A

HISTORY OF CRIME

IN ENGLAND

ILLUSTRATING THE

CHANGES OF THE LAWS IN THE PROGRESS OF CIVILISATION

WRITTEN FROM THE PUBLIC RECORDS AND OTHER CONTEMPORARY EVIDENCE

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CRIME IN ENGLAND

VOL. II.

A

HISTORY OF CRIME

IN ENGLAND

ILLUSTRATING THE

CHANGES OF THE LAWS IN THE PROGRESS OF CIVILISATION

WRITTEN FROM THE PUBLIC RECORDS AND OTHER CONTEMPORARY EVIDENCE

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CHAPTER VI.

FROM THE ACCESSION OF HENRY VII. TO THE DEATH OF ELIZABETH.

WHEN Henry Tudor succeeded Richard III., and married Elizabeth of York, England and Wales had, for the first time, a prospect of becoming a firmly united kingdom. Not only were the rival claims of York and Lancaster compromised and set at rest, but Welsh jealousy was pacified when the son of a Welshman sat on the throne of England. Not only were the barons exhausted by protracted civil wars, and so less able to break the peace, but the borderland where Wales touches England began to lose the character of a March.

Importance of the first Tudor's accession.

The first Tudor king of England did for Wales what the first Stuart king did for Scotland—he prepared the way for a real harmonious union of the country to which he owed his birth with the country in which he had acquired a throne. At the time at which it became

impossible that there could be another such 'king-maker' as Richard Neville, Earl of Warwick, in England, it became impossible that there could be another such chieftain as Owen Glendower in Wales. Wales, indeed, had long been subject to the English king, but it had been governed only by force, it was always ready for revolt, and its Marches had been, as Marches always were, the scene of crimes even more atrocious and more numerous than were perpetrated in the interior of England. As late as the beginning of the fifteenth century it was found necessary to enact special provisions for keeping ward on the Welsh Marches. Purchases of land in England by Welshmen were declared illegal. An attempt was made to extirpate Welsh rhymers and minstrels by statute. To carry provisions or arms into Wales was an offence which rendered transgressors liable to forfeiture of the goods they carried. No Welshman could hold any office of trust; every castle and walled town was held by Englishmen; and even an Englishman who had married a Welsh woman, since the rising of Owen Glendower, was placed under the same disqualifications as a Welshman. This policy was, no doubt, provoked, in part at least, by Owen Glendower's deeds of arms; but there had been brave deeds of arms on the Welsh border before Owen was born, and might have been again after his death, had not the son of Edmund Tudor been accepted as king by the English, at the favourable moment when every noble family in England and Wales had lost its best blood in the battle-field or on the block, and when new paths to wealth were being discovered in English towns, and new opportunities for adventure on foreign seas.

With the gradual disappearance of a March gradually

disappeared one cause of crime, and one of the causes which had long given strength to the spirit of private war. The local and personal feuds, which had been the curse of the land since the invasions of the barbarians, were destined to grow weaker as the power of the crown grew stronger. There was at length, what there had never been since the last Roman legion sailed from Britain, some reason to believe that the study of letters by laymen would cease to be considered by the greater part of the nation either dangerous or contemptible, the gains of commerce to be considered less honourable than spoil taken by force, and the laws made for the preservation of human life to be considered of as little worth, and to be broken through as lightly, as the parchment on which they were written. The traditions of the Welsh Marches, however, were not extinct in the reign of Philip and Mary—much less the traditions of the Marches toward Scotland.

The existence of the Welsh Marches a cause of crime.

Happy as were the auspices under which Henry VII. ascended the throne, there was one source of trouble from which it was impossible that he could escape annoyance. Up to the time of the accession of Mary there was always, whenever the fate of a king or of a king's heir was in any doubt, a party which maintained that the missing person was still alive. Edward II. had partisans after he had been tortured to death, Richard II. after he had ceased to assert his own existence, and even Edward VI., after the poor boy had succumbed to the natural weakness of his constitution. The disappearance and probable murder of the two sons of Edward IV. in the Tower suggested naturally enough the idea of personating one of them. The imprisonment of Edward Plantagenet, Earl of Warwick, son of the

False personations.

Duke