the interest of either the Monarchy or the Aristocracy to combine with the Democracy; because it is the interest of the Democracy, or community at large, that neither the King nor the Aristocracy should have one particle of power, or one particle of the wealth of the community, for their own advantage.

The Democracy or Community have all possible motives to endeavour to prevent the Monarchy and Aristocracy from exercising power, or obtaining the wealth of the community, for their own advantage: The Monarchy and Aristocracy have all possible motives for endeavouring to obtain unlimited power over the persons and property of the community: The consequence is inevitable; they have all possible motives for combining to obtain that power, and unless the people have power enough to be a match for both, they have no protection. The balance, therefore, is a thing, the existence of which, upon the best possible evidence, is to be regarded as impossible. The appearances which have given colour to the supposition are altogether delusive.

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## VI.

*In the Representative System alone the Securities for good Government are to be found.*

What then is to be done? For, according to this reasoning, we may be told that good Government appears to be impossible. The people, as a body, cannot perform the business of Government for themselves. If the powers of Government are entrusted to one man, or a few men, and a Monarchy, or governing Aristocracy, is formed, the results are fatal: And it appears that a combination of the simple forms is impossible.

Notwithstanding the truth of these propositions, it is not yet proved that good Government is unattainable. For though the people, who cannot exercise the powers of Government themselves, must entrust them to some one individual or set of individuals, and such individuals will infallibly have the strongest motives to make a bad use of them, it is possible that checks may be found sufficient to prevent them. The next subject of inquiry, then, is the doctrine of checks. It is sufficiently conformable to the established and fashionable opinions to say, that, upon the right constitution of checks, all goodness of Government depends. To this proposition we fully subscribe. Nothing, therefore, can exceed the importance of correct conclusions upon this subject. After the developments already made, it is hoped that the inquiry will be neither intricate nor unsatisfactory.

In the grand discovery of modern times, the system of representation, the solution of all the difficulties, both speculative and practical, will perhaps be found. If it cannot, we seem to be forced upon the extraordinary conclusion, that good Government is impossible. For as there is no individual, or combination of individuals, except the community itself, who would not have an interest in bad Government, if entrusted with

its powers; and as the community itself is incapable of exercising those powers, and must entrust them to some individual or combination of individuals, the conclusion is obvious: The Community itself must check those individuals, else they will follow their interest, and produce bad Government.

But how is it the Community can check? The community can act only when assembled: And then it is incapable of acting.

The community, however, can chuse Representatives: And the question is, whether the Representatives of the Community can operate as a check?

## VII.

*What is required in a Representative Body to make it a Security for good Government?*

We may begin by laying down two propositions, which appear to involve a great portion of the inquiry; and about which it is unlikely that there will be any dispute.

I. The checking body must have a degree of power sufficient for the business of checking.

II. It must have an identity of interest with the community; otherwise it will make a mischievous use of its power.

I. To measure the degree of power which is requisite upon any occasion, we must consider the degree of power which is necessary to be overcome. Just as much as suffices for that purpose is requisite, and no more. We have then to inquire what power it is which the Representatives of the community, acting as a check, need power to overcome. The answer here is easily given. It is all that power, wheresoever lodged, which they, in whose hands it is lodged, have an interest in misusing. We have already seen, that to whomsoever the community entrusts the powers of Government, whether one, or a few, they have an interest in misusing them. All the power, therefore, which the one or the few, or which the one and the few combined, can apply to insure the accomplishment of their sinister ends, the checking body must have power to overcome, otherwise its check will be unavailing. In other words, there will be no check.

This is so exceedingly evident, that we hardly think it necessary to say another word in illustration of it. If a King is prompted by the inherent principles of human nature to seek the gratification of his will; and if he finds an obstacle in that pursuit, he removes it, of course, if he can. If any man, or any set of men, oppose him, he overcomes them, if he is able; and to prevent him, they must, at the least, have equal power with himself.

The same is the case with an Aristocracy. To oppose them with success in pursuing their interest at the expense of the community, the checking body must have power successfully to resist whatever power they possess. If there is both a King and an Aristocracy, and if they would combine to put down the checking force, and to pursue their

mutual interest at the expense of the community, the checking body must have sufficient power successfully to resist the united power of both King and Aristocracy.

These conclusions are not only indisputable, but the very theory of the British Constitution is erected upon them. The House of Commons, according to that theory, is the checking body. It is also an admitted doctrine, that if the King had the power of bearing down any opposition to his will that could be made by the House of Commons; or if the King and the House of Lords combined had the power of bearing down its opposition to their joint will, it would cease to have the power of checking them; it must, therefore, have a power sufficient to overcome the united power of both.

II. All the questions which relate to the degree of power necessary to be given to that checking body, on the perfection of whose operations all the goodness of Government depends, are thus pretty easily solved. The grand difficulty consists in finding the means of constituting a checking body, the powers of which shall not be turned against the community for whose protection it is created.

There can be no doubt, that, if power is granted to a body of men, called Representatives, they, like any other men, will use their power, not for the advantage of the community, but for their own advantage, if they can. The only question is, therefore, how they can be prevented? In other words, how are the interests of the Representatives to be identified with those of the community?

Each Representative may be considered in two capacities; in his capacity of Representative, in which he has the exercise of power over others, and in his capacity of Member of the Community; in which others have the exercise of power over him.

If things were so arranged; that, in his capacity of Representative, it would be impossible for him to do himself so much good by mis-government, as he would do himself harm in his capacity of member of the community, the object would be accomplished. We have already seen, that the amount of power assigned to the checking body cannot be diminished beyond a certain amount. It must be sufficient to overcome all resistance on the part of all those in whose hands the powers of Government are lodged. But if the power assigned to the Representative cannot be diminished in amount, there is only one other way in which it can be diminished, and that is, in duration.

This, then, is the instrument; lessening duration is the instrument, by which, if by any thing, the object is to be attained. The smaller the period of time during which any man retains his capacity of Representative, as compared with the time in which he is simply a member of the community, the more difficult it will be to compensate the sacrifice of the interests of the longer period, by the profits of mis-government during the shorter.

This is an old and approved method of identifying, as nearly as possible, the interests of those who rule, with the interests of those who



are ruled. It is in pursuance of this advantage, that the Members of the British House of Commons have always been chosen for a limited period. If the Members were hereditary, or even if they were chosen for life, every inquirer would immediately pronounce that they would employ, for their own advantage, the powers entrusted to them; and that they would go just as far in abusing the persons and properties of the people, as their estimate of the powers and spirit of the people to resist them would allow them to contemplate as safe.

As it thus appears, by the consent of all men, from the time when the Romans made their Consuls annual, down to the present day, that the end is to be attained by limiting the duration, either of the acting, or (which is better) of the checking power, the next question is, to what degree should the limitation proceed?

The general answer is plain. It should proceed, till met by overbalancing inconveniences on the other side. What then are the inconveniences which are likely to flow from a too limited duration?

They are of two sorts; those which affect the performance of the service, for which the individuals are chosen, and those which arise from the trouble of election. It is sufficiently obvious, that the business of Government requires time to perform it. The matter must be proposed, and deliberated upon, a resolution must be taken, and executed. If the powers of Government were to be shifted from one set of hands to another every day, the business of Government could not proceed. Two conclusions, then, we may adopt with perfect certainty; that whatsoever time is necessary to perform the periodical round of the stated operations of Government, should be allotted to those who are invested with the checking powers; and secondly, that no time, which is not necessary for that purpose, should by any means be allotted to them. With respect to the inconvenience arising from frequency of election, though it is evident that the trouble of election, which is always something, should not be repeated oftener than is necessary, no great allowance will need to be made for it, because it may easily be reduced to an inconsiderable amount.

As it thus appears, that limiting the duration of their power is a security against the sinister interest of the people's Representatives, so it appears that it is the only security of which the nature of the case admits. The only other means which could be employed to that end, would be punishment on account of abuse. It is easy, however, to see, that punishment could not be effectually applied. Previous to punishment, definition is required of the punishable acts; and proof must be established of the commission. But abuses of power may be carried to a great extent, without allowing the means of proving a determinate offence. No part of political experience is more perfect than this.

If the limiting of duration be the only security, it is unnecessary to speak of the importance which ought to be attached to it.

In the principle of limiting the duration of the power delegated to the Representatives of the people, is not included the idea of changing them. The same individual may be chosen any number of times. The check of the short period, for which he is chosen, and during which he can pro-

mote his sinister interest, is the same upon the man who has been chosen and re-chosen twenty times, as upon the man who has been chosen for the first time. And there is good reason for always re-electing the man who has done his duty, because the longer he serves, the better acquainted he becomes with the business of the service. Upon this principle of re-choosing, or of the permanency of the individual, united with the power of change, has been recommended the plan of permanent service with perpetual power of removal. This, it has been said, reduces the period within which the Representative can promote his sinister interest to the narrowest possible limits; because the moment when his Constituents begin to suspect him, that moment they may turn him out: on the other hand, if he continues faithful, the trouble of election is performed once for all, and the man serves as long as he lives. Some disadvantages, on the other hand, would accompany this plan. The present, however, is not the occasion on which the balance of different plans is capable of being adjusted.

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### VIII.

#### *What is required in the Elective Body to secure the requisite Properties in the Representative Body.*

Having considered the means which are capable of being employed for identifying the interest of the Representatives, when chosen, with that of the persons who choose them, it remains that we endeavour to bring to view the principles which ought to guide in determining who the persons are by whom the act of choosing ought to be performed.

It is most evident, that, upon this question, every thing depends. It can be of no consequence to insure, by shortness of duration, a conformity between the conduct of the Representatives and the will of those who appoint them, if those who appoint them have an interest opposite to that of the community; because those who choose will, according to the principles of human nature, make choice of such persons as will act according to their wishes. As this is a direct inference from the very principle on which Government itself is founded, we assume it as indisputable.

We have seen already, that if one man has power over others placed in his hands, he will make use of it for an evil purpose; for the purpose of rendering those other men the abject instruments of his will. If we, then, suppose, that one man has the power of choosing the Representatives of the people, it follows, that he will choose men, who will use their power as Representatives for the promotion of this his sinister interest.

We have likewise seen, that when a few men have power given them over others, they will make use of it exactly for the same ends, and to the same extent, as the one man. It equally follows, that, if a small number of men have the choice of the Representatives, such Representatives will be chosen as will promote the interests of that small number, by reducing, if possible, the rest of the community to be the abject and helpless slaves of their will.

In all these cases, it is obvious and indisputable, that all the benefits of the Representative system are lost. The Representative system is, in that case, only an operose and clumsy machinery for doing that which might as well be done without it; reducing the community to subjection, under the One, or the Few.

When we say the Few, it is seen that, in this case, it is of no importance whether we mean a few hundreds, or a few thousands, or even many thousands. The operation of the sinister interest is the same; and the fate is the same, of all that part of the community over whom the power is exercised. A numerous Aristocracy has never been found to be less oppressive than an Aristocracy confined to a few.

The general conclusion, therefore, which is evidently established is this; that the benefits of the Representative system are lost, in all cases in which the interests of the choosing body are not the same with those of the community.

It is very evident, that if the community itself were the choosing body, the interest of the community and that of the choosing body would be the same. The question is, whether that of any portion of the community, if erected into the choosing body, would remain the same?

One thing is pretty clear, that all those individuals whose interests are indisputably included in those of other individuals, may be struck off without inconvenience. In this light may be viewed all children, up to a certain age, whose interests are involved in those of their parents. In this light, also, women may be regarded, the interest of almost all of whom is involved either in that of their fathers or in that of their husbands.

Having ascertained that an interest, identical with that of the whole community, is to be found in the aggregate males, of an age to be regarded as *sui juris*, who may be regarded as the natural Representatives of the whole population, we have to go on, and inquire, whether this requisite quality may not be found in some less number, some aliquot part of that body.

As degrees of mental qualities are not easily ascertained, outward and visible signs must be taken to distinguish, for this purpose, one part of these males from another. Applicable signs of this description appear to be three; Years, Property, Profession or Mode of Life.

According to the first of these means of distinction, a portion of the males, to any degree limited, may be taken, by prescribing an advanced period of life at which the power of voting for a Representative should commence. According to the second, the elective body may be limited, by allowing a vote to those only who possess a certain amount of property or of income. According to the third, it may be limited, by allowing a vote only to such persons as belong to certain professions, or certain connexions and interests. What we have to inquire is, if the interest of the number, limited and set apart, upon any of those principles, as the organ of choice for a body of Representatives, will be the same with the interest of the community?

With respect to the first principle of selection, that of age, it would

appear that a considerable latitude may be taken without inconvenience. Suppose the age of forty were prescribed, as that at which the right of Suffrage should commence; scarcely any laws could be made for the benefit of all the men of forty which would not be laws for the benefit of all the rest of the community.

The great principle of security here is, that the men of forty have a deep interest in the welfare of the younger men; for otherwise it might be objected, with perfect truth, that, if decisive power were placed in the hands of men of forty years of age, they would have an interest, just as any other detached portion of the community, in pursuing that career which we have already described, for reducing the rest of the community to the state of abject slaves. But the great majority of old men have sons, whose interest they regard as an essential part of their own. This is a law of human nature. There is, therefore, no great danger that, in such an arrangement as this, the interests of the young would be greatly sacrificed to those of the old.

We come next to the inquiry, whether the interest of a body of electors, constituted by the possession of a certain amount of property or income, would be the same with the interest of the community?

It will not be disputed, that, if the qualification were raised so high that only a few hundreds possessed it, the case would be exactly the same with that of the consignment of the Electoral Suffrage to an Aristocracy. This we have already considered, and have seen that it differs in form rather than substance from a simple Aristocracy. We have likewise seen, that it alters not the case in regard to the community, whether the Aristocracy be some hundreds or many thousands. One thing is, therefore, completely ascertained, that a pecuniary qualification, unless it were very low, would only create an Aristocratical Government, and produce all the evils which we have shown to belong to that organ of misrule.

This question, however, deserves to be a little more minutely considered. Let us next take the opposite extreme. Let us suppose that the qualification is very low, so low as to include the great majority of the people. It would not be easy for the people who have very little property, to separate their interests from those of the people who have none. It is not the interest of those who have little property to give undue advantages to the possession of property, which those who have the great portions of it would turn against themselves.

It may, therefore, be said, that there would be no evil in a low qualification. It can hardly be said, however, on the other hand, that there would be any good; for if the whole mass of the people who have some property would make a good choice, it will hardly be pretended that, added to them, the comparatively small number of those who have none, and whose minds are naturally and almost necessarily governed by the minds of those who have, would be able to make the choice a bad one.

We have ascertained, therefore, two points. We have ascertained that a very low qualification is of no use, as affording no security for a good choice beyond that which would exist if no pecuniary qualification was required. We have likewise ascertained, that a qualification so high

as to constitute an Aristocracy of wealth, though it were a very numerous one, would leave the community without protection, and exposed to all the evils of unbridled power. The only question, therefore, is, whether, between these extremes, there is any qualification which would remove the right of Suffrage from the people of small, or of no property, and yet constitute an elective body, the interest of which would be identical with that of the community?

It is not easy to find any satisfactory principle to guide us in our researches, and to tell us where we should fix. The qualification must either be such as to embrace the majority of the population, or some thing less than the majority. Suppose, in the first place, that it embraces the majority, the question is, whether the majority would have an interest in oppressing those who, upon this supposition, would be deprived of political power? If we reduce the calculation to its elements, we shall see that the interest which they would have, of this deplorable kind, though it would be something, would not be very great. Each man of the majority, if the majority were constituted the governing body, would have something less than the benefit of oppressing a single man. If the majority were twice as great as the minority, each man of the majority would only have one-half the benefit of oppressing a single man. In that case, the benefits of good Government, accruing to all, might be expected to overbalance to the several members of such an elective body the benefits of misrule peculiar to themselves. Good Government, would, therefore, have a tolerable security. Suppose, in the second place, that the qualification did not admit a body of electors so large as the majority, in that case, taking again the calculation in its elements, we shall see that each man would have a benefit equal to that derived from the oppression of more than one man; and that, in proportion as the elective body constituted a smaller and smaller minority, the benefit of misrule to the elective body would be increased, and bad Government would be insured.

It seems hardly necessary to carry the analysis of the pecuniary qualification, as the principle for choosing an elective body, any farther.

We have only remaining the third plan for constituting an elective body. According to the scheme in question, the best elective body is that which consists of certain classes, professions, or fraternities. The notion is, that when these fraternities or bodies are represented, the community itself is represented. The way in which, according to the patrons of this theory, the effect is brought about, is this. Though it is perfectly true, that each of these fraternities would profit by misrule, and have the strongest interest in promoting it; yet, if three or four such fraternities are appointed to act in conjunction, they will not profit by misrule, and will have an interest in nothing but good Government.

This theory of Representation we shall not attempt to trace farther back than the year 1793. In the debate on the motion of Mr. (now Earl) Grey, for a Reform in the System of Representation, on the 6th of May, of that year, Mr. Jenkinson, the present Earl of Liverpool, brought forward this theory of Representation, and urged it in opposition to all idea of Reform in the British House of Commons, in terms as clear and

distinct as those in which it has recently been clothed by leading men on both sides of that House. We shall transcribe the passage from the speech of Mr. Jenkinson, omitting, for the sake of abbreviation, all those expressions which are unnecessary for conveying a knowledge of the plan, and of the reasons upon which it was founded.

“Supposing it agreed,” he said, “that the House of Commons is meant to be a legislative body, representing all descriptions of men in the country, he supposed every person would agree, that the landed interest ought to have the preponderant weight. The landed interest was, in fact, the *stamina* of the country. In the second place, in a commercial country like this, the manufacturing and commercial interest ought to have a considerable weight, secondary to the landed interest, but secondary to the landed interest only. But was this all that was necessary? There were other descriptions of people, which, to distinguish them from those already mentioned, he should style professional people, and whom he considered as absolutely necessary to the composition of a House of Commons. By professional people, he meant those Members of the House of Commons who wished to raise themselves to the great offices of the State; those that were in the army, those that were in the navy, those that were in the law.” He then, as a reason for desiring to have those whom he calls “professional people” in the composition of the House of Commons, gives it as a fact, that country Gentlemen and Merchants seldom desire, and seldom have motives for desiring, to be Ministers and other great Officers of State. These Ministers and Officers, however, ought to be made out of the House of Commons. Therefore, you ought to have “professional people” of whom to make them. Nor was this all. “There was another reason why these persons were absolutely necessary. We were constantly in the habit of discussing in that House all the important concerns of the State. It was necessary, therefore, that there should be persons in the practice of debating such questions.” “There was a third reason, which, to his mind, was stronger than all the rest. Suppose that in that House there were only country Gentlemen, they would not then be the Representatives of the nation, but of the landholders. Suppose there were in that House only commercial persons, they would not be the Representatives of the nation, but of the commercial interest of the nation. Suppose the landed and commercial interest could both find their way into the House. The landed interest would be able, if it had nothing but the commercial interest to combat with, to prevent that interest from having its due weight in the Constitution. All descriptions of persons in the country would thus, in fact, be at the mercy of the landholders.” He adds, “the professional persons are, then, what makes this House the Representatives of the people. They have collectively no *esprit de corps*, and prevent any *esprit de corps* from affecting the proceedings of the House. Neither the landed nor commercial interest can materially affect each other, and the interests of the different professions of the country are fairly considered. The Honourable Gentleman (Mr. Grey), and the petition on this table, rather proposed uniformity of election. His ideas were the reverse—

that the modes of election ought to be as varied as possible, because, if there was but one mode of election, there would, generally speaking, be but one description of persons in that House, and by a varied mode of election only could that variety be secured."

There is great vagueness undoubtedly in the language here employed; and abundant wavering and uncertainty in the ideas. But the ideas regarding this theory appear in the same half-formed state, in every speech and writing, in which we have seen it adduced. The mist, indeed, by which it has been kept surrounded, alone creates the difficulty; because it cannot be known precisely how any thing is good or bad, till it is precisely known what it is.

According to the ideas of Lord Liverpool, the landholders ought to be represented; the merchants and manufacturers ought to be represented; the officers of the army and navy ought to be represented; and the practitioners of the law ought to be represented. Other patrons of the scheme have added, that literary men ought to be represented. And these, we believe, are almost all the fraternities, which have been named for this purpose, by any of the advocates of representation by clubs. To insure the choice of Representatives of the landholders, landholders must be the choosers; to insure the choice of Representatives of the merchants and manufacturers, merchants and manufacturers must be the choosers; and so with respect to the other fraternities, whether few or many. Thus it must be at least in *substance*; whatever the form, under which the visible acts may be performed. According to the scheme in question, these several fraternities are represented *directly*, the rest of the community is *not* represented directly; but it will be said by the patrons of the scheme, that it is represented *virtually*, which, in this case, answers the same purpose.

From what has already been ascertained, it will appear certain, that each of these fraternities has its sinister interest, and will be led to seek the benefit of misrule, if it is able to obtain it. This is frankly and distinctly avowed by Lord Liverpool. And by those by whom it is not avowed, it seems impossible to suppose that it should be disputed.

Let us now, then, observe the very principle upon which this theory must be supported. Three, or four, or five, or more clubs of men, have unlimited power over the whole community put into their hands. These clubs have, each, and all of them, an interest, an interest the same with that which governs all other rulers, in misgovernment; in converting the persons and properties of the rest of the community wholly to their own benefit. Having this interest, says the theory, they will not make use of it, but will use all their powers for the benefit of the community. Unless this proposition can be supported, the theory is one of the shallowest by which the pretenders to political wisdom have ever exposed themselves.

Let us resume the proposition. Three, or four, or five fraternities of men, composing a small part of the community, have all the powers of government placed in their hands. If they oppose and contend with one another, they will be unable to convert these powers to their own benefit. If they agree, they will be able to convert them wholly to their own benefit, and to do with the rest of the community just what they please.

The patrons of this system of Representation assume, that these fraternities will be sure to take that course which is *contrary* to their interest. The course which is *according* to their interest, appears as if it had never presented itself to their imaginations!

There being two courses which the clubs may pursue, one contrary to their interest, the other agreeable to it, the patrons of the club system must prove, they must place it beyond all doubt, that the clubs will follow the first course, and not follow the second: if not, the world will laugh at a theory which is founded upon a direct contradiction of one of the fundamental principles of human nature.

In supposing that clubs or societies of men are governed, like men individually, by their interests, we are surely following a pretty complete experience. In the idea that a certain number of those clubs can unite to pursue a common interest, there is surely nothing more extraordinary, than that as many individuals should unite to pursue a common interest. Lord Liverpool talks of an *esprit de corps* belonging to a class of landholders, made up of the different bodies of landholders in every county in the kingdom. He talks of an *esprit de corps* in a class of merchants and manufacturers, made up of the different bodies of merchants and manufacturers in the several great towns and manufacturing districts in the kingdom. What, then, is meant by an *esprit de corps*? Nothing else but a union for the pursuit of a common interest. To the several clubs supposed in the present theory, a common interest is created by the very circumstance of their composing the representing and represented bodies. Unless the patrons of this theory can prove to us, contrary to all experience, that a common interest cannot create an *esprit de corps* in men in combinations, as well as in men individually, we are under the necessity of believing, that an *esprit de corps* would be formed in the classes separated from the rest of the community for the purposes of Representation; that they would pursue their common interest; and inflict all the evils upon the rest of the community to which the pursuit of that interest would lead.

It is not included in the idea of this union for the pursuit of a common interest, that the clubs or sets of persons appropriated to the business of Representation should totally harmonize. There would, no doubt, be a great mixture of agreement and disagreement among them. But there would, if experience is any guide, or if the general laws of human nature have any power, be sufficient agreement to prevent their losing sight of the common interest; in other words, for insuring all that abuse of power which is useful to the parties by whom it is exercised.

The real effect of this motley Representation, therefore, would only be to create a motley Aristocracy; and, of course, to insure that kind of misgovernment which it is the nature of Aristocracy to produce, and to produce equally, whether it is a uniform, or a variegated Aristocracy; whether an Aristocracy all of landowners; or an Aristocracy in part landowners, in part merchants and manufacturers, in part officers of the army and navy, and in part lawyers.

We have now, therefore, examined the principles of the Representative system, and have found in it all that is necessary to constitute a security



for good government. We have seen in what manner it is possible to prevent in the Representatives the rise of an interest different from that of the parties who choose them, namely, by giving them little time, not dependent upon the will of those parties: We have likewise seen in what manner identity of interest may be insured between the electoral body and the rest of the community: We have, therefore, discovered the means by which identity of interest may be insured between the Representatives and the community at large. We have, by consequence, obtained an organ of Government which possesses that quality, without which there can be no good Government.

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## IX.

### 1. *Objection: That a perfect Representative System, if established, would destroy the Monarchy, and the House of Lords.*

The question remains, Whether this organ is competent to the performance of the whole of the business of Government? And it may be certainly answered, that it is not. It may be competent to the making of laws, and it may watch over their execution: but to the executive functions themselves, operations in detail, to be performed by individuals, it is manifestly not competent. The executive functions of Government consist of two parts, the administrative and the judicial. The administrative, in this country, belong to the King; and it will appear indubitable, that, if the best mode of disposing of the administrative powers of Government be to place them in the hands of one great functionary, not elective, but hereditary; a King, such as ours, instead of being inconsistent with the Representative system, in its highest state of perfection, would be an indispensable branch of a good Government; and, even if it did not previously exist, would be established by a Representative body whose interests were identified, as above, with those of the nation.

The same reasoning will apply exactly to our House of Lords. Suppose it true, that, for the perfect performance of the business of Legislation, and of watching over the execution of the laws, a second deliberative Assembly is necessary; and that an Assembly, such as the British House of Lords, composed of the proprietors of the greatest landed estates, with dignities and privileges, is the best adapted to the end: it follows, that a body of Representatives, whose interests were identified with those of the nation, would establish such an Assembly, if it did not previously exist: for the best of all possible reasons; that they would have motives for, and none at all against it.

Those parties, therefore, who reason against any measures necessary for identifying the interests of the Representative body with those of the nation, under the plea that such a Representative body would abolish the King and the House of Lords, are wholly inconsistent with themselves. They maintain that a King and a House of Lords, such as ours, are important and necessary branches of a good Government. It is demonstratively certain that a Representative body, the interests of which were

identified with those of the nation, would have no motive to abolish them, if they were not causes of bad government. Those persons, therefore, who affirm that it would certainly abolish them, affirm implicitly that they are causes of bad, and not necessary to good government. This oversight of theirs is truly surprising.

The whole of this chain of reasoning is dependent, as we stated at the beginning, upon the principle that the acts of men will be conformable to their interests. Upon this principle, we conceive that the chain is complete and irrefragable. The principle, also, appears to stand upon a strong foundation. It is indisputable that the acts of men follow their will; that their will follows their desires; and that their desires are generated by their apprehensions of good or evil; in other words, by their interests.

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## X.

*II. Objection: That the People are not capable of acting agreeably to their Interests.*

The apprehensions of the people, respecting good and evil, may be just, or they may be erroneous. If just, their actions will be agreeable to their real interests. If erroneous, they will not be agreeable to their real interests, but to a false supposition of interest.

We have seen, that, unless the Representative Body are chosen by a portion of the community the interest of which cannot be made to differ from that of the community, the interest of the community will infallibly be sacrificed to the interest of the rulers.

The whole of that party of reasoners who support Aristocratical power affirm, that a portion of the community, the interest of whom cannot be made to differ from that of the community, will not act according to their interest, but contrary to their interest. All their pleas are grounded upon this assumption. Because, if a portion of the community whose interest is the same with that of the community, would act agreeably to their own interest, they would act agreeably to the interest of the community, and the end of Government would be obtained.

If this assumption of theirs is true, the prospect of mankind is deplorable. To the evils of misgovernment they are subject by inexorable destiny. If the powers of Government are placed in the hands of persons whose interests are not identified with those of the community, the interests of the community are wholly sacrificed to those of the rulers. If so much as a checking power is held by the community, or by any part of the community, where the interests are the same as those of the community, the holders of that checking power will not, according to the assumption in question, make use of it in a way agreeable, but in a way contrary to their own interest. According to this theory, the choice is placed between the evils which will be produced by design, the design of those who have the power of oppressing the rest of the community, and an interest in doing it; and the evils which may be produced by mistake,

the mistake of those who, if they acted agreeably to their own interest, would act well.

Supposing that this theory were true, it would still be a question, between these two sets of evils, whether the evils arising from the design of those who have motives to employ the powers of Government for the purpose of reducing the community to the state of abject slaves of their will, or the evils arising from the misconduct of those who never produce evil but when they mistake their own interest, are the greatest evils.

Upon the most general and summary view of this question, it appears that the proper answer cannot be doubtful. They who have a fixed, invariable interest in acting ill, will act ill invariably. They who act ill from mistake, will often act well, sometimes even by accident, and in every case in which they are enabled to understand their interest, by design.

There is another, and a still more important ground of preference. The evils which are the produce of interest and power united, the evils on the one side, are altogether incurable: the effects are certain, while that conjunction which is the cause of them remains. The evils which arise from mistake are not incurable; for, if the parties who act contrary to their interest had a proper knowledge of that interest, they would act well. What is necessary, then, is knowledge. Knowledge, on the part of those whose interests are the same as those of the community, would be an adequate remedy. But knowledge is a thing which is capable of being increased; and the more it is increased the more the evils on this side of the case would be reduced.

Supposing, then, the theory of will opposed to interest to be correct, the practical conclusion would be, as there is something of a remedy to the evils arising from this source, none whatever to the evils arising from the conjunction of power and sinister interest, to adopt the side which has the remedy, and to do whatever is necessary for obtaining the remedy in its greatest possible strength, and for applying it with the greatest possible efficacy.

It is no longer deniable that a high degree of knowledge is capable of being conveyed to such a portion of the community, as would have interests the same with those of the community. This being the only resource for good government, those who say that it is not yet attained stand in this dilemma; either they do not desire good government, which is the case with all those who derive advantage from bad; or they will be seen employing their utmost exertions to increase the quantity of knowledge in the body of the community.

The practical conclusion, then, is actually the same, whether we embrace or reject the assumption that the community are little capable of acting according to their own interest.

That assumption, however, deserves to be considered. And it would need a more minute consideration than the space to which we are confined will enable us to bestow upon it.

One caution, first of all, we should take along with us; and it is this, That all those persons who hold the powers of Government, without having an identity of interests with the community; all those persons

who share in the profits which are made by the abuse of those powers; and all those persons whom the example and representations of the two first classes influence; will be sure to represent the community, or a part having an identity of interest with the community, as incapable, in the highest degree, of acting according to their own interest; it being clear that they who have not an identity of interest with the community ought to hold the powers of Government no longer, if those who have that identity of interest could be expected to act in any tolerable conformity with their interest. All representations from that quarter, therefore, of their incapability so to act, are to be received with suspicion. They come from interested parties; they come from parties who have the strongest possible interest to deceive themselves, and to endeavour to deceive others.

It is impossible that the interested endeavours of all those parties should not propagate, and for a long time successfully uphold, such an opinion, to whatever degree it might be found, upon accurate inquiry, to be without foundation.

A parallel case may be given. It was the interest of the priesthood, when the people of Europe were all of one religion, that the laity should take their opinions exclusively from them; because, in that case, the laity might be rendered subservient to the will of the Clergy, to any possible extent; and as all opinions were to be derived professedly from the Bible, they withdrew from the laity the privilege of reading it. When the opinions which produced the Reformation, and all the blessings which may be traced to it, began to ferment, the privilege of the Bible was demanded. The demand was resisted by the Clergy, upon the very same assumption which we have now under contemplation. "The people did not understand their own interest. They would be sure to make a bad use of the Bible. They would derive from it not right opinions; but all sorts of wrong opinions."\*

There can be no doubt that the assumption, in the religious case, was borne out by still stronger appearance of evidence, than it is in the political. The majority of the people may be supposed less capable of deriving correct opinions from the Bible, than of judging who is the best man to act as a Representative.

Experience has fully displayed the nature of the assumption in regard to religion. The power bestowed upon the people, of judging for themselves, has been productive of good effects, to a degree which has totally altered the condition of human nature, and exalted man to what may be called a different stage of existence.

For what reason then, is it, we are called upon to believe, that, if a portion of the community, having an identity of interests with the whole community, have the power of choosing Representatives, they will act wholly contrary to their interests, and make a bad choice?

Experience, it will be said, establishes this conclusion. We see that

\* A most instructive display of these and similar artifices for the preservation of mischievous power, after the spirit of the times is felt to be hostile to it, may be seen in Father Paul's *History of the Council of Trent*.

the people do not act according to their interests, but very often in opposition to them.

The question is between a portion of the community, which, if entrusted with power, would have an interest in making a bad use of it, and a portion which, though entrusted with power, would not have an interest in making a bad use of it. The former are any small number whatsoever; who, by the circumstance of being entrusted with power, are constituted an Aristocracy.

From the frequency, however great, with which those who compose the mass of the community act in opposition to their interests, no conclusion can, in this case, be drawn, without a comparison of the frequency with which those, who are placed in contrast with them, act in opposition to theirs. Now, it may with great confidence, be affirmed, that as great a proportion of those who compose the Aristocratical body of any country, as of those who compose the rest of the community, are distinguished for a conduct unfavourable to their interests. Prudence is a more general characteristic of the people who are without the advantages of fortune, than of the people who have been thoroughly subject to their corruptive operation. It may surely be said, that if the powers of Government must be entrusted to persons incapable of good conduct, they were better entrusted to incapables who have an interest in good government, than to incapables who have an interest in bad.

It will be said, that a conclusion ought not to be drawn from the unthinking conduct of the great majority of an Aristocratical body, against the capability of such a body for acting wisely in the management of public affairs; because the body will always contain a certain proportion of wise men, and the rest will be governed by them. Nothing but this can be said with pertinency. And, under certain modifications, this may be said with truth. The wise and good in any class of men do, to all general purposes, govern the rest. The comparison, however, must go on. Of that body, whose interests are identified with those of the community, it may also be said, that if one portion of them are unthinking, there is another portion wise; and that, in matters of state, the less wise would be governed by the more wise, not less certainly than in that body, whose interests, if they were entrusted with power, could not be identified with those of the community.

If we compare in each of these two contrasted bodies the two descriptions of persons, we shall not find that the foolish part of the Democratical body are more foolish than that of the Aristocratical, nor the wise part less wise.

Though, according to the opinions which fashion has propagated, it may appear a little paradoxical, we shall probably find the very reverse.

That there is not only as great a proportion of wise men in that part of the community which is not the Aristocracy, as in that which is; but that, under the present state of education, and the diffusion of knowledge, there is a much greater, we presume, there are few persons who will be disposed to dispute. It is to be observed, that the class which is universally described as both the most wise and the most virtuous part

of the community, the middle rank, are wholly included in that part of the community which is not the Aristocratical. It is also not disputed, that in Great Britain the middle rank are numerous, and form a large proportion of the whole body of the people. Another proposition may be stated, with a perfect confidence of the concurrence of all those men who have attentively considered the formation of opinions in the great body of society, or, indeed, the principles of human nature in general. It is, that the opinions of that class of the people, who are below the middle rank, are formed, and their minds are directed by that intelligent, that virtuous rank, who come the most immediately in contact with them, who are in the constant habit of intimate communication with them, to whom they fly for advice and assistance in all their numerous difficulties, upon whom they feel an immediate and daily dependence, in health and in sickness, in infancy and in old age, to whom their children look up as models for their imitation, whose opinions they hear daily repeated, and account it their honour to adopt. There can be no doubt that the middle rank, which gives to science, to art, and to legislation itself, their most distinguished ornaments, and is the chief source of all that has exalted and refined human nature, is that portion of the community of which, if the basis of Representation were ever so far extended, the opinion would ultimately decide! Of the people beneath them, a vast majority would be sure to be guided by their advice and example.

The incidents which have been urged as exceptions to this general rule, and even as reasons for rejecting it, may be considered as contributing to its proof. What signify the irregularities of a mob, more than half composed, in the greater number of instances, of boys and women, and disturbing, for a few hours or days, a particular town? What signifies the occasional turbulence of a manufacturing district, peculiarly unhappy from a very great deficiency of a middle rank, as there the population almost wholly consists of rich manufacturers and poor workmen; with whose minds no pains are taken by anybody; with whose afflictions there is no virtuous family of the middle rank to sympathize; whose children have no good example of such a family to see and to admire; and who are placed in the highly unfavourable situation of fluctuating between very high wages in one year, and very low wages in another? It is altogether futile with regard to the foundation of good government to say that this or the other portion of the people may, at this, or the other time, depart from the wisdom of the middle rank. It is enough that the great majority of the people never cease to be guided by that rank; and we may, with some confidence, challenge the adversaries of the people to produce a single instance to the contrary in the history of the world.

(F. F.)

THE ARTICLE

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# JURISPRUDENCE.

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## I.

*The End of Jurisprudence, viz. the Protection of Rights.—Importance of the Inquiry, as involving Human Happiness.—Confusion in the vulgar uses of the word Right.—Use of the term Right, in the Science of Jurisprudence.—The principal Ideas involved in the Jurisprudential sense of the word Right.—All Rights respect Objects desired; and desired as means to an end.—The Objects of Right are twofold, viz. either Persons or Things.—Rights, when closely inspected, mean Powers—legalized Powers.—Powers over Persons, and Powers over Things.—Every Right imports a corresponding Obligation.—No Creation of Good, by Rights, without the Creation of Evil.*

**T**HE object of the science, which is distinguished by the name of Jurisprudence, is the protection of rights:

The business of the present discourse is, therefore, to ascertain the means which are best calculated for the attainment of that end.

What we desire to accomplish is, The protection of rights: What we have to inquire is, The means by which protection may be afforded.

That rights have hitherto been very ill protected, even in the most enlightened countries, is matter of universal acknowledgment and complaint. That men are susceptible of happiness, only in proportion as rights are protected, is a proposition, which, taken generally, it is unnecessary to prove. The importance of the inquiry, therefore, is evident.

It is requisite, as a preliminary, to fix, with some precision, what we denote by the expression *rights*. There is much confusion in the use of this term. That disorderly mass, the Roman law, changes the meaning of the word in stating its division of the subject, *Jura Personarum*, and *Jura Rerum*. In the first of these phrases, the word *Jura* means a title to enjoy; in the second, it must of necessity mean something else, because things cannot enjoy. Lawyers, whose nature it

is to trudge, one after another, in the track which has been made for them, and to whose eyes, that which is, and that which ought to be, have seldom any mark of distinction, have translated the jargon into English, as well as into other modern languages.

This is not all the confusion which has been incurred in the use of the word *right*. It is sometimes employed in a very general way, to denote whatever ought to be; and in that sense is opposed to wrong. There are also persons—but these are philosophers, pushing on their abstractions—who go beyond the sense in which it is made to denote generally whatever ought to be, and who make it stand for the *foundation* of whatever ought to be. These philosophers say, that there is a right and a wrong, original, fundamental; and that things ought to be, or ought not to be, according as they do, or do not, conform to that standard. If asked, whence we derive a knowledge of this right and wrong in the abstract, which is the foundation and standard of what we call right and wrong in the concrete, they speak dogmatically, and convey no clear ideas.\* In short, writers of this stamp give us to understand, that we must take this standard, like many other things which they have occasion for, upon their word. After all their explanations are given, this, we find, is what alone we are required, or rather commanded, to trust to. The standard exists,—Why? Because they say it exists; and it is at our peril if we refuse to admit the assertion. They assume a right, like other despots, to inflict punishment, for contumacy, or contempt of court. To be sure, hard words are the only instruments of tyranny which they have it in their power to employ. They employ them, accordingly; and there is scarcely an epithet, calculated to denote a vicious state of the intellectual, or moral part, of the human mind, which they do not employ to excite an unfavourable opinion of those who refuse subscription to their articles of faith.

With right, however, in this acceptation, we have at present, no farther concern than to distinguish it clearly from that sense in which the word is employed in the science of jurisprudence. To conceive more exactly the sense in which it is employed in that science, it is necessary to revert to what we established, in the article GOVERNMENT, with regard to the end or object of the social union, for to that, every thing which is done in subservience to the social union, must of course bear a reference.

In that article it appeared, that, as every man desires to have for himself as many good things as possible, and as there is not a sufficiency of good things for all, the strong, if left to themselves, would take from the weak every thing, or at least as much as they pleased; that the weak, therefore, who are the greater number, have an interest in conspiring to protect themselves against the strong. It also appeared, that almost all the things, which man denominates good, are the fruit of human labour; and that the natural motive to labour is the enjoyment of its fruits.

That the object, then, of the social union, may be obtained; in other

\* See the writings of Kant and his followers, *passim*; see also Degerando, and others of his school, in various parts of their works.

words, that the weak may not be deprived of their share of good things, it is necessary to fix, by some determination, what shall belong to each, and to make choice of certain marks by which the share of each may be distinguished. This is the origin of right. It is created by this sort of determination, which determination is either the act of the whole society, or of some part of the society which possesses the power of determining for the whole. Right, therefore, is factitious, and the creature of will. It exists, only because the society, or those who wield the powers of the society, will that it should exist; and before it was so willed, it had no existence.

It is easy to see what is the standard, in conformity with which the rights in question *ought* to be constituted; meaning by *ought*, that which perfect benevolence would desire. It is the greatest happiness of the greatest number. But whether rights are constituted, that is, whether the shares of good things are allotted to each, according to this standard, or not according to this standard, the allotment is still the act of the ruling power of the community; and the rights, about which the science of jurisprudence treats, have this alone for the cause of their existence.

In this complicated term, it is obvious that there is involved, on the one hand, the idea of the person to whom a share is allotted, and on the other hand, an idea of the things which are allotted. The one is the owner of the right, the person to whom it belongs; the other is the object of the right, namely, the person or thing over which certain powers are given.

All rights of course are rights to objects of human desire,—of nothing else need shares be allotted. All objects which men desire, are desired, either as the end, or as means. The pleasurable state of the mind is the end; consisting of the feelings of the mind. It would be absurd, however, to speak of giving a man a right to the feelings of his own mind. The objects of desire, therefore, which are the objects of right, are not the pleasurable feelings themselves, which are desired as the end, but the objects which are desired as the means to that end.

Objects of desire, as means to that end, may be divided into the class of persons and the class of things. Both may be the object of rights. In framing our language, therefore, we may say, that all rights are the rights of persons; but they may be rights *to*, either persons, or things.

All that men desire, either with persons or things, is to render them subservient to the end, for which they are desired as means. They are so rendered by certain powers over them. All rights, then, when the term is closely investigated, are found to mean powers; powers with respect to persons, and powers with respect to things. What any one means when he says that a thing is his property, is, that he has the power of using it in a certain way.

It is no part of the present inquiry to ascertain what rights *ought* to be constituted, or what rights perfect benevolence would choose to see constituted. That belongs to the question how government should be constituted; in other words, how the powers which are necessary for the

general protection ought to be distributed, and the advantages of the union to be shared. At present our sole endeavour is to ascertain the most effectual means which the governing power of the state can employ for protecting the rights, whatever they are, which it has seen meet to create.

Rights, it must be remembered, always import obligations. This is a point of view, which, in the consideration of rights, has not, in general, attracted sufficient attention. If one man obtains a right to the services of another man, an obligation is, at the same time, laid upon this other to render those services. If a right is conferred upon one man to use and dispose of a horse, an obligation is laid upon other men to abstain from using him. It thus appears, that it is wholly impossible to create a right, without at the same time creating an obligation.

The consequences of this law of nature are in the highest degree important. Every right is a benefit; a command to a certain extent over the objects of desire. Every obligation is a burthen; an interdiction from the objects of desire. The one is in itself a good; the other is in itself an evil. It would be desirable to increase the good as much as possible. But, by increasing the good, it necessarily happens that we increase the evil. And, if there be a certain point at which the evil begins to increase faster than the good, beyond that point all creation of rights is hostile to human welfare.

The end in view is a command over the objects of desire. If no rights are established, there is a general scramble, and every man seizes what he can. A man gets so much, and he is interdicted by the scramble from all the rest. If rights are established, he also gets so much, and is interdicted by his obligations from the rest. If what he obtains by his rights exceeds what he would have obtained by the scramble, he is a gainer by the obligations which he sustains.

If it is proposed to create rights in favour of all the members of a community, the limits are strict. You cannot give all your advantages to every one; you must share them out. If you do not give equal rights to all, you can only give more than an equal share to some, by diminishing the share of others, of whom, while you diminish the rights, you increase the obligations. This is the course which bad governments pursue; they increase the rights of the few, and diminish the rights of the many, till, in the case of governments virtually despotic, it is all right on the one side, all obligation on the other.

It may be necessary to say a word, to prevent misconstruction of the term "equal rights." Rights may truly be considered as equal, when all the sorts of obligation under which a man lies with respect to other men, they are placed under with respect to him: if all the abstinence which he is obliged to practise with respect to their property, they are obliged to practise with respect to his; if all the rules by which he is bound not to interfere with their actions bind them equally not to interfere with his. It is evident, that inequality of fortune is not excluded by equality of rights. It is also evident, that, from equality of rights must always be

excepted those who are entrusted with the powers of the community for the purposes of government. They have peculiar rights, and the rest of the community are under corresponding obligations. It is equally evident, that those must be excepted who are not *sui juris*, as children in non-age, who must be under the guidance of others. Of two such classes of persons the relation to one another, that is, their reciprocal rights and obligations, need to be regulated by particular rules.

It is presumed that these illustrations will suffice to fix, in the minds of our readers, the exact meaning which is intended, in the present discourse, to be attached to the word *rights*. The sequel is to be occupied in discovering the means which are most proper to be employed for affording *protection* to those rights.

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## II.

*Meaning of the Word Protection, in the Jurisprudential Phrase, Protection of Rights.—The first Requisite to the Protection of Rights is to make them capable of being known.—Definition of Rights, the first Instrument of Protection.—Definition of the Acts by which Rights are violated, and the Application of Preventive Motives, another Instrument of Protection.—Civil and Penal Codes.—What.—Code of Procedure,—What.—Corpus Juris, or Body of Law,—What.*

In the term protection, it is hardly necessary to give notice, that we do not here include protection against foreign enemies; that protection which is to be yielded by employing armies against invaders. The protection, of which it is the business of jurisprudence to find out and to describe the means, is that which is required by one member of the community against the other members. The members of the community, each of whom endeavours to have as much as possible of the objects of desire, will be disposed to take those objects one from another; to take them, either by force, or by fraud. The means of preservation must, therefore, be found. Certain members of the community, as organs of government, are furnished with powers for that purpose. The question is, what powers are required; and in what manner are they to be employed?

In proceeding to present what may be called a skeleton-map of the ill-explored country of Jurisprudence, it is necessary to warn the reader, that he must supply, by his own attention, what the limits of the work did not permit to be done for him. The several topics are rather indicated, than expounded. It is hoped they are indicated so clearly, that there will be no difficulty in spreading out the ideas in detail. It is necessary, however, that the reader should do this for himself. As the writer has not been able to dwell upon the several topics, though of the utmost importance, long enough to stamp the due impression of them upon the mind, unless the reader takes time to do this, by reflection on each topic, as it arrives, he will pass to the succeeding ones without due

preparation, and the whole will be perused without interest, and without profit.

That a man's rights may be effectually secured, it is obviously necessary, in the first place, that they should be made capable of being accurately known. This seems to be so undeniable, that it would answer little purpose to enlarge in its illustration. It is, however, exceedingly necessary that the importance of this requisite should be clearly and adequately conceived. How can a man's rights be protected from encroachment, if what are his rights be uncertain or unknown? If the boundary by which his rights are distinguished is clear and conspicuous, it is itself a protection. It warns off invaders; it serves to strike them with awe; for it directs the eyes and indignation of mankind immediately and certainly to the offender. Where the boundary, on the other hand, is obscure and uncertain, so far scope is allowed for encroachment and invasion. When the question, to which of two men an article of property belongs, comes for decision to the judge, it is easy, if accurate marks are affixed, to point out and determine the rights of each. If no marks are attached, or such only as are obscure and variable, the decision must be arbitrary and uncertain. To that extent the benefit derived from the creation and existence of rights is diminished.

It is, therefore, demonstrable, and we may say demonstrated (the demonstration not being difficult), that, in the inquiry respecting the means of protecting rights, the *Definition of Rights* may be entered at the head of the list. Without this, as the ground-work, all other means are ineffectual. In proportion as rights can be ascertained, are the judicial functions, and judicial apparatus, capable of being employed to any beneficial purpose: in proportion to the facility with which they can be ascertained, is the extent of the benefit which the judicial functions are enabled to secure.

Such, then, is the first of the means necessary for the protection of rights: That they may receive the most perfect possible protection, they must be as accurately as possible defined.

In supposing that rights have need of protection, we suppose that there are acts by which rights are violated. With regard to those acts, the object is twofold; to redress the evil of the act when it has taken place; and to prevent the performance of such acts in future. To prevent the performance, two classes of means present themselves; to watch till the act is about to be committed, and then to interpose; or, to create motives which shall prevent the will to commit. It is but a small number of cases in which the first can be done; the latter is, therefore, the grand desideratum. From the view of these circumstances we discover two other articles in the catalogue of means. Those acts by which rights are violated require to be made accurately known; in other words to be defined; and the motives which are fitted to prevent them must be duly applied. Motives sufficient to that end can only be found in the painful class; and the act by which they are applied is denomi-

nated punishment. The definition, therefore, of offences or of the acts by which rights are violated and which it is expedient to punish, and the definition of the penalties by which they are prevented, are equally necessary with the definition of rights themselves. The reasons which demonstrate this necessity are so nearly the same with those which demonstrate the necessity of the definition of rights, that we deem it superfluous to repeat them.

The definition of rights constitutes that part of law which has been generally denominated the *Civil Code*. The definition of offences and punishments constitutes that other part of law which has been generally denominated the criminal or *Penal Code*.

When rights are distributed, and the acts by which they may be violated are forbidden, an agency is required, by which that distribution may be maintained, and the violators of it punished. That agency is denominated Judicature. The powers, by which this agency is constituted, require to be accurately defined; and the mode in which the agency itself is to be carried on must be fixed and pointed out by clear and determinate rules. These rules and definitions prescribe the form and practice of the courts, or mode in which the judicial functions are performed; and constitute that branch of law which has been called the *Code of Procedure*.

These three codes, the civil code, the penal code, and code of procedure, form together the whole subject of jurisprudence. Of the three, it sufficiently appears, that the last exists only for the sake of the other two. Courts and their operations are provided that the provisions of the civil and penal codes may not be without their effect. It is to be considered, therefore, as subordinate, and merely instrumental, in respect to the other two. They form the main body of the law; this is an accessory to the main body, though an accessory of indispensable use. It would be of great advantage to affix characteristic names to distinguish from one another the main and accessory parts of law. Unexceptionable names, however, it is not easy to find. Mr. Bentham, the great improver of this branch of knowledge, has called the civil and penal codes together, by the name of "substantive law," the code of procedure by that of "adjective law;" not, we may be satisfied, because he approved of those names, but because the language hardly afforded others to which equal objections would not apply. In the very sense in which either the term accessory, or the term adjective can be applied to the code of procedure, both may be applied to the penal code as it respects the civil. The penal code exists purely for the sake of the civil; that the rights, which are ordained by the legislature, and marked out by the terms of the code, may be saved from infringement. The civil code is therefore the end and object of all the rest. The code of procedure, however, is auxiliary to each of the other two; the penal code to no more than one.

Having now explained the nature of the three codes which constitute the body of law necessary for the protection of rights, it remains that

we illustrate, as much in detail as our limits will permit, what is required for the perfection of each.

### III.

*What is required for the perfection of the Civil Code.—Operations preliminary to the Definition of Rights.—Two Things necessary for the Definition of a Right:—First, a Description of its Extent; Secondly, a Description of the Facts which give it a Beginning and an End.*

The grand object of the civil code is the definition of rights. Rights are sometimes more, sometimes less extensive. Thus the right of a man to a horse, may solely extend to use him in riding from one stage to another; or it may extend to the power of doing with him as he pleases. In like manner, the rights of a man with respect to a person may extend only to some momentary service, or they may go the length of slavery. Even slavery itself does not imply rights always equally extensive. In some cases, it implies rights as extensive over the slave as over the inferior animals.

All rights, when the essence of them is spoken of, are powers; powers to an individual, which the governing members of the community guarantee; powers, more or less extensive, of making either a person or a thing subservient to the gratification of his desires. To be made to gratify the desire of an individual, is to be made to render him a *service*. And the term *service* may, fortunately, be applied to both persons and things. A man receives a service from the field when it produces a crop, as well as from the servant and the horse who ploughed it. In one meaning of the word *service*, it implies only active service, or that rendered by the voluntary operations of sentient beings. In the present case, however, it is employed to denote both active and passive services. It is evident, that in every case in which any thing inanimate is rendered subservient to the gratification of a desire, the service is, properly speaking, a passive service. It is also evident, that even animate beings are rendered subservient to the gratification of desires in a way which may equally be called passive.

It is necessary to request attention to the explanation which is here given of the meaning in which the term *service* is to be employed; as both the English and the Roman lawyers use it in a very restricted sense. Here it is employed to denote the whole of that ministrations to the gratification of our desires, which we are entitled, in consequence of rights, to derive either from persons or from things. Rights are powers, and the powers are means for the obtaining of services. We have now, therefore, a language, by the help of which we may speak with tolerable clearness.

Our object is to define rights, and rights are powers. But these powers can be defined, only by a reference to the services which they are the means of obtaining.



The first thing, therefore, to be done for the definition of rights is, to make out a list of all the kinds of services, which the legislature permits an individual to derive, first, from persons, and secondly, from things. This would not be a matter of very great difficulty. It would be right to begin with the most simple cases, and go on to the more complex. Thus, of the services derivable from a person, some are limited to a single species of act, and that within a limited time, and at a particular place. Others are services, consisting of various acts, limited or not limited in space and time. And lastly, are the whole services which a man is capable of rendering; without limitation as to either space or time. Considerable pains would be necessary to make the list complete; and not only considerable pains; but considerable logic would be necessary, to classify the services, in other words, make them up into lots, the most convenient for the purpose in question; and to fix the extent of each by an exact definition. It is obvious, that as soon as all the possible gradations, in the services which one human being can render to another, are exhibited by such enumeration and assortment, it is easy for the legislature to point out exactly whatever portion of these services it is its will to give any individual a right to.

The same considerations apply to the class of things. In being made subservient to the gratification of our desires, they also render services. In proportion as a man has the right to derive those services from them, they are said to be his property. The whole of the services, which are capable of being derived from them, may, without much difficulty, be enumerated and classified; and when they are so, those which it may be the pleasure of the legislature to make any one's property, may be very easily and distinctly pointed out.

We may take land for an example. All the different services which are capable of being derived from the land may be enumerated, and, being classed under convenient heads, may be referred to with perfect certainty; and any portion of them, which is made the property of any individual, may thus be accurately described. A man may have a right simply to pasture a field; to pasture it for a day, or a year, or a hundred years. He may have a right to crop it; and that either in a particular manner, or in any manner he pleases; for a year, or for any other time. He may have a right to use it for any purpose, and that during a limited time, or an unlimited time. The services which it is capable of rendering may belong to him in common with a number of other persons, or they may all belong to himself.

In illustration of this subject, we may notice a classification of the services derivable from the land, made, though very rudely, by the English law. Blackstone, who, like other English lawyers, has, on this, as on all other occasions, no idea of any other classification, than that which is made by the technical terms of the English law, has distinguished certain lots of the services, derivable from the land, under the name of "Estates therein; Estates with respect to, 1<sup>st</sup>, Quantity of interest; 2<sup>dly</sup>, Time of Enjoyment; 3<sup>dly</sup>, Number and connection of

the tenants :” That is, estates in fee simple, comprehending the whole of the services which are capable of being derived from the land, unlimited in point of time ; estates in fee tail, implying always limitation in point of time, and often a limitation in respect to some of the services ; estates for years ; estates at will ; estates at sufferance ; estates on condition ; estates in remainder ; estates in reversion ; estates in jointenancy ; estates in coparcenary ; estates in common. The Roman law has made no enumeration or classification of the services derivable from any thing, not even from the land. It speaks of property in the abstract, and in two states ; property in possession, and property in action. The English law does the same thing in regard to all other property but the land. “ Property, in chattels personal, is either in possession or in action,” says Blackstone. He does, indeed, add, “ The property of chattels personal is liable to remainders, if created by will, to jointenancy, and to tenancy in common.”

The services derivable from other articles of property than land, need not be divided under many heads. A piece of plate, for example, may render certain services without alteration of its form ; it may be incapable of rendering other services till it has received an alteration of its form. It is chiefly, therefore, by limitation, of time, that the various quantities of interest in such articles need to be determined. A man’s right may extend to the use of a silver cup, for a day, or a year, or for his life. During this time the different services which it is capable of rendering have no occasion to be divided. They go naturally altogether. An unlimited right to its services implies the power of using it, either with or without alteration of its form, and without limitation of time. In most instances the limited right would be called loan, though, in the case of heirlooms and some others, there is a limited use to which the term loan is not customarily applied.

In speaking of the rights which a man may have to persons ; as master, as father, as husband, and so on ; there is one case so remarkable, that it requires a few words to be added in its explanation. It is that of one’s own person. In this case the rights of the individual have no proper limitation beyond the obligations under which he is laid, in consequence either of the rights conferred upon others, or of the means which are thought necessary for protecting them.

If we have enabled our readers to form a tolerable conception of what we desire to be accomplished under the title of an enumeration and commodious classification of the services derivable from persons and things, we have performed what we proposed. The enumeration and classification, themselves, are evidently incommensurate with the design of an article in the present work. That, they are practicable may be confidently taken for granted. In fact, they amount to nothing more than a description of the different degrees in which the property of a thing may be possessed ; a point which is decided upon in every legal dispute. If this be done, from time to time, for one article after another, it may be done once for all.

We have already said, that rights are powers, powers for the obtaining of certain services. We have also said, that those powers can be defined only by a reference to the services which they are the means of obtaining. When those services are enumerated and classified, what remains is easy. A right to those services must begin; and it may end. The legislature has only to determine what fact shall be considered as giving a beginning to each right, and what shall be considered as putting an end to it, and then the whole business is accomplished.

It is evident that, for the definition of rights, two things are necessary. The first is, an exact description of the extent of the right; the second is, the description of the fact which gives birth to it. The extent of the right is described by reference to the lots of services, in the title to which services all rights consist. The facts, which the convenient enjoyment of rights has pointed out as the fittest for giving commencement to rights, have been pretty well ascertained from the earliest period of society; and there has, in fact, been a very great conformity with respect to them in the laws of all nations.

The following is an imperfect enumeration of them:—*An expression of the will of the legislature*, when it makes any disposition with regard to property; *Occupancy*, when a man takes what belongs to nobody; *Labour*; *Donation*; *Contract*; *Succession*. Of these six causes of the commencement of a right there is a remarkable distinction between the first three and the last three. The first three give commencement to a right in favour of one individual, without necessarily putting an end to a right enjoyed by any other individual. The last three give commencement to a right in favour of one individual, only by making the same right to cease in favour of another individual. When a man, by donation, gives a horse to another man, the horse ceases to be the property of the one man by the very same act by which he becomes the property of the other; so in the case of sale, or any other contract.

It is necessary for the legislature, in order that each man may know what are the objects of desire which he may enjoy, to fix, not only what are the facts which shall give commencement to a right, but what are the facts which shall put an end to it. In respect to these facts, also, there is a great harmony in the laws of all nations.

There is first the will of the legislature. When it confers a right, it may confer it, either for a limited, or for an unlimited time. In the term unlimited time, we include the power of tradition, or transfer, in all its shapes. If the time is limited, by the declaration of the legislature, either to a certain number of years, or the life of the party, the fact which terminates the right is obvious. If a man possesses a right, unlimited in point of time, the events are three by which it has been commonly fixed that it may be terminated: 1. some expression of his own will, in the way of gift or contract; 2. some act of delinquency; or, 3. his death.

The possessor of a right, unlimited in point of time, may, in the way of gift or contract, transfer his right either for a limited or for an unlimited time. Thus the owner of a piece of land may lease it for a term

of years. He may also, in this way, convey the whole of the services which it is capable of rendering, or only a part of them. In this transaction, one event gives birth to a right in favour of the man who receives the lease, and terminates a right which was possessed by the man who gives it; another event, namely, the arrival of the period assigned for the termination of the lease, terminates the right of the man who had received the lease, and revives the former right of the man who gave it.

Acts of delinquency have been made to terminate rights, by the laws of most nations, in the various modes of forfeiture and pecuniary penalty.

The mode in which the event of death should terminate rights has been variously regulated: Sometimes it has been allowed to terminate them simply; and what a man left at his death was open to the first occupant: All but rude nations, however, have determined the persons to whom the rights, which a man possessed without limitation of time, shall pass at his death. The will of the former owner, when expressed, is commonly allowed to settle the matter. When that is not expressed, it has by most legislators been regulated, that his rights shall pass to his next of kin.

What is the extent of each right; by what event it shall receive its commencement; and by what event it shall be terminated;—this is all which is necessary to be pre-determined with respect to it. To do this is the duty of the legislature. When it is done, the inquiry of the judge is clear and simple. Does such a right belong to such a man? This question always resolves itself into two others. Did any of the events, which give commencement to a right, happen in this case? And did any of those events, which terminate a right, not happen in this case? These are questions of fact, as distinguished from law; and are to be determined by the production of evidence. If a man proves that an event which gives commencement to a right, happened in his case, and if another man cannot prove that an event which terminates a right happened subsequently in that case, the right of the first man is established.

If we have now ascertained the importance and practicability of a civil code, and have shown what is to be done in order to obtain the benefit of it, we shall conclude, with some confidence, that we have rendered a great service to mankind. We proceed to the consideration of the penal code. The object of that code is, the acts by which rights may be violated.

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#### IV.

*What is necessary to the Perfection of the Penal Code.—Acts meet for Punishment.—What is required to the Definition of an Offence.*

In the term violation, we include all those acts by which the powers, conveyed by a right, are prevented from operating according to the will of the owner.

With respect to a part of such acts, all that it is found convenient to do, through the instrumentality of judicature, is, to remove the obstruction which prevents the enjoyment of the right, without inflicting any penalty for creating it. Thus, if a debt is not paid when due, the right is violated of the man who ought to receive it. Enough, however, is in this case supposed to be done, if the man who owes the debt is constrained to make payment. The act of secretly abstracting, with a view to appropriate, a property of perhaps less value, would be an act which the laws of all nations would punish as theft.

Of injurious acts, those alone, to the commission of which it has been deemed expedient that penalties should be annexed, are considered as the object of the penal code. Of injurious acts so perfect an analysis has been exhibited by Mr. Bentham; so perfectly, too, have the grounds been laid down upon which those acts which are destined for punishment should be selected from the rest; and so accurately have the principles, according to which punishment should be meted out, been established, by that great philosopher, that, on this part of the subject, the philosophy of law is not far from complete.

As acts are declared to be offences, and are made subject to punishment, solely for the protection of rights, it is evident, that all acts which enter into the penal code, are acts which infringe rights, either directly, or indirectly. Those which infringe them *directly*, are those by which injury is done to some individual or individuals; a blow, for example, an act of theft, and so on. We include also, under this division, all acts the *effects* of which produce an immediate infringement of rights; destroying a mound, for example, to inundate the lands of another man; importation of infection, by which the health or lives of others may be destroyed. Those acts by means of which rights are affected *indirectly*, are those which bear immediately upon the means which the state has provided for the protection of rights. The means which the state has provided for the protection of rights, are the operations of government generally. All acts, therefore, meet for punishment, are acts which disturb, either individuals in the enjoyment of their rights, or the operations required for the protection of those rights. The latter, though mediately, and not immediately hurtful, are apt to be more extensively mischievous than the former. An act which infringes a right immediately, is commonly injurious only to one individual, or a small number of individuals; an act which prevents any of the operations of government from proceeding in its natural course is injurious to all those individuals to whose protection the due course of that operation is useful. Permit acts which interrupt all the operations of government, and all rights are practically destroyed.

If, as it thus appears, acts are meet for punishment, only because they infringe a right, or because they interrupt the operations provided for the protection of rights, it is evident, that, in the definition of one set of those acts, must be included the specification of the right which is infringed; and, in the definition of the other, must be included the speci-

fication of the operation disturbed. Before, therefore, an accurate penal code can exist, there must exist an accurate civil code, and also what we may call a constitutional or political code; the latter consisting of an accurate definition of the powers created for the purposes of government, and of the limitations applied to their exercise.

From what has been said, it may appear, that the definition of offences, by which name we shall hereafter distinguish punishable acts, consists necessarily of two parts. The first part is the specification of the right infringed, or the operation of government disturbed; and the second part is the definition of the mode. Thus, for the definition of an act of theft, the right which the act has violated must be distinctly marked, and also the mode in which the violation has been committed. In one and the same class of offences, those against property for example, the mode in which the violation is performed is that chiefly which constitutes the difference between one offence and another. In a theft and a robbery, the right violated may be exactly the same; the mode in which the violation was effected constitutes the difference.

For several purposes of the penal code, it is useful, that, in the specification of the right violated, the value of what has been violated, in other words, the amount of the evil sustained, should sometimes be included. It is evident, that the value of rights can be judged of ultimately, only by a reference to human feelings. Of these feelings, however, certain outward marks must be taken as the standard. In offences which concern property the modes of valuation are familiarly known. In injuries to the person, those marks which denote injuries regarded by mankind in general as differing in magnitude; the size, for example, or position, of a wound; in injuries to reputation, the words used, and the occasion when, and so forth, are the only means of distinction which can be employed.

It may be necessary also to remark, that, in that part of the definition which relates to the mode, are to be distinguished the parties, when more than one, who engage in the same offence with different degrees of criminality; meaning, by different degrees of criminality, nothing more than demand for different degrees of punishment. The chief classes of such persons are those of principals and accessaries; and of accessaries both those before, and those after the fact.

In the definition of the mode, the act is first to be described in its ordinary shape. The act, however, may be attended with aggravating circumstances on the one hand, or extenuating circumstances on the other; presenting a demand for increased punishment in the first case, and diminished punishment in the second. Mr. Bentham has logically remarked, that the circumstances which are to be regarded as aggravating, and the circumstances which are to be regarded as extenuating, being pretty nearly the same in all cases, they may be defined, in a separate chapter, once for all. This being done, the code proceeds in the following manner: The definition is given of the offence in its ordinary shape, and the appropriate punishment is annexed; then immediately

follows the same offence with aggravating circumstances; punishment so much the more severe: the same offence with extenuating circumstances; punishment so much the less.

Thus far we have spoken of the definition of offences, into which we have entered the less in detail, because we do not think there is much of controversy on the subject. Many persons, who doubt the possibility of framing a civil code; though, after the preceding exposition of the subject, it is a doubt which could not, we should imagine, very easily maintain itself; allow, that offences may all be defined; and that it is possible to prevent the monstrous iniquity of punishing men for acts, as offences, which they have not the means of knowing to be such.

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## V.

### *The Doctrine of Punishment.—Satisfaction.—Penalties.*

After offences, comes the consideration of the punishment to be annexed to them. This is a subject of considerable detail; it has been, however, so fully and admirably treated by Mr. Bentham, that only some of the more general considerations, necessary to mark out the place and importance of the topic, need here to be introduced.

When a right has been infringed, there are two things, it is evident, which ought to be done: The injury which has been sustained by the individual ought to be repaired: And means ought to be taken to prevent the occurrence of a like evil in future.

The doctrine of Satisfaction is not at all difficult, as far as regards the regulating principles; the complication is all in the detail. The greater number of injuries are those which concern property. A pecuniary value can generally be set upon injuries of this sort; though it is not very easy to determine the *pretium affectionis*, a matter of considerable importance, which the English law, so much made up of clumsiness in one part, and false refinement in another, wholly overlooks. For injuries to the person, also, it is most frequently in the pecuniary shape alone that any compensation can be made. In making these estimates, some general marks are all that can be conveniently defined by the law, and a considerable discretion must be left to the judge. Indeed, the question of damages is always a question of fact, which must be determined by the evidence adduced in each instance.

It accords with the feelings of every man to say, that he who has committed an injury, should be made to repair it. One part of punishment, therefore, ought, wherever special reason does not intervene, to consist in making satisfaction to the party injured. Pecuniary satisfaction, where the delinquent is rich, may be a small part of the due punishment; still, however, there is an obvious propriety, in making it a part so far as it can go. In the cases in which the delinquent has no property, there is the same propriety in making his labour subservient to that end. Hard labour, with the most economical fare, till the produce of the labour

equals the amount of the satisfaction required, is, therefore, a species of punishment, recommended by the strongest considerations. It is not said that labour so limited would always be sufficient punishment, and there are many cases in which it would be too much; but even then, it should go as far as it can in the one case, and as far as it ought in the other.

When the injury is done to reputation, there is a manifest propriety in making the injurer contribute to the reparation, wherever it can be done. In many of the cases, too, the proper mode is abundantly obvious: all those, for example, where the publication of falsehood is the injurious act. The author of the injury may be obliged to declare, in a way as public as that of the offence, and as well calculated as possible for the reparation of the injury, that he has been solemnly adjudged to have propagated a falsehood, and is condemned to publish his own shame.

In the case of those offences which affect rights indirectly, namely, by affecting the securities provided for them, satisfaction seldom can have any place, because no determinate individual or individuals have sustained an injury.

This may suffice, in exposition of the first thing which is desirable where an injury has been committed, namely, that reparation should be made. The second is, that measures should be adopted for preventing the future occurrence of similar events.

Acts are performed, only because there are motives to the performance of them. Of course injurious acts are performed, only because there are motives to the performance of them.

Corporal restraint being out of the question where all the members of the community are concerned, it is evident that only two means remain for preventing injurious acts; either, first, to take away the motives which provoke to them; or, secondly, to apply motives sufficient for the prevention of them.

From the very nature of many of the acts it is impossible to take away the motives which provoke to them. From property stolen it is impossible to detach the value of the property; from vengeance it is impossible to detach the hope of that relief which is sought by the blow that is aimed.

What is wanted, then, is a sufficiency of motive in each instance to counteract the motives which lead to the crime. Whatever the motives of the alluring kind which lead to an act, if you give stronger motives of the same kind to abstain from the act, the act will, of course, be prevented. The man who would steal from you 5*l.* will assuredly not do so, if he knows that he shall receive 6*l.* for abstaining.

The question may then be started, Why should not all crimes be prevented in this way, since reward is much more desirable and humane than punishment? The answer is most satisfactory, and is built upon a ground which ought to receive profound attention, on many occasions, on which it is treated with the most perfect disregard. No reward can be given to one man, or set of men, but at the expence of some other man



or set of men. What is reward to one is therefore punishment to others. If 6*l.* be given to the man who would steal 5*l.*, it must be taken from some one or more individuals of the community. If one man is elevated by any title or distinction, all the rest with regard to him are degraded and depressed. This is utterly unavoidable. The one event is necessarily included in the other. The giving of rewards, therefore, is a matter of serious import. It is not that simple act, that pure creation of good, which it is often so fraudulently given out to be, and so credulously and foolishly admitted to be.

Other reasons, which prove the insufficiency of rewards for preventing injurious acts, are too obvious to require to be mentioned. We shall not, therefore, dwell upon this topic. This at least is sufficiently evident, that to counteract the motives which lead to the commission of an act, we have but two methods. If we cannot apply motives of the pleasurable sort, to induce the party to abstain from committing the act, we must apply such motives, of the painful sort, as will outweigh the motives which prompt to the performance. To prevent, by such means, a theft of 5*l.*, it is absolutely necessary to affix to that act a degree of punishment which shall outweigh the advantage of possessing 5*l.*

We have now, it is evident, obtained the principle by which punishment ought to be regulated. We desire to prevent certain acts: That is our end, and the whole of our end: We shall assuredly prevent any acts, if we attach to them motives of the painful kind, sufficient to outweigh the motives of the opposite kind which lead to the performance. If we apply a less quantity of evil than is sufficient for outweighing those motives, the act will still be performed, and the evil will be inflicted to no purpose; it will be so much suffering in waste. If we apply a greater quantity of evil than is necessary, we incur a similar inconvenience; we create a quantity of evil which is absolutely useless; the act, which it is the tendency of the motives of the pleasurable kind to produce, will be prevented, if the motives of the painful kind outweigh them in the smallest degree, as certainly as if it outweigh them to any degree whatsoever. As soon, therefore, as the legislator has reached that point, he ought immediately to stop. Every atom of punishment which goes beyond is so much uncompensated evil, so much human misery created without any corresponding good. It is pure unmingled mischief.

As no exact measure, indeed, can be taken of the quantity of pain which will outweigh a supposed quantity of pleasure, it is sometimes necessary to risk going somewhat beyond the mark, in order to make sure of not falling short of it. And, in the case of acts of which the evil is very great; of the higher order of crimes, in short; it may be expedient to risk a considerable degree of excess in order to make sure of reaching the point of efficiency.

In estimating the quantity of evil which it may be necessary to create, in order to compensate the motive which leads to a mischievous act, two circumstances should be taken into the account. These are, certainty, and

proximity. It is of the less importance here to enter far into the illustration of these topics, that they are now pretty generally understood. It is well known that the prospect of an evil which is to happen within an hour, or two hours, produces a much greater uneasiness, than the prospect of the very same evil removed to the distance of years. Every man knows that he will die within a certain number of years; many are aware that they cannot live beyond a few years; and this knowledge produces no uneasiness. The effort, on the other hand, which enables a man to behave with tranquillity, on the prospect of immediate death, is supposed to be so difficult, that it is this which makes the hero. It is, therefore, of the greatest importance, that punishment should be immediate; because, in that case, a much smaller quantity of evil suffices. It is imperatively required, by the laws of benevolence, that, if evil is a necessary means to our end, every expedient should be used to reduce it to the smallest quantity possible. It is cruelty; it belongs only to a malignant nature; to apply evil in a way which demands a quantity of it greater than would otherwise have been required. Suppose a law, that no act of theft should be punished or challenged till twenty years after the commission, or till the life of the thief was supposed to be near its end. It is evident that all punishment in this case; that death, in the greatest torture, would be nearly destitute of power. This is partly the ground of the complaint, of the little efficacy of religious punishment, though dreadful beyond expression in the degree.

The want of certainty is a defect of equal importance. If it is a matter of doubt, whether a threatened evil will take place, the imagination is prone to magnify the chance of its not happening; and, by indulgence, magnifies it to such a degree, that the opposite chance at last excites a comparatively feeble influence. This is a remarkable law of human nature, from the influence of which even the most wise and prudent of men are not exempt; and of which the influence is predominant in these inconsiderate minds which are the most apt to give way to the allurements of vice. To illustrate this law, the influence of the religious punishments affords the most instructive of all examples. The punishments themselves go far beyond what the imagination can conceive. It is the complaint of divines, and the observation of all the world, that, with the great body of men, the efficacy of them is exceedingly small. The reason is, that to the want of proximity is added the greatest uncertainty. If a man puts his fingers in the candle, he knows that he will be punished, and immediately, by being burned. If a man commits even a heinous sin, he has no fear of receiving the religious punishment immediately, and he conceives that, in the mercy of his Judge, in repentance and faith, he has a chance of escaping it altogether. This chance his imagination exaggerates, and most men can, in this way, go on sinning with tranquillity, to the end of their days. If all punishments were as certain and immediate as that of putting a finger in the candle, the smallest quantity it is evident, beyond what would form a counterbalance to the advantage of the forbidden act, would suffice for

its prevention. If uncertainty is admitted, to any considerable degree, no quantity of evil will suffice. It is a fact, which experience has most fully established, and which is now recognized in the most vulgar legislation, that undue severity of punishment runs counter to its end. This it does by increasing uncertainty; because men are indisposed to be the instruments of inflicting evil by which their feelings are lacerated. That legislation, therefore, is bad, which does not take measures for the greatest possible degree of proximity and certainty in the punishments which it applies.

The sources are three, from which motives of the painful sort, applicable to the purposes of the legislator, are capable of being drawn:—  
1. The physical; 2dly, The moral; and, 3dly, The religious.

I. Pains from the Physical Source may be communicated to a man through,

1. His person,
2. His connections,
3. His property.

Through his person, they may be communicated in four principal ways,—by death, disablement, restraint and constraint, simple pain.

A man's connections are either public or private; private, as spouse, parent, servant, master, &c.; public, as ruler, subject, teacher, scholar, and so on.

The modes in which a man is punished through his property need no explanation.

II. Pains, from the Moral Source, are the pains which are derived from the unfavourable sentiments of mankind. For the strength of the pains, derived from this source, we must refer to the writers who have treated of this part of human nature. It is sufficient here to advert to what is universally recognized, that these pains are capable of rising to a height, with which hardly any other pains, incident to our nature, can be compared; that there is a certain degree of unfavourableness in the sentiments of his fellow creatures, under which, hardly any man, not below the standard of humanity, can endure to live.

The importance of this powerful agency for the prevention of injurious acts, is too obvious to need to be illustrated. If sufficiently at command, it would almost supersede the use of other means. It is, therefore, one of the first objects to the legislator to know, in what manner he can employ the pains of the popular sanction with the greatest possible effect.

To know how to direct the unfavourable sentiments of mankind, it is necessary to know in as complete, that is, in as comprehensive a way as possible, what it is which gives them birth. Without entering into the metaphysics of the question, it is a sufficient practical answer, for the present purpose, to say, that the unfavourable sentiments of men are excited by every thing which hurts them. They love that which gives

them pleasure; hate that which gives them pain. Those acts of other men which give them pleasure or save them from pain, acts of beneficence, acts of veracity, and so on, they love. Acts, on the other hand, which give them pain, mendacity, and so on, they hate. These sentiments, when the state of mind is contemplated out of which the acts are supposed to arise, are transformed into approbation and disapprobation, in all their stages and degrees; up to that of the highest veneration, down to that of the deepest abhorrence and contempt.

The unfavourable sentiments, which the legislator would excite towards forbidden acts, must, therefore, in each man, arise from his conception of the mischievousness of those acts. That conception depends upon three circumstances; *1st*, The view which he himself takes of the act; *2dly*, The view which appears to be taken by other people; *3dly*, Every thing which operates to render more or less permanently present to his mind his own and other men's conception of its mischievousness. From these circumstances, the practical rules for applying this great power, as an instrument of the legislator for the prevention of mischievous acts, are easily deduced. 1. Let the best measures be taken for giving the people a correct view of the mischievousness of the act; and then their unfavourable sentiments will be duly excited. 2. Let proper pains be taken that the people shall know every mischievous act that is committed, and know its author; that, so, no evil act may, by concealment, escape the punishment which their unfavourable sentiments imply. 3. Let the legislature, as the leading section of the public, make publication of its own unfavourable sentiments; let it brand the act with infamy. 4. Let the same publication of his own unfavourable sentiments be made by the judge in the shape of reprimand and other declarations. 5. The legislature may increase the effect of these declarations, where the case requires it, by symbolical marks; or, 6, by personal exposure. 7. The legislature may so order matters in certain cases, that the mischievous act can be done only through another act already infamous; as when it is more infamous to break a vow to God than to make false declarations to men, a witness may be made to swear that he will tell the truth. 8. As the favourable sentiments of mankind are powerfully excited towards wealth, a man suffers through the popular sanction when his property is so diminished as to lessen his rank.

III. In pointing and proportioning the apprehension of divine punishment, the legislator can do three things:

1. He can declare his own apprehension, and the measure of it, which should be as exactly proportioned as possible to the mischievousness of the acts:

2. He can hire other people to declare similar apprehensions, and to make the most of the means which are available for their propagation:

3. He may discountenance the pointing of religious apprehensions to any acts which are not mischievous; or the pointing of them more strongly to acts which are slightly, than to acts which are deeply mis-

chievous. Whatever power of restraining from mischievous acts may be lodged in religious apprehensions, is commonly misapplied and wasted. It would be worth the cost, therefore, of pretty forcible means to prevent such a misapplication and waste of religious fears.\*

In drawing from one, or more, of these sources, a lot of punishment adapted to each particular case, the following properties, desirable in a lot of punishment, ought to be steadily borne in view. Every lot of punishment ought, as much as possible, to be,

1. Susceptible of graduation, so as to be applied in different degrees.
2. Measurable, that the difference of degrees may be duly ascertained.
3. Equable, that is, calculated to operate with the same intensity upon all persons.
4. Such, that the thought of the punishment may naturally excite the thought of the crime.
5. Such, that the conception of it may be naturally vivid and intense.
6. Public, addressed to the senses.
7. Reformative.
8. Disabling; viz. from crime.
9. Remediable; viz. if afterwards found to be undeserved.
10. Compensative; viz. to the party injured.
11. Productive; viz. to the community, as labour.

Of all the instruments of punishment which have yet occurred to the ingenuity of man, there is none which unites these desirable qualities in any thing like an equal degree with the *Panopticon Penitentiary*, as devised and described by Mr. Bentham.

One general rule applies, in the case of all the lots of punishment. It is this: That the private good which has operated as the motive to the injurious action, should, in all possible cases, be cut off, and the expected enjoyment prevented. Where this can be done completely, all the additional punishment necessary is only that which would suffice to compensate the want of certainty and proximity in the act of deprivation; for no man would commit a crime which he was sure he could not profit by; no man would steal, if he knew that the property stolen would that minute be taken from him. The interests which are capable of being promoted by a criminal act, may be summed up under the following titles:

1. Money, or money's worth.

\* Nothing which can in any degree interfere with the rights of conscience, including whatever interpretation any man may put upon the words of Scripture, is here understood. It is the object of the legislator to encourage acts which are useful, prevent acts which are hurtful, to society. But religious hopes and fears are often applied, not to promote acts which are useful, prevent acts which are hurtful, to society; in which way, alone, they are capable of conducing to the views of the legislator; but to mere ceremonies. And cases are not wanting in which they are applied to produce acts that are hurtful, prevent those that are useful, to society. As far as religious motives are attached to the useful, instead of the useless or hurtful objects, society is benefited. It is this benefit which it is recommended to the legislator to pursue.

2. Power.
3. Revenge.
4. Vanity, emulation.
5. Sensual pleasure, chiefly venereal.
6. Safety in respect to legal punishment.

With respect to four of these interests, viz. money, power, vanity, and safety in respect to legal punishment, the contemplated benefit is capable, in many cases, of being completely intercepted.

In the case in which revenge has operated through the degradation of the party suffering, the evil doer may be disappointed by re-exaltation of the degraded party.

Sensual pleasure, having been enjoyed, is beyond the reach of this operation.

It is highly worthy of observation, that, among the advantages constituting the motives to crime, those which can be cut off, and from the enjoyment of which the offender can be precluded, constitute by far the most frequent incentives to crime.

This must suffice as a summary of what should be said on the mode of applying pain most usefully for the prevention of certain acts. It only remains to add, that the following are the cases in which it may be pronounced unfit that pain should be employed for that purpose :

1. Where the evil to the community does not overbalance the good to the individual.
2. Where the evil necessary for the punishment would outweigh the evil of the act.
3. Where the evil created is not calculated to prevent the act.
4. Where the end could be obtained by other means.

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## VI.

### *The Code of Procedure.—First stage of the Judicial Business.—Second stage of the Judicial Business.*

We have now, therefore, stated, what the limits of this discourse enable us to adduce, on the subject of the main body of the law; the enactments of the legislature with respect to rights, and with respect to those acts by which rights are violated. It remains that we consider that subsidiary branch of law, by which an agency is constituted for the purpose of carrying those enactments into effect. The inquiry here is, 1. what are the operations essential to that agency; 2. by what agents are they most likely to be well performed; and 3. what are the best securities that can be taken for the good conduct of those agents.

It most significantly illustrates the manner in which ignorance gropes its way in the dark, to observe, that the agency, the sole end of which is to carry into execution the civil and penal laws, was created first, and was in operation for ages, before the idea of the other branches of law was even tolerably framed. It is also worthy of remark, that the men,

whose wisdom rules our affairs, are in the habit of calling the mode in which ignorance gropes its way in the dark, by the name of experience; the mode of acting upon a plan, and with forethought, by the names of theory and speculation.

There is instruction, in observing the mode, in which this inverted course of law-making was pursued. Men disputed; and their disputes were attended with the most destructive consequences. Originally, the king, at the head of the military force, and his subordinates, each at the head of a section of that force, interfered in those disputes. After a time, the king appointed functionaries, under the name of judges, for that particular service. Those judges decided, without any rule, by their own discretion. The feelings of the community, grounded upon their experience of what tended to good and evil upon the whole, pointed vaguely to certain things as right, to other things as wrong; and to these the judge, as often as he was *bona fide*, conformed his decision. The mode was similar both in arbitrating, and in punishing.

As punishing, especially in the severer cases, was an act which made a vivid impression upon the mind, the mode in which that act had been performed in previous cases was apt to be remembered: of the several modes, that which was most approved by the public would naturally be followed the most frequently; and at last there would be a species of scandal, if it was unnecessarily departed from. In this way a uniformity, more or less perfect, was established, in punishing the more heinous offences; and in regard to them custom first established what had some small portion of the attributes of a law.

In those cases in which, without a call for punishment, the authoritative termination of a dispute was all that was required, the experience of what was necessary, not only for any degree of mutual comfort, but even for the means of subsistence, soon established a few leading points of uniformity. Thus, when a man had cultivated a piece of ground, which belonged to nobody more peculiarly than to himself, it was evidently necessary that the crop should be considered as belonging to him; otherwise, no crops would be raised, and the community would be deprived of the means of subsistence.

These general feelings, with the remembrance, more or less perfect, of what had been done in similar cases, were the only guide; and it is surprising to what an extent, over the surface of the whole globe, law has, in all ages, remained in that state of imperfect existence, if, indeed, with any propriety, it can be called a state of existence. In every part of Asia, and in all ages, law has remained in that state of existence, or non-existence. In Europe, where, at a pretty early period, it became the practice to record in writing the proceedings of the judges, the natural propensity of referring to the past as a rule for the present, begat in time a species of obligation of being directed by the examples which had already been set. This created a uniformity and certainty, which, however imperfect, afforded something better than the arbitrary proceedings of Asiatic judges. Yet this was a benefit which had a dreadful alloy.

A body, not of law, but of decisions, out of which, on each particular occasion, a law for that particular occasion, as out of the crude ore, was to be smelted, hammered, and wire-drawn, was the natural material out of which to manufacture a system of chicane. How accurately the system of law, in the several nations of Europe, has conformed to the character of a system of chicane, is matter of present and lamentable experience. The uncertainty, the delay, the vexation and expence, and that immorality of the worst species with which they inundate the community, are not the only evils, great as they are, of laws constructed upon such a plan. A system of laws, so constructed, becomes an instrument of conservation for the barbarous customs and ideas of the times in which they were engendered; and infests society with the evils of an age, which it has left behind.

To conceive the operations which are necessary to give effect to the enactments of the legislature, it is necessary to conceive the occasions which call for them.

When the legislature has established rights, so long as there is no dispute about those rights, and so long as there is no complaint of any violation of them, so long there is no occasion for any agency to give to the enactments of the legislature their effect. The moment, however, one person says, the right to that object is mine, and another person says no, but the right to that object is mine; or the moment any man complains that such or such a right belonging to him another man has violated, that moment occasion for the agency in question begins.

It is evident, also, that the operations necessary to give effect to the enactments of the legislature are confined to those two occasions; namely, that on which a right is disputed, and that on which it has been violated. On the occasions on which a right is disputed, it is requisite to determine to whom it belongs. On the occasions on which a right has been violated, it is sometimes only required to compel reparation to the injured party; sometimes it is necessary, besides, to inflict punishment upon the offender. The question is, What are the operations required for these several results?

Where a right is disputed, all possible cases may be resolved into that of A who affirms, and B who denies. That right is mine, says A, it is not yours, says B.

The first question to be asked of A is, which, among those facts, which the legislature has determined shall give commencement to rights, happened in such a manner as to give commencement to that which is claimed as a right by him.

If no such fact is affirmed, the right does not exist. If some such fact is affirmed, it may be met by the opponent in one of two ways. B either may deny the fact, and affirm that the right never had a commencement; or he may allow the fact, and admit that the right had a commencement, but affirm that there had subsequently happened one of those facts which put an end to rights: admitting that A bought the horse, and had a right to him in the month of July, he might affirm that



A sold him again in August, and by that transaction put an end to his right.

When B meets the affirmation of A in the first way, that is, by denying the commencement of the right, he may do it in either of two ways. He may deny the investitive fact which A affirms, or not denying the fact, he may affirm some antecedent fact which deprived it of its investitive power. Thus, if A affirmed that he got the property by occupancy, B may affirm that it was not open to occupancy, but the property of another person. If A affirmed that he got the property by succession to his father, B may allow the fact of the succession, but affirm that the property did not belong to the father of A at the time of his death.

Whenever the legislature has accurately determined what are the facts which shall give commencement, and what those which shall give termination to a right, the whole confused and intricate mass of what in English law is called *Pleading*, reduces itself to those clear and simple elements. A begins, by affirming some one of the facts which gives commencement to a right. B may deny this fact directly. A affirms a contract for example, B denies it; and then, of course, comes the evidence: Or, instead of denying it, B may affirm an antecedent fact which deprived the fact affirmed by A of its investitive force; or he may affirm a subsequent fact, which put an end to the right. In those two cases, in which B affirms a new fact, A must be called upon for a reply, in other words, asked whether he admits or denies it. If he admits, there is an end, of course, to the claim of A. If he denies, then again we have affirmation and denial upon a matter of fact, which is to be determined by the production of evidence.

This is the first part of the proceeding, neither intricate nor obscure. The next is, the adduction of evidence. A fact is disputed; affirmed on the one side, denied on the other. A produces evidence to prove the fact, B produces evidence to disprove it. The decision is on the one side or the other, and the dispute is at an end.

If both parties obey the decision, there is no occasion for another act. If the losing party disobeys, force is necessary to compel obedience. This is called execution, and terminates the agency required.

It is needless to particularise a penal proceeding; all the possible varieties of which fall under one or other of the cases illustrated.

Thus, when a man is charged with a crime, the prosecutor affirms one of the acts violating rights, to which punishment is annexed by the legislator. The defendant can meet this affirmation in one of two ways only. First, he may deny the act, and then the second stage of proceeding, the adduction of evidence, immediately takes place. Or, not denying the act, he may affirm some previous act, which prevented it from having the effect of violating a right. Not denying the fact of taking the horse out of the field with a view to appropriate him, he may affirm a previous purchase, gift, &c. The adduction of evidence has nothing peculiar in the case of a penal proceeding at law. In the last stage, that of execution, the peculiar act of inflicting punishment is required.

Having thus a view, though very summary, of the operations required, we shall be the better able to judge of the agents necessary for the performance.

The stages, we have observed, are three. The *first* is that in which the plaintiff adduces the fact on which he relies, and is met by the defendant either with a denial of the fact, or the affirmation of another fact, which, to maintain the suit, the plaintiff must deny. The *second* is that in which evidence, to prove or disprove the fact on which the affirmation and denial of the parties ultimately rests, is adduced and decided upon. The *third* is that in which the operations are performed necessary for giving effect to the sentence of the judge.

What is desirable in the operations of the first stage is, 1st, That the affirmations and negations with respect to the facts should be true; and 2dly, That the facts themselves should be such as really to have the quality ascribed to them. For the first of these purposes, all the securities, which the nature of the case admits of, should be taken, for the veracity of the parties. There is the same sort of reason that the parties should speak truly, as that the witnesses should speak truly. They should speak, therefore, under all the sanctions and penalties of a witness. They cannot, indeed, in many cases, swear to the existence or non-existence of the fact; which may not have been within their cognizance. But they can always swear to the state of their belief with respect to it. For the second of the above purposes, namely, that it may be known whether the facts affirmed and denied are such as to possess the quality ascribed to them, two things are necessary; the first is, that all investitive and deinvestitive facts, and all acts by which rights are violated, should have been clearly predetermined by the legislature, in other words, that there should be a well-made code; the second is, that the affirmations and denials with respect to them should be made in the presence of somebody capable of telling exactly whether they have the quality ascribed to them or not. The judge is a person with this knowledge, and to him alone can the power of deciding on matters so essential to the result of the inquiry be entrusted.

To have this important part of the business done, then, in the best possible way, it is necessary that the parties should meet in the very first instance in the presence of the judge. A is asked, upon his oath, to mention the fact which he believes confers upon him or has violated his right. If it is not a fact capable of having that effect, he is told so, and his claim is at an end. If it is a fact capable of having that effect, B is asked whether he denies it; or whether he affirms another fact, either one of those, which, happening previously, would prevent it from having its imputed effect, or in a civil case one of those which, happening subsequently, would put an end to the right to which the previous fact gave commencement. If he affirmed only a fact which could have neither of these effects, the pretension of B would be without foundation.

Done in this manner, the clearness, the quickness, and the certainty of the whole proceeding are demonstrated. Remarkable it is, that every

one of the rules for doing it in the best possible manner, is departed from by the English law, and that, to the greatest possible extent. No security whatsoever is taken that the parties shall speak the truth; they are left with perfect impunity, aptly by Mr. Bentham denominated the *mendacity-licence*, to tell as many lies as they please. The legislature has never enumerated and defined the facts which give commencement, or put a period to or violate rights; the subject, therefore, remains in a state of confusion, obscurity, and uncertainty. And, lastly, the parties do not make their affirmations and negations before the judge, who would tell them whether the facts which they allege could or could not have the virtue ascribed to them; they make them in secret, and in writing, each along with his attorney, who has a motive to make them not in the way most conducive to the interests of his client, but in the way most conducive to his own interests and those of his confederates, from the bottom to the top of the profession. First, A, the plaintiff, writes what is called the declaration, an instrument for the most part full of irrelevant absurdity and lies; and this he deposits in an office, where the attorney of B, the defendant, obtains a copy of it, on paying a fee. Next B, the defendant, meets the declaration of A, by what is called a plea, the form of which is not less absurd than that of the declaration. The plea is written and put into the same office, out of which the attorney of the opposite party obtains a copy of it on similar terms. The plea may be of two sorts; either, 1st, a dilatory plea, as it is called; or, 2dly, a plea to the action. To this plea the plaintiff may make a *replication*, proceeding through the same process. To the replication the defendant may put in a *rejoinder*. The plaintiff may answer the rejoinder by a *sur-rejoinder*. This, again, the defendant may oppose by a *rebutter*, and the plaintiff may answer him by a *sur-rebutter*.

All this takes place without being once seen or heard of by the judge; and no sooner has it come before him, than some flaw is perhaps discovered in it, whereupon he quashes the whole, and sends it to be performed again from the beginning.

This mischievous mess, which exists in defiance and mockery of reason, English lawyers inform us, is a strict, and pure, and beautiful exemplification of the rules of logic. This is a common language of theirs. It is a language which clearly demonstrates the state of their minds. All that they see in the system of pleading is the mode of performing it. What they know of logic is little more than the name.

The agency necessary for the performance of this portion of the business, is some person, who, when he hears a fact affirmed and denied, can tell whether it is one of those facts to which the legislature has attached the power of giving commencement or of putting a period to rights. It is evident, that on such occasion, any one person, with the requisite knowledge, attention, and probity, is as competent to the task as a hundred. If he is single, the attention and probity is likely to be the greatest, as responsibility is not weakened merely, it is almost annihilated by being shared. There should be one judge, therefore, and

not more, to superintend that branch of procedure which consists of pleading.

The agency best adapted to the business of the second stage of judicature, is that which next demands our attention. It is the business of taking evidence; in other words, the doing all that is necessary to ascertain whether the disputed fact happened or did not happen.

The subject of evidence is a matter of complexity in the detail! And where any thing complex is to be stated in words, there is always difficulty in the expression, how plain soever the ideas. Such general considerations, however, as we can even here adduce, will, we hope, throw sufficient light upon the subject, to leave no doubt with respect to the conclusions which we have it in view to establish. This is one of the topics, connected with law, which Mr. Bentham has exhausted, though a small part only of what he has written upon it has yet seen the light.\*

With respect to all facts, legally operative, that is, which give or take away rights, it is desirable that evidence, amounting to proof, should, if possible, always exist. With respect to a great proportion of them, it is in the power of the legislature to take measures, that evidence of them shall be collected at the moment of their happening, and shall be preserved. This is the case with all those of which an evidentiary writing can be made and preserved by registration; all contracts, births, deaths, marriages, and so on. The proportion is really very great of the whole number of facts, legally operative, in regard to which a legislature, by proper means, might secure the existence of evidence, and to that extent might either prevent disputes, or render the decision of them easy. That so little of this most important and obvious work has any where been done, only shows how ill the legislatures of the world have hitherto performed their duty. It is in the power of the legislature, by a proper classification, to have an accurate formulary, for the different species of *contracts*, *wills*, and other *evidentiary writings*. Those formularies properly made and printed with blanks to fill up, would render the business of *Conveyancing*, which, in England, is a boundless, trackless, and almost impenetrable jungle; abounding with expence, with delay and vexation to parties, with wealth and almost boundless power over the fortunes of other men to lawyers; a thing of the greatest simplicity, certainty, and ease.

Into the question of what might be, and ought to be, done by the legislature, for making and preserving evidence of the principal facts by which rights are made to begin or to end, we cannot enter at length, on the present occasion. The great importance of the subject is evident from what we have thus shortly advanced.

The business of him, who is only called upon to determine whether a

\* This part of Mr. Bentham's writings has been presented to the public by M. Dumont, the first of translators and redacteurs, in that happy form which he has given to other portions of that philosopher's manuscripts.

disputed fact did or did not happen, is, to make the best use of all the evidence which exists; whether it were, or were not, desirable, that more had been made to exist. For the best use of that which exists, three things are necessary:

1st, That the whole of it should be made to bear, that is, should be taken and applied.

2dly, That it should be taken in those circumstances which are most conducive to trust-worthiness.

3dly, That the proper value should be set upon each article, and upon the whole.

1. That the evidence may be taken as completely as possible, two things are necessary. The first is, that the judge should have power to send for, and to compel the attendance of, all persons and things which may be capable of affording evidence. The second is, that the evidence should all be taken, and nothing be omitted or lost.

It is not necessary here to enter into any details with respect to the first of those requisites. The necessity of the power is obvious, and the end to be attained is so precise and perspicuous, that there can be no difficulty in conceiving the mode of putting together and applying the means. There is no limit, it is obvious, to the physical power which should be placed at the disposal of the judge. He ought to have the right of calling upon every man, upon the whole community, to aid him in any act which is necessary to the performance of any part of his judicial duty; because any force, opposed to the performance of that duty, there ought to be a force sufficient promptly to overcome. It is convenient, however, to the community, instead of being liable to be called upon, individually, for the performance of the ordinary services auxiliary to the business of the judge, to provide him with a proper number of officers, paid for attending to execute his commands. Their principal business, as regards this stage of the judicial proceedings, is, to serve notice upon any persons whose own presence, or that of any writing or other thing which they may possess, is required by the judge. Persons or things, subjected immediately to the operations of judicature, have a particular name in English. They are said to be *forthcoming*, a word which has an exact equivalent in few other languages, and is exceedingly appropriate and useful. It is of the greatest convenience, when a concrete term, the use of which is very frequent, has an abstract term corresponding to it; as good, has goodness; hard, hardness, and so on. There was not any word in the language corresponding in this way to *forthcoming*. Mr. Bentham, perceiving the great need of it, made the term *forthcomingness*; not exceptionable on the score either of harshness or obscurity. The small wits thought proper to laugh at him. We shall, nevertheless—sorry at the same time that we cannot supply a defect in the language without offending them, make use of the word; in which we find great appropriateness and great convenience. This particular branch, therefore, of the judicial agency is that which relates to *forthcomingness*; and *forthcomingness* is required for two purposes,

both for evidence, and for justiciability; for evidence, that a true decision may be passed; for justiciability, that the sentence of the judge may not fail of its intended effect.

So much with respect to the forthcomingness of evidence. The second condition, required to give the decision the benefit of all existing evidence is, that the whole should be taken, and that not any part of it which can be taken without preponderant inconvenience should be excluded and lost.

Of the several articles of evidence, some will always be of more importance, some of less; and some may be of very little importance; but whether of little or of much, it is always desirable that all should be taken, and every the smallest portion counted for what it is worth. The discovery of truth is promoted by taking advantage of every thing which tends to throw light upon the subject of dispute.

These propositions, it may appear to be useless, indeed impertinent, formally to state. They are too evident, it may be said, to be disputed, and too important to be overlooked. Important as they are, and undisputed by all the rest of the world, they are not only disputed, but trampled upon by lawyers, especially English lawyers. They have unhappily established a set of rules in direct opposition to them. These rules they applaud in all forms of expression, and celebrate as guards and fences of all that is dear to mankind.

In all causes, they have determined, that persons so and so situated, things so and so situated, though apt to be pregnant with information beyond all other persons and things, shall not be admitted as sources of evidence. Thus, in English law, we have incompetency of witnesses, that is, exclusion of them, 1st, From want of understanding; 2dly, From defect of religious principle; 3dly, From infamy of character; 4thly, From interest. These are undisguised modes of exclusion; besides which, there is an extensive assortment of disguised modes. Under this title comes the rule, that only the best evidence be given which the nature of the case admits of; according to which, it often happens that the only evidence which can be had is excluded. Under this title also falls the rule, making certain kinds of evidence conclusive, by which proceeding all other evidence is excluded. To the same list belongs the rule, that hearsay evidence is not admissible. The rules, so extensive in their application, by which writings are wholly rejected, only because they want certain formularies, are rules of exclusion; and so are the limitations with respect to time, and to number of witnesses. Into the very extensive subject, however, of the absurdity and mischievousness of the rules of evidence in English law, we cannot pretend so much as to enter. A remarkable exemplification of them was afforded on the trial of Warren Hastings, to which, for this purpose, the reader may be referred. (See Mill's *History of British India*, Book VI. Chap. ii.)

The only conceivable reasons for the exclusion of evidence are three:

1. Irrelevancy.
2. Inconvenience in obtaining and producing.

### 3. Danger of deception.

With regard to irrelevancy the decision is clear. What has no tendency either to prove or disprove the point in question, it would be loss of time to receive.

With regard to inconvenience, it is no doubt liable to happen, that when all the good which can be expected from the obtaining of a lot of evidence is compared with the evil of the delay, cost, and vexation, inseparable from the obtaining of it, the evil may be more than an overmatch for the good. In all such cases, it is expedient that the lot of evidence should be foregone.

As a guard against the danger of deception, it is equally certain that no evidence ought ever to be excluded. An account of all the reasons by which the absurdity of exclusion on this ground is demonstrated, and of the wide and deplorable mischief which, in the vulgar systems, is produced by it, would be far too extensive for the contracted limits of the present discourse. Reasons, however, decisive of the question, present themselves so obviously, that hardly any man, with an ordinary understanding, not fettered by prejudice, can look at the subject without perceiving them.

If evidence is to be received from no source from which evidence, liable to produce deception, is capable of coming, evidence must not be received at all. Evidence must be received from sources whence false evidence, as well as true, is liable to flow. To refuse all information from such sources, is not the way by which a knowledge of the truth can be obtained. This is the way to make sure of not having that knowledge. The means of obtaining it are, to receive evidence from every possible source, and to separate the bad from the good, under all those securities, and by the guidance of all those marks, of which understanding and attention know how to avail themselves.

It is not enough to say, we will receive information from those sources only which are least likely to yield deceptive evidence, refuse to receive it from those which are most likely. You are obliged to receive it from sources differing in almost all possible degrees of likelihood. Where are you to draw the line of separation? Is not the same discernment which guards you against the danger of false information from the sources which you deem the least likely to yield it, sufficient to guard you against it from those sources which you deem the most likely to do so? In fact it will be still more sufficient; because in this case you will be much more apt to be upon your guard. The very best information is, in truth, liable to be derived from the very worst of sources,—from a man who, you know, would not tell you one word of truth, if he could help it.

The securities that a man will give true information, independently of those artificial securities which the legislature can apply equally to all, are, *1st*, Intelligence, *2dly*, Probity, *3dly*, Freedom from interest. Suppose that one, or two, or all of these securities are wanting; it only

follows, that what he states should be heard with a proportional distrust. It may still be of the utmost importance to the discovery of the truth that he should be heard. Hear him with the proper allowances. This must always be more favourable to the discovery of the truth than that he should not be heard at all. His testimony may appear, when heard, to be utterly unworthy of credence. But that could not be known till it was heard and examined. It might have so been, that it was not only worthy of credence, but completed the proof of a fact of the greatest possible importance. That a man should not be heard as a witness, on account of his religious creed, is an absurdity which we cannot descend to notice.

2. The second of the three things which we found necessary, as above, for making the best use judicially of whatever evidence to the fact in question, exists, was, that it should be taken under those circumstances, which are most conducive to trust-worthiness. Those circumstances are constituted by the artificial securities, which arrangements can be made to apply. The following enumeration of them has been made by Mr. Bentham (*Introduction to the Rationale of Evidence*, p. 54), and appears to be complete.

1. Punishment.
2. Shame.
3. Interrogation, including counter-interrogation.
4. Counter evidence,—admission of.
5. Writing,—use made of it for giving permanence, &c. to evidence.
6. Publicity,—to most purposes and on most occasions.
7. Privacy,—to some purposes, and on some occasions.

For developing the import of these several securities, we can afford to say nothing. The principal operation of the judicial functionary in this part of the business is, to preside over the interrogation; to see that it is properly and completely performed. The question, then, what is the sort of agency best adapted for the performance of this part of the task of taking evidence is not difficult to answer. There is nothing in it which one man, with the proper intellectual and moral qualifications, is not as capable of performing, as any number of men.

3. All the existing evidence being collected and received, it only remains that the proper value should be attached to the several portions, and a corresponding decision pronounced.

It is sufficiently evident that, for the performance of this duty, no very precise instructions can be laid down. The value which belongs to an article of evidence often depends on minute and almost indescribable circumstances; and the result must be left to the sagacity and conscience of the judge.

At the same time, however, service to this end, and of the greatest importance, may be, and, of course, ought to be, rendered by the legislature. The different marks of trust-worthiness may, to a certain extent of particularity, be very correctly described. This being done, the difference between the value of any two lots of evidence, to which those



marks attach, may be very exactly ascertained. One has a certain number of the marks of trust-worthiness, as laid down by the legislature ; another has all these and so many more ; the result is clear. It is evident, that as far, in this respect, as experience and foresight can go, nothing should be left undone by the legislature.

Another important service can be rendered by the legislature ; and that is, to provide an accurate language for the judge ; a language in which he can express precisely the degree of value which he allots to each article of evidence, and to the whole. Various expedients may be adopted for this purpose. A very obvious one is, to fix upon some particular, well known, article of evidence, the value of which all men appreciate equally ; the clear testimony, for example, of a man of the ordinary degree of intelligence and probity, as a standard. Is the value to be expressed, which the judge attaches to any other article of evidence ? If inferior to the standard, it falls below it by so many degrees, one, two, three, four : If superior, it rises above it by so many.

Having provided an accurate language, the legislature should take security that it be used ; and admit of no vague and general expressions in the account of the value which the judge attaches to each article of the evidence on which he grounds his decision.

At the same time that the legislature insists upon the use of precise language in stating the value of evidence, it should insist upon reasons ; upon receiving from the judge a precise statement of the grounds upon which he attaches such a value, and no other, to each and every article of evidence ; that is, upon receiving a reference, as exact as language can give, to each of the circumstances which contributed to suggest to him that particular estimate which he says he has formed.

Of the importance of all these expedients we presume that no illustration is required.

We come now to the third and last stage of the business of judicature ; when all that remains is to carry into effect the sentence of the judge:

When they, upon whom the sentence operates, are willing to obey, all that is necessary is, to afford them notice of what it requires them to perform. In well ordered countries, all but a very insignificant number will be found to be cases of this description. When opposition is to be overcome, a physical force must be provided, sufficient for the purpose. As there seems nothing mysterious in determining how this should be formed, and under what rules it should act, to secure the ends for which it is provided, with the smallest possible amount of collateral evil, we shall here take leave of the subject.

## VII.

*The Judicial Establishment; or Inquiry what is the best form of the Agency required for giving effect to the Laws.—Securities for the intellectual Endowments of the Judge.—Securities for the moral Qualities of the Judge.*

We have now seen the whole of the operations to be performed. The parties are received to state before the judge the investitive or devestitive facts on which they rely. If they state, for this purpose, a fact which is not possessed of those qualities, they are immediately told that it is not possessed of them, and not calculated to support their claim. They come, by two or three steps, at the longest, to a fact upon which the question ultimately turns; and which is either contested, or not contested. In a great many cases it would not be contested. When the subject was stripped of disguise, the party who had no right, would generally see that he had no hope, and would acquiesce. The suit would thus be terminated without the adduction of evidence. When it was not, the cases would be frequent in which it might be terminated by the evidence which the parties brought along with them. In these cases, also, the first hearing would suffice. A vast majority of the whole number of suits would be included in these two sets of cases. For the decision of a vast majority, therefore, of the whole number of suits, a few minutes would suffice. When all the evidence could not be forthcoming at the first hearing, and only then, would a second hearing be required. In this mode of proceeding, justice would be, that without which it is not justice, expeditious and cheap.

In all this there is nothing which one man, with the appropriate intellectual and moral qualities, is not as competent to perform as any number of men. As one man is cheaper than any greater number, that is one reason why no more than one judge should be allowed to one tribunal.

The next object of inquiry is, to ascertain what securities can be provided, that those who are entrusted with the business of judicature shall possess the requisite intellectual and moral endowments.

The intellectual endowments depend upon those who have the power of choosing and of dismissing the judges: and who do or do not appoint men whose knowledge and capacity are ascertained. The moral behaviour of the judges depends upon the interests which act upon them in the situation in which they are placed.

Into the question, who should have the appointment of the judges, we do not intend to enter. The answer would be different under different forms of government; and this is not the place to compare the different forms of government, either for this or any other of the ends of its in-

stitution. One thing only we shall state, because it carries its evidence along with it. Those who appoint the judges ought to have no interest contrary to the best administration of justice.

As the uprightness of the judge is assailed by interests inseparable from his situation; viz. the profit which he may derive from misdecision, it is necessary to counterbalance them by opposite interests, assuming the character of securities. Several of the securities, which we have already seen applying to the situation of witness, apply also to the situation of judge: Some are peculiar to each. The following is the list of those which apply to the situation of judge.

1. Punishment.
2. Shame.
3. Publicity.
4. Writing, for the sake of accuracy and permanency.
5. Singleness of the functionary.
6. Appeal.

For the *Punishment* of the several kinds of judicial offences, provision ought to be made in the penal code.

In the case of the judge there is particular occasion to point accurately, and to strengthen to the utmost, the operation of *Shame*; for in the situation of judge it is possible to be guilty of offences very numerous and very serious, without permitting so much of evidence to attach to any definite act, as would suffice to form a ground for punishment.

The great instrument for the application of shame is *Publicity*. The importance of publicity, therefore, is paramount. It is not only the great instrument for creating and applying the moral sanction, the approbation and disapprobation of mankind; but it is of essential service towards the application of punishment, by making known the occasions on which it is deserved. It is not only a great security in itself, but it is the principle of life and strength to all other securities.

All other publicity is feeble and of little worth compared with that of the *Press*. Not only, therefore, ought this to be allowed to operate with its utmost force upon the judge, but effectual provision ought to be made to cause it to operate upon him with its utmost force. Not only ought the judgment hall to be rendered as convenient as possible for the reception of the public; not only ought the greatest freedom to be enjoyed in publishing the proceedings of the judge; and in publishing all manner of observations upon them, favourable or unfavourable; but measures ought to be taken to make a public, and to produce publication, where there is any chance that a voluntary public, and voluntary publication, would be wanting. For this purpose, unless other very important considerations intervene, the judgment seat should always be in that place, within the district to which it belongs, where the most numerous and intelligent public, and the best means of publication, are to be had.

In England, where there is no definition of libel, and where the judges,

therefore, are allowed to punish, under the name of libel, whatever writing they do not like, the publishing of unfavourable observations on the conduct of a judge—nay, in some instances, and these the highest in importance, the simple report of his proceedings—is treated as one of the most heinous of all possible offences. No wonder! Allow judges, or allow any men, to frame laws, and they will frame them, if they can, to answer their own purposes. Who would not, if he could, make a law to protect himself from censure? More especially if he were a man disposed to act in such a way as to deserve censure.

Would you allow falsehood to be published against the judge? The word falsehood is here ambiguous. It means both erroneous opinions, and false statements with regard to fact. Erroneous opinions we would undoubtedly permit, because we know no standard for ascertaining them, other than that which is afforded by public discussion; and because this is an adequate remedy for all the evil which erroneous opinions have any tendency to produce. Affirmation of facts injurious to the judge, if false, and made without reasonable grounds for having been believed to be true, we would prevent.

Allow facts, injurious to the judge, to be published, even when true; allow comments, unfavourable to the judge, to be made upon his actions; you discredit the administration of justice. Discredit the administration of justice, to which the people are resorting every day for the greatest of all possible benefits, protection from injury! As well talk of discrediting the business of a bread-baker, a meat-seller, if the fraudulent dealer is exposed to the censures of the public! Discredit the administration of justice, indeed, by taking measures of security against the vices of judges, indispensable for its perfection!

The importance of *recording, in permanent characters*, what takes place before the judge, we must content ourselves with assuming. We may do so, it is presumed, with propriety, on account of the facility with which the reasons present themselves. We must also leave it to our readers to draw the line of distinction between the occasions on which it is requisite, and the occasions on which it may be dispensed with; the occasions, for example, where every thing is simple and clear, and all parties are satisfied.

It is a great security, both for diligent and for upright conduct in the judge, that he occupy *singly* the judgment seat. When a man knows that the whole credit and reward of what is done well; the whole punishment and disgrace of what is done ill, will belong to himself, the motive to good conduct is exceedingly increased. When a man hopes that he can shuffle off the blame of negligence, the blame of unfairness, or fix a part of it on another, the uncertainty of the punishment operates, as we have already seen, to the diminution, and almost to the extinction, of its preventive force. Certain common, and even proverbial expressions, mark the general experience of that indifference, with which a duty, that belongs in common to many, is apt to be performed. What

is every body's business is nobody's. This is as true in the family as in the state; as true in judicature as in ordinary life. Much remains to be said upon this topic, which is one of great importance; but we must pass to the next.

Of the use of *appeal*, as a security against the misconduct of the judge, there is the less occasion to adduce any proof, because it seems to be fully recognized by the practice of nations.

One thing, however, which is not recognized by that practice, is, that, if it is necessary in any one sort of causes, so it is in every other, without exception. Not a single reason can be given why it should exist in one set of cases, which is not equally strong to prove that it should exist in every other.

It is instructive to observe the cases in which it has been supposed that it ought to exist, and the cases in which it has been supposed that it might be omitted. The cases in which it has been thought necessary, are those which concern property of considerable value. Those in which it has been dispensed with are those which concern property of inconsiderable value. The first set of cases are those which are of importance to the aristocratical class; the second are those which are of no importance to that class. It is the aristocratical class who have made the laws; they have accordingly declared that the suits which were important to them should have the benefit of appeal; the suits not important to them should not have the benefit of appeal.

We recognize only one standard of importance; namely, influence upon human happiness and misery. The small sum of money for which the suit of the poor man is instituted is commonly of much greater importance to him, than the larger sum for which the suit of the rich man is instituted is to the rich. Again, for one rich man there are thousands and thousands of poor. In the calculation, then, of perfect benevolence, the suits for the small sums are not, as in the calculation of perfect aristocracy, those of the least, or rather no importance; they are of ten thousand times greater importance than the suits for the largest sums.

If an appeal ought to be had, how many *stages* should there be of appeal? This question, we imagine, is easily answered. If you go for a second judgment, you should, if possible, go to the very best source: and if you go at once to the best source, why go any farther?

What is required to be done, in the case of an appeal, is the first thing which deserves to be ascertained. An appeal takes place in consequence of a complaint against the previous judge. Where no complaint, there is no appeal, nor place for appeal.

A complaint against the judge must relate to his conduct, either at the first, the second, or the third stage, of the judicial operations.

If to his conduct at the first stage, it must be a complaint of his having permitted a party to rest upon a fact which had not the investitive or divestitive quality ascribed to it; and this implies either a mistake with

respect to the law, or that he allowed the decision to turn upon a fact which did not embrace the merits of the question. It is evident, that for the decision of this question, all that is necessary is an exact copy of *the pleadings*, and transmission of it to the court of appeal.

If the complaint relates to his conduct at the second stage, it must turn upon one of two points; either that he did not take all the evidence, or that he did not properly determine its value.

If he did not take the evidence properly, by a failure either in assembling the sources of it, or in extracting it from them when assembled, the proper remedy is to send back the cause to him, with an order to supply the omission; or, if he be suspected of having failed wilfully, to send it to the judge of one of the neighbouring districts, to retake the evidence and decide.

If the complaint relates to a wrong estimate of the evidence, the statement of it, transmitted to the court of appeal, with the reasons assigned by the judge for the value affixed to every portion of it, will enable the appellate court to decide.

With regard to the third stage, the only complaint there can be is, that the judge has not taken measures to execute his own sentence. If any inquiry is in this case to be made, the proper course is, that the appellate court refer it to one of the neighbouring judges. When a simple act is to be done, the proper order is to be dispatched, and the proper penalties for non-performance exacted.

It thus appears, that for every thing which is required to be done by the appellate judicature, nothing whatsoever is required, as a foundation, but certain papers. The presence is not required, either of parties or of witnesses.

As it is of no great consequence, in a country in which the means of communication are tolerably provided, whether papers have to be transmitted 50 or 500 miles, the distance, even though considerable, of the seat of the appellate jurisdiction is a matter of very little importance. The object, then, is to get the best seat; that is, the best public. The best public, generally speaking, is in the capital. The capital, then, is the proper seat of all appellate jurisdiction. And that there should be one judge, and one judge only, in each court of appeal, is proved by exactly the same reasons, as those which apply to the courts of primary jurisdiction.

The question how many courts there should be, as well of primary as of appellate jurisdiction, is to be determined by one thing, and one thing only; namely, the need there is for them. The number of the courts of primary jurisdiction must be determined, in some instances, by the number of suits; in some, by local extent. To render justice sufficiently accessible, the distance from the seat of judicature must not be great, though the number of accruing suits, either from the paucity or from the good conduct of the people, should be ever so small.

As the judgment seat should never be empty, for the need of staying

injustice is not confined to times and seasons, and as one judge may be sometimes ill, sometimes called to a distance even by the duties of his office, provision ought to be made for supplying his place. For this purpose the proper expedient is a deputy. That the deputy should well perform his duty, the best security is, that he should be chosen and employed by the judge, the judge being responsible for the acts of the deputy, as his own. Whatever it be, which the judge cannot do, or cannot conveniently do, in that he may employ his deputy. If there is a great influx of causes, the deputy may be employed in some of the least complex and difficult. If there is any business, not of first-rate importance, requiring the presence of the judge at a distance, the delegation of the deputy or deputies is the proper resource.

Besides the Judge and his deputy, there are two adjuncts to every tribunal, which are of the utmost importance; indispensable, indeed, to the due administration of justice. These are, a *pursuer-general*, and a *defender-general*. The business of both pursuer-general, and defender-general is, to reclaim the execution of all laws in the execution of which the nation has a peculiar interest, though individuals may not. The peculiar business of the pursuer-general is, to act on behalf of the administrative authority, in its character of plaintiff, and on behalf of every plaintiff who is without the means of engaging another advocate; to obviate any prejudice he sees likely to arise to justice from the conduct of plaintiffs, whether in civil matters or penal; and to perform, in the case of all offences, where no private prosecutor appears, the office of prosecutor. The peculiar duty of the defender-general is, to act on behalf of the administrative authority in its capacity of defendant, and on behalf of every defendant who has not the means of engaging another advocate, and to obviate any prejudice he sees likely to result to justice from want of skill or other causes on the part of a defendant who pleads his own cause, or on the part of the advocate who pleads it for him.

The courts of appeal, though all seated in the metropolis, ought to be as numerous as the speedy hearing of all the appeals which come to them requires. The judges of appeal ought all to be chosen from the judges of primary jurisdiction, not only on account of the education and the experience received, but as a step of promotion, and a proper motive to acquire the requisite education, and to merit approbation in the inferior employment. There is the same propriety, and for the same reason, in choosing the judges of primary jurisdiction from the deputies.

(F. F.)









THE ARTICLE

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# LIBERTY OF THE PRESS.

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## I.

### *Nature and Objects of the Inquiry.*

**T**HE task of pointing out which of the acts, capable of being committed by the press, it would be expedient to prohibit under penalties, we trust will be found to be greatly diminished, by what we have already established in the articles GOVERNMENT and JURISPRUDENCE.

There is scarcely a right, for the violation of which, scarcely an operation of government, for the disturbance of which the press may not be employed as an instrument. The offences capable of being committed by the press are indeed nearly co-extensive with the whole field of delinquency.

It is not, however, necessary to give a separate definition of every such violation or disturbance, when committed by the press; for that would be to write the penal code a second time; first describing each offence as it appears in ordinary cases; and then describing it anew for the case in which the press is the particular instrument.

If, for the prevention of the violation of rights, it were necessary to give a separate definition, on account of every instrument which might be employed as a means of producing the several violations, the penal code would be endless. In general, the instrument or means is an immaterial circumstance. The violation itself, and the degree of alarm which may attend it, are the principal objects of consideration. If a man is put in fear of his life, and robbed of his purse, it is of no consequence whether he is threatened with a pistol or with a sword. In the definition of a theft, of a fraud, or a murder, it is not necessary to include an account of all the sorts of means by which these injuries may be perpetrated. It is sufficient if the injury itself is accurately described. The object is to prevent the injury, not merely when produced by one sort of means or another sort of means, but by any means.

From these illustrations, it sufficiently appears, that, if an accurate penal code were composed, defining the violations of rights, and the dis-

turbances of the operations of government, to which penalties were to be annexed, every offence; capable of being committed by the press, would be defined without mentioning the press. It is no less evident, that if we include in the term *libel*, as, to the great encouragement of confusion, is generally done, all the offences capable of being committed by the press, we include in the definition of libel all the definitions of the penal code.

As far as Persons and Property are concerned, the general definition of the acts by which rights are liable to be violated, has always been held sufficient; and has been regarded as including not less the cases in which the instrumentality of the press has been employed, than those in which any other means have been employed to the same end. Nobody ever thought of a particular law for restraining the press on account of the cases in which it may have been rendered subservient to the perpetration of a murder or a theft. It is enough that a law is made to punish him who has been guilty of the murder or theft, whether he has employed the press or any thing else as the means for accomplishing his end.

There can be no doubt, however, that the press is an instrument peculiarly adapted for the commission of injuries against Reputation, and for effecting disturbance to the operations of Government, while it has no peculiar adaptation for the commission of other offences. Here, too, there is the greatest disposition to restrain the press within improper limits. It is demanded of us, therefore, upon this part of the subject, to enter into greater detail.

We are then to inquire, in the first place, What are the acts of the press with respect to *private reputation*: and next, What are the acts with respect to *government*, which it is desirable that punishment should be employed to restrain.

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## II.

### *Offences of the Press with respect to Private Rights.*

Agreeably to the principles which have been already considered in the article JURISPRUDENCE, no act can be regarded as an offence with respect to an individual, which is not a violation of some of his rights.\*

In considering the rights which ought to be established with respect to reputation, one proposition may be assumed; That every man should be considered as having a right to the character which he deserves; that is, to be spoken of according to his actions.

#### *Such Offences should be defined.*

In what manner the definition of this right, which would form a part

\* In the description which follows of that violation of rights which is most liable to be committed by the press, and of the mode in which it ought to be treated, the developments presented in the article JURISPRUDENCE are understood to be present to the mind of the reader; if they are not, the very brief exposition here given will not be understood.

of the civil code, should be expressed, is not now the question; it is evident there is no peculiar difficulty in the matter. As words, not thoughts, are the object of legal cognizance, the right can only have respect to security against certain words; words, imputing to the individual, actions which he has not performed, or a disposition to certain actions, without evidence that such a disposition exists.

Suppose that one man has instituted a suit against another, for the offence of having violated, through the press, his right to some part of the reputation which he deserves. In his ground of complaint he must affirm that the man has imputed to him either the performance of actions which he did not commit, or a disposition to certain actions, where no evidence of such disposition can be given.

The words are produced; and the first question is, whether they do or do not impute the actions which, in the complaint, or bill of accusation, they are alleged to impute?

It is to be observed, that they who oppose the attempt to define the offences, which, for shortness, we call the offences of the press, make use of such occasions, as this, to raise their objections. How, they ask, can all the forms of expression be defined, by which the imputation of such and such actions may be, either more openly, or more covertly, conveyed?

It is very evident that the question, on such an occasion, whether the words do or do not impute such or such actions, is a question of fact. The law says, that such and such actions shall not be imputed, defining the actions. Whether such and such a man has imputed such actions, and whether by one set of words, or another set of words, are questions of fact.

The law, when it said that such and such acts should not be imputed to a man, could not determine whether A, who is accused by B, of having imputed to him one of those acts, did so, or not. That is to be determined by evidence, bearing upon the point. One, and in general the main article of that evidence, are the words which have been used. What is the import of these words; or, which comes to the same thing, what is the degree of proof involved in them, is to be determined, as all questions respecting the weight of evidence are, in each instance, to be determined, by the tribunal before which the accusation is brought. The interpretation of words rests upon the same footing in this, as in all other cases, that, for example, of a Will. The law determines, that whatsoever disposition a man has made with respect to his property, shall take effect after his death. But whether A has left his manor of Dale to B, is a matter of fact to be determined by evidence applying to that particular point; principally by that arising from the words of the will.

It may still be argued, by persons who do not easily renounce an opinion to which they have once given their support, that the actions, the imputation of which, the legislature means to prohibit, cannot be defined:

But this is a position which cannot long be maintained.

It is hurtful to a man, if he is believed to have committed some

actions, or to have a disposition to commit them; it is not hurtful in the case of others. Evidently it is by imputation of the first sort alone, that any right with respect to reputation can be infringed.

The acts, which a man receives injury from being believed to have committed, or to be disposed to commit, are either those to which the law has annexed penalties, or those to which the penalties of public disrepute and dislike are annexed.

With respect to those acts to which the law has annexed penalties, as theft, murder, perjury, and so on, it will not be pretended that there is any difficulty; the law has already defined them, or ought to define them, and they may be marked with perfect precision by a few words.

Those acts which it is hurtful to a man, solely on account of the disrepute and dislike which they produce, to have it believed that he has committed them, may also be with sufficient accuracy determined.

*Compensation should be made to the individual for injuries sustained by Offences of the Press.*

The ends to be attained by punishment are, Reparation to the individual to whom injury has been done, and Prevention of similar acts in future.

In the idea of all punishment, effectual reparation to the injured individual is a necessary and essential ingredient. Suppose, then, it were declared by the legislature, that every imputation to a man of acts which bring the evil of dislike and disrepute upon him who has committed them, that is, every false imputation, shall be punished at least by reparation to be made to the party injured; the term *evil* is to this purpose perfectly precise. It would remain with the complainant to show what kind and degree of injury he had received; which is a matter of fact, to be estimated, in each instance, from the evidence adduced, by the tribunal before which the question is brought. If the injury sustained is a pecuniary injury, the question coincides exactly with the question of damages, decided regularly, in English courts, as a question of fact, by the jury.

Injuries of the kind which we are now considering can affect a man only in two ways; either, by lessening the pecuniary value which he might otherwise have enjoyed; or, by lessening the marks of respect and affection which he would otherwise have received. What the loss is, in this latter instance, is also evidently a question of fact. It has nothing, therefore, to do with the legal definition of the offence, the business of the legislature. It is a question, which, like all other questions of fact, must of necessity be determined upon evidence by the tribunal before which it is brought. It is no doubt a question of delicacy, and considerable difficulty, because the evidence must often consist of very fine and minute circumstances, which can seldom be precisely ascertained. But this is not the only class of judicial questions, the determination of which depends upon such evidence as it is very difficult accurately to collect and to weigh. What is of greatest importance, on this occasion, to remark is, that all the difficulty lies in the matter of fact. There is no



doubt or obscurity in the law, which says, that whatsoever hurt a man has sustained through actions or dispositions falsely imputed to him, he shall receive compensation for. Difficulties, however, arising either from the complexity of the matter of fact, or the obscurity of the evidence, no legislative enactments can prevent. These are confided to the skill and integrity of the judge.

The compensation which ought to be made to a man for the diminution of those marks of respect and affection which he would otherwise have received, is a question for the legislature. Let us suppose that a soldier has been accused of cowardice, in such a manner as to create a general belief of the truth of the accusation; that a man of honour has been accused of mendacity, or of some of those irregular propensities to which the horror of the public is attached; it is evident that money is not, in such cases, an appropriate compensation.

When a man, through the offence of another, has been deprived of a certain amount of money, or of money's worth, we say that he has received compensation, when he is placed in the same situation in which he would have been, if the offence had never taken place.

According to this idea of compensation, a man, against whom an unfavourable opinion has been created, by the act of another man, has received compensation, when he is placed in the same situation with regard to the opinion of those with whom he is connected, as if that act had not taken place. This, therefore, is the object which it ought to be the endeavour of the legislature to effect.

One expedient is perfectly appropriate. It is, that the man who has falsely propagated an unfavourable opinion with respect to another, should be made to do whatever is in his power to remove the impression he has made. To this end, he should publish the sentence of the judge, declaring that the action, or disposition which he had imputed to the individual injured, he had imputed to him falsely. He should at least be made to publish it in every way in which he had published the imputation. Frequently a more extensive publication might be required.

In most cases, it will be allowed, that thus much would suffice. It may, however, be affirmed, that often the impression would be too profoundly struck, to be effaced by a mere knowledge of the sentence of the judge. In such cases, something more in the way of compensation would be required. On this, it is of importance to be observed, that if the impression produced by an imputation, which, after solemn inquiry, the judge has declared to be false, should not, by that declaration, be completely effaced, it implies necessarily one of two things; either that the public have evidence of the truth of the accusation, which was not adduced to the judge, and then the remaining impression is not owing to the imputation which the judge has condemned, but to the evidence; or, secondly, that the public mind is in a state of gross ignorance and imbecility, capable of forming opinions, even on the clearest subjects, not only not according to evidence, but in opposition to it. If the public mind, however, is in such a deplorable condition, it is the fault

of the legislature ; and for the rectification of this evil, the best course undoubtedly is, to take effectual measures for the instruction of the people, which instruction would soon place them beyond the danger of such delusions. In the mean time, if something more than the publication of the sentence of the judge were necessary to restore a man to that degree of consideration, of which the false imputation had deprived him, governments have numerous ways of raising the consequence of individuals ; and no legislature would be at a loss for a gradation of expedients suited to the scale of demand.

*Means which should be used for preventing the violation of Rights by the Press.*

We have now illustrated that part of this question which regards compensation to the injured individual. It remains to inquire what is best to be done in this case, for the attainment of the other object of punishment, namely, the prevention of similar offences in time to come.

To devise a punishment sufficient to prevent an offence, is to provide a motive sufficient to counteract the motive which leads to the offence. We have hence to consider what are the motives by which men are incited to make false imputations on the characters of others.

These motives may be of three different sorts. A man may derive *pecuniary profit*, he may derive *comparative distinction*, or he may satisfy his desire of *vengeance*, by blackening the character of his neighbour.

In the case in which a man has by calumny wrongfully intercepted the pecuniary receipts of his neighbour, the obligation of making satisfaction to the party injured would, it is obvious, alone suffice, provided the machinery of the laws were sufficiently perfect, to render the execution of them certain. Seldom would any man calumniate his neighbour, for the sake of placing £20 in his own pocket, if he were sure that, next day, or next week, he would have to restore it, with all the profit which might have been made by the use of it, and with the disgrace besides of having committed an action which other men abhor.

Sometimes, however, a man may derive pecuniary profit from calumniating persons whom he has not by that means deprived of any pecuniary advantage ; by the sale, for example, of a slanderous publication ; when the satisfaction due to the individual may not be of a nature to counteract the motive which leads to the offence. The expedient in this case, also, is sufficiently obvious, and sufficiently simple. It is necessary to ascertain the whole of the gain which has been made by the offender, and to take it away from him. This, together with the satisfaction which he ought to make to the injured individual, would, if it were certain, create a surplus of motive to abstain from the injurious act.

In both of these cases, if the execution of the law is uncertain, an additional punishment may be necessary, sufficient to compensate for the chance of escape. The allowance to be made on this score must depend upon the imperfection of the laws ; while one important fact is to be kept

in remembrance, that as severity of punishment, beyond a certain point, is increased, certainty of execution is diminished. The true expedient, therefore, is to render the machinery of the laws so perfect, that the penalties which they denounce may always be sure of execution; and, then, hardly any thing, beyond compensation to the individual, and the abstraction of any additional gain which might have been made by the propagation of slander, would be necessary to repress all offences against the reputation of others, to which the motive was constituted by pecuniary gain.

The two remaining cases are still more simple. If a man propagates a falsehood, for the sake of injuring the character of a man by whom his own consideration is eclipsed, it is only when he expects to obtain by that means a permanent advantage. If he knows that immediately the law will take its hold upon him; that he will be compelled to re-elevate the character of his neighbour, and to proclaim his own disgrace, he will see that, to attempt depressing the character of another man by calumny, is the very worst of all expedients, for giving a comparative elevation to his own. The same is the result in the case where vengeance constitutes the motive to injure the reputation of another. To render this proposition manifest, the most obvious illustration will suffice. No man, to gratify his malignity to another person, would kill his ox or his ass, provided he were sure that immediately he would be obliged to make him full satisfaction; and instead of injuring the man whom he hated, to injure only himself. No, the rudeness and inefficacy of the law, holding out a chance of escaping the duty of making reparation, is the sole origin and cause of all offences of this description; and if the law were placed in a state but approaching to perfection, hardly any thing beside the obligation of making satisfaction would be necessary to repress the whole of this order of crimes.

*Whether any Imputation by which Truth is not violated, should be considered an Offence by the Press.*

We have now made considerable progress in this important inquiry. We have ascertained, we think, with sufficient evidence, all that is necessary to be done for preventing injuries to the reputation of individuals; provided the rights of reputation are not, by the civil code, made to extend beyond the boundaries of truth. Whether or not they ought to extend farther, and individuals ought to be protected from the disclosure of acts which they may have committed, is, we confess, a question highly worthy of solution; upon which, therefore, before we proceed to any of the subsequent topics, we shall offer the following reflections.

There can be no doubt that the feelings of the individual may be as painful, where actions of a disreputable nature are, truly, as where they are falsely, imputed to him. It is equally certain, that no painful feelings ought to be wilfully excited in any man, where no good, sufficient to overbalance that evil, is its natural consequence.

We have already shown, that reputation is injured by the imputation of acts of two different descriptions; first, those to which the law annexes penalties; secondly, those to which disrepute and the dislike of others are annexed.

With respect to those acts to which the law annexes penalties, there is no room for uncertainty or dispute. Unless the law is a bad law, which ought to be repealed (this, we confess, constitutes an exception, and one, which, in very imperfect codes, extends a great way), the law ought not to be disappointed of its execution. The man who gives information against a murderer, or a thief, by the press, or without the press, renders a public service, and deserves not punishment but reward.

It appears, therefore, that the question, whether a man ought to be protected from the imputation of actions which he has really committed, refers solely to those acts which, without being punishable by the law, are attended with disrepute; acts, in other words, which the members of the society disapprove and dislike.

The prospect of the immediate and public exposure of all acts of this description, would be a most effectual expedient to prevent their being committed. Men would obtain the habit of abstaining from them, and would feel it as little painful to abstain, as at present it is to any well educated person to keep from theft, or those acts which constitute the ill manners of the vulgar. The fable of Momus has always been understood to carry an important moral. He found grievous fault that a window had not been placed in the breast of every man, by which, not his actions alone, but his thoughts, might have been known. The magnanimity of that Roman has been highly applauded, who not only placed his residence in such a situation that his fellow-citizens might see as much as possible of his actions, but declared a wish that he could open to all eyes his breast as well as his house.

If the hatred and contempt of the people, therefore, were always rightly directed, and rightly proportioned; if they never operated against any actions but those which were hurtful, either to the individual himself, or to others, and never, but in the degree in which they were hurtful, the case would be clear; the advantage which would be derived from the true exposure of any man's actions of any sort, would exceed beyond calculation the attendant evil. The great difficulty of insuring the practice of morality, in those numerous and highly important cases, to which the legal sanction, or the *security of pains and penalties*, does not extend, consists in the want of a motive always present, and powerful enough to counteract the instant motive which urges to the instant offence. That motive almost every man would derive from the knowledge that he had the eyes upon him of all those, the good opinion of whom it was his interest to preserve; that no immoral act of his would escape their observation, and a proportionate share of their hatred and contempt. It is in this view that the aid of religion has been sometimes regarded as of importance to morality; suggesting the idea of a high and constant observer. All motives, however, are feeble, in proportion as the pains and pleasures

upon which they depend are distant, vague, or uncertain. Divines agree with all other men in complaining of the trifling effect of religious motives upon the lives of the greater number of men. From the nature of the prospect on which these motives depend, they could not be less feeble than they have been thus described. The case is not the same with the motives arising from the sentiments which we know we shall inspire in the breasts of our fellow-creatures. It is a matter of daily and incontrovertible experience, that these are among the most powerful which operate upon the human mind. The soldier rushes upon death, and endures all the hardships and toils of his cruel profession, that he may enjoy the admiration, and escape the contempt of his fellow-men. On what else is founded the greater part of all human pursuits? How few, even of those who toil at the meanest occupations, but exert themselves to have something for show, something to make an impression upon the eyes of those who surround them? The very subject of the present inquiry derives from this source the whole of its importance. The value of reputation is, indeed, but another name for the value which we attach to the favourable and unfavourable sentiments of our fellow-men.

It is, however, true, that their unfavourable sentiments do not always fall where they ought, and this, we confess, is a consideration of the highest importance. It very often happens that men's antipathies are excited to actions from which no evil ensues, either to him who performs them, or to any body else. If any man derives a pleasure from such actions, it is to limit his sphere of innocent enjoyment, to debar him from them. And if the press exposes him to the antipathies, the hatred, and contempt of his fellow-creatures, on account of those actions, it produces an evil, uncompensated by the smallest portion of good. To an Indian Brahmen, if he were known to have eaten, even when starving, a morsel of food which had been prepared by a Christian, the consequences would be dreadful. Where the Roman-Catholic religion is in vigour, a man who should indulge himself in animal food on forbidden days would be regarded with horror. The use of wine, however moderate, would render a Mahomedan execrable to the whole of his tribe.

This misdirection of the favourable and unfavourable sentiments of mankind; in other words, this perversion and corruption of their moral sentiments, has, in by far the greater number of instances, been the work of priests, contriving the means of increasing their influence. In some very important instances, such, for example, as the prejudices of birth, at one time in Europe so powerful as to make men of low birth objects of the greatest contempt, men of elevated birth objects of the highest veneration; the perversion of the moral sentiments is evidently the work of the aristocratical class, securing to themselves a more easy dominion over the rest of their fellow-creatures.

It is, therefore, evident, that where antipathies, religious or aristocratical, should prevail, the press would be hurtfully employed in giving notoriety to the facts which would expose a man to the operation of either.

We have now ascertained the cases in which it would *not* be good that men should be protected from the declaration of truth by the press, and also the cases in which it *would* be good that they should be so protected.

What, upon this view of the subject, would be desirable, is sufficiently clear. It would be desirable that, in the one set of cases, the declaration should be allowed, in the other it should not be allowed. Are the two sets of cases, however, capable of being accurately distinguished?

If the comparison is made with any attention, it will not be difficult to determine that the evil to be incurred by the loss of truth in the set of cases in which the declaration of it would be useful, is much greater than that which would arise from permitting the declaration in the cases in which it would be hurtful.

In the first place, the set of cases in which the declaration would be useful are much more numerous, and much more important, than those in which, in any tolerably civilized state of society, it would be hurtful. Those in which it would be useful embrace the whole field of morality, all those acts, the performance of which, on account of their singular importance, has been elevated to the rank of virtues. Every body believes and proclaims, that the universal practice of the moral virtues would ensure the highest measure of human happiness; no one doubts that the misery which, to so deplorable a degree, overspreads the globe, while men injure men, and instead of helping and benefiting, supplant, defraud, mislead, pillage, and oppress, one another, would thus be nearly exterminated, and something better than the dreams of the golden age would be realized upon earth. Toward the attainment of this most desirable state of things, nothing in the world is capable of contributing so much as the full exercise of truth upon all immoral actions,—all actions, the practice of which is calculated to lessen the amount of human happiness. According to this view, the justice of which it is impossible to dispute, the evil incurred by forbidding the declaration of truth upon all immoral actions is incalculable. That which would be incurred by the antipathies of misguided minds against actions innocent in themselves, nobody, we should imagine, would so much as think of placing in comparison.

In our own country, for example, the classes of actions which, though they injure nobody, expose a man to the unfavourable sentiments of others, are not numerous. The number of persons who would be exposed to inconvenience on account of the declaration of truth, in regard to them, would be small in comparison with those who would benefit by its declaration in the case of all really hurtful acts.

It is, indeed, important to be observed, that a comparative smallness of number is necessarily implied in the supposition of injury from any unfounded antipathy. Those who share in the antipathy, of course, abstain from the action. And unless the antipathy were so general as to include almost the whole of the society, it would lose its injurious effect. Besides, all the injury which can be done to the individuals against whom

truth would in this manner operate injuriously, would be, to make them abstain from the acts which were thus condemned.

Another thing to be considered is, that the whole of the evil arising from the exercise of truth is dependent upon an accidental circumstance, capable of being removed; upon a mental disease, requiring to be cured, which, the legislature ought to be constantly endeavouring to cure, and toward the cure of which truth is likely to operate as the most effectual of all expedients. If any considerable inconvenience were experienced from exposure to unfounded antipathies, in consequence of the publication of truth, the groundlessness of these antipathies could not fail in this case to be so often canvassed, and made to appear, that at last it would become familiar to the multitude, and the antipathies would expire.

It clearly, therefore, appears, that, if the cases in which the declaration of truth would expose to unfounded prejudices could not be clearly defined, and separated from the cases in which the declaration would be salutary, the rule of permitting truth ought to be universal. But, though we perceive, that, to a considerable extent, there are cases, in respect to which it would be vain to hope for agreement in drawing the line of distinction between what is hurtful and what is not, we are persuaded that principles might be laid down in which all would agree, and which would serve to mark out certain cases for exception with sufficient exactness. If any such cases could be separated, either of actions which, though injurious to nobody, excited antipathies, or of facts, as those of birth, for which, though a man was in no respect worse, he might be regarded as worse; the exercise of truth, with regard to them, might, on the express ground that they were actions innocuous, or facts which ought to be of no importance in the estimate of human worth, be forbidden, when injurious, under the penalty of at least making reparation for all the injury of which it had been the cause.

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### III.

#### *Offences of the Press with respect to Government.*

We have now explained, we trust with sufficient clearness for the present occasion, the principles upon which laws should be constructed for protecting the *rights of individuals* against violations committed by the press. The first part of this inquiry, therefore, we must consider as completed. In the second part we have to explain the principles upon which they should be constructed for protecting *the operations of government*.

*Exhortations to obstruct the operations of Government in detail, should; Exhortations to resist all the powers of Government at once should not, be considered offences.*

Unless a door is left open to resistance of the government, in the largest sense of the word, the doctrine of passive obedience is

adopted ; and the consequence is, the universal prevalence of misgovernment, ensuring the misery and degradation of the people. On the other hand, unless the operations of government, instituted for the protection of rights, are secured from obstruction, the security of rights, and all the advantages dependent upon the existence of government, are at an end. Between these two securities, both necessary to obtain the benefits of good government, there appears to be such a contrariety, that the one can only be obtained by the sacrifice of the other.

As this difficulty, however, arises chiefly from the extent of the terms, a close inspection of the cases which they involve, and which they have a tendency to confuse, will enable us to discover the course which it belongs to practical wisdom to pursue.

It is necessary, first of all, to ascertain what sort of obstructions are inconsistent, and what are not inconsistent, with those operations of government, which are necessary for the protection of rights.

The application of physical force, to resist the government in applying to the execution of the laws the physical power placed at its disposal by the law, is such an obstruction of the operations of government, as would, if frequent, render it inadequate to the ends which it is provided to secure. This application of force, therefore, must be treated as an offence ; and any thing proceeding from the press, tending directly to produce it, as a similar offence.

This proposition requires to be illustrated. The application of physical force which is here described, and treated as an evil, is clearly distinguishable from that resistance of government which is the last security of the many against the misconduct of the few. This is an application of physical force to obstruct the operations of government in detail ; the proceedings, for example, of a court of justice ; the proceedings of the legislative organ, or the proceedings of any of the administrative functionaries, in the execution of the duties with which they are charged. This is not that species of resistance which is necessary, in the last resort, to secure the people against the abuse of the powers of government. This last is not a resistance to the operations of government in detail. It is a resistance to all the powers of government at once, either to withdraw them from the hands in which they have hitherto been deposited, or greatly to modify the terms upon which they are held.

Even this last species of resistance it may be necessary to punish, at least in a certain degree, whenever it is not successful ; that society may not be disturbed by commotions which the majority of the people disapprove. This, however, is a question which belongs to the penal code in general, and does not concern the inquiry into the offences capable of being committed by the press : because we think it may be satisfactorily shown, that no operation of the press, however directly exhorting to this species of resistance, ought to be treated as an offence.

The reason is, that no such exhortation can have any immediate, or



formidable effect; can, indeed, have any effect at all, except through such mediums as ought to be at all times perfectly free. Suppose, that a work is published, exhorting the people in general to take arms against the government, for the purpose of altering it against the consent of its rulers. The people cannot take arms against the government without the certainty of being immediately crushed, unless there has been already created a general consent. If this consent exists in such perfection as to want nothing to begin action but an exhortation, nothing can prevent the exhortation; and forbidding it is useless. If the consent does not exist in nearly the last degree of perfection, a mere exhortation, read in print, can have no effect which is worth regarding. In all circumstances, therefore, it is useless, and consequently absurd, to treat this species of exhortation as an offence. If, on the other hand, it were clearly recognized, that every man had a licence to exhort the people to the general resistance of the government, all such exhortations would become ridiculous, unless on those rare and extreme occasions, on which no prohibitions, and no penalties, can or ought to prevent them. The doctrine of this paragraph, which will appear somewhat startling and paradoxical to minds accustomed only to a certain train of ideas, will receive illustration, and we trust will be amply confirmed, as we proceed.

Having mentioned this as a grand exception, we now return to the cases in which not only physical force applied to obstruct the operations of government, but the publishing of exhortations to that obstruction, ought to be treated as an offence. These relate solely, as above remarked, to the operations of government in detail. Obstructions it is evident, may be offered to the operations in detail of a government which possesses and deserves the fullest confidence of the community at large; and the press may be employed in directly and efficiently exciting to these obstructions. A hand-bill, for example, distributed at a critical moment, and operating upon an inflamed state of mind, in a narrow district, may excite a mob to disturb the proceedings of a court of justice, to obstruct public officers in the execution of their duties, or even to disturb, on this or that occasion, the deliberations of the legislature itself.

These are clearly hurtful acts; they may be very accurately defined; and penalties, of moderate severity, would be sufficient to deter from the performance of them. Satisfaction by the party offending to the party injured, would often, in offences of this description, be out of the question; because there would be no definite party to whom an injury would be occasioned. It would only be necessary to ascertain the sorts of motives by which such offences would be liable to be produced, and to apply skilfully, as in other cases, motives of an opposite tendency, sufficient to counteract them. This would not be more difficult in this than in other cases, and it is not, therefore, necessary to explain at any length the mode of performing it.

One principle is to be carefully and most religiously observed, that of not imposing an atom of punishment for the purposes of *vengeance*.

This is a principle, the justness and importance of which are so completely recognized, that we might have expected to be relieved ere now from the necessity of recommending attention to it. The fact, however, is, that so long as there are abuses in governments, so long will the men, who have the means of profiting by those abuses, exert themselves to multiply the list of offences against government, and to apply to them punishments of the greatest severity.

Punishments for contempt of court; punishments to vindicate the honour of the court, of the government, of the magistracy; punishments for the support of dignity; punishments severe in proportion as the dignity of the party offended is supposed to be high, and so on, are punishments almost always applied for purposes of vengeance, or the protection of the instruments of abuse. They are punishments, therefore, which will be rigidly excluded from a code which wisely and steadily pursues the general good.

*Of Exhortations to obstruct the Operations of Government, in detail, there are two Sorts: 1. The Direct, 2. The Implied, or Constructive.*

What the *sort of acts* are, to which the exhortations of the press ought not to be applied, has been so far ascertained. The next point is, to determine with accuracy what *sort of exhortation* it is that ought to be forbidden.

To all those who profit by the abuses of government, that is, more especially, to all those who, in a defective government, wield any of its powers, it is of great importance to leave as undefined as possible the sort of exhortation that ought to be forbidden. The point of greatest importance to them is, to keep the people at large from complaining, or from knowing or thinking that they have any ground of complaint. If this object is fully attained, they may then, without anxiety, and without trouble, riot in the pleasures of misrule: there is no limit to the degree in which the few may pursue their own advantage at the expence of the many.

There can be nothing therefore, in which they have a greater interest, than preventing the press from being employed in any such way, as will lead the people to think that they have any thing, on the part of their rulers, of which to complain. All artifices possible will be sure to be employed to effect that prevention. And if it is enacted, that exhortations to acts which obstruct the operations of government in detail should be punished, *without defining accurately what sort of exhortations*, they will easily find expedients; which will, to a great extent, accomplish their purpose.

Under the sort of constructions which it will be their interest to apply, every thing which can be done by the press, to make the people know or believe that there is any thing in the system of their government, or the conduct of their rulers, of which they have to complain, may be treated as an exhortation to obstruct the operations of government. Of these

constructions, our experience affords innumerable examples. Does not the imputing of defects to the government, or misconduct to those who wield the powers of government, tend to bring both "into hatred and contempt?" And if the people hate and condemn the institutions and rulers of their country, will they not oppose their operations? The imputing of these faults, therefore, is it not, in essence and effect, an exhortation to oppose the operations of government? And are we to be governed, in our legislature, by the mere forms in which a set of words may appear, and not by our knowledge of their nature and consequences?

This is not only exceedingly plausible, but almost all the propositions which it involves are true. It is thus, therefore, the more easy to establish such a mode of interpreting an indefinite law of the press, as will prevent, or where the people cannot yet bear a total prevention, will go far towards preventing, whatever can lead the people to believe that any thing is amiss in the manner in which they are ruled.

There are two species of exhortations, the one explicit and direct, the other implied and constructive. In the one, a particular act is pointed out, and the party, or parties, addressed, are called upon to perform it. In the other, certain grounds are only laid, from which the opinion of the addresser, that the act ought to be performed, may, with more or less certainty, be inferred.

With respect to the first, there is no occasion for doubt. A direct and explicit exhortation to commit one of those acts, described above as obstructing the operations of government in detail, should be treated as an offence. The precise question is, whether any exhortation, which is only implied and constructive, should be considered an offence? In the answer to this question, almost every thing which relates to the use of the press in matters of government, will be found to be involved.

*Exhortations which are Implied and Constructive, ought not to be punished.*

We have already divided the subject of resistance to government into two parts; first, that general resistance, the object of which is some great change in the government at large; and, secondly, resistance to this or that of its operations in detail.

We have already adduced an argument, which appears to us to be conclusive, to show, that no exhortation, whether explicit or implied, direct or indirect, the object or tendency of which is to produce the first species of resistance, ought to be subject to legal restraint.

It is necessary here to enter a little more fully into the grounds of that opinion.

We think it will appear, with sufficient evidence, that in the way of indirect exhortation to resistance, that is, in laying the grounds of dissatisfaction with the government, there is no medium between allowing every thing, and allowing nothing; that the end, in short, which is sought to be gained, by allowing any thing to be published in censure of

the government, cannot be obtained, without leaving it perfectly free to publish every thing.

The end which is sought to be obtained, by allowing any thing to be said in censure of the government, is, to ensure the goodness of the government; the most important of all the objects to the attainment of which the wisdom of man can be applied. If the goodness of government could be ensured by any preferable means, it is evident that all censure of the government ought to be prohibited. All discontent with the government is only good, in so far as it is a means of removing real cause of discontent. If there is no cause, or if there is better means of removing the cause, the discontent is, of course, an evil, and that which produces it an evil.

So true it is, however, that the discontent of the people is the only means of removing the defects of vicious governments, that the freedom of the press, the main instrument of creating discontent, is, in all civilized countries, among all but the advocates of misgovernment, regarded as an indispensable security, and the greatest safeguard of the interests of mankind.

For what is meant by a vicious government? or wherein do the defects of government consist? Most assuredly they all consist in sacrificing the interests of the many to the interests of the few. The small number, in whose hands the powers of government are, in part directly, in part indirectly, placed, cannot fail, like other men, to have a greater regard for what is advantageous to themselves, than what is advantageous to other men. They pursue, therefore, their own advantage, in preference to that of the rest of the community. That is enough. Where there is nothing to check that propensity, all the evils of misgovernment, that is, in one word, the worst evils by which human nature is afflicted, are the inevitable consequence. (See the article GOVERNMENT.)

There can be no adequate check without the freedom of the press. The evidence of this is irresistible. In all countries, the people either have a power legally and peaceably of removing their governors, or they have not that power. If they have not that power, they can only obtain any considerable ameliorations of their governments by resistance, by applying physical force to their rulers, or, at least, by threats so likely to be followed by performance, as may frighten their rulers into compliance. But resistance, to have this effect, must be general. To be general, it must spring from a general conformity of opinion, and a general knowledge of that conformity. How is this effect to be produced, but by some means, fully enjoyed by the people, of communicating their sentiments to one another? Unless where the people can all meet in general assembly, there is no other means of attaining this object, to be compared with the freedom of the press.

It is, no doubt, true, that in countries where the liberty of the press is unknown, bad governments are frequently overthrown. This is almost always accomplished by the military force, revenging some grievance of

their own, or falling in with some heat and animosity of the people. But does it ever enable them to make a new government, in which any greater security is provided for their interests than there was before? In such cases, the people get rid of one set of rulers, whom they hate, only to obtain another set, with equal powers of doing them injury.

There are, however, we believe, some people who say, that though the liberty of the press is a necessary instrument to attain good government, yet, if it is fairly attained, and if legal and peaceable means are in the hands of the people of removing their governors for misconduct;—if the people of England, for example, really chose the members of the House of Commons, and renewed their choice so frequently, as to have the power of removal after a short experience of misconduct, the freedom of the press would be unnecessary.

So far is this from being true, that it is doubtful whether a power in the people of choosing their own rulers, without the liberty of the press, would be an advantage.

*Freedom of Censure on the Conduct of their Rulers, is necessary for the good of the People.*

It is perfectly clear, that all chance of advantage to the people, from having the choice of their rulers, depends upon their making a good choice. If they make a bad choice—if they elect people either incapable, or disinclined, to use well the power entrusted to them, they incur the same evils to which they are doomed when they are deprived of the due control over those by whom their affairs are administered.

We may then ask, if there are any possible means by which the people can make a good choice, besides the *liberty of the press*? The very foundation of a good choice is knowledge. The fuller and more perfect the knowledge, the better the chance, where all sinister interest is absent, of a good choice. How can the people receive the most perfect knowledge relative to the characters of those who present themselves to their choice, but by information conveyed freely, and without reserve, from one to another?

There is another use of the freedom of the press, no less deserving the most profound attention, that of making known the conduct of the individuals who have been chosen. This latter service is of so much importance, that upon it the whole value of the former depends.

This is capable of being rigidly demonstrated. No benefit is obtained by making choice of a man who is well qualified to serve the people, and also well inclined to serve them, if you place him in a situation in which he will have preponderant motives to serve himself at their expence.

If any set of men are chosen to wield the powers of government, while the people have not the means of knowing in what manner they discharge their duties, they will have the means of serving themselves at the expence of the people; and all the miseries of evil government are the certain consequence.

Suppose the people to choose the members of the Legislative Assembly, with power of rechoosing, or dismissing them, at short intervals;

To what desirable end could these powers be exercised, without the liberty of the press? Suppose that any one of those whom they have chosen has misconducted himself, or promoted, as far as depended upon him, the ends of misgovernment; how are the people to know that the powers with which they had entrusted him had been treacherously employed?

If they do not know, they will rechoose him, and that as cordially as the man who has served them with the greatest fidelity. This they are under a deplorable necessity of doing, even to be just; for, as they know no difference between him and the best, it would be on their part iniquity to make any. The consequences would be fatal. If one man saw that he might promote misrule for his own advantage, so would another; so, of course, would they all. In these circumstances, we see laid the foundation on which, in every country, bad government is reared. On this foundation it is impossible that it should not be reared. When the causes are the same, who can expect that the effects will be different? It is unnecessary to dwell upon these fundamental truths, because they have already been developed in the article, GOVERNMENT.

Without the knowledge, then, of what is done by their representatives, in the use of the powers entrusted to them, the people cannot profit by the power of choosing them, and the advantages of good government are unattainable. It will not surely cost many words to satisfy all classes of readers that, without the free and unrestrained use of the press, the requisite knowledge cannot be obtained.

That an accurate report of what is done by each of the representatives, a transcript of his speeches, and a statement of his propositions and votes, is necessary to be laid before the people, to enable them to judge of his conduct, nobody, we presume, will deny. This requires the use of the cheapest means of communication, and, we add, the free use of those means. Unless every man has the liberty of publishing the proceedings of the Legislative Assembly, the people can have no security that they are fairly published. If it is in the power of their rulers to permit one person, and forbid another, the people may be sure that a false report,—a report calculated to make them believe that they are well governed, when they are ill governed, will be often presented to them.

One thing more is necessary, and so necessary, that, if it is wanting, the other might as well be wanting also. The publication of the proceedings tells what is done. This, however, is useless, unless a correct judgment is passed upon what is done.

We have brought this inquiry, then, to an important point. In the article GOVERNMENT, we have seen that, unless the people hold in their own hands an effectual power of control on the acts of their government, the government will be inevitably vicious: We have now seen, that they cannot exercise this control to any beneficial purpose without the means of forming a correct judgment upon the conduct of their representatives: We have likewise seen, that one of the means necessary to enable them to judge correctly of the conduct of their representatives, is the liberty to every body of publishing reports of

what they do: It remains to inquire, by what other acts the press can be made to contribute to the same desirable end.

What is wanted is, that all the people, or as many of them as possible, should estimate correctly the consequences of the acts proposed or done by their representatives, and also that they should know what acts might have been proposed, if the best were not proposed, from which better consequences would have followed. This end would be accomplished most effectually, if those who are sufficiently enlightened would point out to those who are in danger of mistakes, the true conclusions; and, showing the weight of evidence to be in their favour, should obtain for them the universal assent.

How is this to be accomplished? In what manner are those wise men to be chosen? And who are to be the choosers? Directly the object cannot be attained. There are no distinct and indubitable marks by which wisdom, and less by which integrity, is to be known. And who is to be trusted with the privilege of pointing them out? They whose judgment requires to be directed are not well qualified to determine who shall direct them. And if the rulers are to choose, they will employ none but those who will act in conformity to their views, and enable them to benefit themselves by the pillage and oppression of the people.

As there is no possible organ of choice, no choice whatever ought to be made. If no choice is to be made, every man that pleases ought to be allowed. All this is indubitable. The consequences of denying any part of it are so obvious, that hardly any man, we suppose, will risk the imputations to which such a denial would justly expose him.

They who say that no choice ought to be made, say, in effect, that no limit whatsoever ought to be imposed upon the liberty of the press. The one of these propositions is involved in the other. To impose any restraint upon the liberty of the press, is undoubtedly to make a choice. If the restraint is imposed by the government, it is the government that chooses the directors of the public mind. If any government chooses the directors of the public mind, that government is despotic.

Suppose that, by the restraint imposed upon the liberty of the press, all censure of the government is forbidden, here is undoubtedly a choice. The government, in this case, virtually says, The people who might attempt the task of directing the public mind are of two sorts; one, those who would censure; another, those who would not censure; I choose the latter.

Suppose that not every censure, but only such and such kinds of censure, are forbidden; here, again, is still a choice, while confessedly there is no party to whom the power of choosing for the rest can with safety be given.

If not every censure, but only some censures, are to be forbidden, what are those to which the prohibition should extend? The answer to this question will elucidate nearly all that yet remains, in any degree obscure, of the doctrine of the liberty of the press.

It will not be said that any censure which is just should be forbidden, because that would undoubtedly be to detract from the means of enabling the people to form correct judgments; and we have, we trust, rendered it indisputable that no source of benefit to society is at all to be compared with that of correct judgments, on their government and its functionaries, formed by the people, and determining their actions.

But what censures are just and what are unjust; in other words, what are the conclusions which ought to be formed respecting the properties and the acts of the government, is exactly the point to be determined. If you say that no man is to pass an unjust censure upon the government, who is to judge? It is surely unnecessary to repeat the proof of the proposition, that there is nobody who can safely be permitted to judge. The path of practical wisdom is as clear as day: All censures must be permitted, equally; just, and unjust.

Where various conclusions are formed among a number of men, upon a subject on which it would be unsafe, and therefore improper, to give any minor portion of them a power of determining for the rest, only one expedient remains. Fortunately, that is an expedient, the operation of which is powerful, and its effects beneficial in the highest degree. All the conclusions which have formed themselves in the minds of different individuals, should be openly adduced; and the power of comparison and choice should be granted to all. Where there is no motive to attach a man to error, it is natural to him to embrace the truth; especially if pains are taken to adapt the explanation to his capacity. Every man, possessed of reason, is accustomed to weigh evidence, and to be guided and determined by its preponderance. When various conclusions are, with their evidence, presented with equal care and with equal skill, there is a moral certainty, though some few may be misguided, that the greater number will judge right, and that the greatest force of evidence, wherever it is, will produce the greatest impression.

As this is a proposition upon which every thing depends, it is happy that the evidence of it should be so very clear and striking. There is, indeed, hardly any law of human nature more generally recognized, wherever there is not a motive to deny its existence. "To the position of Tully, that if Virtue could be seen, she must be loved, may be added," says Dr. Johnson, "that if Truth could be heard, she must be obeyed." (*Rambler*, No. 87.)—"Je vous plains, mes Pères," says Mons. Pascal to the Jesuits, "d'avoir recours à de tels remèdes. Vous croyez avoir la force et l'impunité: mais je crois avoir la vérité, et l'innocence. C'est une étrange et longue guerre que celle où la violence essaie d'opprimer la vérité. Tous les efforts de la violence ne peuvent affaiblir la vérité, et ne servent qu'à la relever davantage: toutes les lumières de la vérité ne peuvent rien pour arrêter la violence, et ne font que l'irriter encore plus. Quand la force combat la force, la plus puissante détruit la moindre: quand l'on expose les discours aux discours, ceux qui sont véritables et convainquants confondent et dissipent ceux qui n'ont que la vanité et le mensonge." (*Lett. Provinc.*



12.)—"Reason," says Burke, "clearly and manfully delivered, has in itself a mighty force; but reason, in the mouth of legal authority, is, I may fairly say, irresistible." (*Lett. on Regicide Peace.*)

It is of importance to show how many of the greatest men, of all ages and countries, have borne testimony to the prevalence of true over false conclusions, when both are fairly offered to the human mind. "Truth," says Mr. Locke, "certainly would do well enough, if she were once left to shift for herself. She seldom has received, and I fear never will receive, much assistance from the power of great men, to whom she is but rarely known, and more rarely welcome. She is not taught by laws, nor has she any need of force to procure her entrance into the minds of men." (*Letter on Toleration.*) The following is the emphatical language of Montesquieu: "La raison a un empire naturel; elle a même un empire tyrannique: on lui resiste, mais cette resistance est son triomphe, encore un peu de temps, et l'on sera forcé de revenir à elle." (*Esp. de Loix*, l. 28, ch. 38.)—"It is noted out of Cicero, by Machiavel, that the people, though they are not so prone to find out truth of themselves, as to follow custom, or run into error; yet if they be shown truth, they not only acknowledge and embrace it very suddenly, but are the most constant and faithful guardians and conservators of it." (*Harrington.*)—"The labour of a confutation," says Chillingworth, "I have not in any place found such labour or difficulty, but that it was undertakeable by a man of very mean abilities; and the reason is, because it is Truth I plead for; which is so strong an argument for itself, that it needs only light to discover it." (*Religion of Protestants.*)—"About things on which the public thinks long," says Dr. Johnson, "it commonly attains to think right." (*Life of Addison.*)—"The adversary," says Dr. Campbell, "is both subtle and powerful. With such an adversary, I should on very unequal terms enter the lists, had I not the advantage of being on the side of truth. And an eminent advantage this doubtless is. It requires but moderate abilities to speak in defence of a good cause. A good cause demands but a distinct exposition, and a fair hearing; and we may say, with great propriety, it will speak for itself." (*Campbell on Miracles*, *Intro.*)

We have then arrived at the following important conclusions,—that there is no safety to the people in allowing any body to choose opinions for them; that there are no marks by which it can be decided beforehand, what opinions are true and what are false; that there must, therefore, be equal freedom of declaring all opinions, both true and false; and that, when all opinions, true and false, are equally declared, the assent of the greater number, when their interests are not opposed to them, may always be expected to be given to the true. These principles, the foundation of which appears to be impregnable, suffice for the speedy determination of every practical question.

All censure thrown upon the government, all censure thrown either

upon the institutions of the government, or upon the conduct of any of the functionaries of government, supreme or subordinate, has a tendency to produce resistance to the government.

Of the censures thrown upon government, some may have a tendency to produce resistance to the operations of government in detail; others that general resistance which has in view some great alteration in the government.

Of the first sort would be any such accusation of the conduct and disposition of a judge, as might excite the people, whose sympathies were roused in favour of the individual against whom his sentence was to operate, to rescue him from the officers of justice. We have already shown that such a rescue ought to be punished, and any direct exhortation to it ought to be punished. It will now be evident, we trust, that no censure on the judge, though capable of being treated as an indirect exhortation, ought to be punished.

The reason is conclusive. The people ought to know, if possible, the real qualities of the actions of those who are entrusted with any share in the management of their affairs. This they have no chance of knowing, without the unlimited power of censure upon those actions, both in gross and detail. To see the full force of these propositions, it is only necessary to apply the principles which have been already established.

If the people have not the means of knowing the actions of all public functionaries, they have no security for the good conduct even of their representatives. Suppose it is the duty of their representatives to watch the conduct of the judges, and secure the perfection of judicature, the people cannot know whether their representatives perform this duty, unless they know what the conduct of the judges is. Ignorance of this would of itself suffice to vitiate the government. A door would be left open, through which the rulers might benefit themselves at the expence of the people. All the profit to be made by an abuse of the power of justice, would thus become the profit of the representatives; by whom it would be allowed, and encouraged, as far as the knowledge which they could not withhold from the people, would permit.

That the people ought, therefore, to know the conduct of their judges, and when we say judges we mean every other functionary, and the more perfectly the better, may be laid down as indubitable. They are deprived of all trust-worthy means of knowing, if any limit whatsoever is placed to the power of censure.

All censure consists in the delivery of an unfavourable opinion, with or without the grounds of it. This is the essence of censure. But if the conduct of the judge deserves that an unfavourable opinion should be entertained of it, the more perfectly that is known to the people, the better.

The conduct of the judge, on this occasion, says a defender, does not deserve an unfavourable opinion: A public expression of such an opinion ought, therefore, to be prohibited. But there are occasions

on which the conduct of judges deserves an unfavourable opinion. When it is deserved, there is no security for good government, unless it is allowed to be made known. How can you allow an unfavourable opinion to be delivered in the one case, and not delivered in the other? To have the benefit of it in the one case, you must submit to the evil of it in the other.

*In matters of Government, undeserved praise as mischievous as undeserved Blame.*

As the real point of importance is, to establish correct opinions in the minds of the people, it is as mischievous to inculcate a favourable opinion, when an unfavourable is deserved, as an unfavourable when a favourable is deserved; and, in the eye of reason, it is incontrovertible, that, if the one deserves to be prevented by punishment, so does the other.

But, if an unfavourable opinion is pronounced of any public functionary; of a judge, for example, would you have it left uncontradicted? Would you not grant the liberty of calling in question the truth of the allegations, and of supporting a different opinion? If not, the character of no public functionary would be safe, and any man, however deserving, might be made to appear the proper object of the most unfavourable sentiments. Why should not the two cases be treated equally? Why should not the favourable, as well as the unfavourable opinion be open to contradiction?

It is perfectly certain, that it is not in the power of law to mark out, by antecedent definition, any sort of men, of whom it can say, all opinions favourable to such men shall be punished. It can never be affirmed of any men beforehand, that they will certainly perform such and such injurious actions. If they do perform them, all declarations conformable with the matter of fact are good. But the question is, whether they have performed them? One man affirms that they have. Is that to be taken for granted? And is no man to be allowed to affirm the contrary, and to sift the grounds upon which the allegations of the other man are supported? It is by weighing well the evidence on both sides, that a well-founded opinion is capable of being formed. And it is certain, that the best security for having the evidence on both sides fully adduced, and the strength and weakness of it perfectly disclosed, is by permitting all those who are attached to different opinions to do what they can for the support of them.

If it is evident that it ought not to be permitted to speak evil of public functionaries without limit, while any limit is put to the power of speaking well of them; it is equally evident that, for the purpose of forming a correct opinion of their conduct, it ought not to be permitted to speak well of them, and oppose any limit whatsoever to the power of speaking ill of them.

It ought not to be permitted to speak evil of them without an equal liberty of speaking well; because, in that case, the evidence against

them might be made to appear much stronger than it was. It ought not to be permitted to speak well of them without an equal liberty of speaking ill; because, in that case, the evidence in favour of them might be made to appear much greater than it really was. In either case, the people would be misguided, and defrauded of that moral knowledge of the conduct of their rulers, the paramount importance of which has so fully appeared.

It may be said (as by the short-sighted, if we did not anticipate them, it would be said), that if, by limiting the power of censure, the people are made to judge more favourably of their rulers than they deserve, the evil is small; but if they are permitted to form a very unfavourable opinion, the consequences are alarming.

We believe it may be rigidly demonstrated, that no evils are greater than those which result from a more favourable opinion of their rulers, on the part of the people, than their rulers deserve; because just as far, as that undue favour extends, bad government is secured. By an opinion of their rulers more favourable than they deserve, is implied an ignorance on the part of the people of certain acts of their rulers by which the people suffer. All acts by which the rulers have any motive to make the people suffer, are acts by which the rulers profit. When the ignorance of the people extends to material points, all the evils of bad government are secured. These are the greatest of all possible evils. To this it will not be said that the ignorance of the people ought to extend. On all material points, it is admitted, then, that the freedom of censure ought to be complete. But if it is to be allowed on great points, on those where it is calculated to excite the greatest disapprobation; what can be thought of their consistency, who would restrain it on those where it is only calculated to excite a small? If it is proper to protect the people from great injuries at the hands of their rulers, by exciting a strong, it is good to protect them against small injuries, by exciting a weak disapprobation.

To public functionaries may be imputed either acts which they have not performed, or a want of certain qualifications, moral or intellectual, which they ought to possess.

With respect to acts, and even dispositions, which do not, either directly or indirectly, concern their public function, the same protection may be safely extended to them as to private men.

Acts in their public capacity which they have not performed, may be imputed to them either by mere forgery, and without any appearance of ground, or they may be imputed with some appearance of ground. From permitting the former, no good can be derived. They ought, therefore, to be prevented, in the same way as false imputations, injurious to individuals in their private capacity. That there should be no restraint in imputing actions to any public functionary which he may appear to have done, flows immediately from the principles already established, and requires not that any thing should here be added to its proof. Any appearance sufficient to lay the foundation of the slightest

suspicion, renders it useful to call the attention of the public to the suspected part, which can only be done by making the suspicion known. A man may, indeed, publish, as a matter of fact, what is supported by appearances which would only justify the slightest suspicion. In that case, he is sure of incurring the disgrace of temerity, if not of malignity; and this is all the penalty which needs or can safely be inflicted upon him.

In imputing inaptitude to a public functionary, on the score either of intellectual or moral qualities, scarcely any limitation would be safe. Every man ought to have liberty to declare upon this subject any opinion which he pleases, and support it by any evidence which he may think adapted to the end. If, in supporting his opinion of the inaptitude of any public functionary, he imputes to him actions which there is not even an appearance of his having performed, that limited prohibition, the propriety of which we have just recognized, will strictly apply. With this exception, freedom should be unimpaired.

We have now, therefore, explained, we hope sufficiently, in what manner the principles which we have established require, that the use of the press should be regulated in speaking of the actions of public functionaries, and of their fitness for the duties which they are appointed to discharge, whether those functionaries are the immediate representatives of the people, or others whom it is the business of those representatives to control.

*Freedom of Censure on the Institutions of Government is necessary  
for the good of the People.*

We have next to inquire in what manner those principles require that the use of the press should be regulated in speaking of the *institutions* of government. The illustrations already adduced will supersede the use of many words upon this part of the subject.

Institutions of government are good in proportion as they save the people from evil. Institutions of government are bad in proportion as they are the cause of evil to the people, either by what they create, or what they fail in preventing.

According to this statement, which it is impossible to controvert, institutions of government may, in strict propriety of speech, be said to be the cause of all the evil which they do not save the people from, and from which the people would be saved by any other institutions.

It is therefore of the highest importance that the people should know what are the institutions which save from the greatest quantity of evil, and how much their own institutions want of being those best institutions.

Institutions of government are bad, either because those in whose hands the powers of government are placed do not know that they are bad, and though willing, cannot improve them; or they are bad, because those who have in their hands the powers of government do not wish that they should be improved.

Where the rulers are willing, but do not know how to improve the institutions of government; every thing which leads to a knowledge of their defects is desirable to both rulers and people. That which most certainly leads to such knowledge is, that every man who thinks he understands any thing of the subject, should produce his opinions, with the evidence on which they are supported, and that every man who disapproves of these opinions should state his objections. All the knowledge which all the individuals in the society possess upon the subject is thus brought, as it were, to a common stock or treasury; while every thing which has the appearance of being knowledge, but is only a counterfeit of knowledge, is assayed and rejected. Every subject has the best chance of becoming thoroughly understood, when, by the delivery of all opinions, it is presented in all points of view; when all the evidence upon both sides is brought forward, and all those who are most interested in showing the weakness of what is weak in it, and the strength of what is strong, are, by the freedom of the press, permitted, and by the warmth of discussion excited, to devote to it the keenest application of their faculties. False opinions will then be delivered. True; but when are we most secure against the influence of false opinions? Most assuredly when the grounds of those opinions are the most thoroughly searched. When are the grounds of opinions most thoroughly searched? When discussion upon the subject is the most general and the most intense; when the greatest number of qualified persons engage in the discussion, and are excited by all the warmth of competition, and all the interest of important consequences, to study the subject with the deepest attention. To give a body of rulers, or any other body of men, a power of choosing, for the rest, opinions upon government, without discussion, we have already seen, upon good evidence, is the way to secure the prevalence of the most destructive errors.

When institutions are bad, and the rulers would gladly change them if they knew they were bad, discussion, it will not be disputed, would be good for both parties, rulers, and ruled. There is, however, another case, and that by far the most common, where the rulers are attached to the bad institutions, and are disposed to do all in their power to prevent any alteration. This is the case with all institutions which leave it in the power of the men who are entrusted with the powers of government, to make use of them for their own advantage, to the detriment of the people; in other words, which enable them to do injury to the people, or prevent the people from good. This is the case with by far the greater number of those institutions by which the people suffer. They are institutions contrived for benefiting the few at the cost of the many.

With respect, therefore, to the greater number of defective institutions, it is the interest of the rulers that true opinions should not prevail. But with respect to those institutions, it is of still greater importance to the people that discussion should be free. Such institutions as the rulers would improve, if they knew that they were defective, will be improved as the rulers themselves become sensible of their defects. Such defective

institutions as the rulers would not wish to see improved, will never be improved, unless the knowledge of those defects is diffused among the people, and excites among them a disapprobation which the rulers do not think it prudent to disregard.

That the prevalence of true opinions among the people, relative to those defects in their political institutions, by which the rulers profit at their expence, is of the utmost importance to the people, is therefore a proposition, which no improbity will dare openly to controvert. That freedom of discussion is the only security which the people can have for the prevalence of true opinions has already been proved. It is therefore proved, that freedom of discussion, in its utmost perfection, they ought to enjoy.

What is included in the term *freedom of discussion*, is evident from what has already been said.

Freedom of discussion means the power of presenting all opinions equally, relative to the subject of discussion; and of recommending them by any medium of persuasion which the author may think proper to employ. If any obstruction is given to the delivering of one sort of opinions, not given to the delivering of another; if any advantage is attached to the delivering of one sort of opinions, not attached to the delivery of another; so far equality of treatment is destroyed, and so far the freedom of discussion is infringed; so far truth is not left to the support of her own evidence; and so far, if the advantages are attached to the side of error, truth is deprived of her chance of prevailing.

To attach advantage to the delivering of one set of opinions, disadvantage to the delivering of another, is to make a choice. But we have already seen, that it is not safe for the people to let any body choose opinions for them. If it be said, that the people themselves might be the authors of this preference, what is this but to say, that the people can choose better before discussion than after; before they have obtained information than after it? No, if the people choose before discussion, before information, they cannot choose for themselves. They must follow blindly the impulse of certain individuals, who, therefore, choose for them. This is, therefore, a pretence, for the purpose of disguising the truth, and cheating the people of that choice, upon which all their security for good government depends.

If these deductions are as clear and incontrovertible as to us they appear to be, the inquiry respecting the principles which ought to regulate the use of the press is drawn pretty nearly to its close. We have shown, that, as far as regards the violation of the rights of individuals, in respect to both persons and things, no definition on account of the press is required. We have shown in what manner the rights of individuals, in regard to reputation, should be defined by the civil code, and the violation of them prevented by the penal. We next proceeded to what may be considered as the main branch of the inquiry, namely, the use of the press in speaking of the institutions and functionaries of government. We have found, that in this respect the freedom of the

press is of such importance, that there is no security for good government without it. We have also found, that the use of it, in respect to those subjects, admits but of two useful restrictions;—that of a direct exhortation to obstruct any of the operations of government in detail, and that of imputing to a functionary of government a criminal act, which there was no ground, nor even any appearance of ground, to impute to him. These restrictions, of course, it would be very easy to define in the criminal code, and to find appropriate motives to sanction. In all other respects, we have seen that the press ought to be free; that if there is any limit to the power of delivering unfavourable opinions, respecting either the functionaries, or the institutions of government, and of recommending those opinions by any media, with the single exception of false facts, under the circumstances mentioned above, the benefits which may be derived from the freedom of the press are so greatly infringed, that hardly any security for good government can remain.

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#### IV.

##### *Limitations to Freedom of Discussion, which involve its destruction.*

In the administration of English law, or rather of what is called law, upon this subject, without being any thing better than the arbitrary will of the judges, it is said, that though discussion should be free, it should be “decent;” and that all “indecent” in discussion should be punished as a libel. It is not our object in this discourse to give an exposition of the manifold deformities of the English law of libel. If we have been successful in developing the true principles which ought to regulate the freedom of the press, every reader may, by an application of those principles, determine what he ought to think of the several particulars which there may attract his attention. We shall confine ourselves to a short notice of those *dicta*, or doctrines, which seem most likely to be pleaded in opposition to the principles which we have endeavoured to establish.

The question is, whether *indecent* discussion should be prohibited? To answer this question, we must, of course, inquire what is meant by *indecent*.

In English libel law, where this term holds so distinguished a place, is it not defined?

English legislators have not hitherto been good at defining; and English lawyers have always vehemently condemned, and grossly abused it. The word “*indecent*,” therefore, has always been a term under which it was not difficult, on each occasion, for the judge to include whatever he did not like. “*Decent*,” and “*what the judge likes*,” have been pretty nearly synonymous.

Indecency of discussion cannot mean the delivery either of true or of false opinions, because discussion implies both. In all discussion there



is supposed at least two parties, one who affirms, and one who denies: One of them must be in the wrong.

The delivery, though not of all true opinions, yet of some, may be said to be indecent. All opinions are either favourable or unfavourable: True opinions that are favourable to government and its functionaries will not be said to be indecent; nor will all opinions that are true and unfavourable be marked out for prohibition under that name. Opinions unfavourable may either be greatly unfavourable or slightly unfavourable. If any unfavourable opinions are exempted from the charge of indecency, it must be those which are slightly so. But observe what would be the consequence of prohibiting, as indecent, those which are greatly unfavourable. A true opinion, greatly unfavourable to a functionary, or institution of government, is an opinion that the functionary, or institution, is greatly hurtful to the people: You would permit the slight evil to be spoken of, and hence removed; you would not permit the great evil to be spoken of.

If no true opinion can be regarded as indecent, meaning by indecent, requiring *punishment*, we must inquire if any false opinion on matters of government ought to be treated as such. If all false opinions are indecent, all discussion is indecent. All false opinions, therefore, are not indecent. The English libel law does not treat any favourable opinions, how much soever false, as indecent. If all opinions that are false and unfavourable are said to be indecent, who is to judge if they are false? It has been already proved, that the people can confide the power of determining what opinions are true, what are false, to none but themselves. Nothing can resist the following argument. Either the people do know, or they do not know, that an opinion is false: if they do not know, they can permit nobody to judge for them, and must leave discussion its free course: if they do know, all infliction of evil for the delivery of an opinion which then can do no harm, would be purely mischievous and utterly absurd.

If all opinions, true and false, must be allowed to be delivered; so must all the media of proof. We need not examine minutely the truth of this inference, because it will probably be allowed. It will be said, however, that though all opinions may be delivered, and the grounds of them stated, it must be done in calm and gentle language. Vehement expressions, all words and phrases calculated to inflame, may justly be regarded as indecent, because they have a tendency rather to pervert than rectify the judgment.

To examine this proposition, it must be taken out of that state of vagueness in which so many things are left by the English law, and made, if possible, to speak a language, the meaning of which may be ascertained.

We have just decided, and as it appeared, on very substantial grounds, that the statement of no opinion, favourable or unfavourable, true or false, with its media of proof, ought to be forbidden. No language, necessary for that purpose, can be indecent, meaning here, as before, nothing by

that term, as nothing can be meant, but simply *punishable*, or proper for punishment.

But the only difference between delivering an opinion one way and another way is, that in the one case it is simply delivered, in the other it is delivered with indications of passion. The meaning of the phrase in question then must be, that an opinion must not be delivered with indications of passion.

What! not even a favourable one?

"Oh, yes! a favourable one. Merited *praise* ought to be delivered with warmth."

Here, then, is inequality, and therefore mischief, at once. An opinion, meaning here a true opinion, if it is favourable, you allow—if unfavourable, you do not allow—to be delivered in a certain way. Why? Because in that way, you say, it is calculated to make an undue impression. Opinions favourable, then, you wish to make an undue impression, and by that confess the wickedness of your intention. You desire that the people should think better of the institutions and functionaries of their government than they deserve; in other words, you wish the government to be bad.

If opinions, to what degree soever unfavourable, may be freely and fully delivered, there are two conclusive reasons why the terms in which they are delivered should not be liable to punishment. In the first place, the difference between one mode of delivery and another is of little consequence. In the second place, you cannot forbid the delivery in one set of terms, without giving a power of preventing it in almost all.

*First, the difference is of little consequence.* If I say barely that such a functionary of government, or such an institution of government, is the cause of great injury and suffering to the people, all that I can do more by any language is, to give intimation, that the conduct of such functionary, or the existence of such institution, excites in me great contempt; or great anger, or great hatred, and ought to excite them in others. But if I put this in the way of a direct proposition, I may do so, because then it will be a naked statement with regard to a matter of fact, and cannot be forbidden, without overthrowing the whole of the doctrine which we have already established.

If, then, I give indication of certain sentiments of mine, and of my opinion of what ought to be the sentiments of others *explicitly*, I ought, you say, to be held innocent; if *implicitly*, guilty. Implicitly, or explicitly, that is the difference, and the whole of the difference. If I say, that such a judge, on such an occasion, took a bribe, and pronounced an unjust decision, which ruined a meritorious man and his family, this is a simple declaration of opinion, and ought not, according to the doctrine already established, to meet with the smallest obstruction. If I also state the matter of fact with regard to myself, that this action has excited in me great compassion for the injured family, and great anger and hatred against the author of their wrongs, this must be fully

allowed. I must further be allowed to express freely my opinion, that this action ought to excite similar sentiments in other members of the community, and that the judge ought to receive an appropriate punishment. Much of all this, however, I may say in another manner. I may say it much more shortly by implication.—Here, I may cry, is an act for the indignation of mankind! Here is a villain, who, invested with the most sacred of trusts, has prostituted it to the vilest of purposes! Why is he not an object of public execration? Why are not the vials of wrath already poured forth upon his odious head?—All this means nothing, but that he has committed the act; that I hate him for it, and commiserate the sufferers; that I think he ought to be punished; and that other people ought to feel as I do. It cannot be pretended, that between these two modes of expression, the difference, in point of real and ultimate effect, can be considerable. For a momentary warmth, the passionate language may have considerable power. The permanent opinion formed of the character of the man, as well as the punishment, which, under a tolerable administration of law, he can sustain, must depend wholly upon the real state of the facts; any peculiarity in the language in which the facts may have been originally announced soon loses its effect. If that language has expressed no more indignation than what was really due, it has done nothing more than what the knowledge of the facts themselves would have done. If it has expressed more indignation than what was due, the knowledge of the facts operates immediately to extinguish it, and, what is more, to excite an unfavourable opinion of him who had thus displayed his intemperance. No evil then is produced; or none but what is very slight and momentary. If there should be a short-lived excess of unfavourable feeling, we have next to consider what is the proper remedy. Punishment should never be applied, where the end can be attained by more desirable means. To destroy any excess of unfavourable feeling, all that is necessary is, to show the precise state of the facts, and the real amount of the evil which they import. All excess of feeling arises from imputing to the facts a greater efficacy in the way of evil than belongs to them. Correct this opinion, and the remedy is complete.

*Secondly, you cannot forbid the use of passionate language, without giving a power of obstructing the use of censorial language altogether.* The reason exists in the very nature of language. You cannot speak of moral acts in language which does not imply approbation and disapprobation. All such language may be termed passionate language. How can you point out a line where passionate language begins, dispassionate ends? The effect of words upon the mind depends upon the associations which we have with them. But no two men have the same associations with the same words. A word which may excite strains of emotion in one breast, will excite none in another. A word may appear to one man a passionate word, which does not appear so to another. Suppose the legislature were to say, that all censure, conveyed in passionate language, shall be punished, hardly could the vices of either the functionaries or the

institutions of government be spoken of in any language which the judges might not condemn as passionate language, and which they would not have an interest, in league with other functionaries, to prohibit by their condemnation. The evil, therefore, which must of necessity be incurred by a power to punish language to which the name of *passionate* could be applied, would be immense. The evil which is incurred by leaving it exempt from punishment is too insignificant to allow that almost any thing should be risked for preventing it.

*Religion*, in some of its shapes, has, in most countries, been placed on the footing of an institution of the state. Ought the freedom of the press to be as complete, in regard to this, as we have seen that it ought to be, in regard to all other institutions of the state? If any one says that it ought not, it is incumbent upon him to show wherein the principles, which are applicable to the other institutions, fail in their application to this.

We have seen, that, in regard to all other institutions, it is unsafe for the people to permit any but themselves to choose opinions for them. Nothing can be more certain, than that it is unsafe for them to permit any but themselves to choose for them in religion.

If they part with the power of choosing their own religious opinions, they part with every power. It is well known with what ease religious opinions can be made to embrace every thing upon which the unlimited power of rulers, and the utmost degradation of the people, depend. The doctrine of *passive obedience* and non-resistance was a *religious doctrine*. Permit any man, or any set of men, to say what shall, and what shall not, be religious opinions, you make them despotic immediately.

This is so obvious, that it requires neither illustration nor proof.

But if the people here, too, must choose opinions for themselves, discussion must have its course; the same propositions which we have proved to be true in regard to other institutions, are true in regard to this; and no opinion ought to be impeded more than another, by any thing but the adduction of evidence on the opposite side.

(F. F.)

THE ARTICLE

**P R I S O N S**

AND

**PRISON DISCIPLINE,**

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ENCYCLOPEDIA BRITANNICA

# PRISONS

AND

## PRISON DISCIPLINE.

II

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### *Introduction.—Ends of Imprisonment.*

**T**HE arrangements, necessary to adapt prisons to the ends for which they are designed, seem to require little more than the exercise of good sense; and yet the manner in which the practice of the world blunders on from one absurdity, and very often from one atrocity, to another, shows pretty distinctly, how little public affairs have hitherto had the benefit of that practical faculty, or of any thing that resembles it.

### *Ends of Imprisonment.*

Prisons have been applied to three purposes; 1st, That of safe-custody; 2dly, That of punishment; 3dly, That of reformation.

It is very evident, that each of these purposes requires an arrangement of means peculiar to itself.

Though each requires a combination of means peculiar to itself, it does not follow that of the means required for each a portion may not be the same in all. Every body will acknowledge that this is the case.

The means of safe-custody, for instance, are required for those who are imprisoned in order to be punished and those who are imprisoned in order that they may be reformed, as well as for those who are imprisoned to the sole end of their being made present at a particular time and place.

The arrangements, then, for safe-custody, form a basis, on which every combination of means for attaining any of the other ends of imprisonment must always be erected. Other means for the attainment of those ends are to be considered as accessions to those required for the first.

It is a corollary from this position, that the same house may, at one and the same time, be employed for all three purposes. Those properties in the building which make it fittest, at the least expence, for safe-custody, make it fittest also for the purposes, either of punishment, or of reformation. This will be rendered abundantly apparent in the sequel; and is nearly proved by the single circumstance, that the means of punishment and reformation are only additions to those of safe-custody. If the arrangements needed, for those who are to be punished, and for those who are to be reformed, interfere not with one another, or with those needed on account of the persons in safe custody merely, the truth of the corollary is indisputable, for nobody will deny that, in point of economy, there must be very great advantage.

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## II.

### *Means of Safe-custody.*

I. We shall consider, first of all, what is the best combination of means for safe-custody. Dungeons and fetters are the expedient of a barbarous age. In respect of prisons, as of every thing which comes within the precincts of law, the expedients of a barbarous age are, with great industry, retained in those which are civilized. They are, indeed, preserved with a success which, if it were not experienced, would be altogether incredible. As the expedients of a barbarous age still exist in many other arrangements for the purposes of law, so it is but of yesterday that the prisons of our forefathers have been regarded as fit for reform; or that the means which those sages in their ancestral wisdom devised for attaining the ends of imprisonment were supposed capable of being altered for the better, by their less instructed sons.

It is at last, however, allowed, that inspection is a means for safe custody, which renders unnecessary all but very ordinary means of any other description. Thus, so long as a man is, and knows that he is, under the eyes of persons able and willing to prevent him, there is very little danger of his making an attempt, which he sees would be vain, to effect a breach in the wall, or force open the door, of his cell. Any great strength, therefore, in such wall or door, or fetters upon any part of his body, are wholly unnecessary, since the attempts are sure of not being made, or of being instantly frustrated.

The plan of a prison, in which the power of inspection is rendered so complete, that the prisoner may be, and cannot know but that he is, under the eyes of his keepers, every moment of his time, a plan which we owe to General Bentham, so universally known for his mechanical genius, is described by his brother, in his work entitled *Panopticon, or Inspection House*; where also a system of management is delineated, and its principles are expounded, so perfectly, that they who proceed in this road, with the principle of utility before them, can do little else than travel in his steps.



An idea of the contrivance may be conveyed in a few words. It is a circular building, of the width of a cell, and of any height; carried round a space, which remains vacant in the middle. The cells are all open inwards, having an iron grating instead of a wall, and, of course, are visible in every part to an eye properly placed in the vacant space. A narrow tower rises in the middle of that space, called the inspection tower, which serves for the residence of the keepers, and in which, by means of windows and blinds, they can see without being seen; the cells, by lights properly disposed, being capable of being rendered as visible by night as by day.

Thus, we have provision for safe custody; and along with it, five other important purposes are gained. First of all, there is great economy; the vast expense of thick, impenetrable walls, being rendered unnecessary. Secondly, All pretence for subjecting prisoners to the torture and degradation of irons is taken away. Thirdly, No misbehaviour of the prisoners can elude observation, and instant correction. Fourthly, No negligence, or corruption, or cruelty, on the part of the subordinate agents in the prison, can escape the view of their principals. And, Fifthly, No misconduct towards the prisoners, on the part of their principals, can remain unknown to the public, who may obtain a regulated admittance into the inspection tower, and regulated communication with the prisoners.

The persons who are liable to be in prison, for safe-custody merely, are of three classes: First, Persons apprehended, and about to be put on their trial, for the commission of a crime: Secondly, Persons convicted of a crime, and about to receive their punishment: and, Thirdly, Debtors.

Under a good system of law, very little provision would need to be made for these cases. It is one of the essential properties of a good system of law to permit as little time as possible to intervene between the apprehension and trial, and between the conviction and punishment, of a person for a crime. There would never, therefore, be many such persons in any prison at a time. And under a good system of law, there never would be any body in a prison on account of debt.\* This is mentioned merely to show how little, under a good system of law, the apparatus and expense of a separate prison, for this set of cases, would be wanted.

These persons being inmates of a prison, for insuring their presence merely, the question is, What treatment they ought to receive?

Persons in prison before trial, and debtors, are persons of whom nothing is certainly known, but that they are unfortunate. They are, therefore, entitled to all the benevolence which is due to the unfortunate.

What is done for them in a prison must, however, be done at the expense of the community, that is, by sacrifices demanded of those who are not in prison; and those sacrifices ought, undoubtedly, to be the smallest

\* If fraud were committed in contracting the debt, or if the property of others obtained by loan, had been dishonestly spent, or dishonestly risked, such fraud, or dishonesty, being crimes, not a debt, might justly subject a man to imprisonment, or any other sort of due punishment.

possible. The question is, therefore, to be settled by a compromise between the principle of benevolence, and the principle of economy.

The principle of benevolence undoubtedly requires that the health of the prisoners should not be impaired; for this, importing the premature loss of life, is in reality the punishment of death, inflicted upon those to whom no punishment is due.

That health may not be impaired, three things are indispensable:—  
1. A wholesome apartment; 2. A sufficiency of wholesome food; 3. Sufficient clothing.

The principle of economy, with equal certainty, exacts, that all those should be of the cheapest kind.

All this is abundantly clear. It is equally clear, that, with respect to those who are in prison for safe custody merely, the principle of benevolence requires, and the principle of economy does not forbid, that they should be free to use any indulgence, which costs nothing, or which they provide for themselves; and that no farther restraint should be placed upon their liberty than what the custody of their persons, and the rule of economy, which prescribes the limits and accommodations of the place, may demand.

Few words will be necessary to show what is appropriate to the case of the man, who is in prison during the interval between his sentence and his punishment.

By the supposition, in this case, his punishment is something distinct from his imprisonment; because, if not, it is a case which comes under another head, namely, that of persons who are in prison for the sake of punishment; and will be fully considered in another part of this discourse.

If he is in prison for detention merely, his punishment, as meted out and fixed by the judge, being something wholly separate, every particle of hardship imposed upon him, not necessary for his detention, is without law, and contrary to law; is as much injustice and a crime, when inflicted upon him, as if inflicted upon any other member of the community. The same considerations, which, as we found above, ought to regulate the imprisonment of debtors, and persons in custody before trial, namely, the compromise between the principle of benevolence and the principle of economy; apply, without the smallest difference, to the case of persons who, during the interval between their sentence and its execution, are in prison for the mere purpose of preventing their escape.

We foresee a difficulty, or rather an objection, for there is really no difficulty in the case.

Persons come into prisons, who have been accustomed, in the preceding part of their lives, to all degrees of delicate and indulgent living; to whom, therefore, the hard fare prescribed by the principle of economy will occasion very different degrees of uneasiness.

Such persons, when in prison for safe-custody merely (what is required when persons are in prison for punishment, or for reformation, will be seen hereafter), may be allowed to make use of any funds, which they may possess, for procuring to themselves all unexceptionable indulgences. They may be also allowed the exercise of any lucrative art, consistent with

the nature of the prison, for procuring to themselves the means of such indulgences. This the principle of benevolence dictates, and there is nothing in the principle of economy which forbids it.

We shall be told, however, that there are persons, who have been accustomed to a delicate mode of living, and who come into prison without the command of any funds, or the knowledge of any art, by which they may soften the hardship of their lot: and we shall be asked what is the course which our philosophy recommends for the treatment of them? The course which it recommends is very clear. Such persons are paupers, and whatsoever treatment is fit for paupers, of the description to which they belong, is fit also for them. If there are any funds, to which as paupers they can apply, the application should be open to them. If there is not any, nor any person to whose benevolence they can resort, the effects of such a destitute situation must be sustained, the same way in a prison, as they must be, when any person falls into it, out of a prison.

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### III.

#### *Means of Punishment.*

II. Having stated what appears to us necessary for illustrating the principles which ought to regulate the imprisonment of those, in respect to whom safe-custody is the end in view, we come, in the next place, to the case of those, in respect to whom, in addition to safe-custody, punishment is to be effected through the same medium.

This subject we shall unfortunately be under the necessity of treating superficially; because, in order to explain it fully, we ought to have before us the whole doctrine of punishment; and, for this purpose, a developement, too extensive for the present occasion, would be required.

This we may assume as an indisputable principle; That whatever punishment is to be inflicted, should be determined by the judge, and by him alone; that it should be determined by its adaptation to the crime; and that it should not be competent to those to whom the execution of the sentence of the judge is entrusted, either to go beyond the line which he has drawn, or to fall short of it.

We have already established, on what seemed sufficient reasons, that for persons confined, on account of safe-custody merely, the cheapest accommodation, not importing injury to health, in respect to apartment, food, and clothing, should alone be provided at the public expense.

Unless in the case of those whom the judge might condemn to lose a portion of their health, by the sufferings of an unwholesome prison, unwholesome food, or improper clothing, this accommodation ought to be afforded, even to those who are placed in prisons for the sake of punishment. And if it should be thought that the loss of health never can be a proper punishment, if it has never been regarded as such even by savages, and is repudiated by every principle of reason, then it follows,

that the accommodations which we have described in the former part of this discourse, as required in the case of prisoners detained for safe-custody, are required in the case of prisoners of every description.

This is a basis, therefore, upon which every thing is to rest. In every rational system of prison management, this is an essential condition. We are now to see in what manner, upon this footing, punishment, by means of imprisonment, is to be effected.

One mode is sufficiently obvious and sufficiently known. The punishment may be rendered more or less severe by its duration. Want of liberty is, in almost all cases, a source of uneasiness; want of liberty, added to the denial of all pleasures of sense, can hardly ever fail to be a source of great uneasiness. A long imprisonment, therefore, with the cheapest accommodation not importing injury to health, must be a severe punishment. This, it is evident, may be graduated to more or less of severity, not only by degrees of time, but of the use of such means as the prisoner might command for procuring accommodations and indulgences.

To this imprisonment may be added solitude. But though we mention this, as a practicable addition to simple imprisonment, it is well known how little, unless for short periods, and on very particular occasions, it is to be recommended.

The modes, which lately have been most in repute, of adding to the severity of simple imprisonment, for the purpose of punishment, have been two; 1st, Hard labour; and, 2dly, Bad prisons, with bad management in those prisons.

1. The species of labour which appears to have obtained the preference is that of treading in a wheel.

If a criminal in a prison is ever to be let out again, and to mix in society, it is desirable that nothing should be done, and least of all done on purpose, to make him a worse member of society than when he went in. There cannot be a worse quality of a punishment, than that it has a tendency to corrupt and deteriorate the individual on whom it is inflicted; unless, indeed, he is a prisoner for life; in that case, people of a certain temper might say, that making worse his disposition is a matter of little importance; and to them we have no time to make any reply.

Most of those persons who come into prison as criminals, are bad, because they have hated labour, and have had recourse to other means than their industry of attaining the supply of their wants and the gratification of their desires. People of industry, people who love labour, seldom become the criminal inmates of a prison.

One thing, however, is pretty certain, that men seldom become in love with their punishments. If the grand cause of the crimes which have brought a man to punishment is his not having a love but hatred of labour; to make labour his punishment, is only to make him hate it the more. If the more a man hates labour, the more he is likely to act as a bad member of society; to punish a man with labour, and then to turn him out upon society, is a course of legislation which savours not of the highest wisdom.

Besides, in treating labour as an instrument of punishment, call it *hard* labour, if you will, what sort of a lesson do you teach to the industrious and laborious class, who form the great body of your people? to those whose lot is labour, whose lot is hard labour, harder than any which it is in your power to impose? What compulsory labour is so hard as many species of voluntary labour?

As an instrument of reformation, labour, as we shall presently see, is invaluable. As an instrument of punishment, hardly any thing can be conceived more exceptionable. That which is the source of all that mankind enjoy, that which is the foundation of every virtue in the most numerous class of the community, would you stamp with ignominy and dishonour, by inflicting it as a punishment upon the worst and basest of your people? Is this your expedient for rendering it, what every wise legislator would wish to render it, honourable, and thence desirable?

There are other objections, perfectly decisive, against labour as a punishment. It operates with more inequality than almost any other instrument of punishment that ever has been invented. The same degree of labour would kill one man, that to another would be only a pastime. From this source we may apprehend the most horrid abuses, in the continuance of those tread-mills. We may be very sure, that the most atrocious cruelty will often be inflicted upon those who, with strength below the average standard, are placed in those penal engines; while, in the case of those whose strength is much above that standard, they will hardly operate as a punishment at all.

It is impossible that the judge can measure out this punishment; because the judge has not the means of ascertaining the relative strength of the parties who come before him. It must, therefore, be left to the jailor. The jailor, not the judge, will mete out and determine the degree of suffering which each individual is to undergo. The jailor, not the judge, is the man who adapts the punishment to the crime. Hence one of the stains which mark a careless and stupid legislation.

It is a far inferior, though still no inconsiderable proof of a blundering legislation, that the labour, if labour it must be, is not of such a sort as to be useful. The turning of a wheel, by human labour, when so many better means of turning it are possessed in abundance, is destitute of even this recommendation. It stands upon a similar footing with the contrivance of the jailor, whom Mr. Bentham celebrates: "We are told somewhere," he says, "towards the close of Sully's *Memoirs*, that for some time after the decease of that great and honest minister, certain high mounds were to be seen at no great distance from his house. These mounds were so many monuments of his charity. The poor in his neighbourhood happened to have industry to spare, and the best employment he could find for it was, to remove dirt from the place where it lay to another where it was of no use. By the mere force of innate genius, and without having ever put himself to school to learn economy of a French minister, a plain English jailor, whom Howard met with, was seen practising this revived species of pyramid architecture in miniature. He had

got a parcel of stones together, shot them down at one end of his yard, and set the prisoners to bring them to the other; the task atchieved, Now, says he, you may fetch them back again. Being asked what was the object of this industry, his answer was, 'To plague the prisoners.'" In a note on this passage, Mr. Bentham says, "I beg the jailor's pardon; what is above was from memory; his contrivance was the setting them to saw wood with a blunt saw, made blunt on purpose. The removers of mounts were a committee of justices."

2. Bad prisons, and bad management in those prisons, is a mode of punishment, the recommendation of which has lately been revived, after we might have hoped that, in this country at least, it was exploded for ever. The language of such recommendation has, on several recent occasions, been heard in Parliament; and an article on Prison Discipline, which lately appeared in the *Edinburgh Review*, cannot, if the writer is to be considered as speaking in earnest (which, perhaps, may be doubted), be interpreted in any other sense. Even the Committee of the Society for the Improvement of Prison Discipline have not been able to withstand the force of what they may have supposed to be fashionable doctrine. In their *Fourth Report*, lately published, which we are sorry to say evinces more of good intention, than of enlightened views for its guidance; they say, "No charge can be more mistaken and unfounded, than that the plans recommended by this institution are calculated to introduce comfort into gaols. The committee are of opinion, and have always contended, that severe punishment must form the basis of an effective system of prison discipline;" thereby confounding two things, punishment, and prison discipline; things totally distinct; and between which, it is of so much importance to preserve the distinction, that without preserving it not a rational idea can be entertained about either.

No doubt crimes must be punished. Who needs instruction upon that head? But when the judge has prescribed, that, in a particular way, which he points out, a particular measure of pain shall be inflicted upon an individual; and when the individual is taken, and made to sustain the operations through which the pain is generated; what has this to do with the discipline of the prison? It is an act or series of acts, *sui generis*; acts not forming any part of the ordinary course of prison management; acts which would not have taken place, which ought not to have taken place, if the judge had not commanded them, and which were performed solely and exclusively in obedience to his commandment. This is the nature of punishment,—other punishment than this there ought to be none.

The committee would make severe punishment the basis of prison discipline! What business have the committee with punishment? The assigning of punishment the legislature have given to other and fitter hands; to those who take cognizance of the offence, and alone ought to measure the punishment. Saying they would make punishment the basis of prison discipline, what do they intend by this ill-contrived expression? Do they mean, that their jailor shall hold the scales, and weigh out the

proper quantity? If not, how are they to be understood? for if not the jailor but the judge is to weigh, and the jailor is to do nothing but punctually carry the prescription of the judge into execution, then is punishment, in no proper sense of the word, any part of prison discipline. It is a separate operation, performed on a particular occasion, because prescribed by the judge, and in the exact manner in which the judge has prescribed it. If it is, on the other hand, a part of prison discipline, then all the horrid consequences, inseparable from making the jailor the judge and meter of punishment, present themselves to the imagination; and he who can endure to look at them may dwell upon the picture of a prison, wherein the poor will not be more comfortable than at home, nor by the charms of imprisonment enticed to the commission of crimes.

Nothing can more clearly indicate that vulgar state of mind, which consists in confusion of ideas, than the vague language which we hear about the necessity of making prisons the seats of wretchedness, that crimes, they say, may not receive encouragement.

We have already seen, that, unless it is part of a man's punishment, expressly ordained, that he shall lose a portion of his health; that is, that his life shall be cut short; that is, that along with a portion of torture, he shall receive a capital punishment; a wholesome apartment, a sufficiency of wholesome food, proper clothing, all of the cheapest kind, must be provided for every body. When people talk about making prisons seats of wretchedness, do they mean something worse than this?

Many of them will no doubt answer; Yes, we mean hard labour in addition. We ask again, Do you mean hard labour, according to the prescription of the judge, or without the prescription of the judge? If according to the prescription of the judge, the case is the same with that which we have previously examined. This instrument of punishment is exceptionable, only because it is a bad instrument.

The whole matter evidently comes to this. If more wretchedness is desired than what is implied in confinement under the worst accommodation which the preservation of health admits, it must be meted out, either at the pleasure of the jailor, or the pleasure of the judge. The writers in the *Edinburgh Review*, and the Committee of the Society for the Improvement of Prison Discipline, speak as if they had never reflected upon the difference.

We do not mean to bestow a word upon that theory, which, for the prevention of offences, would make prisons scenes of wretchedness at the pleasure of the jailor.

The only question which can deserve a solution is, what mode of inflicting evil in a gaol can the judge make use for best attaining the ends of punishment? The answer is not difficult. Unless, where that course of reformatory discipline, which we shall delineate under the next head, suffices; and we allow, that, though it may be made to involve no small degree of punishment, there are cases in which it would not suffice; it will certainly appear, that prisons are not the best instruments of punishment.

A single consideration suffices for the proof of this proposition. Punishment in a prison loses the grand requisite of a punishment, that of engendering the greatest quantity of terror in others, by the smallest quantity of suffering in the victim. The principal, perhaps the sole end of punishment, is, to restrain by the example; because, with respect to the individual whom you have got, if you think society in any danger from him, you can keep him in sight, and no more is required. Yet, the language we hear about the tread-mill, and hear from mouths of high persons, implies, that hardly any thing more is in their minds, than the effect upon the individual sufferers. "Nothing finer than the tread-mill; a fellow who has been in the tread-mill never comes back again." Be it so, but by your leave, this is a very insignificant part of the question.

The choice of expedients, for obtaining the punishment best adapted to the several cases for which a course of reformatory discipline does not suffice, belongs to another head of inquiry, and must, for the present purpose, be regarded as determined. All that it is necessary for us to show here is, that a prison is not the proper scene for it, nor the instruments of a prison the proper instruments. To render a punishment the most efficacious in accomplishing the great end of punishment, it must be a punishment calculated to make the strongest impression upon the senses, and, through the senses, upon the imagination, of the public at large; more especially of that part of the public who lie under the strongest temptations to the commission of similar crimes. But the punishments inflicted in a prison are withdrawn from the senses of the public, and seem as if they were intended to make the smallest possible, not the greatest possible, impression upon the imaginations of those who are to be deterred from crime. They are defective, therefore, in the most essential quality of a punishment, and can always be supplied by better means of attaining the same end.

The proper idea of a prison is that of a place of custody, and that alone. This idea ought to be clearly, and distinctly, and steadily preserved in the mind, in all disquisitions respecting prison discipline. Punishment and reformatory discipline may be annexed to safe custody; and in as far as they consist of a series of operations, requiring time for their performance, it is essential to them. As reformatory discipline consists wholly in such a series, imprisonment is a necessary condition of it. Since many, also, of the best kinds of punishment are not such as can be executed all at once, but require a period of time, imprisonment is equally necessary for these punishments. But though you must have safe-custody to enable you to execute certain punishments, and also to enable you to carry into effect a course of reformatory discipline, safe-custody is not the same thing with punishment, nor the same thing with reformatory discipline; and no conclusions can be depended upon, in which ideas so distinct are confounded.



## IV.

*Reformatory Discipline.*

III. Having thus considered prisons, as instruments of safe-custody, and as instruments of punishment; two of the purposes to which they have been applied as means; it remains, that we consider them, as instruments of reformatory discipline, the third of the purposes to which they have been applied.

It is necessary, first of all, to state a clear idea of reformatory discipline.

When offences, against which it is necessary that society should have protection, are committed, it is desirable that the punishment of the offender should have three properties; *1st*, That it should deter all other persons from committing a similar offence, which is its most important property. *2dly*, That it should have the effect of deterring the man himself from a repetition of the offence. *3dly*, That it should have the effect of removing his former bad habits, and planting useful habits in their stead. It is this last property which is sought to be communicated to his punishment by reformatory discipline.

As the creating and destroying of habits is the work of time, and as safe-custody, and restraint from all indulgences, except under certain conditions, is necessary to reformatory discipline, whatever punishment is involved in such protracted coercion, is a necessary part of reformatory discipline.

What is desired is, to create a habit of doing useful acts, break the habit of doing hurtful acts. To accomplish this, means must be obtained of making the individual in question perform certain acts, abstain from the performance of certain other acts.

The means to be employed for producing performance cannot be of more than two sorts; the pleasurable, and the painful. A man may be induced to perform certain acts, either by punishment, or reward. He may be made to abstain from performing certain acts by an additional means, by withholding the power of performing them.

The latter is the means chiefly applicable for preventing the performance of hurtful acts in prisons; not only crimes, but acts of intemperance, gaming, or any others, the tendency of which is towards crimes. As this is nearly the universal practice, the reasons of it must be so generally known, as not to need repetition.

The inquiry which chiefly calls for our attention is, What are the best means of producing the performance of those acts, the habit of performing which we desire to render so perfect, that it may be relied upon for the effect, even in a state of freedom?

The persons on whom reformatory discipline is intended to operate, belong to the class of those who depend upon their industry for their support. So nearly, at least, do they belong to this class exclusively, that the immaterial exceptions may, in this general inquiry, be omitted.

The necessary foundation, in the case of such persons, not only for all

virtues, but for abstinence from crime, is the habit of performing some one of those series of acts, which are denominated lawful industry, and for which the performers obtain payment or reward.

Labour, therefore, in some of its useful branches, is to be regarded as the foundation of all reformatory discipline. But as the object of this discipline is to train the man to love, not to hate labour, we must not render the labour in such a case any part of his punishment. The labour must, for this important purpose, be a source of pleasure, not of pain.

The way in which labour becomes agreeable to men out of a prison, is the way in which it can be made agreeable to them in a prison; and there is no other. Advantages must accrue from the performing of it.

The way of attaching to it advantages the most intensely persuasive, in a reformatory prison or penitentiary, is exceedingly obvious.

There, it is easy to prevent the attaining of any pleasure, except through the medium of labour.

What is provided in the prison, according to the principles already explained, is lodging, food, and clothing, all of the very cheapest kind not producing injury to health. In the monotony of a prison, there is no one who will not intensely desire pleasure in addition to this.

In the sentence of a criminal, who is subjected to reformatory discipline, it may, and as often as the case requires, it ought, to be rendered a part, that he shall not be permitted to make any additions to this hard fare from any source belonging either to himself or others, except his labour; but that what he earns by his labour he may, in a certain way, lay out to procure to himself better food, or any other indulgence (certain hurtful ones excepted) which he may desire. Few cases, indeed, will be found in which this simple contrivance will not produce steadiness of application.

We have now then attained what is of principal importance. For if we have got the inmates of a prison to labour steadily in some useful branch of industry, to look to labour as the great or only source of their enjoyments, and to form habits of so doing, sufficiently confirmed to be depended upon for governing their conduct in a state of freedom, we have prepared them for being useful members of society, and our purpose is accomplished.

Here, then, comes the question, By what arrangements, in detail, can the business of confining, maintaining, and setting offenders to work, be most advantageously performed?

In other words, In what hands should the government of penitentiaries be placed, and under what rules should it be ordained for them to act?

It is an universal axiom in morals, that no security is equally to be depended upon for any desirable result, as the interest of those upon whom its accomplishment depends. If, in devolving upon a man the task of bringing about a particular end, we make it his interest to bring it about in the best possible manner, especially if we make it his interest in any high degree, we can hardly be disappointed in counting upon his most strenuous exertions. On the other hand, if he has no interest, or a very inconsiderable interest, in the end which he is intrusted to bring about;

if little cognizance will be taken of his proceedings, whether good or bad ; if to attend to the business would be exceedingly troublesome, to neglect it will produce little inconvenience ; we may be very sure that, by a great majority of men, the business of the task devolved upon them will be very imperfectly performed. If they can make a profit out of oppression, or if, as is the case to so great a degree in prisons, they can consult their ease by imposing additional and mischievous restraints upon the prisoners, their interests are strongly set against their duties, and ill conduct is still more perfectly secured.

This last, how deplorable soever the confession, is the state of management of all British prisons, with hardly any exception. There is a jailor, who receives a salary and power ; and is told to manage the prison well ; and there is a number of justices, that is, gentlemen of the neighbourhood, who obtain not a little power, and a great deal of praise, for undertaking to do certain public duties of a local nature, with little interest in doing them well, and no little interest in doing them in many respects exceedingly ill, who have the charge of looking after him. Varieties we cannot afford to particularize. This is the general description.

The management, then, of the prison, is the joint concern of the jailor and the justices, or magistrates, including sheriffs, who, jointly or severally, have no such interest, as can be expected generally to produce any considerable effect, in any thing more than such a kind of management as will not excite attention and indignation by its badness. All the degrees of bad management, which are within those limits, they, having little or no interest to prevent, have abundant interest to permit.

It is surely not necessary, that we should go far into the detail of this case, to show the causes which it places in operation, and their natural effects.

First of all, it is sufficiently evident, that the jailor has an interest in obtaining his salary, and other emoluments, with as little trouble to himself as possible.

It is not less evident, that the magistrates have an interest in getting the power and credit, attached to their office, with as little trouble to themselves as possible.

This is enough. The book of human nature is clear upon the subject. This principle, at uncontrolled work in a prison, is perfectly sufficient to generate all the evils which those abodes of misery can be made to contain.

It is undeniable, that so far as those, who thus have the superintendance of jailors, are disposed to consult their ease, and to perform negligently a troublesome duty, which they may perform well or ill, just as they please, so far they will be indisposed to listen to any complaints against the jailor. It saves them a good deal of trouble to confide in the jailor. They speedily come, therefore, to look upon confidence in the jailor, and to speak of it, as a good thing, a duty. " Has not the jailor been most carefully and judiciously selected for his office, by wise and good men ? (viz. ourselves). Would it not be an injury to a man of his

character to distrust him? And to distrust him—for what? For the complaints of prisoners. But prisoners are always complaining, always giving trouble. Jailors are a good set of men. Prisoners are a bad set of men; especially complaining prisoners. They are the very worst kind of men;—they are, therefore, to be silenced; and it is often very difficult to silence them; nothing but harsh measures will do it; when harsh measures, however, are absolutely necessary, it is the duty of jailors to use them, and the duty of magistrates to protect such men in the discharge of so important a duty.”

Such are the feelings and conclusions which are undeniably prompted, by the mere love of ease, in the bosoms of such men as English magistrates.

So far as the magistrates consult their ease (men generally do consult their ease when they have not a preponderating motive to the contrary), the jailor is at liberty to consult his ease.

In the jailor's consulting his ease, every thing that is horrid in a prison finds its producing cause.

What the jailor has chiefly to guard against is, the escape of his prisoners, because that is a result which cannot be hidden, and will not escape animadversion. But the love of ease prompts him to take the easiest means for this purpose, locking up in dungeons, loading with irons, and prohibiting communication from without: in other words, all the measures which are the most tormenting to the prisoner. If the prisoner, confiding in his ingenuity or his strength, makes any attempts to free himself from this misery, by escaping, the disturbance which is thus given to the ease of the jailor is a cause of pain, proportional to the love with which he cherishes his ease; this pain, excites resentment, resentment calls for vengeance, and the prisoner is cruelly punished. The demon despotism reigns in his most terrific form.

This is only one half of the evil. The servants of the jailor, the turnkeys, as they are called, and others who wait upon the prisoners, are as fond of their ease as the jailor is of his. If the jailor has not adequate motives to make him take care that the business of the prison is well done, he will repose the same confidence in his servants, which the magistrates so liberally exercise towards him. He will leave them to indulge their ease, as he could not do otherwise without disturbing his own.

From the servants of the prison indulging their ease, neglect of the prisoners is the immediate and unavoidable consequence. From neglect of prisoners, that is, of men placed in a situation destitute of all the means of helping themselves, all those evils, which, in another situation, could be produced only by the most direful oppression, immediately ensue.

By the servants of a gaol, cherishing their ease, and left by their superintendents, to do so, every call of a prisoner for help, for relief from any annoyance, is felt as an injury, and resented as such. Cruelty speedily comes, as a co-operator with neglect, to fill up the measure of the prisoner's calamity.

The prisoner, finding himself destitute of all remedy, except he can prevail upon the people who approach him to remove some of the causes of the misery which he endures, has recourse to bribery, when he can possibly command the means; and then pillage, without limit and without mercy, is added to all the evils of this den of horrors.

If such are the consequences of entrusting the management of prisons to persons who have no interest, or not a sufficiency of interest, in good management, we have next to consider the important question, By what means a sufficiency of interest in good management can be created? We need not have any doubt, that if a sufficiency of good accrues to the managers from every particle of good management, and a sufficiency of evil from every particle of bad, we shall have as much as possible of the good, and as little as possible of the evil.

1. The grand object, as we have stated, of reformatory discipline is, to create habits of useful industry.

2. A second object is, to preserve the health of the prisoners, and impose upon them no suffering, not implied in the conditions of their confinement, or prescribed by the judge.

3. A third is, by moral and religious tuition, to generate and strengthen good dispositions.

4. A fourth is, to attain those ends at the smallest possible expense.

It is not difficult to give the manager or keeper of a reformatory prison or penitentiary, a very strong interest in all these important results.

We have already seen, that the mode of giving to the prisoner a motive to labour, is, by giving him a share in the produce of his labour.

It is evident that an equally certain mode of giving to the jailor a motive for obtaining as much of that labour as possible, that is, for doing all that depends upon him to make the prisoners labour as much as possible, and as productively as possible, is by giving him also a share in the produce of their labour.

It may be said, however, that if the jailor receives a share of the labour of the prisoners, he will have a motive for making them labour too much: labour may be so excessive as to equal the severest torture.

Effectual expedients, however, for the prevention of this evil, are easy and obvious. In the first place, it does not seem necessary that the labour should be in any degree compulsory. If a prisoner is, according to the rule above laid down with respect to the cheapest fare, confined to the coarsest kind of bread, and to water, if he does not labour, but has it in his power to add to his enjoyments by labouring, more especially if he may labour in company, but if he will not labour, must remain in solitude, the cases will be exceedingly few in which compulsion will be needful; and these might, if it were deemed of sufficient importance, be specially provided for by the legislature.

If a man may work, or not work, as he pleases, and much or little as he pleases, there is no need of any farther security against excessive labour. If there were, it would be afforded by the interest which it is easy to give to the jailor in the health of the prisoner.

Giving to the jailor a share in the produce of the labour of a prisoner has two happy effects; not only that of giving him an interest in rendering the value of that produce as great as possible, but that, also, of giving him an interest in the health of the prisoner; because the produce of a man's labour is greater when he is in health than when he is not.

This may be increased by giving to the jailor, through a very obvious channel, an interest, and an interest to any amount, in the life of each prisoner. It being ascertained what is the proportion of persons of a similar age that die annually, when not confined in a prison, all that is necessary is, to entitle the jailor to a sum of money for each of the individuals above that proportion whom he preserves alive, and to make him forfeit a sum for each individual above that proportion who dies. This sum, it is evident, may be sufficiently high, to ensure, on the part of the jailor, a strong desire for the life, and thence a proper attention to the health of the prisoners.

Another particular in this case requires attention. It is obvious, that the motive of the prisoner to render the quantity or value of his labour the greatest, is, when the share which he enjoys of it is the greatest. It is equally obvious, that the motive of the jailor to promote the augmentation of this quantity or value is the greatest when his share is the greatest.

If the whole of the produce of the labour of each of the prisoners were left to be divided between himself and the jailor, the motives of the two parties, taken jointly, would be at the highest. And the question then would be, according to what proportion should the division be made?

The peculiar circumstances of this case permit the most decisive answer to be returned. No evil can accrue, and every good purpose is best gained, by allowing the jailor to take as much as he pleases. It being first established that he can employ no compulsory methods, that the prisoner must have as much of the coarsest fare and accommodation as he needs, whether he works or not, and that work can thus be obtained from him only by the operation of reward, it will be the interest of the jailor to make his reward sufficiently high to obtain from him all the work which he can perform, and, in his situation as a criminal, he ought, generally speaking, to receive no more. The propriety of this regulation, therefore, rests on conclusive evidence.

Here, however, an objection, worthy of attention, occurs. If the jailor receives so great a proportion of the produce of the labour of the prisoners, he may receive a much higher remuneration than the nature of his duties requires; and so far the public is deprived of a fund which ought to be available for the public service.

This observation is true; and the question is, in what manner can the separation of what is necessary in remuneration of the jailor, and what should be detached for the benefit of the public, be most advantageously made?

If the situation of the jailor affords more than an adequate reward, he will be willing to give something annually in order to retain that situation.

And for measuring exactly what he ought to give, there is a sure and a well tried expedient: it is, to lay the thing open to competition.

By this expedient, a double advantage is gained: for both the public receives as great a share of the produce of the labour of the prison, as is compatible with the due remuneration of the jailor; and the jailor, he being entitled, in the first instance, to share the whole of the produce with the labourers, having both to pay what he owes to the government, and obtain his own remuneration out of his share, has a motive as strong as if the whole were his own, to render the produce as great as possible.

It will easily be seen that this contract between the public and the jailor, if sufficient securities can be taken for its being cancelled, as soon as misconduct on his part should render it desirable that it should be so, ought, for important reasons, to be concluded for a considerable number of years, or for his life. It is of importance that those individuals, who are to undergo the reformatory discipline, and who are unacquainted with any trade, should, especially if they are young, be taught the trade in which their labours can be turned to the greatest account: and, to make it the interest of the jailor to have them taught, it is evident that he must have the prospect of enjoying the benefit of their skilled labour for a sufficient length of time. This short illustration we hope will suggest to the reader sufficient reflections, for evidence on this point; and we must hasten to the remainder.

We have now shown, to how great an extent, upon the plan which we have thus briefly sketched, the interest of the jailor is rendered co-incident with the ends which are in view, and the most effectual of all securities is obtained for the goodness of his management. We proceed to show what additional securities this plan enables us to provide.

Let us, first of all, attend to the power of inspection, which may be afforded in a degree altogether unparalleled. By the admirable properties of the building which we have recommended, not only is the conduct of the prisoners rendered wholly transparent to the jailor, but the conduct of the jailor may be rendered equally transparent to his inspectors. And as the central lodge, or tower of inspection, may be entered by any number, without giving the least disturbance to the prisoners, without their even knowing that any body is there, the public may be admitted on such terms, as to afford the full benefit of public inspection,—the most efficient of all inspections,—over the whole economy of the prison. By means of whispering tubes, oral communication might be permitted with the prisoners, at such times, and under such regulations, as would prevent it from interfering with the working hours, or other parts of the discipline, to all persons who might have a wish to hear if they had any complaints.

Another very simple expedient would make an important addition to the list of securities. It ought to be an obligation on the jailor to keep a book, in which all complaints of the prisoners should be entered, and, as often as they could write, signed with their names. Along with the complaint should be entered a statement of what had been done for removing the ground of the complaint, or of the reasons for doing nothing. And

this book should be open to the perusal of the public, and should lie in a place convenient for the inspection of all the visitors of the prison.

A still more important and indispensable security would be, the obligation of the jailor to present, annually, to the principal court of justice, such as the Court of King's Bench in England, a report on the management and state of the prison during the preceding year, containing, with all other points of useful information, exact accounts of the receipts and disbursements; to verify those statements by his oath; to print and publish them at his own expense; and to answer, upon oath, all interrogatories, made to him, in open court, by the judge, or by any other person, how much soever the answer might tend to his own crimination; and this as often as the judge might call upon him for such a purpose. By this means, with the obvious security afforded for other still more important ends, so perfect a knowledge would be communicated of the gains of the jailor, and the mode of obtaining them, as would ensure an accurate bargain, rigidly proportioned to the amount of them, as often as the contract came to be renewed.

The last thing which we think it necessary to recommend in the shape of a security, would operate as a test of the efficacy of the management in its character of a reformatory discipline. The jailor should be held bound to pay a certain sum, varying in proportion to the length of time during which the prisoner had been subject to his discipline, for each of the prisoners who, after liberation, should be convicted of a crime.

Connected with the important part of the subject relating to the labour of the prisoners, it is proper to bring to view the advantage of a subsidiary establishment for receiving and employing those who might be liberated from the prison. It is a well known ground of lamentation, that persons liberated from a prison, find often great difficulty in obtaining employment, and are constrained, by a kind of necessity, to betake themselves to their former evil courses, though with the inclination to have devoted themselves to honest industry, had the means not been denied them. The best mode of obviating this great evil would be, to have a subsidiary establishment, the architectural form the same as that of the prison, in which the jailor should be obliged to receive all persons who have been liberated from the prison, and who make application for admittance, and to employ them on the same terms as the prisoners, with the single exception of its being in their power to remove when they please, and to make, in respect to terms, all such stipulations with the jailor as may be for their mutual advantage.

The next part of the subject to which we proceed, is the plan according to which the prison shall be supplied with the articles which the prisoners are enabled by their labour to purchase.

As there are certain articles, such as intoxicating liquors, which ought to be altogether withheld, unless for special reason permitted, and as the jailor could not have a sufficient command over the articles conveyed into the prison, unless he had, in his own hands, the power of supply; as the intercourse, also, which would be created with strangers, if the prisoners



were at liberty to purchase of whom they pleased, would be incompatible with the discipline of the prison, the power of supplying articles of purchase to the prisoners ought to be confined to the jailor.

If it be objected that the jailor would thus have the power of oppressing the prisoners, by selling bad articles, or good articles too dear, the answer is, That he could not. We have already seen, that in order to derive from the prisoners the greatest quantity of profit to himself, he must give to them a reward for their labour sufficient to make them labour to the most profitable account. But if he sells articles to them at more than the usual price, this is merely a reduction of the reward left to them for their labour: this he cannot reduce beyond a certain point, without reducing the amount of his profit; and any greater reward than up to this point, the nature of the case renders undesirable.

We have now then stated all that seems necessary to be said on the three great subjects; *1st*, Of the structure and form of the prison; *2dly*, The securities which may be applied for obtaining good conduct on the part of the jailor; and *3dly*, The first and principal part of reformatory discipline, namely, voluntary labour.

The remaining conditions of reformatory discipline will not require much explanation.

1. Separation, as far as concerns the sexes, and as far as concerns the good from the bad, is now so generally attended to as an object of importance, that the danger sometimes is of other things being too much overlooked in the comparison.

In a prison, such as we have described, in which, by means of moveable partitions, the cells may be enlarged or contracted at pleasure, and in which the prisoners are all under continual inspection, the power of separation, to any desired extent, is complete.

The two sexes, though inmates of the same prison, and simultaneously subject to the same inspection, may be as completely disjoined as if they were inhabitants of a different region. By a piece of canvas, and nothing more costly, extended in the form of a curtain, from the boundary on each side of the female cells, in the direction of a radius across the central area to the inspection lodge, the females would be as completely cut off from seeing, or being seen by the male prisoners, as if they were separated by seas and mountains; the same effect would be obtained as to hearing, by merely leaving a cell vacant between those of the males and females; and thus the space appropriated to each of the two sexes might, in the easiest manner, be diminished or enlarged, as their relative numbers might require.

A much more complete and desirable separation, than that which is aimed at as the utmost in other prisons, is easily attainable in this. The ordinary separation of young offenders from old, of the greatly corrupted from those who are presumed to be less deeply infected, is still apt to leave associations too promiscuous, and too numerous, not to be unfavourable to the progress of reformation.

The prisoners should be put together in companies of twos, and

threes, and fours, seldom more; each company occupying a separate cell. It would be the interest of the jailor to put them together in such assortments as would be most conducive to the quantity and value of work they could perform, and to the goodness of their behaviour; that is, to the most perfect operation of the reformatory discipline: and his experience of their dispositions and faculties would of course fit him beyond any one else for making the selection.

It will have been all along understood, that, to attain the ends of inspection and economy, the same rooms or cells which form the day and working rooms on our plan, form also the sleeping rooms. Not the smallest inconvenience from confusion of things in the apartment can thence be derived; because the hammocks, which would be more convenient than beds, could be stowed away in little compass during the day.

It is also to be particularly observed, that whatever degree of seclusion might either be indulged to the feelings of an individual, or might be deemed conducive to his mental improvement, might still, upon this plan, be easily secured; because, by means of screens, a portion of the cell might be formed into as many private apartments as might be desired; and where experience of good conduct had laid a foundation for confidence, periods of seclusion, even from the eye of the inspector, might be allowed.

2. Nothing of great importance to be mentioned in this summary sketch seems now to remain, except schooling, and religious instruction.

The Sunday is the appropriate period for both. Sunday-schools are found by experience to be sufficient for communicating to children the important arts of reading, writing, and accounts. It would be obligatory on the jailor to afford the means of instruction in these respects to every prisoner who might not have attained them; together with all other means, not incompatible with the case, of promoting their moral and intellectual improvement.

3. The religious services proper to the day, and such other devotional exercises as might be thought requisite on other days, would be conducted by the chaplain, the prison affording remarkable facilities for bringing all the prisoners into a situation conveniently to hear; and also, which would be a circumstance of great importance, bringing the public from without, to participate in the religious services of the prison, for whom temporary accommodation in the vacant central area might be provided, and to whom, by the charms of eloquence and music, and the power of curiosity, it would be the interest of the jailor, by letting the seats, to provide sufficient attraction.

It seems to be necessary, before concluding, to obviate an objection, which, though it has seldom been urged as a reason against reformatory discipline, is yet considered as requiring a great deduction to be made in the estimate formed of its advantages. The objection is, that, by affording the means of employment to prisoners, we take away those means from a corresponding number of persons who are not prisoners, and thus sacrifice the deserving to the worthless.

This objection is drawn from some of the conclusions of Political Economy. That which affords the means of employment to labour is capital; in other words, the means of subsistence to the labourer, the tools he works with, and the raw material on which he is employed. When labourers are too numerous for the means of employment, it is evident that, if any new ones are added to the number, you can give employment to them only by taking it away from the old ones. It is, therefore, said, that by giving employment to prisoners, we make an equal number of honest workmen paupers.

In this objection, however, as is generally the case with false reasoning, a part only of the essential circumstances, not the whole, is taken into the account. In the first place, with regard to the prisoners, one principal part of the capital which puts labour in motion, namely, subsistence, is afforded to them of course, whether they labour or not.

In the next place, the objection proves too much: for, if it would be better, for the sake of affording employment to others, that the man should do nothing in prison, it would equally be better that he should have done nothing out of prison; better that we should have a portion of our population useless than productive. According to this doctrine, the proper rule, whenever population exceeds the demand for labour, and wages are low, would be to give subsistence to a portion of the people, on the condition of their abstaining from labour.

Thus much of the allegation is true, namely, that when to the subsistence, which you would have given at any rate, you add tools and raw materials, you so far diminish the quantity of tools and raw materials which can be furnished to others. But, counting only this circumstance, another most important circumstance is left out of the computation. This deduction of tools and raw materials is made once for all. The productive labourer replaces the capital, which employs him, with a profit. Advance to him, for one year, the food and other articles which he needs, you never need to advance any thing more. What he produces in the course of the year, replaces the food and all other articles which he has used, with a profit. But if he has not laboured, he has produced nothing; you have to supply him, therefore, with the means of subsistence, not one year, but every year, from the produce of other men's labour. If he labours, you have to give him once, out of the general stock of means for the employment of labour, subsistence for a year, with tools and raw material, and you have no occasion to give him any more. If he is to be idle, you give him, it is true, only subsistence, without tools and raw material, the first year; but you have to give him subsistence, that is, so far to diminish the means of employing other men's labour, every year; whereas, if he is a productive labourer, for the advance which you make to him the first year, he not only exempts you from all farther deductions from the means of employing other men, but he every year adds to those means, by the whole amount of the profit made upon his labour. To make those persons, therefore, productive labourers, whom you must at

any rate subsist, is to increase, not to diminish the means of employing others.

As to another objection which is sometimes offered, that the commodities produced in a prison glut the market, and injure other manufacturers, this is still more evidently founded upon the consideration of part of the determining circumstances, without consideration of the remainder. If it is meant to apply not to one class, or two classes of commodities, but to the mass of commodities in general, it may instantly be seen to be untrue. The men who become sellers of the articles produced in a prison, become buyers to the same amount. Whenever a man sells a greater amount of articles than before, he gets the means of buying an equally greater amount. He always brings as much of a new demand into the market as he brings of a new supply. If he introduces more of some one commodity than the market requires, and reduces the profits on producing it, capital leaves that employment till the inequality is redressed. If the number of people is the same, and the quantity of commodities is increased, it is a contradiction in terms, to say that the circumstances of such a people are not improved.

Having answered these objections, it does not occur to us that there is any thing more which in this outline it is necessary for us to add. The plan, both of construction and management, appears to us simple, and easy to be understood; and to offer securities for the attainment of the end, such as the imperfection of the human powers, seldom permit to be realized. In the delineation presented, the only merit we have to claim is that (if our endeavour has been successful) of adding perspicuity to compactness. There is not, we believe, an idea which did not originate with Mr. Bentham, whose work ought to be the manual of all those who are concerned in this material department of public administration.

(F. F.)

THE ARTICLE

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# COLONY.

*Introduction. — Meaning of the term Colony. — Two Species of Colonies;—1. That, in the Conception of which the Idea of the Population predominates;—2. That, in the Conception of which, the Idea of the Territory predominates.*

**T**HE term "Colony" has not been used with much precision. Dr. Johnson defines it "A body of people drawn from the mother country to inhabit some distant place;" and it would not be easy to find a short expression better calculated to embrace all the particulars to which the name is ever applied. Yet this will be found to include some very heterogeneous objects; nay, more, to embrace particulars to which the term "Colony" really does not extend. When the French Protestants, for example, settled, in great numbers, in England, and in the United Provinces, they were "a body of people drawn from the mother country to inhabit a distant place;" but did not, for that reason, become a colony of France. Let the first part of the definition be supposed to be correct, and that a colony must, of necessity, be "a body of people drawn from the mother country;" something more is necessary to complete the definition, than the idea of inhabiting a distant place; for not every sort of inhabiting constitutes them a colony. It seems necessary, that, inhabiting a distant place, they should not come under the authority of any foreign government, but either remain under the government of the mother country, or exist under a government of their own. Of colonies remaining under the government of the mother country, the West India Islands of the different European states afford an example. Of those existing under a government of their own, the most celebrated example is found in the colonies of the ancient states of Greece. The United States of America, as they constituted an example of colonies of the first sort, before the revolution which disjoined them from the mother country, so they may be regarded as constituting an example of colonies of the Grecian sort, now that they exist under a government of their own. Our resentment at their preferring to live under a government of their own, has indeed often

prevented us from regarding them in the endearing light of a colony, or daughter country. It has made us much rather apply to them the name of enemies; and in our feelings towards them, has mixed up a greater proportion of the hostile than the friendly ingredients.

Again, the term "Colony" is sometimes employed in a sense in which the idea of a body of people, drawn from the mother country, hardly seems to be included. Thus, we talk of the British colonies in the east, meaning, by that mode of expression, the East Indies. Yet it can hardly be said, that any body of people is drawn from the mother country to inhabit the East Indies. There is nobody drawn to *inhabit*, in the proper sense of the word. A small number of persons, such as are sent to hold possession of a conquered country, go; and, in this sense, all the conquered provinces of the ancient Roman Empire might be called what they never have been called, colonies of Rome.

In the meaning of the term "Colony," the predominant idea among the ancient Greeks and Romans, appears to have been that of the *people*; the egress of a body of people to a new and permanent abode. Among the moderns, the predominant idea appears to be that of the *territory*, the possession of an outlying territory; and, in a loose way of speaking, almost any outlying possession, if the idea of permanency is united, would receive the name of "a colony." If we use the term with so much latitude as to embrace the predominating idea, both of ancients and moderns, we shall say that a colony means an outlying part of the population of the mother country, or an outlying territory belonging to it; either both in conjunction, or any one of the two by itself.

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## SECTION I.

*Of that Class of Colonies, in the Conception of which the Idea of the People is the predominating Idea.*

Of this sort were the Roman and the Grecian colonies, and of this sort are some of the British colonies.

1. The Roman colonies arose out of a peculiarity in the situation of the Roman people. In Rome, as in other countries, the lands were originally regarded as belonging to the state; and as belonging to the people, when the people took the powers of government to themselves. A sense of convenience, there, as everywhere else, rendered the land private property by degrees; and, under a form of government so very defective as the Roman, the influence of the leading men enabled them, in a short time, to engross it. The people, when reduced to misery, did not altogether forget, that the land had once been regarded as theirs; and, every now and then, asserted their claims in so formidable a manner, that, when aided by circumstances, they compelled the ruling few to make something of a sacrifice. They did not, indeed, compel them to give up the lands which they had appropriated; but it always happened, that in the countries conquered by the Romans, a portion of the lands was public property, and



continued to be cultivated for the benefit of the Roman state. When the importunity of the people for a division of lands began to be troublesome or formidable, a portion of these lands was generally resorted to, enough to take off the most fiery of the spirits, and, contenting the leaders, to quiet the populace for a time. The portion of land, set apart for the purpose, was divided, at the rate of so much for every man; and a sufficient number of persons to occupy it, and to form a community, were sent out, more or less provided with the various supplies which were necessary for commencing the settlement.

In the nature of an establishment of this description, there is no mystery, and hardly any thing which requires explanation. The colonists lived in a Roman province, under Roman laws, and differed not materially from the people of any other local jurisdiction. Being once got rid of, no farther advantage was expected from them than from the other inhabitants of the country, in paying taxes, for example, and furnishing men for the army. In some few instances, in the planting of colonies, some benefit was looked to in the way of defence; when they were established in newly conquered countries, the people of which were not yet patient under the yoke, or when they were placed in the way of invading enemies. But not much advantage of this sort can be derived from a colony, which, in general, has more need to receive, than ability to yield, protection.

These colonies were planted wholly for the benefit of the Roman aristocracy. They were expedients for preserving to them the extraordinary advantages and powers they had been enabled to assume, by allaying that impatience of the people, under which the retention of their usurpations became difficult and doubtful. The wonder is, that the people were so easily contented, and that, having the means of intimidating the aristocracy to so great a degree, they did not insist upon greater advantages. And the pity is, that they understood so little what was for their advantage. If, instead of demanding a portion of land, the benefit of which, at best, was only temporary, they had demanded good laws, and had obtained efficient securities for good government, securities against that prevalence of the interests of the few over the interests of the many; which existed to so great an extent in the Roman government, as it has existed, and still does exist, in almost all other governments; they would have rendered to themselves, and would have rendered to the human race, the greatest of all possible services. But the human mind had not then made sufficient progress to see distinctly what was the real object of good government, or what the means which would be effectual in attaining it.

2. We next come to the class of colonies which are exemplified in the case of those sent out by the Greeks; and we take them in order subsequently to the Roman, because there is something in them for which rather more of explanation is required. Of those early migrations, which carried a Greek population into Asia Minor, and at a later period into Italy and Sicily, we have not a sufficient number of historical facts to know very accurately the cause. It may be, that internal commotions, as frequently as a superabounding population, were the source from which they

were derived. When, of two contending parties, one acquired the ascendancy, they frequently made the situation of their opponents so painful to them, and sometimes also the shame of defeat was so great, that the vanquished party chose rather to live any where, than subject to the power and contempt of those over whom they had hoped to domineer. The leaders proposed emigration, and a great part of those who contended under their banners, were ready to depart along with them. In this way they might remove in large bodies, and, carrying with them all their moveable effects, would be in circumstances, when they established themselves on a fertile soil, to attain, in a little time, a great degree of prosperity. All this seems necessary to account for the flourishing state of the Greeks in Asia Minor, among whom arts and sciences flourished sooner, and civilization made still more rapid strides, till checked by Persian domination, than in the mother country itself, where a more dense population, and a less fertile soil, opposed obstructions to the happiness of the people, and the progress of the human mind.

There is nothing in modern times which so much resembles the colonization of Asia Minor by the Greeks, as the colonization of North America by the English. Of the first English planters of North America, a large proportion went out to escape the oppression of a predominating religion, as the Greeks to escape the oppression of a predominating political party. One difference there was—that the English did not go off at once, in any considerable bodies, under distinguished leaders, or with any great accompaniment of capital, the means of future prosperity. Accordingly, the prosperity of the British colonies in North America was much less rapid, and much less brilliant, than that of the Grecian colonies in Asia Minor. Another great difference there was, in that the English colonies, though they made a sort of subordinate government for themselves, were still held to be subject to the government of the mother country. The Grecian colonies became states, in all respects independent, owning no government but that which they established for themselves; though they still looked to the mother country for protection and assistance, and held themselves under a very strong obligation to befriend and assist her in all her difficulties.

In regard to those detachments of the population of the Grecian states, which resulted either from political disgust or political oppression, there is nothing which stands in need of explanation. The motive which gave rise to them is familiar and obvious; and the sort of relation in which they and the mother country stood to one another, importing mutual benevolence; but no right in the one to command, or obligation on the other to obey, every body can immediately understand.

There were other occasions, however, on which the Greeks sent out colonies, and these are the colonies which are commonly meant, when the Grecian principle of colonization is spoken of by way of distinction. These were resorted to, when the population of the mother country became superabundant, and relief was demanded by a diminution of numbers. This is a ground of colonization, which, since the principle of

population has been shown to exert so great an influence upon the condition of human beings, deserves profound regard. We shall not, therefore, pass it by without a few observations.

A population is said to be redundant; When? Not when it is numerically either great or small; but solely and exclusively when it is too great for the quantity of food. Any one country produces or procures a certain quantity of food in the year. If it has a population greater than such a quantity of food is sufficient to maintain, all that number which is over and above what it is capable of maintaining, is a redundancy of population.

A curious phenomenon here presents itself. A redundancy of population, in the states of ancient Greece, made itself visible even to vulgar eyes. A redundancy of population in modern Europe never makes itself visible to any but the most enlightened eyes. Ask an ordinary man, ask almost any man, if the population of his country is too great; if the population of any country in Europe is, or ever was, too great: so far, he will tell you, is it from being too great, that good policy would consist in making it, if possible, still greater; and he might quote, in his own support, the authority of almost all governments, which are commonly at pains to prevent the emigration of their people, and to give encouragement to marriage.

The explanation of the phenomena is easy, but it is also of the highest importance. When the supply of food is too small for the population, the deficiency operates, in modern Europe, in a manner different from that in which it operated in ancient Greece. In modern Europe, the greatest portion of the food is bought by the great body of the people. What the great body of the people have to give for it is nothing but labour. When the quantity of food is not sufficient for all, and when some are in danger of not getting any, each man is induced, in order to secure a portion to himself, to give better terms for it than any other man, that is, more labour. In other words, that part of the population who have nothing to give for food but labour, take less wages. This is the primary effect, clear, immediate, certain. It is only requisite, farther, to trace the secondary, or derivative effects.

When we say, that in the case in which the supply of food has become too small for the population, the great body of the people take less wages; that is, less food, for their labour; we mean that they take less than is necessary for comfortable subsistence; because they would only have what is necessary for comfortable subsistence in the case in which the supply of food is not too small for the whole.

The effect, then, of a disproportion between the food and the population, is not to feed to the full measure that portion of the population which it is sufficient to feed, and to leave the redundant portion destitute; it is to take, according to a certain rate, a portion of his due quantity from each individual of that great class who have nothing to give for it but ordinary labour.

What this state of things imports is most easily seen. The great class who have nothing to give for food but ordinary labour, are the great body of the people. When every individual in the great body of the people has less than the due quantity of food, less than would fall to his share if the quantity of food were not too small for the population, the state of the great body of the people is the state of sordid, painful, and degrading poverty. They are wretchedly fed, wretchedly clothed, have wretched houses, and neither time nor means to keep either their houses or their persons free from disgusting impurity. Those of them, who, either from bodily infirmities, have less than the ordinary quantity of labour to bestow, or from the state of their families, need a greater than the ordinary quantity of food, are condemned to starve; either wholly, if they have not enough to keep them alive, or partially, if they have enough to yield them a lingering, diseased, and, after all, a shortened existence.

What the ignorant and vulgar spectator sees in all this, is not a redundant population, it is only a poor population. He sees nobody without food who has enough to give for it. To his eye, therefore, it is not food which is wanting, but that which is to be given for it. When events succeed in this train, and are viewed with these eyes, there never can appear to be a redundancy of population.

Events succeeded in a different train in the states of ancient Greece, and rendered a redundancy of population somewhat more visible, even to vulgar and ignorant eyes.

In ancient Greece, the greatest portion of the food was not bought by the great body of the people; the state of whom, wretched or comfortable, legislation has never yet been wise enough much to regard. All manual labour, or, at least, the far greatest portion of it, was performed, not by free labourers serving for wages, but by slaves, who were the property of the great men. The deficiency of food, therefore, was not distributed in the shape of general poverty and wretchedness over the great body of the population, by reduction of wages; a case which affects, with very slight sensations, those who regard themselves as in no degree liable to fall into that miserable situation. It was felt, first of all, by the great men, in the greater cost of maintaining their slaves. And what is felt as disagreeable by the great men, is sure never to continue long without an effort, either wise or foolish, for the removal of it. This law of human nature was not less faithfully observed in the states of ancient Greece, for their being called republics. Called republics, they in reality were aristocracies; and aristocracies of a very bad description. They were aristocracies in which the people were cheated with an idea of power, merely because they were able, at certain distant intervals, when violently excited, to overpower the aristocracy in some one particular point; but they were aristocracies in which there was not one efficient security to prevent the interests of the many from being sacrificed to the interests of the few; they were aristocracies, accordingly, in which the interests of the many were habitually sacrificed to the interests of the few; meaning by the many, not the slaves merely, but the great body of the free citizens.

This was the case in all the states of Greece, and not least in Athens. This is not seen in reading the French and English histories of Greece. It is not seen in reading Mitford, who has written a *History of Greece* for no other purpose but that of showing that the interests of the many always *ought* to be sacrificed to the interests of the few; and of abusing the people of Greece, because every now and then, the Many in those countries showed, that they were by no means patient under the habitual sacrifice of their interests to the interests of the Few. But it is very distinctly seen, among other occasions, in reading the Greek orators, in reading Demosthenes for example, in reading the Oration against Midias, the Oration on Leptines, and others, in which the licence of the rich and powerful, and their means of oppressing the body of the people, are shown to have been excessive, and to have been exercised with a shameless atrocity, which the gentleness and modesty of the manners of modern Europe, even in the most aristocratically despotic countries, wholly preclude.

In Greece, then, any thing which so intimately affected the great men, as a growing cost of maintaining their slaves, would not long remain without serious attempts to find a remedy.

It was not, however, in this way alone, that a redundant population showed itself in Greece. As not many of the free citizens maintained themselves by manual labour, they had but two resources more,—the land, and profits of stock. Those who lived on profits of stock, did so, commonly, by employing slaves in some of the known arts and manufactures, and of course were affected by the growing cost of maintaining their slaves. Those who lived on the produce of a certain portion of the land, could not but exhibit very distinctly the redundancy of their numbers, when, by the multiplication of families, portions came to be so far subdivided, that what belonged to each individual was insufficient for his maintenance.

In this manner, then, it is very distinctly seen, why, to vulgar eyes, there never appears, in modern Europe, to be any redundancy of population, any demand for relieving the country by carrying away a portion of the people; and why, in ancient Greece, that redundancy made itself be very sensibly perceived; and created, at various times, a perfectly efficient demand for removing to distant places a considerable portion of the people.

But what if that redundancy of population which shows itself in modern Europe, in the effects of reduced wages, and a poor and starving people, should suggest to rulers the policy of ancient Greece, and some time or other recommend colonization? A few reflections may be well bestowed upon a supposition of this kind.

In the first place, it should be very distinctly understood, what it is we mean, when we say, in regard to such a country as Great Britain, for example, that the supply of food is too small for the population; because it may be said immediately, that the quantity of food may be

increased in Great Britain; a proposition which no man will think of denying.

Let us suppose that in any given year, this year for example, the food in Great Britain is too small for the people, by 10,000 individuals. It is no doubt true, that additional food sufficient to supply 10,000 individuals might be raised next year; but where would be the amelioration, if 10,000 individuals were at the same time added to the numbers to be fed? Now, the tendency of population is such, as to make, in almost all cases, the real state of the facts correspond with this supposition. Population not only rises to the level of the present supply of food; but, if you go on every year increasing the quantity of food, population goes on increasing at the same time, and so fast, that the food is commonly still too small for the people. This is the grand proposition of Mr. Malthus's book; it is not only quite original, but it is that point of the subject from which all the more important consequences flow, consequences which, till that point was made known, could not be understood.

When we say that the quantity of food in any country is too small for the quantity of the people, and that, though we may increase the quantity of food, the population will at the same time increase so fast, that the food will still be too small for the people; we may be encountered with another proposition. It may be said, that we may increase food still faster than it is possible to increase population. And there are situations in which we must allow that the proposition is true.

In countries newly inhabited, or in which there is a small number of people, there is commonly a quantity of land, yielding a large produce for a given portion of labour. So long as the land continues to yield in this liberal manner, how fast soever population increases, food may increase with equal rapidity, and plenty remain. When population, however, has increased to a certain extent, all the best land is occupied: if it increases any farther, land of a worse quality must be taken in hand; when land of the next best quality is all exhausted, land of a still inferior quality must be employed, till, at last you come to that which is exceedingly barren. In this progress it is very evident that it is always gradually becoming more and more difficult to make food increase with any given degree of rapidity, and that you must come at last to a point where it is altogether impossible.

It may, however, be said, and has been said in substance, though not very clearly, by some of Mr. Malthus's opponents, that it is improper to speak of food as too small for the population, so long as food can be made to increase at an equal pace with population; and though it is no doubt true, that, in the states of modern Europe, food does not actually increase so fast as the population, and hence the poverty and wretchedness of the people; yet it would be very possible to make food increase as fast as population, and hence to make the people happy without diminishing their numbers by colonization: and that it is owing to unfavourable, to ill-contrived institutions, that such is not the effect universally experienced.

As this observation has in it a remarkable combination of truth and error, it is worthy of a little pains to make the separation.

There can be no doubt that, by employing next year a greater proportion of the people upon the land than this year, we should raise a greater quantity of food; by employing a still greater proportion the year following, we should produce a still greater quantity of food; and, in this way it would be possible to go on for some time, increasing food as fast as it would be possible for the population to increase. But observe at what cost this effect would be attained. As the land yields gradually less and less to every new portion of labour, it would be necessary to employ, gradually, not only a greater and greater *number*, but a greater and greater *proportion* of the people in raising food. But the greater the proportion of the people which is employed in raising food, the smaller is the proportion which can be employed in producing anything else. You can only, therefore, increase the quantity of food, to meet the demand of an increasing population, by diminishing the supply of those other things which minister to human desires.

There can be no doubt, that, by increasing every year the proportion of the population which you employ in raising food, and diminishing every year the proportion employed in every thing else, you may go on increasing food as fast as population increases, till the labour of a man upon the land, is just sufficient to add as much to the produce, as will maintain himself and raise a family. Suppose, where the principle of population is free from all restriction, the average number of children reared in a family is five; in that case, so long as the man's labour, added to the labour already employed upon the land, can produce food sufficient for himself, and the rearing of five children, food may be made to keep pace with population. But if things were made to go on in such an order, till they arrived at that pass, men would have food, but they would have nothing else. They would have neither clothes, nor houses, nor furniture. There would be nothing for elegance, nothing for ease, nothing for pleasure. There would be no class, exempt from the necessity of perpetual labour, by whom knowledge might be cultivated, and discoveries useful to mankind might be made. There would be no physicians, no legislators. The human race would become a mere multitude of animals, of a very low description, having just two functions, that of raising food, and that of consuming it.

To shorten this analysis, let us, then, assume, what will hardly be disputed, that it is by no means desirable for human nature to be brought into a situation in which it would be necessary for every human being to be employed, and fully employed, in the raising of food; that it never can be desirable that more than a certain proportion should be employed in the raising of food; that it must for ever be desirable that a certain proportion should be employed in producing other things which minister to human desires; and that there should be a class possessed of leisure, among whom the desire of knowledge may be fostered, and those individuals

reared who are qualified to advance the boundaries of knowledge, and add to the powers and enjoyments of man.

It is useless, then, to tell us, that we have the physical power of increasing food as fast as population. As soon as we have arrived at that point at which the due distribution of the population is made between those who raise food, and those who are in other ways employed in contributing to the well-being of the members of the community, any increase of the food, faster than is consistent with that distribution, can only be made at the expense of those other things, by the enjoyment of which the life of man is preferable to that of the brutes. At this point the progress of population ought undoubtedly to be restrained. Population may still increase, because the quantity of food may still be capable of being increased, though not beyond a certain slowness of rate, without requiring to the production of it a greater than the due proportion of the population.

Suppose, then, when the due proportion of the population is allotted to the raising of food, and the due proportion to other desirable occupations, that the institutions of society were such as to prevent a greater proportion from being withdrawn from those occupations to the raising of food. It would, surely, be very desirable that the institutions of society should secure this important object. If population, in that case, should go on at its full rate of increase—in other words, faster than with such a distribution of the population it would be possible for food to be increased, what would be the consequences? The answer is abundantly plain. All those effects would take place which have already been described as following upon the existence of a redundant population in modern Europe, and in all countries in which the great body of those who have nothing to give for food but labour, are free labourers. Wages would fall; poverty would overspread the population; and all those horrid phenomena would exhibit themselves, which are the never-failing attendants on a poor population.

It is of no great importance, though the institutions of society may be such, as to make the proportion of the population, kept back from the providing of food, rather greater than it might be. All that happens is, that the redundancy of population begins a little earlier. The unrestrained progress of population would soon have added the deficient number to the proportion employed in the raising of food: and, at whatever point the redundancy begins, the effects are always the same.

What are the best means of checking the progress of population, when it cannot go on unrestrained, without producing one or other of two most undesirable effects, either drawing an undue proportion of the population to the mere raising of food, or producing poverty and wretchedness, it is not now the time to inquire. It is, indeed, the most important practical problem to which the wisdom of the politician and moralist can be applied. It has, till this time, been miserably evaded by all those who have meddled with the subject, as well as by all those who were called



upon by their situation to find a remedy for the evils to which it relates. And yet, if the superstitions of the nursery were discarded, and the principle of utility kept steadily in view, a solution might not be very difficult to be found; and the means of drying up one of the most copious sources of human evil; a source which, if all other sources of evil were taken away, would alone suffice to retain the great mass of human beings in misery, might be seen to be neither doubtful nor difficult to be applied.

The only question to which we are here required to find an answer, is that of colonization. When the population of a country is full, and its increase cannot go on at its most rapid pace, without producing one of the two evils of redundancy, a portion of the people, sent off to another country, may create a void, and till this is filled up, population may go on as rapidly as before, and so on for any number of times.

In certain circumstances, this is a better resource than any scheme for diminishing the rate of population. So long as the earth is not peopled to that state of fulness which is most conducive to human happiness, it contributes to that important effect. It is highly desirable, on many accounts, that every portion of the earth, the physical circumstances of which are not inconsistent with human well-being, should be inhabited, as fully as the conditions of human happiness admit. It is only, in certain circumstances, however, that a body of people can be advantageously removed from one country, for the purpose of colonizing another. In the first place, it is necessary that the land which they are about to occupy, should be capable of yielding a greater return to their labour than the land which they leave; otherwise, though relief is given to the population they leave behind, their own circumstances are not better than they would have been had they remained.

Another condition is, that the expense of removal from the mother country to the colonized country, should not be too great; and that expense is usually created by distance.

If the expense is too great, the population which remains behind in the mother country, may suffer more by the loss of capital, than it gains by the diminution of numbers.

It has been often enough, and clearly enough, explained, that it is only capital which gives employment to labour; we may, therefore, take it as a postulate. A certain quantity of capital, then, is necessary to give employment to the population which any removal for the sake of colonization may leave behind. But if, to afford the expence of that removal, so much is taken from the capital of the country, that the remainder is not sufficient for the employment of the remaining population, there is, in that case, a redundancy of population, and all the evils which it brings. For the well-being of the remaining population, a certain quantity of food is required, and a certain quantity of all those other things which minister to human happiness. But to raise this quantity of food, and this quantity of other things, a certain quantity of capital is indispensably

necessary. If that quantity of capital is not supplied, the food, and other things, cannot be obtained.

On the subject of that class of colonies, in the conception of which the idea of the people is the predominating idea, we have now explained the principle which is exemplified in the Roman, and that which is exemplified in the Grecian cases: belonging to the same class, there are British colonies, in which another, and a very remarkable principle is exemplified. The Greeks planted colonies for the sake of getting rid of a redundant population;—the British, for the sake of getting rid of a delinquent population.

3. The brilliant idea of a colony for the sake of getting rid of a delinquent population, if not peculiar to English policy, is, at any rate, a much more remarkable part of the policy of England, than of that of any other country. We have not time here to trace the history of this singular portion of English policy, nor is it of much importance. Every body knows, that this mode of disposing of delinquents, was carried to a considerable height before this country lost her dominion over the North American colonies, to which she annually transported a considerable number of convicts. It will suffice, for the present occasion, to offer a few observations on the nature of such an establishment as that of New South Wales.

Considered in the light of its utility as a territory, the colony of New South Wales will be included in the investigation of that class of colonies, in the conception of which the idea of territory is the predominating idea. At present it is to be considered in its capacity of a place for receiving the delinquent part of the British population.

In dealing with a delinquent population, the end to be aimed at, the security of the non-delinquent, embraces two particulars; security from the crimes of this or that individual delinquent himself, and security from those of other men who may be tempted to follow his example. The first object is comparatively easy. It is not difficult to prevent an individual from doing any mischief. What is chiefly desirable is, that the individual who is proved to be a delinquent, should be so dealt with, that the mode of dealing with him may be as effectual as possible in deterring others from the commission of similar offences.

In pursuit of the first object, securing society from the crimes of the convicted individual, there is a good mode, and a bad mode. The best of all modes, unquestionably, is the reformation of the offender. Wherever this can be accomplished, every other mode, it is evident, is a bad one. Now, in regard to the reformation of the offender, there is but one testimony, that New South Wales, of all places on the face of the earth, except, perhaps, a British prison, is the place where there is the least chance for the reformation of an offender, the greatest chance of his being improved and perfected in every species of wickedness.

If it be said, that taking a man to New South Wales at any rate af-

fords to the British community security against the crimes of that man, we may answer, that putting him to death would do so. And we farther pronounce, that saving a man from death, with the mind of a delinquent, and sending him to New South Wales, to all the effects of his vicious propensities, is seldom doing even him any good.

It is, however, not true, that sending a delinquent to New South Wales, secures the British community from his future offences. A very great proportion of those who are sent to New South Wales find the means of returning; and those who do so are, in general, and may always be expected to be, the very worst.

We have a high authority for this affirmation. The Committee of the House of Commons, who were appointed in the session of 1812, "to inquire into the manner in which sentences of transportation are executed, and the effects which have been produced by that mode of punishment," stated solemnly, in their *Report*, that "No difficulty appears to exist among the major part of the men who do not wish to remain in the colony, of finding means to return to this country. All but the aged and infirm easily find employment on board the ships visiting New South Wales, and are allowed to work their passage home. But such facility is not afforded to the women. They have no possible method of leaving the colony, but by prostituting themselves on board the ships whose masters may choose to receive them. They who are sent to New South Wales, that their former habits may be relinquished, cannot obtain a return to this country, but by relapsing into that mode of life which, with many, has been the first cause of all their crimes and misfortunes. To those who shrink from these means, or are unable, even thus, to obtain a passage for themselves, transportation for seven years is converted into a banishment for life; and the just and humane provisions of the law, by which different periods of transportation are apportioned to different degrees of crime, are rendered entirely null."

So much, then, with regard to the reformation of the individual, and security from his crimes, neither of which is attained. But, even on the supposition that both were ever so completely attained, there would still be a question of great importance; viz. whether the same effects could not be attained at a smaller expense. It never ought to be forgotten, that society is injured by every particle of unnecessary expense; that one of the most remarkable of all the points of bad government, is, that of rendering the services of government at a greater than the smallest possible expense; and that one of the most remarkable of all the points of good government is, that of rendering every service which it is called upon to render at the smallest possible expense.

In this respect also, the policy of the New South Wales establishment is faulty beyond all endurance. The cost of disposing in this way of a delinquent population is prodigious. We have no room for details, and there is no occasion for proof; the fact is notorious: whereas, on the contrary, it is now well known, that in houses of industry and reformation,

upon the best possible plan, that, for example, of Mr. Bentham's *Panopticon*, which has no parallel, there is little or no expence, there is perfect security against the future crimes of the delinquent, and that, to a great degree, by the best of all possible modes,—his reformation.

If the mode of dealing with a delinquent according to such an institution as that of New South Wales, is thus wretched, as far as regards the securing of the community from the future crimes of the convicted delinquent; it is not less so in what regards the deterring of all other men from following similar courses to those of the delinquent.

It is very evident that this last is by far the most important of the two objects. It is now agreed that this is the end, the only good end, of all punishment, properly so called; for mere safe custody, and satisfaction to the injured party, are not, in the proper sense of the word, punishments; they are for other ends than punishment, in any point of view in which it is ever contemplated.

The great importance of this above the previous case, consists in this, that when you take security against the crimes of the convicted delinquent, you take security against the crimes of only one man, and that, a man in your hands, with whom you can deal as you please. When, by means of the mode of dealing with him, you deter all other men from following similar courses, you provide security, not against one man alone, but many men, any number of men, of men undetected, and not in your power, each of whom may be guilty of many crimes before he can be stopt.

On this point it is only necessary, for form's sake, to write down what is the fact; for every human being of common reflection, must anticipate the observation before it is made. If an assembly of ingenious men, in the character of legislators, had taken pains to devise a method of dealing with delinquents, which, while it had some appearance of securing society from the crimes of the detected individual, should be, to the greatest possible degree, devoid, both of the reality and even the appearance of any efficacy of deterring other men from the pursuit of similar courses, they could not have devised any thing better calculated for that preposterous end, than the colony of New South Wales. Nothing can operate where it is not. The men to be operated upon are in England; the example which should operate is in New South Wales. Much more might be said, but it is unnecessary. In the great majority of cases, a voyage to New South Wales has not even the appearance of a punishment. Men of that description have neither friends nor affections. They leave behind nobody whom they like, and nobody who likes them. What is it to such men, that they are for a while, or for ever, taken away from England, along, very frequently, with the only sort of persons with whom they have any connection, the companions of their debaucheries and of their crimes?

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## SECTION II.

*Of Colonies, in the conception of which, the idea of Territory is the predominating Idea.*

Of this sort are most of the colonies of the states of modern Europe; the British possessions, for example, in the East and West Indies.

The question is, in what way or ways, abstracting from the questions of population, an outlying territory, considered merely as territory, is calculated to be advantageous; or, in other words, what reasons can any country have for desiring to possess the government of such territories.

There are two ways, which will easily present themselves to every mind, as ways in which advantage may accrue to the governing country. First, these outlying dominions may yield a tribute to the mother country; secondly, they may yield an advantageous trade.

### 1. *Where Tribute to the Mother Country is the Benefit she proposes.*

This will not require many words, as few persons are much in error on the subject. In regard to the West Indies, no such idea as that of a tribute has ever been entertained. Even in regard to those taxes, which a vain and unprofitable attempt was made to impose upon the formerly existing colonies in North America, they were never dreamt of as a tribute, and never spoken of but in a sense contrary to the very idea of a tribute, that of reimbursing to the mother country a part, and no more than a part, of that which they cost her in governing and defending them.

With regard to the East Indies, we believe, there exists more or less of prejudice. Under the ignorance in which Englishmen have remained of East India affairs, it floats in the minds of a great many persons, that, some how or other, a tribute, or what is equivalent to a tribute, does come from the East Indies. Never did an opinion exist, more completely without evidence, contrary to evidence, evidence notorious, and well-known to the persons themselves, by whom the belief is entertained. India, instead of yielding a tribute to England, has never yielded enough for the expence of its own government. What is the proof? That its government has always been in debt; and has been under the necessity of continually augmenting its debt, till it has arrived at a magnitude which it has often itself described as alarming.

So far is India from yielding a tribute to Great Britain, that, in loans and aids, and the expence of fleets and armies, it has cost this country enormous sums. It is no doubt true, that some acts of Parliament have assumed the existence of a tribute from India, or what has been called a surplus revenue, for the use of the nation. But Parliament, we have pretty good experience, cannot make things by affirming them. *Things* are a little more stubborn than the credulity of Englishmen. That, in general, is obedient enough to the affirmations of those who lead the Parliament, and who have sometimes an interest in leading it wrong. *Facts*

take their own course, without regard to the affirmations of Parliament, or the plastic faith of those who follow them.

A general proposition on this subject, may be safely advanced. We may affirm it, as a deduction from the experienced laws of human society, that there is, if not an absolute, at least, a moral impossibility, that a colony should ever benefit the mother country, by yielding it a permanent tribute.

Let any body but consider what is included in the word government; and when he has done that, let him then tell himself, that the colonies must be governed. If he has the sufficient degree of knowledge and reflection, no further proof will be necessary.

No proposition in regard to government is more universal, more free from all exception than this; that a government always spends as much as it finds it possible or safe to extract from the people. It would not suit the limits of the present design, to run over the different governments of the world, for the experimental proof of this proposition. We must invite every reader to do it for himself. Of one thing we are perfectly sure, that the more profoundly he is read in history, the more thoroughly will he be convinced of the universality of the fact.

Now, then, consider whether this universal fact be not inconsistent with the idea of a tribute from a colony. The government of the mother country itself cannot keep its expences within bounds. It takes from the people all it can possibly take, and is still going beyond its resources. But if such is the course of government at home, things must be worse in the colonies. The farther servants are removed from the eye of the master, the worse, generally speaking, their conduct will be. The government of the colonies, managed by delegates from home, is sure to be worse, in all respects, than the government at home; and, as expence is one of the shapes in which the badness of government is most prone to manifest itself, it is sure, above all things, to be in proportion to its resources more expensive. Whatever springs operate at home to restrain the badness of government, cannot fail to operate with diminished force, at the distance of a colony. The conclusion is irresistible. If the government of the mother country is sure to spend up to the resources of the country; and if a still stronger necessity operates upon the government of the colony to produce this effect, how can it possibly afford any tribute?

If it be objected to this conclusion, that this propensity of governments to spend may be corrected, we answer, that this is not the present question. Take governments as, with hardly any exception, they have always been, (this is a pretty wide experience;) and the effect is certain. There is one way, to be sure, of preventing the great evil, and preventing it thoroughly. But there is only one. In the constitution of the government, make the interest of the many to have the ascendancy over the interest of the few, and the expence of government will not be large. The services expected from government may, generally speaking, be all rendered in the best possible manner, at very little expence. Whenever the interests of the many are made, in the framing of governments, to have the

ascendency over the interests of the few, the services of government will always be rendered at the smallest possible expence. So long as the interests of the few are made to have the ascendency over the interests of the many, the services of government are all sure to be rendered at the greatest possible expence. In almost all governments that ever yet existed, the interest of the few has had an ascendency over the interests of the many. In all, the expence of government has, accordingly, been always as great, as, in existing circumstances, the people could be made, or could be made with safety, to give the means of making it.

One other supposition may be urged in favour of the tribute. The expence, it may be said, of governing the colony by a deputation from the mother country, may be escaped, by allowing the colony to govern itself. In that case, the colony will not choose to pay a tribute. If the tribute rests upon the ground of friendship, it will not be lasting. If the mother country extorts it by force, the colony is, in fact, governed by the mother country; and all the expence of that mode of government is ensured. If it be urged that the colony may continue to pay a tribute to the mother country, and that voluntarily, because the mother country may be of use to it; that, we may answer, is a bargain, not a tribute. The mother country, for example, may yield a certain portion of defence. But the colony is saved from the expence of providing for itself that defence which it receives from the mother country, and makes a good bargain if it gets it from the mother country cheaper than it could be provided by itself. In this case, too, the expence incurred by the mother country is apt to be a very full equivalent for the tribute received. It is evident, that this sort of bargain may subsist between any two states whose circumstances it may suit, and is not confined to a mother and daughter country. It is, therefore, no part of the question relating to colonies.

## 2. *Where profits of Trade are the advantage sought by the Mother Country.*

We have now investigated the first of the modes in which a colony, considered as territory merely, may be expected to benefit the mother country; and we have seen the chances of good which it affords. The second of these modes, viz. the trade, by means of which it is supposed that colonies may benefit the mother country, is a topic of some importance; for it is on account of the trade, that colonies have remained an object of affection to Englishmen. It is on account of trade, solely, that the colonies in the West Indies are valued; and though an idea of something like a tribute from the East Indies has till this time maintained a place in the minds of the unthinking part of the community, still it is the trade which has been supposed to be the principal source of the advantage which has been ascribed to what we call "the British Empire in the East."

In the idea of deriving a peculiar advantage from the trade of the colonies, is necessarily included the idea of monopoly. If the trade of the

colony were free, other nations would derive as much advantage from it as the mother country; and the mother country would derive as much advantage from it, if the colony were not a colony.

Dr. Smith affirms that this monopoly can never be of any advantage; must always, on the contrary, be a source of great disadvantage to the mother country.

If the trade of the colony is left open to all the merchants of the mother country, it will no doubt happen, that the competition of these merchants, one with another, will make them sell as cheap in the colony as they can afford to sell, that is, buy as dear as they can afford to buy. The produce of the colony will, in that case, go as cheap to the foreign as to the home consumer.

There is another case; namely, that in which the trade of the colony is placed in the hands of an exclusive company. In that case it is true, that the mother country may obtain a given quantity of the goods of the colony for a less quantity of her own than otherwise she would do. The goods of the mother country are, in that case, placed, with regard to the goods of the colony, in the situation in which those commodities which can only be produced in a limited quantity, particular wines, for example, which can only be produced on one particular spot, are placed with regard to all the rest of the goods in the world. It is evident that any quantity of the rest of the goods in the world may be given for those wines, if people are sufficiently desirous to possess them; that there is no limit, in short, to that quantity, but the unwillingness of people to part with more of the things which they possess, to obtain the commodities which are thus in request. The same would be the case with a colony, the trade of which was entirely in the hands of an exclusive company. The exclusive company, by limiting the quantity of the goods of the mother country which they chose to send to the colony, might compel the colonists to give for that limited quantity any quantity of the produce of their own land and labour, which their desire to obtain the goods of the mother country would admit. If the goods of the mother country were goods which excited a very strong desire, if they were goods of the first necessity, the necessary materials of food or the instruments of their industry, there would be no limit but one to the greatness of the quantity of their own produce, which they might be compelled to pay for a given quantity of the produce of the mother country. When nothing was left to the colony of the whole produce of its labour, but just enough to keep the labourers alive, it could not go any farther. Up to that point, if dependent for articles of the first necessity, it might, by an exclusive company, undoubtedly be stript.

Even where the monopoly is not confined to an exclusive company, but extended to all the merchants of the mother country, she might still, in one supposeable case, draw an ordinary advantage from the trade of the colony.

The facts would be these. Whatever foreign goods the colony bought, she would still be obliged to purchase from the mother country. No doubt, the competition of the merchants of the mother country would, in



this case, compel them to sell as cheap to the colony as to any other country. Wherein, then, would consist the advantage? In this, that England might thus sell in the colony, with the usual profits of stock, certain kinds of goods, which not being able to manufacture so cheaply as some other countries, she would cease to manufacture, except for the monopoly. But still a very natural question arises:—What advantage does she derive from forcing this manufacture, since she makes by it no more than the ordinary profits of stock, and might make the ordinary profits of stock by the same capital in some other employment? The answer is, that she might, by this means, obtain a greater quantity of the goods of the colony, by a given quantity of the produce of her own labour, or what comes to the same thing, an equal quantity of the goods of the colony, by a less quantity of the produce of her own labour, than she could in a case of freedom.

It may be seen to be so in this manner. England desires to purchase, say 10,000 hogsheads of sugar. This is her consumption. For this she will give, of the produce of her own labour, whatever quantity it is necessary to give. She wishes, however, to give as little as possible; and the question is, in what way she may give the least. The sugar is worth, say £500,000. England sends goods to the colony which sell for £500,000. Now, apply the supposition introduced above. Suppose that, if trade were free, these goods from England, which the manufacturers and merchants of England cannot afford to sell for less than £500,000, could be had for £400,000, from some other country. In that case it is evident that the same quantity of these same goods with which England, under the monopoly, purchased 10,000 hogsheads of sugar, would now purchase only 8000; for that is the ratio of the £400,000 to the £500,000. What, then, would happen, supposing England still to resolve upon having 10,000 hogsheads of sugar? One of two things must of necessity happen. Either she will purchase the sugar with the same goods, or she will not. If she purchases it with the same goods, it is evident that she must give a greater quantity of goods; she must give one fifth more of the produce of her labour; one fifth more of her industrious people must be withdrawn from administering to other productions, and employed in enabling her to obtain the same quantity of sugar. This quantity of produce, in that case, the mother country saves, by means of the monopolized trade of the colony. This quantity she loses, by losing such a colony. But, undoubtedly the mother country would, in such a case, endeavour to purchase the sugar, not with such goods as she purchased it with before, but other goods. She would endeavour to purchase it with goods which she could manufacture as cheaply as any other country. But supposing the colony had no demand for any goods which the mother country could afford as cheap as any other country; even in that case the mother country would still have a resource. If there was any country in which she could sell such goods for money, she could purchase the same quantity of sugar, for the same quantity of the produce of her own labour as before.

It is not then true, according to Dr. Smith, that in no case can the mother country derive any peculiar advantage in the way of trade, from

the possession of colonies. We see that there are two cases, in which she may derive an advantage in that way. It remains to inquire what that advantage is ultimately worth; not only what it is in itself independently, but what it is, after compensation is made for all the disadvantages with which the attainment of it is naturally attended.

We are first to enquire what is the value of that advantage, all deductions made, which the mother country may derive, through an exclusive company, from the trade of a colony?

It is very evident, in the first place, that, whatever the mother country gains, the colony loses. Now, if the colony were part of the dominions of a foreign state, there is a certain way of viewing such questions, in which that result would appear to be perfectly desirable. But, suppose that the colony, which is the fact, is not part of the dominions of a foreign state, but of the same state; that it is, in truth, not part of a different country, but of the same country; its subjects not part of a different community, but of the same community; its poverty or riches, not the poverty or riches of another country, but of the same country. How is the result to be viewed in that case? Is it not exactly the same sort of policy, as if Yorkshire were to be drained and oppressed for the benefit of Middlesex? What difference does it make, that one of the portions of the same empire is somewhat farther off than another? Would it, for that reason, be more rational to pillage Caithness, than to pillage Yorkshire, for the sake of Middlesex? Does the wealth of a state consist in the wealth of one part, effected by the misery of another? What opinion must we form of such a rule for guiding the policy of state? Assuredly, this would be a contrivance, not for increasing her wealth and happiness upon the whole. It would be a contrivance for diminishing it. In the first place, when, from one of two parties, equally provided with the means of enjoyment, you take a portion to give it to the other, the fact is,—a fact too well established, and too consonant with the experience of every man, to need illustration here,—that you do not add to the happiness of the one, so much as you take from the happiness of the other; and that you diminish the sum of happiness of the two taken together. This, in truth, is the foundation, upon which the laws for the protection of property rest. As the happiness of one man is, or ought to be, of no more value to the state, than the happiness of another man, if the man who takes from another man a part of his property, added to his own happiness, as much as he took from the happiness of the other, there would be no loss of happiness upon the whole, and the state would have no ground, in utility, on which to interfere.

But this is not all: not only is the quantity of happiness diminished upon the whole, but by that operation which gives the mother country an advantage by the trade of the colony, the quantity of produce of the community is diminished upon the whole. The subjects of the state, taken as a whole, not only enjoy less than they would otherwise enjoy, but they produce less than they would otherwise produce. The state is not a richer state; it is, on the contrary, a poorer state, by means of such a colonial policy.

By means of such a policy, a portion of the capital of the state is employed in a channel in which it is less productive than it would have been in the channel into which it would have gone of its own accord. It is a point established in the science of Political Economy, that it is not good policy to confine consumption to any sort of home manufacture, when it can be purchased more cheaply abroad. It is upon this ground that we have laughed at the late and present outcries of the Germans, because the English sell their goods cheaper than they can make them. The reason is, because when a country continues to consume an article made at home, which it could get cheaper from another country, it does neither more nor less than insist, that it shall employ a certain number of men's labour in providing it with that article, more than it would be necessary to employ if it imported the article; and, of course, it loses completely the benefit of these men's labour, who would otherwise be employed in producing for it something else. The country is, therefore, the poorer, by the whole value of these men's labour. The case is exactly the same, where the colonies are confined to the manufactures of the mother country. When the colony is obliged to employ, for the purpose of obtaining a certain quantity of goods from the mother country, the labour of a greater number of men than she would be obliged to employ to get the same quantity of goods from another country, she loses the labour of all that additional number of men. At the same time, the mother country does not gain it; for if the mother country did not manufacture for the colony, her capital would be liberated to another employment, and would yield the same profits in that as it did in the former employment.

We have still, however, to examine that extraordinary case which we before supposed, in which the mother country cannot produce any sort of commodity whatsoever as cheap as other countries; and, if trade were free, of course would sell nothing in a foreign market. The case here is somewhat altered. In liberating the colony from the monopoly of the mother country, there would be no change of capital from a less to a more productive employment; because, by the supposition, the mother country has not a more productive employment to which her liberated capital can be sent. Events would succeed in the following order. The colony would obtain the goods which it demanded, with a smaller portion of its own labour, would hence be more amply supplied with goods. But it is not supposed that this event would give to its industry a more beneficial direction. In the case of a sugar colony, at any rate, its industry would remain in the same channels as before. Such would be the effects in regard to the colony. What would they be in regard to the mother country? If her capital is no longer employed in manufacturing for the colony, she can always, indeed, employ it with the same profit as before. But she still desires the same quantity of sugar; and her goods will not go so far as before in the purchase of it. Whatever fall would be necessary in the price of her goods to bring them upon a level with the goods of other countries, is equivalent, as far as she is concerned, to a rise of the same amount, in the price of sugar. In this case, the mother country

would lose exactly as much as the colony would gain. The community, taken as a whole, would be neither the richer nor the poorer, for driving things out of the free, into the compulsory channel. The people of the mother country would be so much the richer, the people of the colony would be so much the poorer.

This, however, still remains to be said. There is only one case in which this sort of monopoly would not diminish the produce of the community, and render it positively poorer upon the whole. There is only that one case, supposed above, in which the mother country has not one commodity which she can sell as cheap as other countries. Now this may fairly be regarded as a case, if not altogether, at any rate, very nearly impossible. It is not easy to conceive a country so situated, as not to have advantages in regard to the production of some sorts of commodities, which set her on a level with other countries. As long as this is the case, she can obtain money on as good terms as any other country; and if she can obtain money on as good terms, she can obtain sugar, and every thing else.

The question, then, as to the benefit capable of being derived from a colony through the medium of an exclusive trade, is now brought to a short issue. There is no benefit, except through the medium of a monopoly. There is only one case in which the monopoly does not make the whole community poorer than it would otherwise be. In that case, it does not make the community richer than it would otherwise be; and that case is one, which can either never be realized, or so rarely, as to be one of the rarest of all exceptions to one of the most constant of all general rules. The policy of holding a colony for the benefit of its trade, is, therefore, a bad policy.

To these conclusions, one or two of the doctrines of Dr. Smith will be seen to be opposed, and, therefore, require a few words of elucidation.

If an advantage, in the two cases just explained, would arise from colonies, it would be counterbalanced, he says, by the disadvantage attending the rise in the profits of stock.

Both parts of this doctrine may be disputed. In the first place, it may be disputed, whether the monopoly of the colony trade has any tendency to raise the profits of stock in the mother country. In the next place, it may be disputed, whether a high rate of profits in any country, has any tendency to lay it under any disadvantage in its traffic with other nations.

First, it may be disputed, whether the monopoly of the colony trade would increase the profits. The expulsion of foreign capital would create a vacuum, whence, according to Smith, a rise of profit, and an absorption of capital from the mother country. The question is, whether capital would not flow into the colonies from the mother country, till it reduced the profits in the colony, to the level of the profits in the mother country, instead of raising those in the mother country, in any degree

toward a level with those of the colony. That it would do so, appears to be capable of demonstration. Mr. Ricardo's argument would be very short. Nothing, he would say, can raise the profits of stock, but that which lowers the wages of labour. Nothing can lower the wages of labour, but that which lowers the necessities of the labourer. But nobody will pretend to say, that there is any thing in the monopoly of the colony trade, which has any tendency to lower the price of the necessities of the labourer. It is, therefore, impossible that the monopoly of the colony trade can raise the profits of stock. By those who are acquainted with the profound reasonings of Mr. Ricardo, in proof of the two premises, this argument will be seen to be complete. There is not a demonstration in Euclid, in which the links are more indissoluble. To those who are not acquainted with those reasonings, we are aware that the propositions will appear mysterious; and yet, we are afraid that, in the few words to which we are confined, it will not be possible to give them much satisfaction.

With regard to the last of the two propositions, that nothing can lower the wages of labour, but that which lowers the necessities of the labourer, we may confine ourselves to that combination of circumstances which marks the habitual state, without adverting to the modifications exemplified in those states of circumstances which are to be regarded as exceptions. The habitual state of population is such, that wages are at the lowest terms; and cannot be reduced lower without checking population, that is, reducing the number of labourers. In this case, it is self-evident, that nothing can lower the wages of labour, but lowering the necessities of the labourer. In all, then, except the extraordinary cases, which it would require too many words here to explain, in which a country is but partially peopled, and in which part of the best land is still unemployed, the proposition of Mr. Ricardo is indisputable, that nothing can lower the wages of labour, except a fall in the necessities of the labourer.

Let us next consider the proposition, That nothing can raise the profits of stock but that which lowers the wages of labour.

One thing is perfectly clear, that if the whole of what is produced by the joint operations of capital and labour, were, whatever it is, divided, without deduction, between the owner of the stock, and the labourers whom it employs, in that case, whatever raised the wages of labour, would lower profits of stock, and profits of stock could never rise, except in proportion as wages of labour fell. The whole being divided between the two parties, in whatever proportion the one received more, it is certain that the other would receive less.

But what is here put in the way of supposition, viz. that the whole of what is produced by the joint operations of capital and labour, is divided between the capitalists and the labourers, is literally and rigidly the fact. It is, then, undeniable, that nothing can raise the profits of stock, but that which lowers the wages of labour.

The whole produce, without any exception, of every country, is divided

into three portions, rent, wages, and profits. If there were no rent, and the whole were divided into profits and wages, the case would be clear; because nothing could be added to the one without being detracted from the other.

Rent, however, does, in reality, make no difference. Rent is no part of the joint produce of labour and capital. It is the produce, exclusively, of a particular degree of fertility in particular lands; and is yielded over and above a return to the whole of the labour and capital employed upon that land, over and above a return equal to the joint produce of an equal portion of labour and capital in any other employment.

So much, then, for Dr. Smith's opinion, that the monopoly of the colonial trade raises the profits of stock. Let us next inquire if it be true, that a rise in the profits of stock, if it were produced by the monopoly, would occasion, as he supposes, any discouragement to the foreign trade of the mother country.

It would occasion this discouragement, he says, by raising prices. If, then, it can be shown, that it would certainly not raise prices, every reason for supposing that it would afford any discouragement to foreign trade is taken away. But that a high rate of profits does not, and cannot raise prices, is evident from what has been deduced above. The whole produce of the joint operations of labour and capital being divided between profits and wages, in whatever degree profits rise, wages fall; the cost of production remains the same as before.

Not only does a variation in the state of wages and profits give no obstruction to foreign trade, a variation even in the cost of production gives no obstruction. A nation exports to another country, not because it can make cheaper than another country; for it may continue to export, though it can make nothing cheaper. It exports, because it can, by that means, get something cheaper from another country, than it can make it at home. But how can it, in that case, get it cheaper than it can make it at home? By exchanging for it something which costs it less labour than making it at home would cost it. No matter how much of that commodity it is necessary to give in exchange. So long as what it does give is produced by less labour, than the commodity which it gets for it could be produced by at home, it is the interest of the country to export. Suppose that the same quantity of corn which is produced in England by the labour of 100 men, England can purchase in Poland with a quantity of cotton goods which she has produced with the labour of 90 men; it is evident that England is benefited by importing the corn and exporting the cotton goods, whatever may be the price of the cotton goods in Poland, or the cost of producing them. Suppose that the cotton goods could be produced in Poland with the labour of 85 men, that is, less than they are supposed to be produced with in England. Even that would not hinder the trade between them. Suppose that the same quantity of corn, which is raised in England with the labour of 100 men, is raised in Poland with the labour of 80; in that case, it is plain, that Poland can get with 80 men's labour, through the medium of her corn, the same quantity of cotton

goods which would cost her the labour of 85 men, if she was to make them at home. Both nations, therefore, profit by this transaction; England, to the extent of 10 men's labour, Poland to the extent of 5 men's labour; and the transaction, in a state of freedom, will be sure to take place between them, though England is less favourably situated than Poland with regard to both articles of production.

In what manner this class of transactions is affected by the intervention of the precious metals; in what manner the precious metals distribute themselves, so as to leave the motives to this barter exactly the same as they would be, if no precious metal intervened, it would require too many words here to explain. The reader who recurs for that explanation to Mr. Ricardo, the first author of it, will not lose his time or his pains.

One other disadvantage of the colony trade is adduced by Dr. Smith. It turns the capital of the country out of a more, into a less profitable employment, by turning it from the home to a foreign trade, from a foreign of quick, to a foreign of slow returns, and from a foreign to a carrying trade. This doctrine, too, requires some explanation, and more, to be sufficiently clear, than can here be bestowed upon it. The home trade is not necessarily more advantageous than the foreign, nor the foreign of quick, than the foreign of slow returns, nor any of them all than the carrying trade. These trades, it may be allowed, increase the gross produce of a country, in the order in which Dr. Smith has arranged them. But a country is happy and powerful, not in proportion to its gross, but in proportion to its net revenue; not in proportion to what it consumes for the sake of production, but to what it has over and above the cost of production. This is an important fact, which, in almost all his reasonings Dr. Smith has overlooked. It will hardly, however, be denied, that in various circumstances, any one of these trades, the carrying trade itself, may be more conducive to a net revenue, than any of the rest; and in a state of freedom will be sure to be so, as often as the interest of individuals draws into that channel any portion of the national stock.

We have now, therefore, considered all those cases which, in the study of colonial policy, can be regarded in the light of *species* or classes. There are one or two singular cases, which are of sufficient importance to require a separate mention.

### 3. *Where Maritime Strength is the Object sought by the Mother Country.*

That English law, which established the monopoly of the colonies, at least of the transatlantic ones, professes to have in view, not trade so much as defence. The reason of that round-about policy is in this manner deduced. The defence of England stands very much upon her navy; her navy depends altogether upon her sailors; the colony trade and its monopoly breed sailors; therefore, colonies ought to be cultivated, and their trade monopolized.

Upon the strength of this reasoning, in which, for a long time, it would

have appeared to be little less than impiety to have discovered a flaw, the navigation laws, as they are called, were embraced, with a passionate fondness, by Englishmen.

Nothing is worthy of more attention, in tracing the causes of political evil, than the facility with which mankind are governed by their fears; and the degree of constancy with which, under the influence of that passion, they are governed wrong. The fear of Englishmen to see an enemy in their country has made them do an infinite number of things, which had a much greater tendency to bring enemies into their country than to keep them away.

In nothing, perhaps, have the fears of communities done them so much mischief, as in the taking of securities against enemies. When sufficiently frightened, bad governments found little difficulty in persuading them, that they never could have securities enough. Hence come large standing armies; enormous military establishments; and all the evils which follow in their train. Such are the effects of taking too much security against enemies!

A small share of reflection might teach mankind, that in nothing is the rigid exercise of a sound temperance more indispensable to the well-being of the community than in this. It is clear to reason (alas, that reason should so rarely be the guide in these matters!) that the provision for defence should always be kept down to the lowest possible, rather than always raised to the highest possible terms! At the highest possible terms, the provision for defence really does all the mischief to a community which a foreign enemy *could* do; often does a great deal more than he *would*. A moderate provision against evils of frequent and sudden occurrence, a provision strictly proportioned to the occasion, and not allowed to go beyond it, will save more evil than it produces. All beyond this infallibly produces more evil than it prevents. It enfeebles, by impoverishing the nation, and by degrading with poverty and slavery the minds of those from whom its defence must ultimately proceed. It makes the country, in this manner, a much easier prey to a powerful enemy, than if it had been allowed to gather strength by the accumulation of its wealth, and by that energy in the defence of their country, which the people of a well-governed country alone can evince.

A navy is useful for the defence of Great Britain. But a navy of what extent? One would not, for example, wish the whole people of Great Britain engaged in the navy. The reason, we suppose, would be; because this would not contribute to strength, but weakness. This is an important admission. There is, then, a line to be drawn; a line between that extent of navy which contributes to strength, and that extent which, instead of contributing to strength, produces weakness. Surely it is a matter of first-rate importance to draw that line correctly. What attempt has ever been made to draw that line correctly? What attempt has ever been made to draw it at all? Can any body point out any land-marks which have been set up by the proper authority? Or, has the matter been always managed without measure or rule? And has it not thus always been an easy task to keep the navy in a state of excess,



always beyond the line which separates the degree that would contribute to strength from the degree that infallibly contributes to weakness?

As the passion of England has always been to have too great a navy; a navy which, by its undue expence, contributed to weakness; so it has been its passion to have too many sailors for the supply of that navy. The sailors of a navy are drawn from the sailors of the maritime trade. But a navy of a certain extent requires, for its supply, a maritime trade of only a certain extent. If it goes beyond that extent, all the excess is useless, with regard to the supply of the navy. Now, what reason has ever been assigned to prove, that the maritime traffic of Great Britain would not, without the monopoly of the colonies, afford a sufficient supply of sailors to a sufficient navy? None, whatsoever: none, that will bear to be looked at. But till a reason of that sort, and a reason of indubitable strength, is adduced, the policy of the navigation laws remains totally without a foundation. In that case, it deserves nothing but rejection, as all the world must allow. It is a violent interference with the free and natural course of things; the course into which the interests of the community would otherwise lead them; without any case being made to appear which requires that violent disturbance.

The discussion of this supposed benefit of colonies, we shall not pursue any farther; for, it is a signal proof of the diffusion of liberal ideas, that the policy of the navigation laws has become an object of ridicule in the British Parliament, and finds even there but a small number of defenders.

#### 4. *Where profit from Mines of the precious Metals is the object of the Mother Country.*

There is another singular case, created by mines of the precious metals. A colony may be formed and retained for the sake of the gold and silver it may produce. Of this species of colony, we have something of a specimen in the Spanish colonies of Mexico and Peru. The question is, whether any advantage can ever be derived from a colony of this description? The answer to this question is not doubtful; but it is not very easy, within the limits to which we are confined, to make the evidence of it perfectly clear to every body. In one case, and in one case alone, an advantage may be derived. That is the case, in which the colony contains the richest mines in the world. The richest mines in the world always, in the case of the precious metals, supply the whole world; because, from those mines, the metals can be afforded cheaper than the expense of working will allow them to be afforded from any other mines; and the principle of competition soon excludes the produce of all other mines from the market.

Now, the country, which contains the richest mines, may so order matters, as to gain from foreign countries, on all the precious metals which she sells to them, nearly the whole of that difference which exists between what the metal in working costs to her, and what, in working, it costs at the mines, which, next to hers, are the most fertile in the world.

She must always sell the metal so cheap, as to exclude the metal of those other mines from the market; that is, a trifle cheaper than they can afford to sell it. But, if her mines are sufficiently fertile, the metal may cost her much less in working than the price at which she may thus dispose of it. All the difference she may put in her exchequer. In three ways this might be done. The government might work the mines wholly itself. It might let them to an exclusive company. It might impose a tax upon the produce of the mine. In any one of these ways it might derive a sort of tribute from the rest of the world, on account of the gold and silver with which it supplied them. This could not be done, if the mines, without being taxed, were allowed to be worked by the people at large; because, in that case, the competition of the different adventurers would make them undersell one another, till they reduced the price as low as the cost of working would allow. Could the tax at the mine be duly regulated, that would be the most profitable mode; because the private adventurers would work the mines far more economically, than either the government or an exclusive company.

It is evident that this is a mode of deriving advantage from the possession of the richest mines of the precious metals, very different from that which was pursued by the Spanish government, and which has been so beautifully exposed by Dr. Smith. That government endeavoured to derive advantage from its mines, by preventing other countries from getting any part of their produce, and by accumulating the whole at home. By accumulating at home the whole of the produce of its mines, it believed (such was the state of its mind) that Spain would become exceedingly rich. By preventing other countries from receiving any part of that produce, it believed that it would compel them to continue poor. And, if all countries continued poor, and Spain became exceedingly rich, Spain would be the master of all countries.

In this specimen of political logic, which it would not be difficult to match nearer home, there are two assumptions, and both of them false. In the first place, that a country can accumulate, to any considerable extent, the precious metals; that is, any other way than by locking them up and guarding them in strong holds: In the next place that, if it could accumulate them, it would be richer by that means.

The first of these assumptions, that a country can keep in circulation a greater proportion than other countries of the precious metals, "by hedging in the cuckoo," as it is humourously described by Dr. Smith, has been finely exposed by that illustrious philosopher, and requires no explanation here.

On the second assumption, that a country, if it could hedge in the precious metals, would become richer by that process, a few reflections appear to be required.

It is now sufficiently understood, that money, in any country, supposing other things to remain the same, is valuable just in proportion to its quantity. Take Mr. Hume's supposition, that England were walled round by a wall of brass, and that the quantity of her money were, in one night, by

a miracle, either raised to double, or reduced to one half. In the first case, every piece would be reduced to one half of its former value; in the second case, it would be raised to double its former value, and the value of the whole would remain exactly the same. The country would, therefore, be neither the richer nor the poorer; she would neither produce more nor enjoy more on that account.

It is never then, by *keeping* the precious metals, that a country can derive any advantage from them; it is by the very opposite, by *parting with* them. If it has been foolish enough to hoard up a quantity of the produce of its capital and labour in the shape of gold and silver, it may, when it pleases, make a better use of it. It may exchange it with other countries for something that is useful. Gold and silver, so long as they are hoarded up, are of no use whatsoever. They contribute neither to enjoyment nor production. You may, however, purchase with them, something that is useful. You may exchange them either for some article of luxury, and then they contribute to enjoyment; or you may exchange them for the materials of some manufacture, or the necessaries of the labourer, and then they contribute to production; then the effect of them is to augment the riches, augment the active capital, augment the annual produce of the country. So long as any country hoards up gold and silver, so long as it abstains from parting with them to other countries for other things, so long it deprives itself of a great advantage.

*Conclusion.—Tendency of Colonial Possessions to produce or prolong bad Government.*

If colonies are so little calculated to yield any advantage to the countries that hold them, a very important question suggests itself. What is the reason that nations, the nations of modern Europe, at least, discover so great an affection for them? Is this affection to be *wholly* ascribed to mistaken views of their utility, or partly to other causes?

It never ought to be forgotten, that, in every country, there is "a Few," and there is "a Many;" that in all countries in which the government is not very good, the interest of "the Few" prevails over the interest of "the Many," and is promoted at their expence. "The Few" is the part that governs; "the Many" the part that is governed. It is according to the interest of "the Few" that colonies should be cultivated. This, if it is true, accounts for the attachment to colonies, which most of the countries, that is, of the governments of modern Europe, have displayed. In what way it is true, a short explanation will sufficiently disclose.

Sancho Panza had a scheme for deriving advantage from the government of an island. He would sell the people for slaves, and put the money in his pocket. "The Few," in some countries, find in colonies, a thing which is very dear to them; they find, the one part of them, the precious matter with which to influence; the other, the precious matter with which to be influenced;—the one, the precious matter with which

to make political dependents; the other, the precious matter with which they are made political dependents;—the one, the precious matter by which they augment their power; the other, the precious matter by which they augment their riches. Both portions of the “ruling Few,” therefore, find their account in the possession of colonies. There is not one of the colonies but what augments the number of places. There are governorships and judgeships, and a long train of *et ceteras*; and above all, there is not one of them but what requires an additional number of troops, and an additional portion of navy. In every additional portion of army and navy, beside the glory of the thing, there are generalships, and colonelships, and captainships, and lieutenantships, and in the equipping and supplying of additional portions of army and navy, there are always gains, which may be thrown in the way of a friend. All this is enough to account for a very considerable quantity of affection maintained towards colonies.

But beside all this, there is another thing of still greater importance; a thing, indeed, to which, in whatever point of view we regard it, hardly any thing else can be esteemed of equal importance. The colonies are a grand source of wars. Now wars, even in countries completely arbitrary and despotical, have so many things agreeable to the ruling few, that the ruling few hardly ever seem to be happy, except when engaged in them. There is nothing to which history bears so invariable a testimony as this. Nothing is more remarkable than the frivolous causes which almost always suffice for going to war, even when there is little or no prospect of gaining, often when there is the greatest prospect of losing by it, and that, even in their own sense of losing. But if the motives for being as much as possible in war are so very strong, even to governments which are already perfectly despotic, they are much stronger in the case of governments, which are not yet perfectly despotic, of governments of which the power is still, in any considerable degree, limited and restrained.

There is nothing in the world, where a government is, in any degree, limited and restrained, so useful for getting rid of all limit and restraint, as wars. The power of almost all governments is greater during war than during peace. But in the case of limited governments, it is so, in a very remarkable degree.

In the first place, there is the physical force of the army, and the terror and awe which it impresses upon the minds of men. In the next place, there is the splendour and parade, which captivate and subdue the imagination, and make men contented, one would almost say happy, to be slaves. All this surely is not of small importance. Then there is an additional power with which the government is entrusted during war. And, far above all, when the government is limited by the will of only a certain portion of the people; as, it is, under the British government, by the will of those who supply with members the two houses of Parliament; war affords the greatest portion of the precious matter with which that will may be guided and secured. Nothing augments so much the quantity of that portion of the national wealth which is placed at the command of

the government, as war. Of course, nothing puts it in the power of government to create so great a number of dependents, so great a number of persons, bound by their hopes and fears to do and say whatever it wishes them to do and say.

Of the proposition, that colonies are a grand source of wars, and of additional expence in wars; that expence, by which the ruling few always profit at the cost of the subject many; it is not probable that much of proof will be required.

With regard to additional expence, it can hardly appear to be less than self-evident. Whenever a war breaks out, additional troops, and an additional portion of navy, are always required for the protection of the colonies. Even during peace, the colonies afford the pretext for a large portion of the peace establishment, as it is called; that is, a mass of warlike apparatus and expence, which would be burdensome even in a season of war. How much the cost amounts to, of a small additional portion, not to speak of a large additional portion, of army and navy, Englishmen have had experience to instruct them; and how great the mischief which is done by every particle of unnecessary expence, they are daily becoming more and more capable of seeing and understanding.

That the colonies multiply exceedingly the causes and pretexts of war, is matter of history; and might have been foreseen, before reaping the fruits of a bitter experience. Whatever brings you in contact with a greater number of states, increases, in the same proportion, those clashings of interest and pride, out of which the pretexts for war are frequently created. It would exhibit a result, which probably would surprise a good many readers, if any body would examine all the wars which have afflicted this country, from the time when she first began to have colonies, and would show how very great a proportion of them have grown out of colony disputes.

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THE ARTICLE

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# LAW OF NATIONS.

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## I.

*Ideas involved in the term Law.—These ideas how modified in the term Law of Nations.—The only sanction applicable to the Law of Nations is the popular sanction.—What dependence may be placed upon the popular sanction.*

**I**N the meaning of the word Law, three principal ideas are involved; that of a Command, that of a Sanction, and that of the Authority from which the command proceeds.

Every law imports, that something is to be done; or to be left undone.

But a Command is impotent, unless there is the power of enforcing it. The power of enforcing a command, is the power of inflicting penalties, if the command is not obeyed. And the applicability of the penalties constitutes the Sanction.

There is more difficulty in conveying an exact conception of the Authority which is necessary to give existence to a law. It is evident, that it is not every command, enforced by penalties, to which we should extend such a title. A law is not confined to a single act; it embraces a class of acts; it is not confined to the acts of one man; it embraces those of a community of men. And the authority from which it emanates must be an authority which that community are in the habit of obeying. An authority to which only a temporary obedience is paid, does not come up to the notion of that authority which is requisite to give existence to laws; for thus, the commands of a hostile army, committing plunder, would be laws.

The conditions, which we have thus described, may all be visibly traced, in the laws which governments lay down for the communities to which they belong. There we observe *the command*; there *the punishment* prescribed for its violation; and there *the commanding authority* to which obedience is habitually paid.

Of these conditions how many can be said to belong to any thing included under the term Law of Nations?

By that term is understood, something which either does, or which, it is supposed, ought to bind the conduct of one nation towards another.

But it is not understood, that one nation has a right to command another. When one nation can be commanded by another, it is dependent upon that other; and the laws of dependence are different from those which we are at present considering. An independent nation would resent, instead of obeying, a command delivered to it by another. Neither can it properly be said, that nations, taken aggregately, prescribe those laws to one another severally; for when did they ever combine in any such prescription? When did they ever combine to vindicate the violations of them? It is therefore clear, that the term Command cannot be applied, at least in the ordinary sense, to the laws of nations.

In the next place, it would not seem, that any thing, deserving the name of Sanction, belongs to them. Sanction, we have already seen, is punishment. Suppose nations to threaten one another with punishment, for the violation of any thing understood to be a law of nations. To punish implies superiority of strength. For the strong, therefore, the law of nations, may perhaps have a sanction, as against the weak. But what can it have as against the strong? Is it the strong, however, or is it the weak, by whom it is most liable to be violated? The answer is obvious and undeniable.—As against those from whom almost solely any violation of the laws of nations need be apprehended, there appears, therefore, to be no sanction at all.

If it be said, that several nations may combine to give it a sanction in favour of the weak, we might, for a practical answer, appeal to experience. Has it been done? Have nations, in reality, combined, so constantly and steadily, in favour of the law of nations, as to create, by the certainty of punishment, an overpowering motive, to unjust powers, to abstain from its violation? For, as the laws against murder would have no efficacy, if the punishment prescribed were not applied once in fifty, or a hundred times, so the penalty against the violations of the law of nations can have no efficacy, if it is applied unsteadily and rarely.

On the mode in which it has been applied, we may appeal to a great authority. Montesquieu says—“ Le droit public est plus connu en Europe qu'en Asie: cependant on peut dire que les passions des princes —la patience des peuples—la flatterie des écrivains, en ont corrompu tous les principes. Ce droit, tel qu'il est aujourd'hui, est une science qui apprend aux princes jusqu'à quel point ils peuvent violer la justice, sans choquer leurs intérêts.”—(*Lett. Persanes*, XCIV.)

To go a little deeper, we may consider, whether the interest of nations, that which, in the long run, governs them all, can ever produce combinations, from which an effectual sanction, of the nature in question, can be expected to proceed. That they would derive some advantage from the general observation of those maxims which have been called laws of nations, frivolous as are the points upon which the greater part of them turn, cannot be denied. These advantages, however, are seen at a distance, and with the mind's eye; they are speculative, rather than sensible.

The inconveniencies, on the other hand, which must result from any movement to lend effect to the law of nations, are immediate and formidable; the whole train of the evils of war are almost sure to arise from them. The latter class of impressions must, in general, be far more powerful than the former; and thus the interposition, in favour of the law of nations, will generally be shunned. A nation is often but too easily stimulated to make war in resentment of injuries done to itself. But it looks with too much coolness upon the injuries done to other nations, to incur the chance of any great inconvenience for the redress of them.

Besides, the object is to be gained by the means of combination. But the combinations of nations are very difficult things. Nations hardly ever combine without quarrelling.

Again, all nations ought to combine for an object common to all. But for all nations to combine in any one enterprise is impossible. Suppose a prince to have violated the law of nations, it would be absurd to suppose that all the countries on earth should conspire to punish him. But if not all, what is to be the selection? Who shall come forward; who stand excused? By those who are condemned to the sacrifice, in what proportion are the contributions to be made? Who is to afford the greatest, and who may come with the least?

It is unnecessary to pursue any farther the analysis of this extraordinary hypothesis. It is evident from what has been said, that it is full of impracticabilities.

Are we, then, obliged to consider the maxims or rules, which pass under the name of Laws of Nations, as utterly without force and influence; and the discourse which is made about them, as mere affectation and impertinence?

Not wholly so. It is of use, that the ordinary intercourse of nations should be conducted according to certain forms, generally known and approved; because they will be observed on all occasions, when there is no particular motive to violate them, and will often prevent disputes which might arise on frivolous occasions. They resemble, in this respect, the ceremonial of a court, or the established forms of polished society.

The objects, however, which are understood to be embraced by the law of nations, are of two sorts. The first are those minor objects, which partake more of form than of substance. The other are objects which deeply affect humanity. That there are certain interests of nations, which it were good to have considered as their rights, and of which it is infinitely to be desired that the violation could be prevented, is most true. But if national law has no penalty annexed to it; if the weaker party, who is wronged, has no means of redress; where, it may be said, is the advantage of such a law? Or where the propriety of calling that a law, which is only a declaration respecting rights; violated by the more powerful party with impunity, as often, and to as great an extent, as he pleases?

There is still, however, a power, which, though it be not the physical force, either of one state, or of a combination of states, applied to vin-

dicate a violation of the law of nations, is not without a great sway in human affairs; and which, as it is very nearly the whole of the power which can be applied to secure the observation of that law, deserves to be carefully considered, that, by duly appreciating its efficacy in this important affair, we may neither trust to it where it will disappoint our expectation, nor neglect the use of it where it may be turned to advantage.

That the human mind is powerfully acted upon by the approbation or disapprobation, by the praise or blame, the contempt and hatred, or the love and admiration, of the rest of mankind, is a matter of fact, which, however it may be accounted for, is beyond the limits of dispute. Over the whole field of morality, with the exception of that narrow part which is protected by penal laws, it is the only power which binds men to good conduct, and renders man agreeable and useful to man. It is evident, also, that where there is not great inequality, it is a power, the binding force of which must be necessarily great. Because every individual, considered in himself, is weak and helpless as compared with the rest of the community. Unless, therefore, he can prevail upon them to abstain from injuring him, he must be exposed to unlimited suffering. And if, on the other hand, he can prevail upon them to combine in doing, or in desiring to do him good, he is put in the way of receiving perpetually the greatest advantages. His motive, therefore, to obtain the favourable, and to avoid the unfavourable regards of the members of the society in which he lives, is of the highest order. But he can obtain their favourable, and avoid their unfavourable sentiments, only by abstaining with scrupulous anxiety from doing any injury to them, and observing all such modes of conduct as are calculated to be useful and agreeable to them.

The value which men set upon these favourable regards of the persons among whom they live, is strikingly manifested by some of the most ordinary forms of their discourse and behaviour. What is more esteemed than character? What injury reckoned more deep and unpardonable than that of the man who exerts himself to take away unworthily any part of the reputation of his neighbours? But what is character, if not the title to the favourable sentiments of other men? And what is the loss of character, but the opinion of other men, that we do not deserve those favourable sentiments, with which they have been accustomed to regard us?

Honour and shame, those emotions, the intensity of which is proved by so many phenomena of human life, are but the feelings which attend upon those different situations. When a man finds himself in possession of the love, the esteem, and admiration of those by whom he is surrounded, he is filled with that delight which the belief of the secure possession of a great source of benefit, cannot fail to inspire: he is fearless, elated, and confident; the principal characteristics of that state of mind which we denominate pride. When he is conscious, on the other hand, of having forfeited in any degree the favourable sentiments of those among whom he lives, he suffers that depression which the loss of a highly valued possession is calculated to create; he ceases, in some degree, to look

forward to his fellow men for good, and feels more or less the apprehension of evil at their hands; he fears to prove how far their disapprobation of him reaches, or to excite them to define it too accurately for themselves; he hangs down his head, and dares not so much as look them in the face.

When men are favourably situated for having those impressions deeply struck; or, more correctly speaking, when those combinations of ideas have consistently and habitually been presented to their minds, the association becomes at last so indissoluble and strong, as to operate, even where the connection among the things themselves may not exist.

When persons, who have been educated in a virtuous society, have, from their infancy, associated the idea of certain actions with the favourable sentiments, and with all the advantages which flow from the favourable sentiments of mankind; and, on the other hand, have associated the idea of certain other actions with the unfavourable sentiments, and all the disadvantages which flow from the unfavourable sentiments of mankind; so painful a feeling comes in time to be raised in them at the very thought of any such action, that they recoil from the perpetration of it, even in cases in which they may be perfectly secure against any unfavourable sentiments, which it might be calculated to inspire.

It will, we apprehend, upon the most accurate investigation, be found, that this is the only power to which we can look for any considerable sanction to the laws of nations;—for almost the only species of punishment to which the violation of them can ever become amenable: it is the only security, therefore, which mankind can ever enjoy for the benefit which laws, well contrived for this purpose, might be calculated to yield.

It is in the next place incumbent upon us to inquire, what dependence can be placed upon this security, in the set of cases now under consideration; and in what circumstances it is calculated to act with the greatest, in what with the least efficacy, toward this important end.

A power, which is wholly derived, from the good which may follow the favourable, the evil which may follow the unfavourable sentiments of mankind, will act most efficaciously upon him who is the most, least efficaciously upon him who is the least exposed to receive good and evil from the immediate inclination of his fellow men.

It seems to be evident, that he who is most weak, as compared with the rest of the community, is the most exposed to receive good or evil in consequence of their favourable or unfavourable sentiments; and that he, on the other hand, who is the most powerful, as compared with them, is the least exposed to receive good or evil in consequence of those sentiments.

When men are nearly upon equality, no one has any chance of inducing other people to abstain from hurting him, but by his abstaining from doing hurt in any way to them. He has no means of inducing them to do him any acts of service, but by their expectation of receiving similar acts of service from him. He is, therefore, intensely interested in its being generally believed of him, that he is a man who is careful to

abstain from injuring, and ever ready to exert himself to do services to others.

The case is exceedingly different, where one man is lifted high above others. In that case he has powerful means of protection against their hurtful acts, powerful means of obtaining their services, altogether independent of his conduct, altogether independent of his disposition either to abstain from injuring them, or to render them service.

So far, therefore, as good conduct arises from a man's dependence upon the sentiments of others; and from this is derived the moral power, to which alone the term moral sanction or obligation can properly belong; the security for good conduct is apt to be lessened, in exact proportion as any one is raised above the level of those composing the mass of the community. If any man possesses absolute power over the rest of the community, he is set free from all dependence upon their sentiments. In this, or nearly in this situation is every despot, having a well established authority. So far as a man is educated as a despot, he can therefore have but few of those associations, on which a conduct, beneficent to others, depends. He is not accustomed to look—for the services which he needs, or the evils which he apprehends, from others—to the opinion which they may entertain of the goodness or badness of his conduct; he cannot, therefore, have that salutary train of transitions from the idea of an evil act to that of the condemnatory sentiments of mankind, and from the condemnatory sentiments of mankind to the forfeiture of all those delights and advantages which spring to him from the operation of their favourable regards;—associations which in men favourably situated become at last habitual, and govern the conduct, as it were, mechanically, without any distinct recurrence to the consequences, upon the thought of which, nevertheless, this salutary and ennobling sentiment ultimately depends, and from which it has been originally derived.

If such is the situation of the despot with regard to these important associations, it is in a proportional degree the situation of all those who partake of that species of elevation. In an Aristocratical country, for example, a country in which there is great inequality of wealth, those who possess the large fortunes, are raised to a great degree above any chance of receiving evil, or of standing deprived of any good, because the great mass, the lower orders, of their countrymen, think unfavourably of them. They are, no doubt, to a considerable degree dependent upon what the people of their own class may think of them; and it is accordingly found, that those qualities and acts, which are useful to that class, are formed into a particular, an Aristocratical code of morality, which is very effectually sanctioned by the favourable and unfavourable sentiments of the Aristocratical body, at the same time that it is exceedingly different from that more enlarged and all-comprehensive code, on which the happiness of the greatest number depends, and to which alone the epithet moral in propriety belongs.

Such being the state of the facts connected with this important case, it remains to see what are the inferences, bearing upon it, which we are entitled to draw from them. We have already ascertained, that the only

power which can operate to sanction the laws of nations; in other words, to reward or punish any nation, according as it obeys, or as it disobeys them, is the approbation and disapprobation of mankind. It follows, that the restraining force is, in this case, determined by the associations which they who govern it may have formed with the approbation and disapprobation of mankind. If they have formed strong associations of a pleasurable kind, with the approbation, strong associations, of the painful kind, with the disapprobation of mankind, the restraining force will be great; if they have not formed such associations, it will be feeble and insignificant. It has, however, appeared, immediately above, that the rulers of a country, of which the government is either monarchical, or aristocratical, can have these associations in but a very low degree; as those alone, who are placed on a level with the great body of other men, are placed in circumstances calculated to produce them. It is only then in countries, the rulers of which are drawn from the mass of the people, in other words, in democratical countries, that the sanction of the laws of nations can be expected to operate with any considerable effect.

## II.

*What is required to give to the Law of Nations its greatest perfection.*  
 —Necessity for a CODE of International Law.—Rights of Nations.

Having thus ascertained, what is the power which restrains from violating the laws of nations, and what the description of rulers upon whom its restraining force is the greatest, we are next to inquire, by what expedients the force of it may be raised to the greatest pitch, and the greatest amount of benefit may be derived from it.

It is sufficiently recognized, that whatever is intended to produce any effect as a punishment, produces it in a greater degree, in proportion as it operates with greater precision and certainty. The inquiry, then, regards the means of giving precision and certainty to those sentiments of the world, on which the binding power of the laws of nations so greatly depends.

Two things are necessary to give precision and certainty to the operation of laws within a community. The one is, a strict determination of what the law is; the second, a tribunal so constituted as to yield prompt and accurate execution to the law. It is evident, that these two are indispensable requisites. Without them no penalties can operate with either precision or certainty. And the case is evidently the same, whether we speak of the laws which regulate the actions of individual and individual within the state; or those which regulate the actions of one state towards another.

It is obvious to remark, in the first place, that with regard to the laws of nations, not one of those two indispensable requisites has ever yet had any existence. It has neither been determined what the laws in question

are, nor has any common tribunal for cognizance of the violations of them ever been constituted. With respect to the last, not so much as the idea of it seems to have been entertained. And with respect to the first, though much has been written, it has been almost wholly in the way of vague and general discourse. Hardly a single accurate definition has yet been applied to any part of the subject.

Here, then, we come to what is obviously the grand enquiry; namely, *first*, What can be done towards defining the laws of nations? and *secondly*, What can be done towards providing a tribunal for yielding prompt and accurate decisions in conformity with them? in other words, for applying with the greatest possible efficacy the opinion of the world for restraining the violation of them?

In the Article JURISPRUDENCE, to which it is necessary for us here to revert, we have sufficiently made it appear, that the foundation of all law is the constitution of rights. Of two parties, unless it is previously determined what each shall enjoy, it can never be determined whether one has improperly disturbed the enjoyment of the other. To determine, however, what a party is to enjoy, is to determine his rights.

Now, then, with regard to nations, the question is, what ought to be constituted rights? or in other words, what would it be desirable for the good of mankind upon the whole, that the several nations should respect as the rights of each other?

This, it is pretty obvious, is one of the most extensive of all inquiries, far exceeding the limits of an article in the present work. We can attempt little more than to show the way in which the inquiry may be carried on.

In the Article JURISPRUDENCE, we have endeavoured to clear up the meaning which in legislation can, without leading to confusion, be alike attached to the term *Rights*; and we have there likewise seen, that there are but two classes of objects, in which individuals can have rights; namely, Things, and Persons.

The case, we believe, will be found the same with respect to nations. They also can have rights, in nothing but Persons, and Things. Of course, it follows, that they can receive injury in nothing but in Persons, or Things.

The inquiry, however, with respect to the rights of nations, is not so simple, as that with respect to the rights of individuals; because between individuals, subject to the same system of laws, the legislature recognizes no state of hostility; but between nations there is the State of War, and the State of Peace; and the rights which are understood to belong to nations, are different in these two different states. In the state of war, nations recognize in one another very few rights respecting either persons or things; they kill the one, and take and destroy the other, with little other limit than the want of ability. In the state of peace they respect as rights belonging to one another, nearly the same things which are constituted rights of individuals, by the ordinary systems of national law.



## III.

*What should be recognized as Rights in time of Peace.—The Property of Individuals.—The Persons of Individuals.—The Property or Dominion of the State.—Dominion in Land.—Dominion in Water.*

We shall begin with the consideration of those things which it would be desirable that nations should respect as the rights of one another, in the time of peace.

And, *first*, of rights with respect to things. As the subject of the rights of nations, things may be divided into two sorts; things belonging to some individual member of the nation, and things belonging to the nation in its collective, or corporate, capacity.

Those rights in things which the nation guarantees to its individual members, within the nation, it would be desirable, with hardly any exception, that nations should respect in regard to one another; that those things, for example, which the government of the country to which a man belongs, would regard, and would compel all its subjects to regard, as his property, the governments of all other countries should respect, and compel all their subjects to respect as his property.

There are two states of circumstances in which questions may arise between nations, respecting the property of their respective subjects. The first, where the property in question, when the cause of dispute arises, is within the country of the individual to whom it belongs. The second, where the property has, by its owner, been previously removed into the foreign country, with which, or some of the inhabitants of which, the dispute has arisen.

1. The first set of circumstances exists between two conterminous countries; the bordering inhabitants of which being neighbours to one another, may, as any other neighbours, infringe the properties of one another. The proper mode of settling these disputes seems to be sufficiently obvious. The rights of the party complaining should be adjudged, according to the laws of the country to which he belongs. But the party sued or prosecuted should be amenable only to the tribunals of the country to which he belongs; that is to say, the question should be tried before the tribunals of the country of the defendant; but the definition of the right in question should be taken from the law of the country to which the plaintiff belongs. It might in some cases be convenient for countries in this situation, to agree in constituting a common judicature, appropriated to these disputes, to consist, for example, of two judges, one of each country, with power to chuse a third, when they could not agree.

The injury complained of may be capable of redress by a remedy of the nature of a civil suit merely; or it may be of that more atrocious sort, theft or robbery, for which the remedy of punishment is required.

It would appear that punishment ought to be apportioned according to the laws of the country to which the party who has incurred it belongs.

Whatever would be the punishment decreed for the offence, if committed against a man of his own country, such a punishment he ought to sustain, for the offence against the man of the other country. The question of punishment is here understood, as extraneous to that of compensation. This ought always to be made to the party injured, where it is capable of being made, and in a case of property it is always capable; if not by the author of the injury, from want of property, or other cause, at least by the government of the country to which he belongs.

2. Where a man has removed his property from his own into another country, there seems to be no peculiar reason why it should be regulated by any other laws than those of the country into which he has removed it; why the rights which it confers should be otherwise determined; or the violation of them otherwise punished.

We have now considered, though in a very general manner (and our limits preclude us from attempting any thing more), the mode in which nations should agree about the rights of one another (in other words, the laws they should establish), in as far as the property of individuals belonging to them, is concerned. After the *property* of individuals, their *persons* are to be considered as requiring the protection of laws.

There is more difficulty in determining what is desirable, as international law, with regard to this part of the subject, than that which regards the property of individuals. It is desirable that the persons of the inhabitants of every country should receive protection, according to the laws of their own country. But it is also desirable that each man should sustain punishment according to the laws of his country; and these two objects are to a certain extent inconsistent with one another.

The inconvenience, however, seems to be greater, in permitting the inhabitants of one country to be punished, according to the laws of another; than in leaving the inhabitants of one country to the same measure of protection against injury to their persons from the inhabitants of other countries, as is afforded to the inhabitants of those countries by their own laws. Many cases, indeed, may be conceived, in which this is a measure of protection which all reasonable men would allow to be inadequate. In such cases, however, the only remedy seems to be the formation of a compact, by which a mode of proceeding, agreeable to the sentiments of both parties, may be positively prescribed. This latter expedient is of course extraneous to that equitable construction which ought to be uniformly applied by the tribunals of one country to the injuries perpetrated, by those whom they may have to judge, upon the inhabitants of another country. If an inhabitant of Persia, for example, should force cow-broth down the throat of an inhabitant and native of Hindostan, the tribunals of Persia should not punish this outrage, as they would punish one Persian for making another swallow the same liquid. To the Persian it would be a trifling injury, and more than a trifling punishment would not be required. To the Hindu, it would be one of the greatest of all conceivable injuries. It ought to be, therefore, put upon the same footing, with an injury of an equal degree, done

to a Persian: the nature of the injury, not the external act, should be the object of consideration: and whatever the punishment which would be awarded against a Persian for one of the greatest injuries of which he could be guilty to a Persian, the same ought to be inflicted upon him, for this, one of the greatest which he could occasion to a Hindu.

Besides the cases in which a government, as representative of the country, may be injured through the individuals who live under its protection, there are cases in which it may be injured more directly. Certain things belong as property to the government, without belonging to any individual; and there are persons, members of the government, or agents of the government, who may receive injuries in that capacity, distinct from those which affect them, as private individuals. These are the cases to which it now remains that we direct our attention.

Those things which belong to government as goods and chattels; its moveables, for example; or the lands which it holds, as any individual holds them, in the way of an estate; there seems to be no reason for considering as subject to any other rules, than those applicable to the goods and chattels which belong to individuals.

Of other things, those to which any government can claim a right, as representative of a nation, must be, either, first, Portions of Land, or, secondly, Portions of Water.

1. The questions which relate to the rights which any nation may claim in any portion of land, are questions regarding boundaries; and these involve the whole of the questions respecting the acquisition of dominion.

To have any standard for determining questions with regard to dominion, the different modes of acquiring dominion, must be recognized; those which are proper to be allowed and respected by other nations must be distinguished from those which are improper, must be accurately defined, and the definitions made known.

For this purpose it is easy to perceive, that the same process is necessary, as that for the definition of rights, described, at some length, in the Article in this work, entitled JURISPRUDENCE, to which we must again refer.

It is necessary, according to that example, that the events which are to be considered as giving commencement to a right of dominion, and those which are to be considered as putting an end to it, should be fully enumerated, and accurately defined.

This is the first part of the process. The other part is, to distinguish the different degrees of dominion. There is a dominion which is perfect, which includes every power over the subject in question, and leaves nothing farther to be acquired, a *dominium plenum*: there is also a dominion, which is but the commencement, as it were, of dominion, and includes the smallest possible fragment of a full dominion. These are the two extremes; and between them are various distinguishable degrees. All these should be fully enumerated, and accurately defined.

When any of those events occurs which are to be considered as giving commencement to rights, it often happens that they are accompanied by circumstances which limit the right they would otherwise convey, and render the dominion less than full. These circumstances ought, also, to be completely enumerated; and the power of each to be accurately defined.

If this were done, an international code would be composed, in which the rights of dominion would be accurately defined; and to determine any question about boundaries, or about the degree of dominion, nothing farther would then be necessary than an adequate inquiry respecting the state of the facts.

The questions would exactly resemble those, which we have already described, in the Article JURISPRUDENCE, in analyzing what is called pleading in judicature. In a question about boundaries there is, let us suppose, a district, over which one country affirms that it has a right of dominion, a dominion more or less complete; and another country denies that it has that right. The first question is, Whether any of those events has occurred, which would give the affirming country a right of dominion? The second question is, Whether, if such an event had occurred, it was accompanied with any of those circumstances which limit dominion, and render it less than full, and if so, under what degree of limiting power they are classed? The third question is, Whether, if an event, thus giving commencement to a right of dominion had occurred, any other event, putting an end to that right, had subsequently occurred?

We need not here enlarge upon these several topics; because they will be sufficiently understood by those readers who bear in mind the expositions already given in the article referred to; and to those, who do not, we suggest the propriety of recurring to that article, as a preparation for the perusal of this.

It is evidently disproportionate to the limits which we must here prescribe to ourselves, to enumerate the events which it would be agreeable to the interests of mankind in general that nations should regard as giving, and alone giving, commencement and termination to rights of dominion; because, in order to afford an enumeration which would be in any degree instructive, the reasons must be given why one set of events, and not another, should have the privilege in question conferred upon them.

It may be proper, however, in the mean time, to observe, that the events in question will not be found to be numerous, nor very difficult to discover. In fact, they are, and among civilized nations, almost always have been, pretty nearly agreed upon; and they are the questions of modification, and questions of fact, upon which, chiefly, differences have arisen. For example, there is no dispute, that Occupancy, where there is no prior right, is an event which should be considered as giving commencement to a right of dominion. Neither is there any doubt, that the Consent of those who have a right, may transfer that right to others: or in other words, that such consent is an event which gives commencement to

a right in those others. Conquest, also, made in a lawful war, is recognized as an event of the same description; and, it will be found upon inquiry that these do, in fact, constitute the whole. For on every occasion on which dominion is acquired, the territory so acquired must, beforehand, either have belonged to some body, or have belonged to no body. If it belonged to nobody, occupancy is the only event which can be supposed to give commencement to the right. If it belonged to some body, it must be taken from him, either willingly, or by force. If it is taken from him willingly, we have his consent. If it is taken by force, it is by conquest in war, that the new right is created.

It is evidently, however, farther necessary, that the different species of consent should be distinguished; and those to which it would be proper to attach this investitive power, separated accurately from those from which it should be withheld. It is here accordingly, that the doctrine of contracts, would need to be introduced; that the different species of them applicable to this subject, in which all treaties would be included, should be enumerated; that the effects proper to be given to each of them should be defined; and the mode of interpreting them, or fixing the sense which they ought to bear, accurately laid down.

It would also be expedient, after the principal contracts, applicable to international concerns, are ascertained, to exhibit in the international code, *formulae*, with blanks to be filled up, which should be employed by nations on all occasions of such contracts, and being framed with the greatest possible accuracy, would go as far as it would be possible by words to go, in excluding ambiguity, and the grounds of dispute.

With respect to conquest, the last event, calculated to give commencement to rights of dominion, mentioned in the above general enumeration, it is allowed, that as there are some conquests which ought not to be considered as conferring rights of dominion, there are others which ought to be considered as doing so. It is evidently necessary, therefore, that the line of separation should be drawn.

Whether a conquest, however, should or should not be considered as conferring a right of dominion, depends very much upon the nature of the war, through which it is made. If the war be what is regarded as just, and the mode of warfare conformable to the recognized rules, the conquest is apt to be regarded as conferring a legitimate title; if the war, and mode of war, be of a contrary description, the validity of the title conferred by the conquest may be liable to dispute.

It is evident, therefore, that in order to define the species of conquest on which the investitive power in question should be conferred, the circumstances which render a war justifiable, and the mode in which it is justifiable to carry it on, must first be ascertained. This forms the second part of our inquiry: and the question regarding the investitive power of conquest must be deferred, till that enquiry is performed.

2. Having thus far considered the mode in which should be determined the rights which nations acquire over portions of territory, or Land, it

remains that we consider the mode in which their rights should be determined with regard to Waters.

Waters, as concerns the present purpose, are either rivers or the sea. As the sea involves the questions of greatest extent and importance, we shall attend to that part of the subject first.

Even in the language of ordinary discourse, the sea is denominated the common domain of nations.

The first principle with regard to the sea is this, that all nations have an equal right to the use of it. The utility of recognizing this principle is so apparent, that it has never been the subject of any dispute. And all the rights assigned to nations severally, in the enjoyment of this common domain, ought to rise out of this principle; and to be limited by it. Whatever use any nation makes of it, should be such as not to prevent a similar and equal use from being made by other nations. And every use which cannot be shown to have that effect, should be recognized as a right by the law of nations.

The principal use which nations make of the sea, is that of a passage for their ships. Agreeably to the principle which we have recognized, the ships of one nation should pass in such a manner as not to obstruct the passage of those of another. The rules according to which the possible cases of interference should be regulated, are very simple; and are, in fact, laid down and acted upon, with considerable accuracy. They resemble, in all respects, those according to which the vessels of the same country are made to avoid and to regulate their interferences in the rivers of the country, or upon its coasts. There would be no difficulty, therefore, in making accurate definitions of the requisite rights, for insertion in the international code.

The rights being established, the violations of them should be punished, on the same principles as those which we have laid down in regard to the preceding cases. Either property has been injured, or persons. In either case, compensation is an indisputable part of the remedial process, wherever it is practicable. In loss of property it is fully practicable. It is also practicable in many of the injuries done to the person. As in the case of offences committed on land, the rights of the individual who has suffered should be estimated according to the laws of the country to which he belongs; but the punishment of the offender should be measured according to the laws of the country to which he belongs. In the case of piracy, which is robbery, or murder, committed by persons whom no country recognizes, and upon whom, therefore, justice can be demanded from no foreign government, it has hitherto been the practice, that the nation suffering has taken the punishment into its own hands. Accordingly, the punishment of piracy has always been extremely severe. It would be, no doubt, better, if a mode were adopted, by which it would not be necessary for a nation to be judge in its own cause. A rule does not seem impossible to be framed, ac-

eording to which the punishment of piracy might be provided for, by referring those accused of it, either to some general tribunal, constituted for that purpose, or to the tribunals of some nation other than that against which the offence has been perpetrated. A general law, on this subject, to be observed by all nations, would be highly desirable.

Rules, therefore, seem not difficult to be laid down, for regulating the proceedings of nations on the high seas. A distinction, however, is drawn between what is called the *high*, and what is called the *narrow seas*. By the narrow seas is commonly meant, some portion of sea, to a greater or less extent, immediately surrounding a particular country; and in which that country claims peculiar privileges. The question is, whether any such privileges should be allowed, and if allowed, to what extent?

The regulating principle in this, as in other cases, is the general advantage, the principle of utility. There are cases, in which certain privileges, in the waters surrounding a particular country, are of so much importance to that country; and the exercise of those advantages occasions so very little inconvenience to other nations, that what is lost, by all of them taken together, bears no comparison with what is gained by that particular nation. In these cases, the exercise of such privileges should be allowed; they should, however, be defined, in as many instances as possible, and promulgated by insertion in an international code.

Of the privileges in question, are all those which are essential, or to a considerable degree subservient, to the national security. In some cases, the exclusive right of fishing might perhaps come under the same rule. But this is in general provided for, by the necessity of drawing the nets, or curing the fish, upon the land, a privilege which, of course, it is in the power of any nation to give or to withhold.

In obedience to this equitable principle, it appears, that such foppish privileges, as have sometimes been insisted upon, affording no advantage to one nation, which is not wholly at the cost of others—lowering the flag, for example, and such like impositions—should not be recognized by the code of nations.

It appears, also, that those tolls which have been, sometimes, and are levied, at the narrow inlets of some seas, deserve to fall under the same condemnation. The passage through these inlets is a common good to all the nations of the earth which may have a motive to use them; a good of the highest importance to the nations which are situated within, and to which it is the only means of maritime communication; and, while it imparts no evil to the conterminous nation, the toll which that nation levies is an advantage obtained wholly at the cost of others; and imposing upon them a burthen, in the way of obstruction and trouble, which is compensated for by advantage to nobody.

The waters, we have said, in respect to which rights should be assigned to nations, are rivers and the sea. Having stated what appears necessary on the present occasion with respect to the sea, it remains that we offer the few observations required, on the subject of rivers.

Rivers are either the boundary between two countries, or they are wholly within a particular country.

Those which are wholly within a particular country, it seems most agreeable to the principle of utility to regard as wholly belonging to that country. In the case of navigable rivers which pass through several countries, it would indeed be desirable for those countries which are situated higher up than that at the mouth of each, as well as for all those who might thus have intercourse with them, that the navigation of such rivers should be free; but it would be difficult so to regulate this right, as not to affect the security of the country through which a free navigation should thus be allowed; and a slight diminution in its security would be so great a loss to that country as would require, to compensate for it, a very great advantage to those by whom the navigation was enjoyed. Unless where this advantage were very great, it would not, therefore, be agreeable to the principle which should dictate the laws of nations, that the freedom of the navigation should be regulated on any other principles than those of mutual agreement.

In regard to those rivers which flow between two countries, the principle of regulation is sufficiently plain. The benefits derivable from the river should be shared equally between them. Its principle benefits arise from the fishing and from the navigation. The right of fishing in most cases may be fitly distributed, by each party fishing from its own bank to the middle of the stream. The right of navigating of each must be so exercised as not to obstruct the right of the other. In this case the same sort of rules are required, to prevent the ships of the two nations from obstructing one another, in a common river, as are found available to prevent the ships of different individuals from obstructing one another, in a river belonging to one country. There is no difficulty, therefore, here, which it is worth stopping to show how to remove.

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#### IV.

*What should be recognized as Rights in time of War.—What should be regarded as necessary to render the Commencement of a War just.—*

*What should be regarded as just and unjust in the Modes of carrying on a War.*

We have now adduced, what our limits admit to be said, upon the first great branch of the inquiry relative to the law of nations; namely, the rights which they should recognize in one another in the state of peace. We proceed to the second branch, relating wholly to the state of war.

The questions which present themselves for solution relating to the state of war, are either those which respect its commencement, or those which respect the mode of carrying it on.

With respect to the commencement of a war, the principal question is, What are the conditions which should be regarded as necessary to render it just?



As men, in a situation where laws, and the protection derived from them, do not exist, are left to their own protection, and have no means of deterring other men from injuring them, but making them dread injury in return, so nations, which, with respect to one another, have, as we have seen before, but little protection from the legal sanction, are left to supply its place by this dread of injury in return, which, in the case both of individuals and of nations, may be called the *retributive sanction*, and of which, in the case of nations, war is the principal organ.

From this view of the essence and end of war, we lay down immediately one pretty extensive proposition with regard to the conditions necessary to render it just.

As the legal sanction, or punishment for the offences of individuals ought to operate only where some right has been violated, and the violation has been such as to require it, so the retributive sanction of nations, which is war, ought to operate only where some right of the nation, or something which ought to be traced as a right, has been violated, and where the violation has been such as to require that desperate remedy.

But as not all violations which may possibly be committed of the rights of a nation will justify it in inflicting war, the next object is, to draw the line of separation, and distinguish between those violations of the rights of nations which justify, and those which do not justify, the extremity of war.

As the evils which war produces are exceedingly great, it is, first of all, evident, that no violation of rights which is not very great, will, upon the principle which we have so often recognized, suffice to justify it. Of two evils the least is the choice of all sound legislation.

Of the violation of the rights of individuals, in the same country, the cases meet for punishment are capable of being pointed out, with a degree of accuracy, not wanting much of perfection. Of the violation of the rights of nations, committed by one nation against another, the cases which would justify the remedial operation of war are much more difficult to define. The difficulty, indeed, is not universal; for there are cases which may be very satisfactorily defined; and as far as definition can go, it is of the utmost importance that it should be carried. Uncertainty, then, pervades only one part of the field; which the more we are able to lessen, the greater is the advantage in favour of humanity. If a proper code of international law were formed, there would be certain defined violations of the rights of nations which would be pointed out, not only as deserving the indignation and hatred of all the world, but as justifying the injured nation before all the world, in inflicting upon its injurer the calamities of war. There would also be certain other injuries pointed out, of a more doubtful character, which might, or might not, according to circumstances not easy to define, be such as to justify recourse to war. The injuries of this secondary character, also, which might, or might not, according to circumstances, justify a war, are capable of being pointed out with a certain degree of accuracy. To a certain degree, likewise, the circumstances which would convert them

into justifying causes, are capable of being foreseen. So far definition is capable of extending, and so far, of course, it ought to be carried.

In illustration of this latter class of injuries, we may select the most remarkable, perhaps, and important of all the instances; preparations for a threatened attack. A sense of security is one of the most valuable treasures of a nation; and to be deprived of that sense of security, is one of the greatest injuries. But what state of preparation shall, or shall not be considered as justifying the threatened nation in striking the first blow, in order not to give its enemy the advantage of completing his preparations, and making his attack just at the moment when it would be most destructive, it is perhaps impossible to determine for all cases beforehand; though, no doubt, a certain progress may be made towards that determination, and the bounds of uncertainty may be greatly reduced.

We are aware how general, and therefore how unsatisfactory, these observations are, on the important subject of defining those violations of the rights of nations, which ought to be regarded as justificatory causes of war; but at the same time it is to be observed, that not much more could have been done without framing the code, by actually enumerating and defining the violations for which that remedy should be reserved.

Another consideration is now to be weighed. It is evident that whatever injuries are done by one nation to another, compensation may almost always be made for them. It is equally evident, that whatever injury may have been sustained, if compensation is made for it, the justificatory cause of war is removed.

The doctrine of compensation, therefore, is an important part of international jurisprudence. Before recourse is had to war, for any violation of rights, compensation ought first to be demanded; and no war, except in cases fit for exception, should be regarded as just, which this demand had not preceded; a demand which should be made through a constituted organ, and in a predetermined mode, as we shall more fully describe in a subsequent page, when we come to treat of an international tribunal.

As there can be no reason why the demand of compensation should not always precede the use of arms, except in cases of such a necessity as will not allow time for demanding compensation—a necessity for the immediate use of arms, in order to prevent an evil immediately impending—those cases of urgent necessity should, as far as possible, be sought out, and defined.

Other circumstances may be enumerated, as belonging to this first stage of the remedy against a nation which places itself in an attitude affecting the sense of security of any of its neighbours. If a nation is making preparations, or executing any other measures, calculated to excite alarm, it may be called upon to desist from them; or it may be called upon to give security, that it will not make a hostile use of them. Of these securities, hostages are one of the most familiar instances. Various other instances will easily present themselves to the consideration of our rea-

ders. Upon this part of the subject, therefore, it is unnecessary for us to enlarge.

It thus appears that we may lay down, with a considerable degree of precision, the conditions upon which the commencement of a war ought to be regarded as just. It remains, under this head of enquiry, that we show how it may, as far as possible, be determined, what ought to be regarded as just and unjust in the modes of carrying it on.

This is an enquiry of more complexity, a good deal, than the first. In looking out for a guiding principle, it is evidently necessary to keep in view the end to which every just war is of necessity restricted. That is, compensation for an injury received, and security that a fresh injury shall not be committed. Combining this with the grand principle of humanity and utility, in other words, of morality; namely, that all evil, wilfully occasioned, and not calculated to produce a more than equivalent good, is wicked, and to be opposed, we obtain one comprehensive and highly important rule; which is this: That in the modes of carrying on war, every thing should be condemned by the law of nations, which, without being more conducive, or more in any considerable degree, to the attainment of the just end of the war, is much more mischievous to the nation against whom it is done.

As the end is to be gained, in most cases, only by inflicting a loss of men and property, upon the opposing nation, it would be desirable that the distinction should be drawn between the modes of inflicting this loss, which are the most, and those which are the least calculated, to inflict pain and suffering, without being more conducive to the end.

One distinction is sufficiently remarkable; namely, the distinction between the men who are in arms, or actually opposed to the desigus of the belligerent, and the men who are not so; also between the property which belongs to the government of the opposing nation, and that which belongs to private individuals composing the nation.

With respect to the first class of objects, the men in arms, and the property of the government, there is not much difficulty. To produce the loss of them, as rapidly as possible, till the end or purpose of the war is obtained, appears to be a privilege which cannot be separated from the right of warring at all.

With respect to the loss of men, indeed, there is an important restriction. It means the loss of them for the purposes of the war, and no more. If it be practicable to put them in a situation in which they can no longer be of any service to the war, all farther injury to them should be held unjustifiable. Under this rule falls the obligation, so generally recognized, of making our enemies, as often as possible, prisoners, instead of killing them, and of treating them with humanity, while retained in that condition.

That part of the subject, therefore, which relates to men in arms, and to such property as belongs immediately to the government, it is not impossible to include in rules of tolerable precision. The difficulty is, with respect to those individuals who, composing the body of the nation,

form no part of the men in arms, and with respect to the property of such individuals.

Though it would not be correct to say, that these do not contribute, or rather that they may not be made to contribute, to the means with which the government carries on the war; yet it would be absurd not to recognize a very broad distinction between them, and the men and things which are immediately applied, or applicable to the war. A difference, therefore, equally broad, ought, in reason, to be made in the mode of treating them. The mode of treating the one ought to be very different from that of treating the other. As the rule of destruction must be the rule with regard to the first, only limited by certain restrictions; so the rule of forbearance and preservation ought to be the rule with regard to the latter, only to be infringed upon special and justifying circumstances.

Thus far we seem to have travelled with the advantage of light to our path. We may go a little farther with equal certainty, and say, that as far as regards the persons of those who are not engaged in the immediate business of hostility, very few occasions can occur, in which it would be allowable, upon any just principle of international law, to do them any injury. Leaving them out of the question, we narrow it to the case of the property belonging to individuals; and shall now proceed to see how far the protection of it can be embraced within general rules.

We must suppose the case, which is the strongest, that of an invading army. The advantage which is capable of being derived to such an enemy, by seizing and destroying the property of individuals, bears, unless in certain very extraordinary instances, no sort of proportion to the evil inflicted upon the individuals. This, we presume, cannot admit of a dispute. Upon the principle, therefore, so often recognized, as dictating the rules which ought in this affair to be solely obeyed, no such destruction, unless in such instances, ought to be sanctioned by the law of nations. Such property, it is well known, can rarely be counted upon, as any considerable resource; because it is to a very great extent in the power of the people invaded to drive their property away, or to destroy it. The property of individuals, in an invaded country, would in general be a much more certain resource to an invading army, if that army were to purchase from them the articles which it desired. And, perhaps, this would be the most advantageous compromise, of which the circumstances admit; namely, that the invading army should abstain from the violation of private property; but that it should in return have the benefit of an unrestricted market; that nothing should be done on the part of the government of the invaded country to prevent its subjects from buying and selling with the invaders, as they would with any other parties.

It may no doubt be true, that the plunder and devastation of a province, or other portion of a country, must have an effect in diminishing the resources of the government for carrying on the war. In this point of view it must be allowed that the destruction of private property is of some importance to the invading nation with regard to the result of the

war. But the question, in settling the difficulties of international jurisprudence, is not whether an advantage is gained, but whether the advantage, such as it is, be not gained, at too great a cost.

If it be certain that the losing party, in consequence of the destruction in question, loses more than the gaining party gains, it is certain that the two parties, taken together, are losers by the proceeding; and of course that nations, in the aggregate, are losers upon the whole. Nay, it is certain that each nation, taken by itself, is a loser, upon the balance of the cases in which it is liable to lose, and those in which it is liable to gain. If it loses more in the cases in which it bears, than it gains in the cases in which it inflicts invasion; and if it is as liable to bear, as to inflict, which is the usual condition of nations, it follows clearly that it is its interest to concur in a rule which shall protect the property of individuals, in cases of invasion.

Even in that more civilized mode, which has been adopted by invading armies, of availing themselves of the property of individuals, by exacting contributions through the instrumentality of the local authorities; contributions which these authorities are left to partition among the people, as they may deem equitable; though it is admitted that this is a much less hurtful proceeding than military rapine, still we think, it will easily appear, that the evil inflicted upon the contributors is greater than the benefits derived to the receivers.

Unless the amount thus received by an invading army is very considerable, the benefit which is derived, the aid which is gained towards accomplishing the end of the war, must be considered as trifling. But if a contribution, the amount of which can be of any considerable avail towards attaining the object of the war, is levied suddenly upon a particular district, a comparatively small portion of the invaded country, it must operate upon the contributors with a dreadful weight of oppression. Upon an equitable estimate of the circumstances, it can, therefore, hardly fail to appear, that, whether the contribution exacted is heavy or light (it must always be heavy to those who sustain it), the loss to those who suffer must greatly outweigh the advantage to those who receive. If it be so, this mode of exaction should, it is evident, be forbidden by the law of nations.

If these are the principles, upon which an international code, regarding this branch of the subject ought to be constructed, they will enable us to determine the question with regard to the property of individuals in another set of circumstances, to which the rules of civilized society have hardly yet begun to be applied. Whatever rules apply to the property of individuals found upon the land, the same rules ought, by parity of reason, it should seem, to apply to it when found upon the sea.

The conduct of nations, however, has hitherto not been conformable to the parity which appears to belong to the two sets of cases. Some tenderness, more or less, according to the progress in civilization, appears to have been shown, by all but savages, to the property of individuals upon the land. To this hour the property of individuals upon the sea is

made prize of without mercy, by the most civilized nations in the world.

The notions of piracy, in fact, have, on this subject, unhappily prevailed, and governed the minds of men. Pirates make prey of every thing. Sailors, originally, were all pirates. The seafaring state was a belligerent state, of almost every vessel against every other vessel. Even when nations had gradually advanced into a more civilized state, and when their vessels abstained from injury to one another in a period of peace, they appear, when the ties of peace were dissolved, and they were placed with respect to one another in a state of war upon the seas, to have felt the force of none but their old associations, and to have looked upon the state of war as a state of piracy. Two nations at war with one another continue to act towards the property of individuals belonging to one another at sea, exactly as two nations of pirates would do.

Assuredly this is a state of things, to which the present intelligence and morality of the world ought speedily to put an end. The very same reasoning which we have applied to the case of the property of individuals upon the land, is not less conclusive when applied to the property of individuals upon the sea. The loss to the party losing is more than an equivalent for the gain to the party that gains.

There is another consideration of great importance. All nations gain by the free operations of commerce. If then we were to suppose that the losses and gains of the two belligerent parties balanced one another, which yet they never do, there is an advantage derived from their commerce to every nation on the earth to which, in any degree, either directly or indirectly, that commerce extends; which advantage is either lost or diminished, by their preying upon the property of the individuals belonging to one another. This, therefore, is an unquestionable balance of loss, to the general community of nations, which the law of that community ought to endeavour to prevent.

If, then, we should suppose that it were enacted as the law of nations, that the property of individuals passing on the seas should be equally respected, in peace and in war, we may proceed to consider whether any disadvantage, nearly countervailing the general good, would thence accrue to the belligerents.

It may be alleged, that a nation at war with another is retarded in reducing its antagonist, by the riches which the commerce of that antagonist, if undisturbed, will place at its disposal. But it is evident that an advantage to one of two antagonists, when compensated to the other, by a power to overcome that advantage, exactly equivalent, is in reality no advantage at all. Such is the case with the advantage accruing to the nation with which another is at war, when the property of individuals upon the sea is allowed to pass unmolested. If its riches are increased by freedom of commerce, so are those of its antagonist. The advantages are equal, where the circumstances are equal, which, in the majority of cases, they undoubtedly are.

If it be still objected, that there may be cases in which they are not

equal, the answer is obvious, and incontrovertible. There is no general rule without its exceptions, but partial evil must be admitted for general good. Besides, if the case were very remarkable, it might be excepted from the general rule.

If this were adopted as part of the law of nations, all those questions respecting the maritime traffic of *Neutrals*, questions which have been the source of so much troublesome inquiry, so much animosity, and so much mischief, would be immediately at an end. If the traffic of the belligerents, so far as concerned the property of individuals, were free, so would be that of all neutral nations.

Places actually blockaded, that is surrounded with an hostile force for the immediate purpose of being reduced, either by arms, or by famine, would still form exceptions; because the admission of ships into them, with supplies either of food, or munition of war, would be directly at variance with the very object of the blockade.

In all other cases, the admission either of provisions or of instruments of war into a belligerent country, ought, undoubtedly, upon the principle of utility, not to be disturbed. The benefit, except in rare and remarkable cases, could not be material to the country into which they might enter, nor hence the injury to its antagonist; on the other hand, that antagonist would enjoy the same privilege of the free admission of those commodities, and thus they would be equal in all respects. The inconvenience, however, which would thus be saved to the neutrals—the annoyance of search, the loss by detention, the occasions of quarrel—are known to be evils of no ordinary magnitude.

The desertion of sailors from the ships of a belligerent to those of a neutral has given rise to disputes in one instance only, that of Great Britain and the United States of America. The question to be determined, in laying down the principles of international jurisprudence, is, whether this desertion ought to be considered as constituting a ground for the general right of search; in other words, whether the evil to which a belligerent is exposed by desertion, or rather by that portion of desertion which can be prevented by the right of search, is an equivalent for all the evil which is unavoidably produced by it.

Desertion must take place either from the ships of war of the belligerent, or from its merchant ships.

In respect to ships of war, it is so easy for a belligerent to prevent desertion to neutrals; at least in any such degree as to constitute a great evil, that it would be altogether absurd to speak of it as fit to be compared with the evils arising from the right of search. The only occasions on which ships of war can be exposed to desertion to neutrals, must be those on which they go into a neutral port. But on those, comparatively rare, occasions, they can so easily take precaution against desertion, that the danger to which they are exposed is hardly worth regarding.

When the sailors belonging to merchant ships transfer their services to the ships of a neutral, it is not to be called desertion. It can only take

place, in very considerable numbers, when seamen's wages in the neutral country are much higher than in the belligerent. The sailor, in this case, leaves his own for another country, only because he improves his situation by so doing. This is a liberty, which, as it ought to belong to every body, so it ought not to be withheld from the sailor. If, indeed, any nation thinks proper to forbid any class of its people to leave their country, as England with regard to its artificers, other countries cannot help that; but they ought not to be called upon to lend their aid to such an antisocial regulation, by allowing their vessels to be searched, as security against its infringement. Besides, it is evident, that there is a much greater security, arising from the very nature of the case, against the chance of a nation's being, to any considerable degree, deprived of its sailors by any such means. If the sailors go into the neutral country because wages are higher there, a small number only will have gone, when wages, from diminution of the numbers, will begin to rise in the country which they have left, and from increase of the numbers, will begin to fall in the country to which they have been tempted to repair. When the wages of seamen have thus sufficiently risen, in the belligerent country, which they are sure to do if the demand for them rises, the sailors will not only come back from every country in the world, but the sailors of other countries will hurry along with them; and the evil of desertion cures itself.

Only two questions, of any great importance, appear to remain; that relating to the march of troops, for a hostile purpose, through a neutral country, and that relating to the extent to which the operations of a successful war ought to be pursued.

According to the principles which we have already laid down for regulating the proceedings of a hostile army even in the invaded country, namely, that of committing no plunder, and enjoying the right of market, it appears that the right of passing through a neutral country on similar terms should be refused to no party. This rule, while it holds out equal advantages to all belligerents, admits, less than any other rule, grounds of dispute.

The end, which we have already described as that alone the pursuit of which can render any war justifiable, sufficiently defines the extent to which the operations of a successful war ought to proceed. The end of every justifiable war is to obtain compensation for an injury sustained, and security against the repetition of it. The last point, that of security, alone admits any uncertainty. Nations are apt to exaggerate the demand for security; to require too much; very often unconsciously, from the mere cravings of self-love; sometimes fraudulently, as a cover for ambitious views. As the question, however, respecting what may or may not, in each instance, be sufficient security, is a question of fact, not of law, it must be determined, if determined at all, by a tribunal empowered to take cognizance of the facts.



V.

*Of the construction of an International Code, and an International Tribunal.—How the nations might concur in framing an International Code.—How an International Tribunal should be constructed.—Form of procedure before the International Tribunal.*

We have now then laid down the principles by which, in our opinion, the rights of nations, in respect to one another, ought to be determined; and we have shown in what manner those principles should be applied, in order to come to a decision, in the most remarkable cases. The minor points it is, of course, not in our power to illustrate in detail; but that will not, we should hope, be difficult, after the exemplification exhibited, and the satisfactory solutions, at which we seem to have arrived, of all the more considerable questions which the subject presents.

From what has been shown, it is not difficult to see, what would be the course pursued by nations, if they were really actuated by the desire of regulating their general intercourse, both in peace and war, on the principles most advantageous to them all.

Two grand practical measures are obviously not only of primary importance toward the attainment of this end, but are of indispensable necessity toward the attainment of it in any tolerable degree. These are, first, the construction of a Code; and, secondly, the establishment of a Tribunal.

It is perfectly evident, that nations will be much more likely to conform to the principles of intercourse which are best for all, if they have an accurate set of rules to go by, than if they have not. In the first place, there is less room for mistake; in the next, there is less room for plausible pretexts; and last of all, the approbation and disapprobation of the world is sure to act with tenfold concentration, where a precise rule is broken, familiar to all the civilized world, and venerated by all.

How the nations of the civilized world might concur in the framing of such a code, it is not difficult to devise. They might appoint delegates to meet, for that purpose, in any central and convenient place; where, after discussion, and coming to as full an understanding as possible upon all the material points, they might elect some one person, the most capable that could be found, to put these their determinations into the proper words and form, in short, to make a draught of a code of international law, as effectually as possible providing for all the questions, which could arise, upon their interfering interests, between two nations. After this draught was proposed, it should be revised by the delegates, and approved by them, or altered till they deemed it worthy of their approbation. It should then be referred to the several governments, to receive its final sanction from their approbation; but, in the mean time, it should be published in all the principal languages, and circulated as extensively as possible, for the sake of two important advantages. The first would be, that, the intelligence of the whole world being brought to operate upon it, and suggestions obtained from every quarter, it might be made as per-

fect as possible. The second would be, that the eyes of all the world being fixed upon the decision of every nation with respect to the code, every nation might be deterred by shame from objecting to any important article in it.

As the sanction of general opinion is that upon which chiefly, as we have already seen, such a code must rely for its efficiency, not a little will depend upon the mode in which it is recognized and taught. The recognition should in each country have all possible publicity and solemnity. Every circumstance which can tend to diffuse the opinion throughout the earth, that the people of each country attach the highest importance to such a code, is to themselves a first-rate advantage; because it must be of the utmost importance to them, that all the nations of the earth should behave towards them upon the principles of mutual beneficence; and nothing which they can do can have so great a tendency to produce this desirable effect, as its being generally known that they venerate the rules which are established for its attainment.

If nations, then, were really actuated by the desire of regulating their mutual intercourse upon principles mutually beneficent, they would adopt measures for having a code of international law constructed, solemnly recognized, and universally diffused and made known.

But it is not enough that a code should exist; every thing should be done to secure a conduct conformable to it. Nothing is of so much importance for this purpose as a tribunal; before which every case of infringement should be tried, the facts of it fully and completely explored, the nature and degree of the infringement ascertained; and from which a knowledge of every thing material to the case should be as rapidly as possible diffused through the world; before which also all cases of doubt should regularly come for determination: and thus wars, between nations which meant justly, would always be avoided, and a stigma would be set upon those which justice could not content.

The analogy of the code, which is, or ought to be, framed by each state for regulating the intercourse of its own people within its own territory, throws all the illustration which is necessary upon the case of a tribunal for the international code. It is well known, that laws, however carefully and accurately constructed, would be of little avail in any country; if there was not some organ, by means of which it might be determined when individuals had acted in conformity with them, and when they had not; by which also, when any doubt existed respecting the conduct which in any particular case the law required, such doubt might be authoritatively removed, and one determinate line of action prescribed. Without this, it is sufficiently evident, that a small portion of the benefit capable of being derived from laws would actually be attained. It will presently be seen how much of the benefit capable of being derived from an international code must be lost, if it is left destitute of a similar organ. We shall first consider, in what manner an international tribunal might be constructed; and, next, in what manner it might be appointed to act.

As it is understood that questions relating to all nations should come before it, what is desirable is, that all nations should have equal security for good judicature from it, and should look with equal confidence to its decisions.

An obvious expedient for this purpose is, that all nations should contribute equally to its formation; that each, for example, should send to it a delegate, or judge. Its situation should be chosen for its accessibility, and for the means of publicity which it might afford; the last being, beyond comparison, the advantage of greatest importance. As all nations could not easily, or would not, send, it would suffice if the more civilized and leading nations of the world concurred in the design, with such a number of the less considerable as would be sure to follow their example, and would be desirous of deriving advantage from an instrument of protection, which to them would be of peculiar importance.

As it is found by specific experience, and is, indeed, a consequence of the ascertained laws of human nature, that a numerous assembly of men cannot form a good judicatory; and that the best chance for good judicial service is always obtained when only one man judges, under the vigilant eyes of interested and intelligent observers, having full freedom to deliver to the world their sentiments respecting his conduct; the whole of these advantages may be obtained, in this case, by a very effectual expedient. If precedent, also, be wanted, a thing which in certain minds holds the place of reason, it is amply furnished by the Roman law; according to which, a great number of judges having been chosen for the judicial business generally of the year, a selection was made out of that number, according to certain rules, for each particular case.

Every possible advantage, it appears, would be combined in the international tribunal, if the whole body of delegates, or judges, assembled from every country, should, as often as any case for decision came before them, hold a conference, and, after mature deliberation, choose some one individual of their body, upon whom the whole duty of judge should, in that case, devolve; it being the strict duty of the rest to be present during the whole of his proceedings, and each of them to record separately his opinion upon the case, after the decision of the acting judge had been pronounced.

It would be, no doubt, a good general rule, though one can easily foresee cases in which it would be expedient to admit exceptions, that the judge, who is in this manner chosen for each instance of the judicial service, should not be the delegate from any of the countries immediately involved in the dispute. The motive to this is sufficiently apparent.

We apprehend, that few words will be deemed necessary to show how many securities are thus provided for the excellence of the judicial service.

In the first place, it seems impossible to question, that the utmost fairness and impartiality are provided for, in the choice of the judge; because, of the two parties involved in the dispute, the one is represented by a delegate as much as the other, and the rest of the delegates are in-

different between them. In general, therefore, it is evident, that the sinister interest on the two sides being balanced, and there being a great preponderance of interest in favour of nothing but a just decision, that interest will prevail.

The best choice being made of a judge, it is evident that he would be so situated, as to act under the strongest securities for good conduct. Acting singly, he would bear the whole responsibility of the service required at his hands. He would act under the eyes of the rest of the assembled delegates, men versed in the same species of business, chosen on account of their capacity for the service, who could be deceived neither with respect to the diligence which he might exert, nor the fairness and honesty with which he might decide; while he would be watched by the delegates of the respective parties, having the power of interest stimulating them to attention; and would be sure that the merits or demerits of his conduct would be made fully known to the whole, or the greater part of the world.

The judicatory being thus constituted, the mode of proceeding before it may be easily sketched.

The cases may be divided into those brought before it by the parties concerned in the dispute; and those which it would be its duty to take up, when they were not brought before it by any of the parties.

A variety of cases would occur, in which two nations, having a ground of dispute, and being unable to agree, would unite in an application to the international tribunal for an adjustment of their differences. On such occasions, the course of the tribunal would be sufficiently clear. The parties would plead the grounds of their several claims: the judge would determine how far, according to the law, they were competent to support those claims; the parties would adduce their evidence for and against the facts, on which the determination of the claims was found to depend; the judge would receive that evidence, and finally decide. All this is so perfectly conformable to the course of pleading, and receiving proof, in the case of suits between individuals, as analyzed and explained in the Article JURISPRUDENCE, that it is unnecessary to be more particular here. If farther exposition is required, it will be found upon a reference to the article to which we allude. Decision, in this case, it is observable, fully accomplishes its end; because the parties come with an intention of obeying it.

Another, and a numerous class of cases, would probably be constituted, by those who would come before it, complaining of a violation of their rights by another nation, and calling for redress.

This set of cases is analogous to that, in private judicature, when one man prosecutes another for some punishable offence.

It should be incumbent upon the party thus applying to give notice of its intention to the party against which it is to complain, and of the day on which it means that its complaint should be presented.

If both parties are present, when the case comes forward for trial, they both plead, according to the mode described in the Article JURISPRU-

DENCE; evidence is taken upon the decisive facts; and if injury has been committed, the amount of compensation is decreed. When it happens that the defendant is not present, and refuses to plead, or to submit, in this instance, to the jurisdiction of the court, the inquiry should notwithstanding go on; the allegations of the party present should be heard, and the evidence which it adduces should be received. The non-appearance of the party defendant should be treated as an article of evidence to prove the truth of its opponent's allegations. And the fact of not appearing should, itself, be treated as an offence against the law of nations.

It happens, not unfrequently, when nations quarrel, that both parties are in the wrong; and on some of these occasions neither party might think proper to apply to an equitable tribunal. This fact, namely, that of their not applying to the international tribunal, should, itself, as stated before, be marked in the code as an international offence, and should be denounced as such by the international tribunal. But even when two offending parties do not ask for a decision from the international tribunal, it is not proper that other nations should be deprived of the benefit of such a decision. If these decisions constitute a security against injustice from one another to the general community of nations, that security must not be allowed to be impaired by the refractory conduct of those who dread an investigation of their conduct.

Certain forms, not difficult to devise, should be laid down, according to which, on the occurrence of such cases, the tribunal should proceed. First of all, it is evident, that the parties in question should receive intimation of the intention of the court to take cognisance of their disputes, on a certain day. If the parties, one or both, appeared, the case would fall under one of those which have been previously as above considered. If neither party appeared, the court would proceed to estimate the facts which were within its cognisance.

It would have before it one important article of evidence, furnished by the parties themselves, namely, the fact of their non-appearance. This ought to be considered as going far to prove injurious conduct on both sides. The evidence which the court would have before it, to many specific facts, would be liable to be scanty, from the neglect of the parties to adduce their pleas and evidence. The business of the court, in these circumstances, would be, to state correctly such evidence, direct or circumstantial, as it had before it; giving its full weight to the evidence contained in the fact of non-appearance; and to pronounce the decision, which the balance of the evidence, such as it was, might be found to support.

Even in this case, in which the practical effect of a decision of the international court may be supposed to be the least, where neither party is disposed to respect the jurisdiction, the benefit which would be derived would by no means be inconsiderable. A decision solemnly pronounced by such a tribunal, would always have a strong effect upon the imaginations of men. It would fix, and concentrate the disapprobation of mankind.

Such a tribunal would operate as a great school of political morality. By sifting the circumstances, in all the disputes of nations, by distinguishing accurately between the false colours and the true, by stripping off all disguises, by getting at the real facts, and exhibiting them in the true point of view, by presenting all this to the world, and fixing the attention of mankind upon it by all the celebrity of its elevated situation, it would teach men at large to distinguish. By habit of contemplating the approbation of such a court attached to just proceeding, its disapprobation to unjust; men would learn to apply correctly their own approbation and disapprobation; whence would flow the various important effects, which those sentiments justly excited, would naturally and unavoidably produce.

As, for the reasons adduced at the beginning of this article, the intention should never be entertained of supporting the decisions of the international court by force of arms, it remains to be considered what means of another kind could be had recourse to, in order to raise to as high a pitch as possible the motive of nations respectively to yield obedience to its decisions.

We have already spoken of the effect which would be produced, in pointing the sentiments of mankind, and giving strength to the moral sanction, by the existence of an accurate code, and the decisions themselves of a well-constituted tribunal.

To increase this effect to the utmost, publicity should be carried to the highest practicable perfection. The code, of course, ought to be universally promulgated and known. Not only that, but the best means should be in full operation for diffusing a knowledge of the proceedings of the tribunal; a knowledge of the cases investigated, the allegations made, the evidence adduced, the sentence pronounced, and the reasons upon which it is grounded.

The book of the law of nations, and selections from the book of the trials before the international tribunal, should form a subject of study in every school, and a knowledge of them a necessary part of every man's education. In this manner a moral sentiment would grow up, which would, in time, act as a powerful restraining force upon the injustice of nations, and give a wonderful efficacy to the international jurisdiction. No nation would like to be the object of the contempt and hatred of all other nations; to be spoken of by them on all occasions with disgust and indignation. On the other hand, there is no nation, which does not value highly the favourable sentiments of other nations; which is not elevated and delighted with the knowledge that its justice, generosity, and magnanimity, are the theme of general applause. When means are taken to make it certain that what affords a nation this high satisfaction will follow a just and beneficial course of conduct; that what it regards with so much aversion, will infallibly happen to it, if it fails in the propriety of its own behaviour, we may be sure that a strong security is gained for a good intercourse among nations.

Besides this, it does not seem impossible to find various incon-

veniences, to which, by way of penalties, those nations might be subjected, which refused to conform to the prescriptions of the international code.

Various privileges granted to other nations, in their intercourse with one another, might be withheld from that nation which thus demeaned itself in a way so contrary to the general interests. In so far as the withholding of these privileges might operate unfavourably upon individuals belonging to the refractory nations,—individuals who might be little, or not at all, accessory to the guilt, the effect would be the subject of proportional regret. Many, however, in the concerns of mankind, are the good things which can only be attained with a certain accompaniment of evil. The rule of wisdom, in such cases, is, to make sure that the good outweighs the evil, and to reduce the evil to its narrowest dimensions.

We may take an instance first from trivial matters. The ceremonial of other nations might be turned against the nation, which, in this common concern, set itself in opposition to the interests of others. The lowest place in company, the least respectful situation on all occasions of ceremony, might be assigned to the members of that nation, when travelling or residing in other countries. Many of those marks of disrespect, implying injury neither to person nor property, which are checked by penalties in respect to others, might be free from penalties in respect to them. From these instances, adduced merely to illustrate our meaning, it will be easy to see in what manner a number of considerable inconveniences might, from this source, be made to bear upon nations refusing to conform to the beneficial provisions of the international code.

Besides the ceremonial of other nations, means to the same end might be derived from the law. A number of cases might be found in which certain benefits of the law, granted to other foreigners, might be refused to them. They might be denied the privilege of suing in the courts, for example, on account of any thing except some of the higher crimes, the more serious violations of person or property.

Among other things it is sufficiently evident, that this tribunal would be the proper organ for the trial of piracy. When preponderant inconvenience might attend the removing of the trial to the usual seat of the tribunal, it might delegate for that purpose the proper functionaries to the proper spot.

By the application of the principles, which we have thus expounded, an application which implies no peculiar difficulty, and requires nothing more than care in the detail, we are satisfied that all might be done, which is capable of being done, toward securing the benefits of international law.

(F. F.)

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THE ARTICLE

**E D U C A T I O N,**

REPRINTED FROM

THE SUPPLEMENT

TO THE

**ENCYCLOPÆDIA BRITANNICA.**

OF THE

# THE HISTORY

OF THE

REIGN OF

THE

REIGN OF

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# EDUCATION.

*Introduction.—Extent of the Subject.—The different Questions which it involves.*

**T**HE end of Education is to render the individual, as much as possible, an instrument of happiness, first to himself, and next to other beings.

The properties, by which he is fitted to become an instrument to this end, are, partly, those of the body, and partly those of the mind.

Happiness depends upon the condition of the body, either immediately, as where the bodily powers are exerted for the attainment of some good; or mediately, through the mind, as where the condition of the body affects the qualities of the mind.

Education, in the sense in which it is usually taken, and in which it shall here be used, denotes the means which may be employed to render the *mind*, as far as possible, an operative cause of happiness. The mode in which the *body* may be rendered the most fit for operating as an instrument of happiness is generally considered as a different species of inquiry; belonging to physicians, and others, who study the means of perfecting the bodily powers.

Education, then, in the sense in which we are now using the term, may be defined, the best employment of all the means which can be made use of, by man, for rendering the human mind to the greatest possible degree the cause of human happiness. Every thing, therefore, which operates, from the first germ of existence, to the final extinction of life, in such a manner as to affect those qualities of the mind on which happiness in any degree depends, comes within the scope of the present inquiry. Not to turn every thing to account is here, if any where, bad economy, in the most emphatical sense of the phrase.

The field, it will easily be seen, is exceedingly comprehensive. It is everywhere, among enlightened men, a subject of the deepest complaint, that the business of education is ill performed; and that, in this, which might have been supposed the most interesting of all human concerns, the

practical proceedings are far from corresponding with the progress of the human mind. It may be remarked, that, notwithstanding all that has been written on the subject, even the *theory* of education has not kept pace with philosophy; and it is unhappily true, that the *practice* remains to a prodigious distance behind the theory. One reason why the theory, or the combination of ideas which the present state of knowledge might afford for improving the business of education, remains so imperfect, probably is, that the writers have taken but a partial view of the subject; in other words, the greater number have mistaken a part of it for the whole. And another reason of not less importance is, that they have generally contented themselves with vague ideas of the object or end to which education is required as the means. One grand purpose of the present inquiry will be to obviate all those mistakes; and, if not to exhibit that comprehensive view, which we think is desirable, but to which our limits are wholly inadequate; at any rate, to conduct the reader into that train of thought which will lead him to observe for himself the boundaries of the subject. If a more accurate conception is formed of the end, a better estimate will be made of what is suitable as the means.

It has been remarked, that every thing, from the first germ of existence to the final extinction of life, which operates in such a manner as to affect those qualities of the mind on which happiness in any degree depends, comes within the scope of the present inquiry. Those circumstances may be all arranged, according to the hackneyed division, under two heads: They are either physical or moral; meaning by physical, those of a material nature, which operate more immediately upon the material part of the frame; by moral, those of a mental nature, which operate more immediately upon the mental part of the frame.

2. In order to know in what manner things operate upon the mind, it is necessary to know how the mind is constructed. *Quicquid recipitur, recipitur ad modum recipientis.* This is the old aphorism, and nowhere more applicable than to the present case. If you attempt to act upon the mind, in ways not adapted to its nature, the least evil you incur is to lose your labor.

3. As happiness is the end, and the means ought to be nicely adapted to the end, it is necessary to inquire, What are the qualities of mind which chiefly conduce to happiness,—both the happiness of the individual himself, and the happiness of his fellow-creatures?

It appears to us, that this distribution includes the whole of the subject. Each of these divisions branches itself out into a great number of inquiries. And, it is manifest, that the complete developement of any one of them would require a greater space than we can allow for the whole. It is, therefore, necessary for us, if we aim at a comprehensive view, to confine ourselves to a skeleton.

The first of these inquiries is the most practical, and, therefore, likely to be the most interesting. Under the Physical Head, it investigates the mode in which the qualities of the mind are affected by the health, the ailment, the air, the labour, &c. to which the individual is subject.

Under the Moral Head it includes what may be called, 1. Domestic Education, or the mode in which the mind of the individual is liable to be formed by the conduct of the individuals composing the family in which he is born and bred: 2. Technical or scholastic education, including all those exercises upon which the individual is put, as means to the acquisition of habits,—habits either conducive to intellectual and moral excellence, or even to the practice of the manual arts: 3. Social education, or the mode in which the mind of the individual is acted upon by the nature of the political institutions under which he lives.

The two latter divisions comprehend what is more purely theoretical; and the discussion of them offers fewer attractions to that class of readers, unhappily numerous, to whom intellectual exercises have not by habit been rendered delightful. The inquiries, however, which are included under these divisions, are required as a foundation to those included under the first. The fact is, that good practice can, in no case, have any solid foundation but in sound theory. This proposition is not more important, than it is certain. For, What is theory? The *whole* of the knowledge, which we possess upon any subject, put into that order and form in which it is most easy to draw from it good practical rules. Let any one examine this definition, article by article, and show us that it fails in a single particular. To recommend the separation of practice from theory is, therefore, simply, to recommend bad practice.

## SECTION I.

### *Theory of the Human Mind.—Its Importance in the Doctrine of Education.*

1. The first, then, of the inquiries, embraced by the great subject of education, is that which regards the nature of the human mind; and the business is, agreeably to the foregoing definition of theory, to put the knowledge which we possess respecting the human mind, into that order and form, which is most advantageous for drawing from it the practical rules of education. The question is, How the mind, with those properties which it possesses, can, through the operation of certain means, be rendered most conducive to a certain end? To answer this question, the whole of its properties must be known. The whole science of human nature is, therefore, but a branch of the science of education. Nor can education assume its most perfect form, till the science of the human mind has reached its highest point of improvement. Even an outline, however, of the philosophy of the human mind would exceed the bounds of the present article; we must, therefore, show what ought to be done, rather than attempt, in any degree, to execute so extensive a project.

With respect to the human mind, as with respect to every thing else, all that passes with us under the name of knowledge is either matter of experience, or, to carry on the analogy of expression, matter of guess. The first is real knowledge; the properties of the object correspond to it.

The latter is supposititious knowledge, and the properties of the object do or do not correspond to it; most likely not. The first thing desirable is, to make an exact separation of those two kinds of knowledge; and, as much as possible, to confine ourselves to the first.

What, then, is it which we experience with regard to the human mind? And what is it which we guess? We have experience of ourselves, when we *see*, when we *hear*, when we *taste*, when we *imagine*, when we *fear*, when we *love*, when we *desire*; and so on. And we give names, as above, to distinguish what we experience of ourselves, on one of those occasions, from what we experience on another. We have experience of other men exhibiting *signs* of having similar experiences of themselves, that is, of *seeing*, *hearing*, and so on. It is necessary to explain, shortly, what is here meant by a sign. When we ourselves *see*, *hear*, *imagine*, &c. certain actions of ours commonly follow. We know, accordingly, that if any one, observing those actions, were to infer that we had been *seeing*, *hearing*, &c. the inference would be just. As often then as we observe similar actions in other men, we infer that they, too, have been seeing or hearing; and we thus regard the action as the sign.

Having got names to distinguish the state or experience of ourselves, when we say, *I see*, *I hear*, *I wish*, and so on; we find occasion for a name which will distinguish the having any (be it what it may) of those experiences, from the being altogether without them; and, for this purpose, we say, *I feel*, which will apply, generally, to any of the cases in which we say, *I see*, or *hear*, or *remember*, or *fear*; and comprehends the meaning of them all. The term *I think*, is commonly used for a purpose nearly the same. But it is not quite so comprehensive: there are several things which we should include under the term *our experience of our mind*, to which we should not extend the term *I think*. But there is nothing included under it to which we should not extend the term *I feel*. This is truly, therefore, the generic term.

All our experience, then, of the human mind, is confined to the several occasions on which the term *I feel* can be applied. And, now, What does all this experience amount to? What is the knowledge which it affords? It is, first, a knowledge of the *feelings* themselves; we can remember what, one by one, they were. It is, next, a knowledge of the order in which they follow one another; and this is all. But this description, though a just one, is so very general as to be little instructive. It is not easy, however, to speak about those feelings minutely and correctly; because the language which we must apply to them, is ill adapted to the purpose.

Let us advert to the first branch of this knowledge, that of the feelings themselves. The knowledge of the simple cases, may be regarded as easy; the feeling is distinct at the moment of experience, and is distinctly remembered afterwards. But the difficulty is great with the complex cases. It is found, that a great number of simple feelings are apt to become so closely united, as often to assume the appearance of only one feeling, and to render it extremely difficult to distinguish from one



another the simple feelings of which it is composed. And one of the grand questions which divide the philosophers of the present day, is, which feelings are simple, and which are complex. There are two sorts which all have regarded as simple: those which we have when we say, I hear, I see, I feel, I taste, I smell, corresponding to the five senses, and the copies of these sensations, called ideas of sense. Of these, the second take place only in consequence of the first, they are, as it were, a revival of them; not the same feelings with the sensations or impressions on the senses, but feelings which bear a certain resemblance to them. Thus, when a man sees the light of noon, the feeling he has is called an *impression*,—the impression of light; when he shuts his eyes and has a feeling,—the type or relict of the impression,—he is not said to see the light, or to have the *impression* of light, but to *conceive* the light, or have an idea of it.

These two,—*impressions*, and their corresponding *ideas*,—are simple feelings, in the opinion of all philosophers. But there is one set of philosophers who think that these are the only simple feelings, and that all the rest are merely combinations of them. There is another class of philosophers who think that there are original feelings beside impressions and ideas; as those which correspond to the words *remember*, *believe*, *judge*, *space*, *time*, &c. Of the first are Hartley and his followers in England, Condillac and his followers in France; of the second description are Dr. Reid and his followers in this country, Kant and the German school of metaphysicians in general on the Continent.

It is evident, that the determination of this question with regard to the first branch of enquiry, namely, what the feelings are, is of very great importance with regard to the second branch, namely, what is the order in which those feelings succeed one another. For how can it be known how they succeed one another, if we are ignorant which of them enter into those several groups which form the component parts of the train? It is of vast importance, then, for the business of education, that the analysis of mind should be accurately performed; in other words, that all our complex feelings should be accurately resolved into the simple ones of which they are composed. This, too, is of absolute necessity for the accurate use of language; as the greater number of words are employed to denote those groups of simple feelings which we call complex ideas.

In regard to all events, relating to mind or body, our knowledge extends not beyond two points: The first is, a knowledge of the events themselves; the second is, a knowledge of the order of their succession. The expression in words of the first kind of knowledge is history; the expression of the second is philosophy; and to render that expression short and clear is the ultimate aim of philosophy.

The first steps in ascertaining the order of succession among events are familiar and easy. One occurs, and then another, and after that a third, and so on; but at first it is uncertain whether this order is not merely accidental, and such as may never recur. After a time it is ob-

served, that events, similar to those which have already occurred, are occurring again and again. It is next observed, that they are always followed, too, by the same sort of events by which those events were followed, to which they are similar; that these second events are followed, in the third place, by events exactly similar to those which followed the events which they resemble; and that there is, thus, an endless round of the same sequences.

If the order in which one event follows another were always different, we should know events only one by one, and they would be infinitely too numerous to receive names. If we could observe none but very short sequences, if, for example, we could ascertain that one event was, indeed, always followed by one other of the same description, but could not trace any constancy farther, we should thus know events by sequences of twos and twos. But those sequences would also be a great deal too numerous to receive names.

The history of the human mind informs us, that the sequences which are first observed are the short ones. They are still, therefore, too numerous to receive names. But men compound the matter. They give names to sequences which they are most interested in observing, and leave the rest unnamed. When they have occasion to speak of the unnamed successions, they apply to them, the best way they can, the names which they have got; endeavouring to make a partial naming answer an universal purpose. And hence almost all the confusion of language and of thought arises.

The great object, then, is, to ascertain sequences more and more extensive, till, at last, the succession of all events may be reduced to a number of sequences sufficiently small for each of them to receive a name; then, and then only, shall we be able to speak wholly free from confusion.

Language affords an instructive example of this mode of ascertaining sequences. In language, the words are the events. When an ignorant man first hears another speak an unknown language, he hears the sounds one by one, but observes no sequence. At last he gathers a knowledge of the use of a few words, and then he has observed a few sequences; and so he goes on till he understands whatever he hears. The sequences, however, which he has observed, are of no greater extent than is necessary to understand the meaning of the speaker; they are, by consequence, very numerous and confusing.

Next comes the grammarian; and he, by dividing the words into different kinds, observes that these kinds follow one another in a certain order, and thus ascertains more enlarged sequences, which, by consequence reduces their number.

Nor is this all; it is afterwards observed, that words consist, some of one syllable, and some of more than one; that all language may thus be resolved into syllables, and that syllables are much less in number than words; that, therefore, the number of sequences in which they can be formed are less in number, and, by consequence, are more extensive.

This is another step in tracing to the most comprehensive sequences the order of succession in that class of events wherein language consists.

It is afterwards observed, that these syllables themselves are compounded; and it is at last found, that they may all be resolved into a small number of elementary sounds corresponding to the simple letters. All language is then found to consist of a limited number of sequences, made up of the different combinations of a few letters.

It is not pretended that the example of language is exactly parallel to the case which it is brought to illustrate. It is sufficient if it aids the reader in seizing the idea which we mean to convey. It shews the analogy between the analysing of a complex sound, namely, a word, into the simple sounds of which it is composed, to wit, letters; and the analysing of a complex feeling, such as the idea of a rose, into the simple feelings of sight, of touch, of taste, of smell, of which the complex idea or feeling is made up. It affords, also, a proof of the commanding knowledge which is attained of a train of events, by observing the sequences which are formed of the simplest elements into which they can be resolved; and it thus illustrates the two grand operations, by successful perseverance in which the knowledge of the human mind is to be perfected.

It is upon a knowledge of the sequences which take place in the human feelings or thoughts, that the structure of education must be reared. And, though much undoubtedly remains to be cleared up, enough is already known of those sequences to manifest the shameful defects of that education with which our supineness, and love of things as they are, rest perfectly satisfied.

As the happiness, which is the end of education, depends upon the actions of the individual, and as all the actions of man are produced by his feelings or thoughts, the business of education is, to make certain feelings or thoughts take place instead of others. The business of education, then, is to work upon the mental successions. As the sequences among the letters or simple elements of speech, may be made to assume all the differences between nonsense and the most sublime philosophy, so the sequences, in the feelings which constitute human thought, may assume all the differences between the extreme of madness and of wickedness, and the greatest attainable heights of wisdom and virtue: And almost the whole of this is the effect of education. That, at least, all the difference which exists between classes or bodies of men is the effect of education, will, we suppose, without entering into the dispute about individual distinctions, be readily granted; that it is education wholly which constitutes the remarkable difference between the Turk and the Englishman, and even the still more remarkable difference between the most cultivated European and the wildest savage. Whatever is made of any class of men, we may then be sure is possible to be made of the whole human race. What a field for exertion! What a prize to be won!

Mr. Hobbs, who saw so much further into the texture of human thought than all who had gone before him, was the first man, as far as we

remember, who pointed out (what is peculiarly *knowledge* in this respect) the order in which our feelings succeed one another, as a distinct object of study. He marked, with sufficient clearness, the existence, and the cause of the sequences; but, after a very slight attempt to trace them, he diverged to other inquiries, which had this but indirectly for their object.

“The succession,” he says (*Human Nature*, ch. 4.) “of conceptions, in the mind, series or consequence” (by *consequence* he means *sequence*) “of one after another, may be casual and incoherent, as in dreams, for the most part; and it may be orderly, as when the former thought introduceth the latter. The cause of the coherence or consequence (*sequence*) of one conception to another, is their first coherence or consequence at that time when they are produced by sense; as, for example, from St. Andrew the mind runneth to St. Peter, because their names are read together; from St. Peter to a stone, for the same cause; from stone to foundation, because we see them together; and, according to this example, the mind may run almost from any thing to any thing. But, as in the sense, the conception of cause and effect may succeed one another, so may they, *after sense*, in the imagination.” By the succession in the *imagination* it is evident he means the succession of *ideas*, as by the succession in *sense* he means the succession of sensations.

Having said that the conceptions of *cause* and *effect* may succeed one another in the sense, and after sense in the imagination, he adds, “And, for the most part, they do so; the cause whereof is the appetite of them who, having a conception of the *end*, have next unto it a conception of the next *means* to that end; as when a man from a thought of honour, to which he hath an appetite, cometh to the thought of wisdom, which is the next means thereunto; and from thence to the thought of study, which is the next means to wisdom.” (Ib.) Here is a declaration with respect to three grand laws in the sequence of our thoughts. The first is, that the succession of ideas follows the same order which takes place in that of the impressions. The second is, that the order of cause and effect is the most common order in the successions in the imagination, that is in the succession of ideas. And the third is, that the appetites of individuals have a great power over the successions of ideas; as the thought of the object which the individual desires, leads him to the thought of that by which he may attain it.

Mr. Locke took notice of the sequence in the train of ideas, or the order in which they follow one another, only for a particular purpose;—to explain the intellectual singularities which distinguish particular men. “Some of our ideas,” he says, “have a natural correspondence and connection one with another. It is the office and excellence of our reason to trace these, and hold them together in that union and correspondence which is founded in their peculiar beings. Besides this, there is another connexion of ideas, wholly owing to chance or custom; ideas that are not at all of kin come to be so united in some men’s minds, that it is very hard to separate them; they always keep in company, and the one no sooner at any time comes into the understanding, but its associate appears with it;

and if they are more than two which are thus united, the whole gang, always inseparable, show themselves together." There is no attempt here to trace the order of sequence, or to ascertain which antecedents are followed by which consequents; and the accidental, rather than the more general phenomena, are those which seem particularly to have struck his attention. He gave, however, a name to the matter of fact. When one idea is regularly followed by another, he called this constancy of conjunction *the association of the ideas*; and this is the name by which, since the time of Locke, it has been commonly distinguished.

Mr. Hume perceived much more distinctly than any of the philosophers who had gone before him, that to philosophize concerning the human mind, was to trace the order of succession among the elementary feelings of the man. He pointed out three great laws or comprehensive sequences, which he thought included the whole. Ideas followed one another, he said, according to *resemblance*, *contiguity* in time and place, and *cause and effect*. The last of these, the sequence according to cause and effect, was very distinctly conceived, and even the cause of it explained by Mr. Hobbs. That of contiguity in time and place is thus satisfactorily explained by Mr. Hume. "It is evident," he says, "that as the senses, in changing their objects, are necessitated to change them regularly, and take them as they lie contiguous to each other, the imagination must, by long custom, acquire the same method of thinking, and run along the parts of space and time in conceiving its objects." (*Treatise of Human Nature*, P. 1. B. 1. sect. 4.) This is a reference to one of the laws pointed out by Hobbs, namely, that the order of succession among the ideas, follows the order that took place among the impressions. Mr. Hume shows, that the order of sense is much governed by contiguity, and why; and assigns this as a sufficient reason of the order which takes place in the imagination. Of the next sequence, that according to resemblance, he gives no account, and only appeals to the consciousness of his reader for the existence of the fact. Mr. Hume farther remarked, that what are called our complex ideas, are only a particular class of cases belonging to the same law—the law of the succession of ideas; every complex idea being only a certain number of simple ideas, which succeed each other so rapidly, as not to be separately distinguished without an effort of thought. This was a great discovery; but it must at the same time be owned, that it was very imperfectly developed by Mr. Hume. That philosopher proceeded, by aid of these principles, to account for the various phenomena of the human mind. But though he made some brilliant developements, it is nevertheless true, that he did not advance very far in the general object. He was misled by the pursuit of a few surprising and paradoxical results, and when he had arrived at them he stopped.

After him, and at a short interval, appeared two philosophers, who were more sober-minded, and had better aims. These were Condillac and Hartley. The first work of Condillac appeared some years before the publication of that of Hartley; but the whole of Hartley's train of thought has so much the air of being his own, that there is abundant reason

to believe the speculations of both philosophers equally original. They both began upon the ground that all simple ideas are copies of impressions; that all complex ideas are only simple ideas united by the principle of association. They proceeded to examine all the phenomena of the human mind, and were of opinion that the principle of association, or the succession of one simple idea after another, according to certain laws, accounts for the whole; that these laws might, by meditation, be ascertained and applied; and that then the human mind would be understood, as far as man has the means of knowing it.

The merit of Condillac is very great. It may yet, perhaps, be truer to say, that he wrote admirably upon philosophy, than that he was a great philosopher. His power consists in expression; he conveys metaphysical ideas with a union of brevity and clearness which never has been surpassed. But though he professed rather to deliver the opinions of others, than to aim at invention, it cannot be denied that he left the science of the human mind in a much better state than he found it; and this is equivalent to discovery. As a teacher, in giving, in this field, a right turn to the speculations of his countrymen, his value is incalculable; and there is, perhaps, no one human being, with the exception of Locke, who was his master, to whom, in this respect, the progress of the human mind is more largely indebted. It is also true, that to form the conception of tracing the sequences among our simple ideas, as comprehending the whole of the philosophy of the human mind, even with the helps which Hume had afforded, and it is more than probable that neither Condillac nor Hartley had ever heard of a work which, according to its author, had fallen dead-born from the press, was philosophical and sagacious in the highest degree.

It must be allowed, however, that, in expounding the various mental phenomena, Condillac does not display the same penetration and force of mind, or the same comprehensiveness, as Dr. Hartley. He made great progress in showing how those phenomena might be resolved into the sequences of simple ideas; but Dr. Hartley made still greater. We do not mean to pronounce a positive opinion either for or against the grand undertaking of Dr. Hartley, to resolve the whole of the mental phenomena of man into sequences of impressions, and the simple ideas which are the copies of them. But we have no hesitation in saying, that he philosophizes with extraordinary power and sagacity; and it is astonishing how many of the mental phenomena he has clearly resolved; how little, in truth, he has left about which any doubt can remain.

We cannot afford to pursue this subject any farther. This much is ascertained,—that the character of the human mind consists in the sequences of its ideas; that the object of education, therefore, is, to provide for the constant production of certain sequences, rather than others; that we cannot be sure of adopting the best means to that end, unless we have the greatest knowledge of the sequences themselves.

In what has been already ascertained on this subject, we have seen that there are two things which have a wonderful power over those sequences. They are, Custom; and Pain and Pleasure. These are the grand

instruments or powers, by the use of which, the purposes of education are to be attained.

Where one idea has followed another a certain number of times, the appearance of the first in the mind is sure to be followed by that of the second; and so on. One of the grand points, then, in the study of education, is to find the means of making, in the most perfect manner, those repetitions on which the beneficial sequences depend.

When we speak of making one idea follow another, and always that which makes part of a good train, instead of one that makes part of a bad train, there is one difficulty; that each idea, taken singly by itself, is as fit to be a part of a bad train as of a good one; for good trains and bad trains are both made out of the same simple elements. Trains, however, take place by sequences of twos, or threes, or any greater number; and the nature of these sequences, as complex parts of a still greater whole, is that which renders the train either salutary or hurtful. Custom is, therefore, to be directed to two points; first, to form those sequences, which make the component parts of a good train; and secondly, to join those sequences together, so as to constitute the trains.

When we speak of making one idea follow another, there must always be a starting point; there must be some one idea from which the train begins to flow; and it is pretty evident that much will depend upon this idea. One grand question, then, is, 'What are the ideas which most frequently operate as the commencement of trains?' Knowing what are the ideas which play this important part, we may attach to them by custom, such trains as are the most beneficent. It has been observed that most, if not all, of our trains, start from a sensation, or some impression upon the external or internal nerves. The question then is, which are those sensations, or aggregates of sensations, which are of the most frequent recurrence? it being obviously of importance, that those which give occasion to the greatest number of trains, should be made, if possible, to give occasion only to the best trains. Now the sensations, or aggregates of sensations, which occur in the ordinary business of life, are those of most frequent recurrence; and from which it is of the greatest importance that beneficial trains should commence. Rising up in the morning, and going to bed at night, are aggregates of this description, common to all mankind; so are the commencement and termination of meals. The practical sagacity of priests, even in the rudest ages of the world, perceived the importance, for giving religious trains an ascendancy in the mind, of uniting them, by early and steady custom, with those perpetually recurring sensations. The morning and evening prayers, the grace before and after meals, have something correspondent to them in the religion of, perhaps, all nations.

It may appear, even from these few reflections and illustrations, that, if the sensations, which are most apt to give commencement to trains of ideas, are skilfully selected, and the trains which lead most surely to the happiness, first of the individual himself, and next of his fellow-creatures, are by custom effectually united with them, a provision of unspeakable importance is made for the happiness of the race.

Beside custom, it was remarked by Hobbs, that appetite had a great power over the mental trains. But appetite is the feeling toward pleasure or pain in prospect; that is, future pleasure or pain. To say that appetite, therefore, has power over the mental trains, is to say, that the prospect of pleasure or pain has. That this is true, every man knows by his own experience. The best means, then, of applying the prospect of pleasure and pain to render beneficent trains perpetual in the mind, is the discovery to be made, and to be recommended to mankind.

The way in which pleasure and pain affect the trains of the mind is, as ends. As a train commences in some present sensation, so it may be conceived as terminating in the idea of some future pleasure or pain. The intermediate ideas, between the commencement and the end, may be either of the beneficent description or the hurtful. Suppose the sight of a fine equipage to be the commencement, and the riches which afford it, the appetite, or the end of a train, in the mind of two individuals at the same time. The intermediate ideas in the mind of *the one* may be beneficent, in the other hurtful. The mind of *the one* immediately runs over all the honourable and useful modes of acquiring riches, the acquisition of the most rare and useful qualities, the eager watch of all the best opportunities of bringing them into action, and the steady industry with which they may be applied. That of the other recurs to none but the vicious modes of acquiring riches—by lucky accidents, the arts of the adventurer and impostor, by rapine and plunder, perhaps on the largest scale, by all the honours and glories of war. Suppose the one of these trains to be habitual among individuals, the other not: What a difference for mankind!

It is unnecessary to adduce farther instances for the elucidation of this part of our mental constitution. What, in this portion of the field, requires to be done for the science of education, appears to be, First, to ascertain, what are the ends, the really ultimate objects of human desire; Next, what are the most beneficent means of attaining those objects; and Lastly, to accustom the mind to fill up the intermediate space between the present sensation and the ultimate object, with nothing but the ideas of those beneficent means. We are perfectly aware that these instructions are far too general. But we hope it will be carried in mind, that little beyond the most general ideas can be embraced in so confined a sketch; and we are not without an expectation that, such as they are, these expositions will not be wholly without their use.

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## SECTION II.

*Qualities of Mind, to the Production of which the Business of Education should be directed.*

We come now to the second branch of the science of education, or the inquiry what are the qualities with which it is of most importance that the mind of the individual should be endowed. This enquiry we are in



hopes the preceding exposition will enable us very materially to abridge. In one sense, it might undoubtedly be affirmed, that all the desirable qualities of the human mind are included in those beneficent sequences of which we have spoken above. But, as it would require, to make this sufficiently intelligible, a more extensive exposition than we are able to afford, we must content ourselves with the ordinary language, and with a more familiar mode of considering the subject.

That intelligence is one of the qualities in question will not be denied, and may speedily be made to appear. To attain happiness is the object: and, to attain it in the greatest possible degree, all the means to that end, which the compass of nature affords, must be employed in the most perfect possible manner. But all the means which the compass of nature, or the system in which we are placed, affords, can only be known by the most perfect knowledge of that system. The highest measure of knowledge is therefore required. But mere knowledge is not enough; a mere magazine of remembered facts is an useless treasure. Amid the vast variety of known things, there is needed a power of choosing, a power of discerning which of them are conducive, which not, to the ends we have in view. The ingredients of intelligence are two, knowledge and sagacity; the one affording the materials upon which the other is to be exerted; the one, showing what exists; the other, converting it to the greatest use; the one, bringing within our ken what is capable, and what is not capable of being used as means; the other, seizing and combining, at the proper moment, whatever is fittest as means to each particular end. This union, then, of copiousness and energy; this possession of numerous ideas, with the masterly command of them, is one of the more immediate ends to which the business of education is to be directed.

With a view to happiness as the end, another quality will easily present itself as indispensable. Conceive that a man knows the materials which can be employed as means, and is prompt and unerring in the mode of combining them; all this power is lost, if there is anything in his nature which prevents him from using it. If he has any appetite in his nature which leads him to pursue certain things with which the most effectual pursuit of happiness is inconsistent, so far this evil is incurred. A perfect command, then, over a man's appetites and desires; the power of restraining them whenever they lead in a hurtful direction; that possession of himself which insures his judgment against the illusions of the passions, and enables him to pursue constantly what he deliberately approves, is indispensably requisite to enable him to produce the greatest possible quantity of happiness. This is what the ancient philosophers called temperance; not exactly the same with what is called the virtue or grace of temperance, in theological morality, which includes a certain portion (in the doctrines of some theological instructors, a very large portion) of abstinence, and not only of abstinence, or the gratuitous renunciation of pleasure, but of the infliction of voluntary pain. This is done with a view to please the God, or object of worship, and to provide, through his favour, for the happiness of a second, or future life. The temperance of the ancient philosophers had a view only to the happiness

of the present life, and consisted in the power of resisting the immediate propensity, if yielding to it would lead to an overbalance of evil or prevent the enjoyment of a superior good, in whatever the good or evil of the present life consists. This resisting power consists of two parts; the power of resisting pleasure, and that of resisting pain, the last of which has an appropriate name, and is called Fortitude.

These two qualities, the intelligence which can always choose the best possible means, and the strength which overcomes the misguiding propensities, appear to be sufficient for the happiness of the individual himself; to the pursuit of which it cannot be doubted that he always has sufficient motives. But education, we have said, should be an instrument to render the individual the best possible artificer of happiness, not to himself alone, but also to others. What, then, are the qualities with which he ought to be endowed, to make him produce the greatest possible quantity of happiness to others?

It is evident enough to see what is the first grand division. A man can affect the happiness of others, either by abstaining from doing them harm, or by doing them positive good. To abstain from doing them harm, receives the name of Justice; to do positive good receives that of Generosity. Justice and generosity, then, are the two qualities by which man is fitted to promote the happiness of his fellow-creatures. And it thus appears, that the four cardinal virtues of the ancients do pretty completely include all the qualities, to the possession of which it is desirable that the human mind should be trained. The defect, however, of this description is, that it is far too general. It is evident that the train of mental events which conduct to the proposed results must be far more particularized to insure, in any considerable degree, the effects of instruction; and it must be confessed that the ethical instructions of the ancients failed by remaining too much in generals. What is wanting is, that the incidents of human life should be skillfully classified; both those on the occasion of which they who are the objects of the good acts are pointed out for the receipt of them, and those on the occasion of which they who are to be the instruments are called upon for the performance. It thus appears that the science of Ethics, as well as the science of Intellectuals, must be carried to perfection, before the best foundation is obtained for the science of Education.

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### SECTION III.

*Happiness, the End to which Education is devoted.—Wherein it consists, not yet determined.*

We have spoken of the qualities which are subservient to human happiness, as means to an end. But, before means can be skillfully adapted to an end, the end must be accurately known. To know how the human mind is to be trained to the promotion of happiness, another inquiry then, is necessary; Wherein does human happiness consist?

This is a controverted question; and we have introduced it rather with a view to show the place which it occupies in the theory of education, than that we have it in our power to elucidate a subject about which there is so much diversity of opinion, and which some of the disputants lead into very subtle and intricate inquiries. The importance of the question is sufficiently evident from this, that it is the grand central point, to which all other questions and inquiries converge; that point, by their bearing upon which, the value of all other things is determined. That it should remain itself undetermined, implies, that this branch of philosophy is yet far from its highest point of perfection.

The speculations on this subject, too, may be divided into two great classes; that of those who trace up all the elements of happiness, as they do all those of intellect, to the simple sensations which, by their transformation into ideas, and afterwards into various combinations, compose, they think, all the intellectual and moral phenomena of our nature; another, that of those who are not satisfied with this humble origin, who affirm that there is something in human happiness, and in the human intellect, which soars high above this corporeal level; that there are intellectual as well as moral forms, the resplendent objects of human desire, which can by no means be resolved into the grosser elements of sense. These philosophers speak of eternal and immutable truths; truths which are altogether independent of our limited experience; which are truly universal; which the mind recognizes without the aid of the senses; and which are the objects of pure intellect. They affirm, also, that there is a notion of right and of wrong wholly undervived from human experience, and independent of the laws which regulate, in this world, the happiness and misery of human life; a right and wrong, the distinction between which is perceived, according to some, by a peculiar sense; according to others, by the faculty which discerns pure truth; according to others, by common sense; it is the same, according to some, with the notion of the fitness and unfitness of things; according to others, with the law of nature; according to others, with truth; and there is one eminent philosopher who makes it depend upon sympathy, without determining very clearly whether sympathy depends upon the senses or not.

We cannot too earnestly exhort philosophers to perfect this inquiry; that we may understand at last, not by vague abstract terms, but clearly and precisely, what are the simple ideas included under the term happiness; and what is the real object to which education is pointed; since it is utterly impossible, while there is any vagueness and uncertainty with respect to the end, that there should be the greatest precision and certainty in combining the means.

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#### SECTION IV.

##### *Instruments, and practical Expedients, of Education.*

We come at last to the consideration of the means which are at the disposal of man for endowing the human mind with the qualities on which

the generation of happiness depends. Under this head the discussion of the practical expedients chiefly occurs; but it also embraces some points of theory. The degree in which the useful qualities of human nature are, or are not, under the powers of education, is one of the most important.

This is the subject of a famous controversy, with names of the highest authority on both sides of the question. Helvetius, it is true, stands almost alone, on one side. But Helvetius, alone, is a host. No one man, perhaps, has done so much towards perfecting the *theory* of education as Mons. Helvetius; and his books are pregnant with information of the highest importance. Whoever wishes to understand the groundwork of education, can do nothing more conducive to his end, than to study profoundly the expositions of this philosophical inquirer, whether he adopts his conclusions, in all their latitude, or not. That Helvetius was not more admired in his own country, is owing really to the value of his work. It was too solid, for the frivolous taste of the *gay circles of Paris*, assemblies of pampered noblesse, who wished for nothing but amusement. That he has been so little valued, in this country, is, it must be confessed, owing a little to the same cause; but another has concurred. An opinion has prevailed, a false one, that Helvetius is a peculiarly dangerous enemy to religion; and this has deterred people from reading him; or rather the old people who do not read, have deterred the young who do. There is no book, the author of which does not disguise his unbelief, that can be read with more safety to religion. The author attacks nothing but priestcraft, and in one of the worst of its forms; the popish priestcraft of the dark and middle ages; the idea of which we are well accustomed, in this country, to separate from that of religion. When his phraseology at any time extends, and that is not often, to Christianity itself, or to religion in the abstract, there is nothing calculated to seduce. There is nothing epigrammatic, and sparkling in the expression; nothing sophistical and artfully veiled in the reasoning; a plain proposition is stated, with a plain indication of its evidence; and if your judgment is not convinced, you are not deluded through the fancy.

M. Helvetius says, that if you take men who bring into the world with them the original constituents of their nature, their mental and bodily frame, in that ordinary state of goodness which is common to the great body of mankind,—leaving out of the account the comparatively small number of individuals who come into the world imperfect, and manifestly below the ordinary standard,—you may regard the whole of this great mass of mankind, as equally susceptible of mental excellence; and may trace the causes which make them to differ. If this be so, the power of education embraces every thing between the lowest stage of intellectual and moral rudeness, and the highest state, not only of actual, but of possible perfection. And if the power of education be so immense, the motive for perfecting it is great beyond expression.

The conclusions of Helvetius were controverted directly by Rousseau; and defended, against the strictures of that writer, by the author himself.

We recollect few writers in this country who have embraced them.\* But our authors have contented themselves, rather with rejecting, than disproving; and, at best, have supported their rejection only by some incidental reflection, or the indication of a discrepancy between his conclusions and theirs.

One of the causes, why people have been so much startled, by the extent to which Helvetius has carried the dominion of education, seems to us to be their not including in it nearly so much as he does. They include in it little more than what is expressed by the term schooling; commencing about six or seven years of age, and ending at latest with the arrival of manhood. If this alone is meant by education, it is no doubt true, that education is far indeed from being all-powerful. But if in education is included every thing, which acts upon the being as it comes from the hand of nature, in such a manner as to modify the mind, to render the train of feelings different from what it would otherwise have been; the question is worthy of the most profound consideration. It is probable, that people in general form a very inadequate conception of all the circumstances which act during the first months, perhaps the first moments, of existence, and of the power of those circumstances in giving permanent qualities to the mind. The works of Helvetius would have been invaluable, if they had done nothing more than prove the vast importance of these circumstances, and direct towards them the attention of mankind. Rousseau began this important branch of the study of education. He remarked a variety of important facts, which, till his time, had been almost universally neglected, in the minds of infants, and how much might be done, by those who surround them, to give good or bad qualities to their minds, long before the time at which it had been supposed that education could commence. But Helvetius treated the subject much more profoundly and systematically. He traced the circumstances to the very moment of birth; he showed at how early an age indelible characters may be impressed; nay, that some of the circumstances over which man has a controul (for he speaks not of others), circumstances on which effects of the greatest importance depend, may be traced beyond the birth.

It is evident how much it imports the science of education, that these circumstances should, by careful and continued observation, be all ascertained, and placed in the order best adapted for drawing from them the most efficient practical rules. This is of more importance than determining the question, whether the prodigious difference, which exists among men ordinarily well organized, is owing wholly to the circumstances which have operated upon them since the first moment of their sensitive existence, or is in part produced by original peculiarities. Enough is ascertained to prove, beyond a doubt, that if education does not perform every thing; there is hardly anything which it does not perform: that nothing can be

\* There is one brilliant authority on the side of Helvetius: "It was a favourite opinion of Sir Wm. Jones, that all men are born with an equal capacity of improvement."—Lord Teignmouth's *Life of Sir William Jones*, vol. ii. p. 211.

more fatal than the error of those who relax in the vigilance of education, because nature is powerful, and either renders it impossible for them to accomplish much, or accomplishes a great deal without them: that the feeling is much more conformable to experience, and much more conformable to utility, which ascribes every thing to education, and thus carries the motive for vigilance and industry, in that great concern, to its highest pitch. This much, at any rate, is ascertained, that all the difference which exists, or can ever be made to exist, between one *class* of men, and another, is wholly owing to education. Those peculiarities, if any such there be, which sink a man below, or elevate him above the ordinary state of aptitude to profit by education, have no operation in the case of large numbers, or bodies. But large numbers or bodies of men are raised to a high degree of mental excellence; and might, without doubt, be raised to still higher. Other large bodies, or whole nations, have been found in so very low a mental state, as to be little above the brutes. All this vast distance is undeniably the effect of education. This much, therefore, may be affirmed on the side of Helvetius; that a prodigious difference is produced by education; while, on the other hand, it is rather assumed than proved, that any difference exists, but that which difference of education creates.

*Circumstances of the Physical Kind which operate upon the Mind in the way of Education.*

The circumstances which are included under the term Education, in the comprehensive sense in which we have defined it, may be divided, we have said, into Physical, and Moral. We shall now consider the two classes in the order in which we have named them; and have here again to remind the reader, that we are limited to the task of pointing out what we should wish to be done, rather than permitted to attempt the performance.

Three things are desirable with regard to the physical circumstances which operate in the way of education favourably or unfavourably; to collect them fully; to appreciate them duly; and to place them in the order which is most favourable for drawing from them practical rules.

This is a service (common to the sciences of education and mind) which has been very imperfectly rendered. It has been chiefly reserved to medical men to observe the physical circumstances which affect the body and mind of man; but of medical men few have been much skilled in the observation of mental phenomena, or have thought themselves called upon to mark the share which physical circumstances had in producing them. There are indeed some, and those remarkable, exceptions. There is Dr. Darwin in our own country, and M. Cabanis in France. They have both of them taken the mind as a part at least of their study; and we are highly indebted to them for the number and value of their observations. They are both philosophers, in the most important sense of the word; they both observed nature for themselves, observed her attentively, and with their view steadily directed to the proper end. But

still it is not safe to rely upon them as guides. They were in too great a haste to establish conclusions; and were apt to let their belief run before their evidence. They were not sufficiently careful to distinguish between the different degrees of evidence, and to mark what is required to constitute proof. To do this steadily seems, indeed, to be one of the rarest of all endowments; and was much less characteristic of the two philosophers we have named, than a wide range of knowledge, from which they collected the facts, and great ingenuity in combining and applying them. Dr. Darwin was the most remarkable, both for the strength and the weakness of which we speak. The work of Darwin, to which we chiefly allude, is the *Zoönomia*; though important remarks to the same effect are scattered in his other publications. Cabanis entitled his great work, *Rapports du Physique et du Moral de l'Homme*. And there are some works recently announced by German physiologists, the titles of which promise aids in the same endeavour. But though we expect from them new facts, and ingenious hints, we have less hope of any great number of sound conclusions.

There are certain general names already in use, including the greater number of the physical circumstances which operate in the way of education upon the mind. It will be convenient, because of their commonness, to make use of them on the present occasion, though neither the enumeration which they make is complete, nor the distribution logical.

All the physical circumstances which operate upon the mind are either, 1. inherent in the body; or, 2. external to the body. Those which are external to the body, operate upon the mind, by first operating upon the body.

Of the first kind, the more remarkable seem to be healthiness or sickness, strength or weakness, beauty or deformity, the temperament, the age, the sex.

Of the second sort, the more remarkable seem to be the aliment, the labour, the air, temperature, action, rest.

Previous to the inquiry concerning the power which physical circumstances exert in the formation of the mind, it may seem that we ought to determine the speculative question respecting the nature of the mind: that is, whether the phenomena of mind may possibly result from a certain organization of matter; or whether something of a different kind, and which we call spiritual, must not be conceived, as the source and organ of thought. We do not mean to enter into this controversy, which would detain us too long. It is not, in the least degree, necessary, for the end which we have in view. Whether the one hypothesis, with respect to the mind, be adopted, or the other, the distribution of the circumstances, which operate in the formation of human character, into those commonly called Physical, and those commonly called Moral, will be as convenient as any distribution which the present state of our knowledge enables us to make; and all that inquiry can do, in regard to those circumstances, is, to trace them accurately, and to observe their effects; that is, to ascertain what they are, and what the order of the mental events by which they are followed. This is simply matter of experience; and what we experience

is the same, whether we adopt one opinion, or another, with regard to the nature of that which thinks. It is in what we experience, all ascertained, and put into the best possible shape for ease of comprehension, and ready application to practice, that all useful knowledge on this, as on all other subjects, consists.

1. First, we are to consider the circumstances of the body which have an effect upon the mental sequences. The object is, to ascertain which have a tendency to introduce those sequences which are favourable, which to introduce those that are unfavourable, to human happiness, and how to turn this knowledge to account.

Health and sickness, or the states of body which those names most peculiarly express, are the first of the circumstances which we have enumerated under this head. That these states have a tendency to introduce very different trains of thought, is matter of vulgar experience; but very little has been done to examine such trains, and to ascertain what in each is favourable, and what is unfavourable to human happiness.

We have already seen, that the trains which are favourable to Intelligence, Temperance, Justice, and Generosity, are the trains favourable to human happiness. Now, with respect to Intelligence, it will be seen, that Health is partly favourable, and partly unfavourable; and the same is the case with Sickness. Health is favorable, by allowing that time to be given to study, which many kinds of sickness withdraw, and by admitting a more vigorous attention, which the pain and languor of sickness often impair. It is unfavourable, by introducing that flow of pleasurable ideas which is called high spirits, adverse at a certain pitch to the application of attention; and by leading to that passionate pursuit of pleasure, which diminishes, if it does not destroy, the time for study. The mode in which disease operates upon the mental sequences is a subject of great complexity, and in which little has yet been done to mark distinctly the events, and ascertain the order of their succession. Cabanis, in his seventh memoir, entitled, *De l'Influence des Maladies sur la Formation des Idées et des Affections Morales*, has made a useful beginning toward the elucidation of this subject; but here, as elsewhere, he is too often general and vague. Instruction may also be gleaned from Darwin; but the facts which bear upon this point rather drop from him incidentally, than are anywhere put together systematically for its elucidation. As they were both physicians, however, of great experience, and of unusual skill in the observation of mental phenomena, their opinions are entitled to the greatest respect. The result of the matter is, that an improved medicine is no trifling branch of the art and science of education. Cabanis, accordingly concludes his memoir with the two following propositions:

“ 1mo. L'état de maladie influe d'une manière directe sur la formation des idées et des affections morales: nous avons même pu montrer dans quelques observations particulières, comment cette influence s'exerce.

“ 2do. L'observation et l'expérience nous ayant fait découvrir les moyens de combattre assez souvent avec succès l'état de maladie, l'art qui met en usage ces moyens, peut donc modifier et perfectionner les opérations de l'intelligence et les habitudes de la volonté.”



As it is chiefly through the nervous system, and the centre of that system, the brain, that the mental sequences are affected, and as all the sensitive parts have not an action equally strong, nor equally direct, upon the nerves and brain, diseases affect the mental sequences differently, according to the parts which they invade. The system of the nerves and brain is itself subject to different states of disease. Classified with regard to the functions which that system performs, as the organ of sensibility and of action, these states are thus described by M. Cabanis; "1. Excess of sensibility to all impressions on the one part; excessive action on the organs of motion on the other. 2. Unfitness to receive impressions, in sufficient number, or with the due degree of energy; and a diminution of the activity necessary for the production of the motions. 3. A general disturbance of the functions of the system, without any remarkable appearance of either excess or defect. 4. A bad distribution of the cerebral virtue, either when it exerts itself unequally in regard to time, having fits of extraordinary activity, followed by others of considerable remission; or when it is supplied in wrong proportion to the different organs, of which some are to a great degree abandoned, while there appears in others a concentration of sensibility, and of the excitations or powers by which the movements are affected."

The effects upon the mental sequences are represented in the following general sketch, which has the advantage of being tolerably comprehensive, though it is unhappily both vague and confused: "We may lay it down as a general fact, that, in all the marked affections of the nerves, irregularities, less or greater, take place, relative both to the mode in which impressions are received, and to the mode in which the determinations, automatic or voluntary, are formed. On one part, the sensations vary incessantly and rapidly with respect to their vivacity, their energy, and even their number; on another, the strength, the readiness, the facility of action exhibit the greatest inequalities. Hence perpetual fluctuation, from great excitement to languor, from elevation to dejection; a temper and passions variable in the highest degree. In this condition, the mind is always easily pushed to extremes. Either the man has many ideas, with great mental activity and acuteness; or, he is, on the contrary, almost incapable of thinking. It has been well observed, that hypochondriacal persons are by turns both courageous and cowardly; and as the impressions are habitually faulty either by excess or defect, in regard to almost all objects, it is seldom that the images correspond to the reality of things; that the desires and the will obtain the proper force and direction. If, along with these irregularities, which arise from the nervous system, should be found a weakness of the muscular organs, or of some important viscus, as, for example, of the stomach,—the phenomena, though still analogous in the main, will be distinguished by remarkable peculiarities. During the interval of languor, the debility of the muscles renders the sense of weakness, the fainting and drooping, still more complete and oppressive; life appears ready to escape at every instant. The passions are gloomy, excited by trifles, selfish; the ideas are petty, narrow, and bear

only upon the objects of the slightest sensations. At the times of excitation, which arrive the more suddenly the greater the weakness; the muscular determinations do not obey the impulses of the brain, unless by starts, which have neither energy nor duration. These impulses serve only to convince the patient more profoundly of his real imbecility; they give him only a feeling of impatience, of discontent, and anxiety. Desires, often sufficiently keen, but commonly repressed by the habitual feeling of weakness, still more increase the discouraging impression. As the peculiar organ of thought cannot act without the concurrence of several others, and as, at that moment, it partakes in some degree of the weakness which affects the organs of movement, the ideas present themselves in crowds; they spring up, but do not arrange themselves in order; the necessary attention is not enjoyed; the consequence is, that this activity of the imagination, which we might expect to afford some compensation for the absence of other faculties, becomes a new source of dejection and despair."

In this passage, the mental sequences which particular states of disease introduce are clearly shown to have a prodigious influence upon human happiness; but the effects which are produced in respect to intelligence, temperance, generosity and justice, are mixed up together; and the author rather shows how much this subject deserves to be studied, than gives us information from which any considerable degree of practical utility can be derived. The connection between particular states of body, and particular mental trains, ought to be carefully watched and recorded. When the events, one by one, are accurately distinguished, and made easy to be recognized, and when the order in which they follow one another is known, our power over the trains of those events, power to prevent such as are unfavourable, to produce such as are favourable, to human happiness, will then be at its height; and how to take care of his health will be one of the leading parts of the moral and intellectual education of man.

The state of the body, with regard to health and disease, is the inherent circumstance of the greatest importance, and we must pass over the rest with a cursory notice. The next we mentioned, are, Strength and Weakness, meaning chiefly muscular strength and weakness; and the natural, habitual, not the accidental, or diseased, state. It is a common observation, that muscular strength is apt to withdraw the owner from mental pursuits, and engage him in such as are more of the animal kind; the acquisition and display of physical powers. Few men of great bodily powers have been much distinguished for mental excellence; some of the greatest ornaments of human nature have been remarkable for bodily weakness. Muscular strength is liable to operate unfavourably upon the moral as well as the intellectual trains of thought. It diminishes that respect for other men, which is so necessary to resist the impulses of passion; it presents innumerable occasions for playing the tyrant with impunity; and fosters, therefore, all that train of ideas, in which the tyrannical vices are engendered. Cabanis remarks, and the fact is worthy

of the greatest attention,—“ Presque tous les grands scélérats sont des hommes d'une structure organique vigoureuse, remarquables par la fermeté et la tenacité de leurs fibres musculaires.” It is evident, therefore, how deeply it concerns the happiness of mankind; that the mental trains, which this circumstance has a tendency to raise, should be accurately known, as thus alone the means can be known, how that which is hurtful may be avoided, that which is useful be introduced.

Of beauty and deformity, as circumstances affecting the mental trains, much will not be necessary to be said. Illustrations will occur to every body, to prove, that their power is not inconsiderable; so little, however, has been done to ascertain the facts, and record them in the best possible order, that any thing which deserves the name of knowledge on the subject hardly exists; and the principal service we can render is to point it out for study; to exhort future inquirers to observe diligently the trains which flow from beauty and deformity as their source, and to trace to the largest possible sequences, as above described, the connections which take place between them. Beauty and deformity, it may be observed, operate upon the mental trains in somewhat a different way from health and disease; rather mediately than immediately. It is the idea of their effect upon other people that is the more immediate cause of the trains to which they give occasion. The idea that beauty commands their favourable regards, is apt to introduce the well known trains, denoted by the terms, vanity, pride, contemptuousness, trains not very favourable to the virtues. The idea that deformity is apt to excite their unfavourable regards, is often observed to lead to acuteness and vigour of intellect, employed as instruments of protection, but to moroseness, and even malignity of temper. The mode, however, in which beauty and deformity operate upon the mental trains, namely, through the idea of their effect upon other people, is common to them with a great many other advantages or disadvantages, which derive their value chiefly from their influence upon other people; and materials for the illustration of this subject have been supplied by various writers upon the human mind.

To the word Temperament, no very precise idea has hitherto been annexed. It may be conceived in the following manner: The bodily structure, the composition of elements in the body of every individual, is different from that in the body of any other. It is observed, however, that the composition is more nearly resembling in some, than in others; that those who thus resemble may be arranged in groups; and that they may all be comprehended in four or five great classes. The circumstances, in which their bodily composition agrees, so as to constitute one of those large classes, have been called the Temperament; and each of those more remarkable characters of the body has been observed to be attended with a peculiar character in the train of ideas. But the illustration of the trains of ideas, and hence of the qualities of mind, which are apt to be introduced by temperament, and by the diversities of age and of sex, we are obliged, by the rapid absorption of the space allotted us wholly to omit. The subject in itself is not very mysterious. Ac-

curate observation, and masterly recordation alone are required. To be sure, the same may be said of every object of human inquiry. But in some cases, it is not so easy to conceive perfectly what observation and recordation mean. On these topics, also, we are happy to say, that Cabanis really affords very considerable helps.

2. We come now to the second sort of physical circumstances, which have the power of introducing habitually certain trains of ideas, and hence of impressing permanent tendencies on the mind,—the circumstances which are external to the body. Some of these are of very great importance. The first is Aliment.

Aliment is good or evil, by quality and quantity. Hartley has remarked long ago, that though all the impressions from which ideas are copied, are made on the extremities of the nerves which are ramified on the surface of the body, and supply the several organs of sense, other impressions are nevertheless made on the extremities of the nerves which are ramified on the internal parts of our bodies, and that many of *those impressions* are associated with trains of ideas; that the impressions made upon the extremities of the nerves which are ramified on the alimentary canal, are associated with the greatest number of those trains; and of such trains, that some are favourable to happiness, some altogether the reverse. If the quantity and quality of the aliment be the principal cause of those impressions, here is a physiological reason, of the greatest importance, for an accurate observation and recordation of the events occurring in this part of the field; what antecedents are attended by what consequents, and what the largest sequences that can be traced. Cabanis confirmed the doctrine of Hartley with regard to the internal impressions, and added another class. He said that not only the extremities of the nerves which terminate internally, but the centre of the nervous influence, the brain itself, received impressions, and that thus there were no fewer than three sources of mental and corporeal movements of man; one external, from which almost all our distinct ideas are copied; and two internal, which exert a very great influence upon the trains of ideas, and hence upon the actions of which these trains are the antecedents or cause.

On this too, as on most of the other topics, belonging to the physical branch of education, we must note, as still uncollected, the knowledge which is required. It is understood in a general way, that deep impressions are by this means made upon the mind; but how they are made, is a knowledge which, in any such detail and accuracy as to afford useful practical rules, is nearly wanting. There is a passage in Hartley, which we esteem it important to quote: “The sense of feeling may be distinguished into that of the external surface of the body, and that of the cavities of the nose, mouth, fauces, alimentary duct, pelvis, of the kidneys, uterus, bladder of urine, gall bladder, follicles, and ducts of the glands, &c. The sensibility is much greater in the last than in the first, because the impressions can more easily penetrate through the soft epithelium with which the internal cavities are invested. In the mouth and nose this sensibility is so great, and attended with such distinguishing circumstances, as

to have the names of taste and smell assigned respectively to the sensations impressed upon the papillæ of these two organs."....."The taste may also be distinguished into two kinds; viz. the general one which extends itself to the insides of the lips and cheeks, to the palate, fauces, œsophagus, stomach, and whole alimentary duct, quite down to the anus.....The pleasures of the taste, considered as extending itself from the mouth through the whole alimentary duct, are very considerable, and frequently repeated; they must, therefore, be one chief means by which pleasurable states are introduced into the brain and nervous system. These pleasurable states must, after some time, leave miniatures of themselves, sufficiently strong to be called up upon slight occasions, viz. from a variety of associations with the common visible and audible objects, and to illuminate these and their ideas. When groups of these miniatures have been long and closely connected with particular objects, they coalesce into one complex idea, appearing, however, to be a simple one; and so begin to be transferred upon other objects, and even upon tastes back again, and so on without limits. And from this way of reasoning it may now appear, that a great part of our intellectual pleasures are ultimately deducible from those of taste; and that one principal final cause of the greatness and constant recurrency of these pleasures, from our first infancy to the extremity of old age, is to introduce and keep up pleasurable states in the brain, and to connect them with foreign objects. The social pleasures seem, in a particular manner, to be derived from this source, since it has been customary in all ages and nations, and is in a manner necessary, that we should enjoy the pleasures of taste in conjunction with our relations; friends, and neighbours. In like manner, nauseous tastes and painful impressions upon the alimentary duct give rise and strength to mental pains. The most common of these painful impressions is that from excess, and the consequent indigestion. This excites and supports those uneasy states, which attend upon melancholy, fear, and sorrow. It appears also to me, that these states are introduced in a great degree during sleep, during the frightful dreams, agitations, and oppressions, that excess in diet occasions in the night. These dreams and disorders are often forgotten; but the uneasy states of body which then happen, leave vestiges of themselves, which increase in number and strength every day from the continuance of the cause, till at last they are ready to be called up in crowds upon slight occasions, and the unhappy person is unexpectedly, and at once, as it were, seized with a great degree of the hypochondriac distemper, the obvious cause appearing no ways proportionable to the effect. And thus it may appear that there ought to be a great reciprocal influence between the mind and alimentary duct, agreeably to common observation." Cabanis, in like manner, says, "Quoique les medecins aient dit plusieurs choses hazardées, touchant l'effet des substances alimentaires sur les organes de la pensée, ou sur les principes physiques de nos penchans, il n'en est pas moins certain que les différentes causes que nous appliquons journellement à nos corps, pour en renouveler les mouvemens, agissent avec une grande efficacité sur nos dispositions

morales. On se rend plus propre aux travaux de l'esprit par certaines précautions de régime, par l'usage, ou la suppression de certains alimens. Quelques personnes ont été guéries de violens accès de colere, auxquels elles étoient sujêtes, par la seule diète pythagorique, et dans le cas même ou des délires furieux troublent toutes les facultés de l'ame, l'emploi journalier de certaines nourritures ôu de certaines boissons, l'impression d'une certaine temperature de l'air, l'aspect de certaines objets; en un mot, un système diététique particulier suffit souvent pour y remener le calme, pour faire tout rentrer dans l'ordre primitif."

As it is impossible for us here to attempt a full account of the mode in which aliments operate to produce good or bad effects upon the train of ideas, we shall single out that case, which, as operating upon the greatest number of people, is of the greatest importance; we mean that, in which effects are produced by the *poverty* of the diet; proposing, under the term poverty, to include both badness of quality, and defect of quantity. On badness of quality, we shall not spend many words. Aliments are bad in a variety of ways, and to such a degree as to impair the bodily health. Of such, the injurious effect will not be disputed. Others, which have in them no hurtful ingredient, may contain so insignificant a portion of nourishment, that to afford it in the requisite degree, they must produce a hurtful distention of the organs. The saw-dust, which some northern nations use for bread, if depended upon for the whole of their nourishment, would doubtless have this effect. The potatoe, where solely depended upon, is not, perhaps, altogether free from it. Bad quality, however, is but seldom resorted to, except in consequence of deficient quantity. That is, therefore, the principal point of inquiry.

It is easy to see a great number of ways in which deficient quantity of food operates unfavorably upon the *moral temper of the mind*. As people are ready to sacrifice every thing to the obtaining of a sufficient quantity of food, the want of it implies the most dreadful poverty; that state, in which there is scarcely any source of pleasure, and in which almost every moment is subject to pain. It is found by a very general experience, that a human being, almost constantly in pain, hardly visited by a single pleasure, and almost shut out from hope, loses by degrees all sympathy with his fellow creatures; contracts even a jealousy of their pleasures, and at last a hatred; and would like to see all the rest of mankind as wretched as himself. If he is habitually wretched, and rarely permitted to taste a pleasure, he snatches it with an avidity, and indulges himself with an intemperance, almost unknown to any other man. The evil of insufficient food acts with an influence not less malignant upon the intellectual, than upon the moral part of the human mind. The physiologists account for its influence in this manner. They say, that the signs, by which the living energy is manifested, may be included generally under the term *irritability*, or the power of being put in action by stimulants. It is not necessary for us to be very particular in explaining these terms; a general conception will for the present suffice. A certain degree of this irritability seems necessary to the proper state, or rather the very

existence of the animal functions. A succession of stimulants, of a certain degree of frequency and strength, is necessary to preserve that irritability. The most important by far of all the useful stimulants applied to the living organs is food. If this stimulant is applied, in less than a sufficient degree, the irritability is diminished in proportion, and all those manifestations of the living energy which depend upon it, mental as well as corporeal, are impaired; the mind loses a corresponding part of its force. We must refer to the philosophical writers on medicine for illustrations and facts, which we have not room to adduce, but which will not be difficult to collect. Dr. Crichton places *poor diet* at the head of a list of causes which "weaken attention, and consequently debilitate the whole faculties of the mind."\* From this fact, about which there is no dispute, the most important consequences arise. It follows, that when we deliberate about the means of introducing intellectual and moral excellence, into the minds of the principal portion of the people, one of the *first things which we are bound to provide for*, is, a generous and animating diet. The physical causes must go along with the moral; and nature herself forbids, that you shall make a wise and virtuous people, out of a starving one. Men must be happy themselves, before they can rejoice in the happiness of others; they must have a certain vigour of mind, before they can, in the midst of habitual suffering, resist a presented pleasure; their own lives, and means of well-being, must be worth something, before they can value, so as to respect, the life, or well-being, of any other person. This or that individual may be an extraordinary individual, and exhibit mental excellence in the midst of wretchedness; but a wretched and excellent people never yet has been seen on the face of the earth. Though far from fond of paradoxical expressions, we are tempted to say, that a good diet is a necessary part of a good education; for in one very important sense it is emphatically true. In the great body of the people all education is impotent without it.

Labour is the next of the circumstances in our enumeration. We have distinguished labour from action, though action is the genus of which labour is one of the species; because of those species, labour is so much the most important. The muscular operations of the body, by which men generally earn their bread, are the chief part of the particulars which we include under that term. The same distinction is useful here as in the former case; labour is apt to be injurious by its *quality*, and by its *quantity*. That the quality of the labour, in which a man is employed, produces effects, favourable or unfavourable upon his mind, has long been confessed; Dr. Smith made the important remark, that the labour in which the great body of the people are employed, has a tendency to grow less and less favourable, as civilization and the arts proceed. The division and subdivision of labour is the principal cause. This confines the attention of the labourer to so small a number of ob-

\* An Inquiry into the Nature and Origin of Mental Derangement, &c. By A. Crichton, M. D. T. 274.

jects, and so narrow a circle of ideas, that the mind receives not that varied exercise, and that portion of aliment, on which almost every degree of mental excellence depends. When the greater part of a man's life is employed in the performance of a few simple operations, in one fixed invariable course, all exercise of ingenuity, all adaptation of means to ends, is wholly excluded, and the faculty lost, as far as disuse can destroy the faculties of the mind. The minds, therefore, of the great body of the people are in danger of really degenerating, while the other elements of civilization are advancing, unless care is taken, by means of the other instruments of education, to counteract those effects which the simplification of the manual processes has a tendency to produce.

The *quantity* of labour is another circumstance which deserves attention in estimating the agents which concur in forming the mind. Labour may be to such a degree severe, as to confine the attention almost wholly to the painful ideas which it brings; and to operate upon the mind with nearly the same effects as an habitual deficiency of food. It operates perhaps still more rapidly; obliterating sympathy, inspiring cruelty and intemperance, rendering impossible the reception of ideas, and paralyzing the organs of the mind. The attentive examination, therefore, of the facts of this case, is a matter of first-rate importance. Two things are absolutely certain; that without the bodily labour of the great bulk of mankind the well-being of the species cannot be obtained; and that if the bodily labour of the great bulk of mankind is carried beyond a certain extent, neither intellect, virtue, nor happiness can flourish upon the earth. What, then, is that precious middle point, at which the greatest quantity of good is obtained with the smallest quantity of evil, is, in this part of the subject, the problem to be solved.

The state of defective food and excessive labour, is the state in which we find the great bulk of mankind; the state in which they are either constantly existing, or into which they are every moment threatening to fall. These are two, therefore, in settling the rank among the circumstances which concur in determining the degree of intellect and morality capable of being exhibited in the societies of men, which ought to stand in a very eminent place: the mode of increasing to the utmost, the quantity of intellect, morality, and happiness, in human society, will be very imperfectly understood, till they obtain a new degree of consideration.

We named, besides these, among the physical circumstances which contribute to give permanent characters to the mind, air, temperature, action, and rest. But of these we must leave the illustration wholly to other inquirers. It is mortifying to be obliged to relinquish a subject, on which so much depends, and for which so little has been done, with so very imperfect an attempt for its improvement. We shall, however, have performed a service of some utility to education, if what we have said has any tendency to lead men to a juster estimate of the physical circumstances which concur in fashioning the human mind, and hence to greater industry and care in studying and applying them.



*Circumstances of the Moral Kind which operate upon the Mind in the way of Education.*

The Moral circumstances which determine the mental trains of the human being, and hence the character of his actions, are of so much importance, that to them the term education has been generally confined: or rather, the term education has been generally used in so narrow a sense, that it embraces only one of the four classes into which we have thought it convenient to distribute the moral circumstances which operate to the formation of the human mind.

1. The first of these classes we have comprehended under the term **DOMESTIC EDUCATION**. To this the groundwork of the character of most individuals is almost wholly to be traced. The original features are fabricated here; not, indeed, in such a manner as to be unsusceptible of alteration, but in such a manner, decidedly, as to present a good or bad subject for all future means of cultivation. The importance, therefore, of domestic education, needs no additional words to explain it; though it is difficult to restrain a sigh, when we reflect, that it has but now begun to be regarded as within the pale of education; and a few scattered remarks, rather than a full exposition of the subject, is all the information upon it, with which the world has been favoured.

By Domestic Education, we denote all that the child hears and sees, more especially all that it is made to suffer or enjoy at the hands of others, and all that it is allowed or constrained to do, in the house in which it is born and bred, which we shall consider, generally, as the parental.

If we consider, that the mental trains, as explained above, are that upon which every thing depends, and that the mental trains depend essentially upon those sequences among our sensations which have been so frequently experienced as to create a habit of passing from the idea of the one to that of the other, we shall perceive immediately the reasons of what we have advanced.

It seems to be a law of human nature, that the first sensations experienced produce the greatest effects; more especially, that the earliest repetitions of one sensation after another produce the deepest habit; the strongest propensity to pass immediately from the idea of the one to the idea of the other. Common language confirms this law, when it speaks of the susceptibility of the tender mind. On this depends the power of those associations which form some of the most interesting phenomena of human life. From what other cause does it arise, that the hearing of a musical air, which, after a life of absence, recalls the parental mansion, produces as it were a revolution in the whole being? That the sympathies between brothers and sisters are what they are? On what other cause originally is the love of country founded?—that passionate attachment to the soil, the people, the manners, the woods, the rivers, the hills, with which our infant eyes were familiar, which fed our youthful imaginations, and with the presence of which the pleasures of our early years were habitually conjoined!

It is, then, a fact, that the early sequences to which we are accustomed form the primary habits; and that the primary habits are the fundamental character of the man. The consequence is most important; for it follows, that, as soon as the infant, or rather the embryo, begins to feel, the character begins to be formed; and that the habits, which are then contracted, are the most pervading and operative of all. Education, then, or the care of forming the habits, ought to commence, as much as possible, with the period of sensation itself; and, at no period, is its utmost vigilance of greater importance, than the first.

Very unconnected, or very general instructions, are all that can be given upon this subject, till the proper decompositions and recompositions are performed; in other words, till the subject is first analyzed, and then systemized; or, in one word, *philosophized*, if we may use that verb in a passive signification. We can, therefore, do little more than exhort to the prosecution of the inquiry.

The steady conception of the End must guide us to the Means. Happiness is the end; and we have circumscribed the inquiry, by naming Intelligence, Temperance, and Benevolence, of which last the two parts are Generosity and Justice, as the grand qualities of mind, through which this end is to be attained. The question, then, is, how can those early sequences be made to take place on which the habits, conducive to intelligence, temperance, and benevolence, are founded; and how can those sequences, on which are founded the vices opposite to those virtues, be prevented?

Clearness is attained, by disentangling complexity; we ought, therefore, to trace the sequences conducive to each of those qualities in their turn. A part, however, must suffice when we cannot accomplish the whole. Intelligent trains of ideas constitute intelligence. Trains of ideas are intelligent, when the sequences in the ideas correspond to the sequences in nature. A man, for example, knows the order of certain words, when his idea of the one follows that of the other, in the same order in which the events themselves took place. A man is sagacious in devising means for the production of events when his ideas run easily in trains which are at once agreeable to knowledge, that is, to the trains of events, and at the same time new in the combination. They must be agreeable to knowledge; that is, one of the ideas must follow another in the order in which the objects of which they are the ideas follow one another in nature, otherwise the train would consist of mere chimeras, and, having no connection with things, would be utterly useless. As the event, however, is not in the ordinary course; otherwise sagacity would not be required to give it existence; the ordinary train of antecedents will not suffice; it must be a peculiar train, at once correspondent with nature, and adapted to the end. The earliest trains, produced in the minds of children, should be made to partake as much as possible of those characters. The impressions made upon them should correspond to the great and commanding sequences established among the events on which human happiness principally depends. More explicitly, children ought to be

made to see, and hear, and feel, and taste, in the order of the most invariable and comprehensive sequences, in order that the ideas which correspond to their impressions, and follow the same order of succession, may be an exact transcript of nature, and always lead to just anticipations of events. Especially, the pains and pleasures of the infant, the deepest impressions which he receives, ought, from the first moment of sensation, to be made as much as possible to correspond to the real order of nature. The moral procedure of parents is directly the reverse; they strive to defeat the order of nature, in accumulating pleasures for their children, and preventing the arrival of pains, when the children's own conduct would have had very different effects.

Not only are the impressions, from which ideas are copied, made, by the injudicious conduct of those to whom the destiny of infants is confided, to follow an order very different from the natural one, or that in which the grand sequences among events would naturally produce them; but *wrong trains of ideas*, trains which have no correspondence with the order of events, are often introduced immediately by words, or other signs of the ideas of other men. As we can only give very partial examples of a general error, we may content ourselves with one of the most common. When those who are about children express by their words, or indicate by other signs, that terrific trains of ideas are passing in their minds, when they go into the dark; terrific trains, which have nothing to do with the order of events, come up also in the minds of the children in the dark, and often exercise over them an uncontrollable sway during the whole of their lives.—This is the grand source of wrong education; to this may be traced the greater proportion of all the evil biases of the human mind.—If an order of ideas, corresponding with the order of events, were taught to come up in the minds of children when they go into the dark, they would think of nothing but the real dangers which are apt to attend it, and the precautions which are proper to be taken; they would have no wrong feelings, and their conduct would be nothing but that which prudence, or a right conception of the events, would prescribe.—If the expressions, and other signs of the ideas of those who are about children, indicate that trains, accompanied with desire and admiration, pass in their minds when the rich and powerful are named, trains accompanied with aversion and contempt when the weak and the poor, the foundation is laid of a character stained with servility to those above, and tyranny to those below them. If indication is given to children that ideas of disgust, of hatred, and detestation, are passing in the minds of those about them, when particular descriptions of men are thought of; as men of different religions, different countries, or different political parties in the same country; a similar train becomes habitual in the minds of the children; and those antipathies are generated which infuse so much of its bitterness into the cup of human life.

We can afford to say but very few words on the powers of domestic education with regard to Temperance. That virtue bears a reference to pain and pleasure. The grand object evidently is, to connect with each

pain and pleasure those trains of ideas which, according to the order established among events, tend most effectually to increase the sum of pleasures upon the whole, and diminish that of pains. If the early trains create a habit of over-valuing any pleasure or pain, too much will be sacrificed, during life, to obtain the one, or avoid the other, and the sum of happiness, upon the whole, will be impaired. The order in which children receive their impressions, as well as the order of the trains which they copy from others, has a tendency to create impatience under privation; in other words, to make them in prodigious haste to realize a pleasure as soon as desired, to extinguish a pain as soon as felt. A pleasure, however, can be realized in the best possible manner, or a pain removed, only by certain steps,—frequently numerous ones; and if impatience hurries a man to overlook those steps, he may sacrifice more than he gains. The desirable thing would be, that his ideas should always run over those very steps, and none but them; and the skilful use of the powers we have over the impressions and trains of his infancy would lay the strongest foundation for the future happiness of himself, and of all those over whom his actions have any sway. It is by the use of this power that almost every thing is done to create what is called the temper of the individual; to render him irascible on the one hand, or forbearing on the other; severe and unforgiving, or indulgent and placable.

Intelligence and Temperance are sometimes spoken of, as virtues which have a reference to the happiness of the individual himself: Benevolence as a virtue which has a reference to the happiness of others. The truth is, that intelligence and temperance have a reference not less direct to the happiness of others than to that of the possessor; and Benevolence cannot be considered as less essential to his happiness than intelligence and temperance. In reality, as the happiness of the individual is bound up with that of his species, that which affects the happiness of the one, must also, in general, affect that of the other.

It is not difficult, from the expositions we have already given, to conceive in a general way how sequences may take place in the mind of the infant which are favourable to benevolence, and how sequences may take place which are unfavourable to it. The difficulty is, so to bring forward and exhibit the details, as to afford the best possible instruction for practice. We have several books now in our own language, in particular those of Miss Edgeworth, which afford many finely selected instances, and many detached observations of the greatest value, for the cultivation of benevolence in the infant mind. But the great task of the philosopher, that of *theorizing* the whole, is yet to be performed. What we mean by “theorizing the whole,” after the explanations we have already afforded, is not, we should hope, obscure. It is, to observe exactly the facts; to make a perfect collection of them, nothing omitted that is of any importance, nothing included of none; and to record them in that order and form, in which all that is best to be done in practice can be most immediately and certainly perceived.

The order of the impressions which are made upon the child, by the

spontaneous order of events, is, to a certain degree, favourable to benevolence. The pleasures of those who are about him are most commonly the cause of pleasure to himself; their pains of pain. When highly pleased, they are commonly more disposed to exert themselves to gratify him. A period of pain or grief in those about him, is a period of gloom—a period in which little is done for pleasure—a period in which the pleasures of the child are apt to be overlooked. Trains of pleasurable ideas are thus apt to arise in his mind, at the thought of the pleasurable condition of those around him; trains of painful ideas at the thought of the reverse; and he is thus led to have an habitual desire for the one, aversion to the other. But if pleasures, whencesoever derived, of those about him, are apt to be the cause of good to himself, those pleasures which they derive from himself, are in a greater degree the cause of good to himself. If those about him are disposed to exert themselves to please him when they are pleased themselves, they are disposed to exert themselves in a much greater degree to please him, in particular, when it is he who is the cause of the pleasure they enjoy. A train of ideas, in the highest degree pleasurable, may thus habitually pass through his mind at the thought of happiness to others produced by himself; a train of ideas, in the highest degree painful, at the thought of misery to others produced by himself. In this manner the foundation of a life of beneficence is laid.

The business of a skilful education is, so to arrange the circumstances by which the child is surrounded, that the impressions made upon him shall be in the order most conducive to this happy result. The impressions, too, which are made originally upon the child, are but one of the causes of the trains which are rendered habitual to him, and which, therefore, obtain a leading influence in his mind. When he is often made to conceive the trains of other men, by the words, or other signs by which their feelings are betokened, those borrowed trains become also habitual, and exert a similar influence on the mind. This, then, is another of the instruments of education. When the trains, signified to the child, of the ideas in the minds of those about him are trains of pleasure at the thought of the happiness of other human beings, trains of the opposite kind at the conception of their misery; and when such trains are still more pleasurable or painful as the happiness or misery is produced by themselves, the association becomes in time sufficiently powerful to govern the life.

The grand object of human desire is a command over the wills of other men. This may be attained, either by qualities and acts which excite their love and admiration, or by those which excite their terror. When the education is so wisely conducted as to make the train run habitually from the conception of the good end to the conception of the good means; and as often, too, as the good means are conceived, viz. the useful and beneficial qualities, to make the train run on to the conception of the great reward, the command over the wills of men; an association is formed which impels the man through life to pursue the great object of desire, by

fitting himself to be, and by actually becoming, the instrument of the greatest possible benefit to his fellow men.

But, unhappily, a command over the wills of men may be obtained by other means than by doing them good; and these, when a man can command them, are the shortest, the easiest, and the most effectual. These other means are all summed up in a command over the pains of other men. When a command over the wills of other men is pursued by the instrumentality of pain, it leads to all the several degrees of vexation, injustice, cruelty, oppression, and tyranny. It is, in truth, the grand source of all wickedness, of all the evil which man brings upon man. When the education is so deplorably bad as to allow an association to be formed in the mind of the child between the grand object of desire, the command over the wills of other men, and the fears and pains of other men, as the means; the foundation is laid of the bad character,—the bad son, the bad brother, the bad husband, the bad father, the bad neighbour, the bad magistrate, the bad citizen,—to sum up all in one word, the bad man. Yet, true, it is, a great part of education is still so conducted as to form that association. The child, while it yet hangs at the breast, is often allowed to find out by experience, that crying, and the annoyance which it gives, is that by which chiefly it can command the services of its nurse, and obtain the pleasures which it desires. There is not one child in fifty, who has not learned to make its cries and wailings an instrument of power; very often they are an instrument of absolute tyranny. When the evil grows to excess, the vulgar say the child is spoiled. Not only is the child allowed to exert an influence over the wills of others, by means of their pains; it finds, that frequently, sometimes most frequently, its own will is needlessly and unduly commanded by the same means, pain, and the fear of pain. All these sensations concur in establishing a firm association between the idea of the grand object of desire, command over the acts of other men, and the idea of pain and terror, as the means of acquiring it. That those who have been subject to tyranny, are almost always desirous of being tyrants in their turn; that is to say, that a strong association has been formed in their minds, between the ideas of pleasure and dignity, on the one hand, and those of the exercise of tyranny, on the other, is a matter of old and invariable observation. An anecdote has just been mentioned to us, so much in point, that we will repeat it, as resting on its own probability, though it is hearsay evidence (very good, however, of its kind) on which we have received it. At Eton, in consequence, it is probable, of the criticisms which the press has usefully made upon the system of *fagging* (as it is called), at the public schools, a proposition was lately made, among the boys themselves, for abolishing it. The idea originated with the elder boys, who were in possession of the power; a power of a very unlimited and formidable description; and by them was warmly supported. It was, however, opposed with still greater vehemence by the junior boys, the boys who were then the victims of it. The expected pleasure of tyrannizing in their turn, outweighed the pain of their present slavery. In this case, too, as in most others, the

sources of those trains which govern us are two—the impressions made upon ourselves, and the trains which we copy from others. Besides the impressions just recounted, if the trains which pass in the minds of those by whom the child is surrounded, and which he is made to conceive by means of their words, and other signs, lead constantly from the idea of command over the wills of other men, as the grand object of desire, to the ideas of pain and terror as the means, the repetition of the copied trains increases the effect of the native impressions, and establishes and confirms the maleficent character. These are the few things we can afford to adduce upon the subject of Domestic Education.

2. In the next place comes that which we have denominated **TECHNICAL EDUCATION**. To this the term Education has been commonly confined; or, rather, the word Education has been used in a sense so unhappily restricted, that it has extended only to a part of that which we call Technical Education. It has not extended to all the arts, but only to those which have been denominated liberal.

The question here occurs—What is the sort of education required for the different classes of society, and what should be the difference in the training provided for each? Before we can treat explicitly of technical education, we must endeavour to show, in what manner, at least, this question ought to be resolved.

There are certain qualities, the possession of which is desirable in all classes. There are certain qualities, the possession of which is desirable in some, not in others. As far as those qualities extend which ought to be common to all, there ought to be a correspondent training for all. It is only in respect to those qualities which are not desirable in all, that a difference in the mode of training is required.

What then are the qualities, the possession of which is desirable in all? They are the qualities which we have already named as chiefly subservient to the happiness of the individual himself, and of other men; Intelligence, Temperance, and Benevolence. It is very evident that these qualities are desirable in all men; and if it were possible to get them all in the highest possible degree in all men, so much the more would human nature be exalted.

The chief difficulty respects Intelligence; for it will be readily allowed, that almost equal care ought to be taken, in all classes, of the trains leading to the settled dispositions which the terms Temperance and Benevolence denote. Benevolence, as we have above described it, can hardly be said to be of more importance to the happiness of man in one class than in another. If we bear in mind, also, the radical meaning of Temperance, that it is the steady habit of resisting a present desire, for the sake of a greater good, we shall readily grant, that it is not less necessary to happiness in one rank of life than in another. It is only necessary to see, that temperance, though always the same disposition, is not always exerted on the same objects, in the different conditions of life. It is no demand of temperance, in the man who can afford it, to deny himself animal food; it may be an act of temperance in the man whose harder

circumstances require that he should limit himself to coarser fare. It is also true, that the trains which lead to Temperance and Benevolence may be equally cultivated in all classes. The impressions which persons are made to receive, and the trains of others which they are made to copy, may, with equal certainty, be guided to the generating of those two qualities in all the different classes of society. We deem it unnecessary, (here indeed, it is impossible) to enter into the details of what may be done in the course of technical education, to generate, or to confirm, the dispositions of Temperance and Benevolence. It can be nothing more than the application of the principles which we developed, when we endeavoured to show in what manner the circumstances of domestic education might be employed for generating the trains on which these mental qualities depend.

Technical Education, we shall then consider, as having chiefly to do with *Intelligence*.

The first question, as we have said before, respects what is desirable for all,—the second, what is desirable for each of the several classes. Till recently, it was denied, that intelligence was a desirable quality in the great body of the people; and as intelligence is power, such is an unavoidable opinion in the breasts of those who think that the human race ought to consist of two classes,—one that of the oppressors, another that of the oppressed. The concern which is now felt for the education of the working classes, shows that we have made a great step in knowledge, and in that genuine morality which ever attends it.

The analysis of the ideas decides the whole matter at once. If education be to communicate the art of happiness; and if intelligence consists of two parts, a knowledge of the order of those events of nature on which our pleasures and pains depend, and the sagacity which discovers the best means for the attaining of ends; the question, whether the people should be educated, is the same with the question, whether they should be happy or miserable. The question, whether they should have more or less of intelligence, is merely the question, whether they should have more or less of misery, when happiness might be given in its stead. It has been urged that men are, by daily experience, evinced not to be happy, not to be moral, in proportion to their knowledge. It is a shallow objection. Long ago it was observed by Hume, that knowledge and its accompaniments, morality and happiness, may not be strictly conjoined in every individual, but that they are infallibly so in every age, and in every country. The reason is plain; a natural cause may be hindered of its operation in one particular instance, though in a great variety of instances it is sure to prevail. Besides, there may be a good deal of knowledge in an individual, but not knowledge of the best things; this cannot easily happen in a whole people; neither the whole nor the greater part will miss the right objects of knowledge, when knowledge is generally diffused.

As evidence of the vast progress which we have made in right thinking upon this subject, we cannot help remarking, that even Milton and Locke, though both men of great benevolence toward the larger family of



mankind, and both men whose sentiments were democratical, yet seem, in their writings on education, to have had in view no education but that of the *gentleman*. It had not presented itself, even to their minds, that education was a blessing in which the indigent orders could be made to partake.

As we strive for an equal degree of justice, an equal degree of temperance, an equal degree of veracity, in the poor as in the rich, so ought we to strive for an equal degree of intelligence, if there were not a preventing cause. It is absolutely necessary for the existence of the human race, that labour should be performed, that food should be produced, and other things provided, which human welfare requires. A large proportion of mankind is required for this labour. Now, then, in regard to all this portion of mankind, that labours, only such a portion of time can by them be given to the acquisition of intelligence, as can be abstracted from labour. The difference between intelligence and the other qualities desirable in the *mind of man*, is this, That much of time, exclusively devoted to the fixing of the associations on which the other qualities depend is not necessary; such trains may go on while other things are attended to, and amid the whole of the business of life. The case is to a certain extent, the same with intelligence; but, to a great extent, it is not. Time must be exclusively devoted to the acquisition of it; and there are degrees of command over knowledge to which the whole period of human life is not more than sufficient. There are degrees, therefore, of intelligence, which must be reserved to those who are not obliged to labour.

The question is (and it is a question which none can exceed in importance), What is the degree attainable by the most numerous class? To this we have no doubt, it will, in time, very clearly appear, that a most consolatory answer may be given. We have no doubt it will appear that a very high degree is attainable by them. It is now almost universally acknowledged, that, on all conceivable accounts, it is desirable that the great body of the people should not be wretchedly poor; that when the people are wretchedly poor, all classes are vicious, all are hateful, and all are unhappy. If so far raised above wretched poverty, as to be capable of being virtuous; though it be still necessary for them to earn their bread by the sweat of their brow, they are not bound down to such incessant toil as to have no time for the acquisition of knowledge, and the exercise of intellect. Above all, a certain portion of the first years of life are admirably available to this great end. With a view to the productive powers of their very labour, it is desirable that the animal frame should not be devoted to it before a certain age, before it has approached the point of maturity. This holds in regard to the lower animals; a horse is less valuable, less, in regard to that very labour for which he is valuable at all, if he is forced upon it too soon. There is an actual loss, therefore, even in productive powers, even in good economy, and in the way of health and strength, if the young of the human species are bound close to labour before they are fifteen or sixteen years of age. But if those years are skillfully employed in the acquisition of knowledge, in rendering all those

trains habitual on which intelligence depends, it may be easily shown that a very high degree of intellectual acquirements may be gained; that a firm foundation may be laid for a life of mental action, a life of wisdom, and reflection, and ingenuity, even in those by whom the most ordinary labour will fall to be performed. In proof of this, we may state, that certain individuals in London, a few years ago, some of them men of great consideration among their countrymen, devised a plan for filling up those years with useful instruction; a plan which left the elements of hardly any branch of knowledge unprovided for; and at an expence which would exceed the means of no class of a population, raised as much above wretched poverty as all men profess to regard as desirable. Mr. Bentham called this plan of instruction by the Greek name *Chrestomathia*; and developed his own ideas of the objects and mode of instruction, with that depth and comprehension which belong to him, in a work which he published under that name.\* Of the practicability of the scheme no competent judge has ever doubted; and the difficulty of collecting funds is the only reason why it has not been demonstrated by experiment, how much of that intelligence which is desirable for all may be communicated to all.†

\* *Chrestomathia*, being a collection of papers, explanatory of the design of an institution proposed to be set on foot, under the name of Chrestomathic day school, &c. By Jeremy Bentham, Esq.

† We mention with extraordinary satisfaction, that an idea of education, hardly less extensive than what is here alluded to, has been adopted by that enlightened and indefatigable class of men, the Baptist Missionaries in India, for the population, poor as well as ignorant, of those extensive and populous regions. A small volume, entitled "*Hints relative to Native Schools, together with the Outline of an Institution for their Extension and Management*," was printed at the mission press at Serampore in 1816; and, as it cannot come into the hands of many of our readers, we gladly copy from it the following passage, in hopes that the example may be persuasive with many of our countrymen at home.

"It is true, than when these helps are provided, namely, a correct system of orthography, a sketch of grammar, a simplified system of arithmetic, and an extended vocabulary, little is done beyond laying the foundation. Still, however, this foundation must be laid, if any superstructure of knowledge and virtue be attempted relative to the inhabitants of India. Yet, were the plan to stop here, something would have been done. A peasant or an artificer, thus rendered capable of writing as well as reading his own language with propriety, and made acquainted with the principles of arithmetic, would be less liable to become a prey to fraud among his own countrymen; and far better able to claim for himself that protection from oppression which it is the desire of every enlightened government to grant. But the chief advantage derivable from this plan is, its facilitating the reception of ideas which may enlarge and bless the mind in a high degree,—ideas for which India must be indebted to the West, at present the seat of science, and for the communication of which, generations yet unborn, will pour benedictions on the British name.

"1. To this, then, might be added a concise, but perspicuous account of the solar system, preceded by so much of the laws of motion, of attraction, and gravity, as might be necessary to render the solar system plain and intelligible. These ideas, however, should not be communicated in the form of a treatise, but in that of simple axioms, delivered in short and perspicuous sentences. This method comes recommended by several considerations;—it agrees with the mode in which doctrines are communicated in the *Hindoo Shastras*, and is therefore congenial with the ideas of even the learned among them; it would admit of these sentences being written from dictation, and even committed to memory with advantage, as well as of their being easily retained; and, finally, the conciseness of this method would allow of a multitude of truths and facts

Beside the knowledge or faculties, which all classes should possess in common, there are branches of knowledge and art, which they cannot all acquire, and, in respect to which, education must undergo a corresponding variety. The apprenticeships, for example, which youths are accustomed to serve to the useful arts, we regard as a branch of their education.

relative to astronomy, geography, and the principal phenomena of nature, being brought before youth within a very small compass.

“ 2. This abstract of the solar system might be followed by a compendious view of geography on the same plan—that of comprising every particular in concise but luminous sentences. In this part it would be proper to describe Europe particularly, because of its importance in the present state of the world; and Britain might, with propriety, be allowed to occupy in the compendium, that pre-eminence among the nations which the God of Providence has given her.

“ 3. To these might be added a number of popular truths and facts relative to natural philosophy. In the present improved state of knowledge, a thousand things have been ascertained relative to light, heat, air, water to meteorology, mineralogy, chemistry, and natural history, of which the ancients had but a partial knowledge, and of which the natives of the East have as yet scarcely the faintest idea. These facts, now so clearly ascertained, could be conveyed in a very short compass of language, although the process of reasoning, which enables the mind to account for them, occupies many volumes. A knowledge of the facts themselves, however, would be almost invaluable to the Hindoos, as these facts would rectify and enlarge their ideas of the various objects of nature around them; and while they, in general, delighted as well as informed those who read them, they might inflame a few minds of a superior order with an unquenchable desire to know *why* these things are so, and thus urge them to those studies, which in Europe have led to the discovery of these important facts.

“ 4. To this view of the solar system of the earth, and the various objects it contains, might, with great advantage, be added such a compendium of history and chronology united, as should bring them acquainted with the state of the world in past ages, and with the principal events which have occurred since the creation of the world. With the creation it should commence, describe the primitive state of man, the entrance of evil, the corruption of the antediluvian age, the flood, and the peopling of the earth anew from one family, in which the compiler should avail himself of all the light thrown on this subject by modern research and investigation; he should particularly notice the nations of the east, incorporating, in their proper place, the best accounts we now have both of India and China. He should go on to notice the call of Abraham, the giving of the decalogue, the gradual revelations of the Scriptures of Truth, the settlement of Greece, its mythology, the Trojan war, the four great monarchies, the advent of the Saviour of men, the persecutions of the Christian church, the rise of Mahometanism, the origin of the papacy, the invention of printing, of gunpowder, and the mariner's compass, the reformation, the discovery of the passage to India by sea, and the various discoveries of modern science. Such a synopsis of history and chronology, composed on the same plan, that of comprising each event in a concise but perspicuous sentence, would exceedingly enlarge their ideas relative to the state of the world, certainly not to the disadvantage of Britain, whom God has now so exalted as to render her almost the arbitress of nations.

“ 5. Lastly, It would be highly proper to impart to them just ideas of themselves, relative both to body and mind, and to a future state of existence, by what may be termed a Compendium of Ethics and Morality. The complete absence of all just ideas of this kind, is the chief cause of that degradation of public morals so evident in this country.

“ These various compendiums, after being written from dictation, in the manner described in the next section, might also furnish matter for reading; and when it is considered that, in addition to the sketch of grammar, the vocabulary, and the system of arithmetic, they include a view of the solar system, a synopsis of geography, a collection of facts relative to natural objects, an abstract of general history, and a compendium of ethics and morality; they will be found to furnish sufficient matter for reading while youth are at school.”

Why should not the same idea be pursued in England, and as much knowledge conveyed to the youth of all classes at school, as the knowledge of the age, and the allotted period of schooling will admit?

Whether these apprenticeships, as they have hitherto been managed, have been good instruments of education, is a question of importance, about which there is now, among enlightened men, hardly any diversity of opinion. When the legislature undertakes to do for every man, what every man has abundant motives to do for himself, and better means than the legislature; the legislature takes a very unnecessary, commonly a not very innocent trouble. Into the details, however, of the best mode of teaching, to the working people, the arts by which the different commodities useful or agreeable to man are provided, we cannot possibly enter. We must content ourselves with marking it out as a distinct branch of the subject, and an important object of study.

With respect to the education of that class of society who have wealth and time for the acquisition of the highest measure of intelligence, there is one question to which every body must be prepared with an answer. If it be asked, whether, in the constitution of any establishment for the education of this class; call it university, call it college, school, or any thing else; there ought to be a provision for perpetual improvement; a provision to make the institution keep pace with the human mind; or whether, on the other hand, it ought to be so constituted as that there should not only be no provision for, but a strong spirit of resistance, to all improvement, a passion of adherence to whatever was established in a dark age, and a principle of hatred to those by whom improvement should be proposed; all indifferent men will pronounce, that such institution would be a curse rather than a blessing. That he is a *progressive* being, is the grand distinction of Man. He is the only progressive being upon this globe. When he is the most rapidly progressive, then he most completely fulfils his destiny. An institution for education which is hostile to progression, is, therefore, the most preposterous, and vicious thing, which the mind of man can conceive.

There are several causes which tend to impair the utility of old and opulent establishments for education. Their love of ease makes them love easy things, if they can derive from them as much credit, as they would from others which are more difficult. They endeavour, therefore, to give an artificial value to trifles. Old practices, which have become a hackneyed routine, are commonly easier than improvements; accordingly, they oppose improvements, even when it happens that they have no other interest in the preservation of abuses. Hardly is there a part of Europe in which the universities are not recorded in the annals of education, as the enemies of all innovation. "A peine la compagnie de Jesus," says d'Alembert, "commençait elle à se montrer en France, qu'elle essuya des difficultés sans nombre pour s'y établir. Les universités sur tout firent les plus grands efforts, pour écarter ces nouveaux venus. Les Jesuites s'annonçaient pour enseigner gratuitement, ils comptoient déjà parmi eux des hommes savans et célèbres, superieures peut être à ceux dont les universités pouvaient se glorifier; l'interêt et la vanité pouvaient donc suffire à leurs adversaires pour chercher à les exclure. On se rapelle les contradictions semblables que les ordres mendians essayèrent

de ces mêmes universités quand ils voulurent s'y introduire ; contradictions fondées à peu près sur les mêmes motifs." (*Destruction des Jesuites en France.*) The celebrated German philosopher, Wolf, remarks the aversion of the universities to all improvement, as a notorious fact, derived from adequate motives: "Non adeo impune turbare licet scholarium quietem, et docentibus lucrosam, et discentibus jucundam."—(*Wolfii Logica, Dedic. p. 2.*)

But though such and so great are the evil tendencies which are to be guarded against in associated seminaries of education ; evil tendencies which are apt to be indefinitely increased, when they are united with an ecclesiastical establishment, because, whatever the vices of the ecclesiastical system, the universities have in that case an interest to bend the whole of their force to the support of those vices, and to that end to vitiate the human mind, which can only be rendered the friend of abuses in proportion as it is vitiated intellectually, or morally, or both ; it must, notwithstanding, be confessed, that there are great advantages in putting it in the power of the youth to obtain all the branches of their education in one place ; even in assembling a certain number of them together, when the principle of emulation acts with powerful effect ; and in carrying on the complicated process according to a regular plan, under a certain degree of discipline, and with the powerful spur of publicity. All this ought not to be rashly sacrificed ; nor does there appear to be any insuperable difficulty, in devising a plan for the attainment of all those advantages, without the evils which have more or less adhered to all the collegiate establishments which Europe has yet enjoyed.

After the consideration of these questions, we ought next to describe, and prove by analysis, the exercises which would be most conducive in forming those virtues which we include under the name of intelligence. But it is very evident, that this is a matter of detail far too extensive for so limited a design as ours. And though, in common language, Education means hardly any thing more than making the youth perform those exercises ; and a treatise on Education means little more than an account of them ; we must content ourselves with marking the place which the inquiry would occupy in a complete system, and proceed to offer a few remarks on the two remaining branches of the subject, *Social Education*, and *Political Education*.

The branches of moral education, heretofore spoken of, operate upon the individual in the first period of life, and when he is not as yet his own master. The two just now mentioned operate upon the whole period of life, but more directly and powerfully after the technical education is at an end, and the youth is launched into the world under his own control.

3. SOCIAL EDUCATION is that in which Society is the Instructor. That the Society in which an individual moves produces great effects upon his mode of thinking and acting, every body knows by indubitable experience. The object is, to ascertain the extent of this influence, the mode in which it is brought about, and hence the means of making it operate in a good, rather than an evil direction.

The force of this influence springs from two sources: the principle of imitation; and the power of the society over our happiness and misery.

We have already shown, that when, by means of words and other signs of what is passing in the minds of other men, we are made to conceive, step by step, the trains which are governing them, those trains, by repetition, become habitual to our own minds, and exert the same influence over us as those which arise from our own impressions. It is very evident, that those trains which are most habitually passing in the minds of all those individuals by whom we are surrounded, must be made to pass with extraordinary frequency through our own minds, and must, unless where extraordinary means are used to prevent them from producing their natural effect, engross to a proportional degree, the dominion of our minds. With this slight indication of this source of the power which society usurps over our minds, that is, of the share which it has in our education, we must content ourselves, and pass to the next.

Nothing is more remarkable in human nature, than the intense desire which we feel of the favourable regards of mankind. Few men could bear to live under an exclusion from the breast of every human being. It is astonishing how great a portion of all the actions of men are directed to these favourable regards; and to no other object. The greatest princes, the most despotical masters of human destiny, when asked what they aim at by their wars and conquests, would answer, if sincere, as Frederic of Prussia answered, *pour faire parler de soi*; to occupy a large space in the admiration of mankind. What are the ordinary pursuits of wealth and of power, which kindle to such a height the ardour of mankind? Not the mere love of eating and of drinking, or all the physical objects together, which wealth can purchase or power command. With these every man is in the long run speedily satisfied. It is the easy command, which those advantages procure over the favourable regards of society,—it is this which renders the desire of wealth unbounded, and gives it that irresistible influence which it possesses in directing the human mind.

Whatever, then, are the trains of thought, whatever is the course of action which most strongly recommends us to the favourable regards of those among whom we live, these we feel the strongest motive to cultivate and display; whatever trains of thought and course of action expose us to their unfavourable regards; these we feel the strongest motives to avoid. These inducements, operating upon us continually, have an irresistible influence in creating habits, and in moulding, that is, educating us, into a character conformable to the society in which we move. This is the general principle; it might be illustrated in detail by many of the most interesting and instructive phenomena of human life; it is an illustration, however, which we cannot pursue.

To what extent the habits and character, which those influences tend to produce, may engross the man, will no doubt depend, to a certain degree, upon the powers of the domestic and technical education which he has

undergone. We may conceive that certain trains might, by the skilful employment of the early years, be rendered so habitual as to be uncontrollable by any habits which the subsequent period of life could induce, and that those trains might be the decisive ones, on which intelligent and moral conduct depends. The influence of a vicious and ignorant society would, in this case, be greatly reduced; but still, the actual rewards and punishments, which society has to bestow, upon those who please, and those who displease it; the good and evil, which it gives, or withholds, are so great, that to adopt the opinions which it approves, to perform the acts which it admires, to acquire the character, in short, which it "delighteth to honour," can seldom fail to be the leading object of those of whom it is composed. And as this potent influence operates upon those who conduct both the domestic education and the technical, it is next to impossible that the trains which are generated, even during the time of their operation, should not fall in with, instead of counteracting, the trains which the social education produces; it is next to impossible, therefore, that the whole man should not take the shape which that influence is calculated to impress upon him.

4. The POLITICAL EDUCATION is the last, which we have undertaken notice, of the agents employed in forming the character of man. The importance of this subject has not escaped observation. Some writers have treated of it in a comprehensive and systematical manner. And a still greater number have illustrated it by occasional and striking remarks. It is, nevertheless, true, that the full and perfect exposition of it yet remains to be made.

The Political Education is like the key-stone of the arch; the strength of the whole depends upon it. We have seen that the strength of the Domestic and the Technical Education depends almost entirely upon the Social. Now it is certain, that the nature of the Social depends almost entirely upon the Political; and the most important part of the Physical (that which operates with greatest force upon the greatest number, the state of aliment and labour of the lower classes), is, in the long-run, determined by the action of the political machine. The play, therefore, of the political machine acts immediately upon the mind, and with extraordinary power; but this is not all; it also acts upon almost every thing else by which the character of the mind is apt to be formed.

It is a common observation, that such as is the direction given to the desires and passions of men, such is the character of the men. The direction is given to the desires and passions of men by one thing, and one alone; the means by which the grand objects of desire may be attained. Now this is certain, that the means by which the grand objects of desire may be attained, depend almost wholly upon the political machine. When the political machine is such, that the grand objects of desire are seen to be the natural prizes of great and virtuous conduct—of high services to mankind, and of the generous and amiable sentiments from which great endeavours in the service of mankind naturally proceed—it is natural to see diffused among mankind a generous ardour in the acquisition of all

those admirable qualities which prepare a man for admirable actions; great intelligence, perfect self-command, and over-ruling benevolence. When the political machine is such that the grand objects of desire are seen to be the reward, not of virtue, not of talent, but of subservience to the will, and command over the affections of the ruling few; interest with the *man above* to be the only sure means to the next step in wealth, or power, or consideration, and so on; the means of pleasing the man above become, in that case, the great object of pursuit. And as the favours of the man above are necessarily limited—as some, therefore, of the candidates for his favour can only obtain the objects of their desire by disappointing others—the arts of supplanting rise into importance; and the whole of that *tribe* of faculties denoted by the words intrigue, flattery, back-biting, treachery, &c., are the fruitful offspring of that political education which government, where the interests of the subject many are but a secondary object, cannot fail to produce.





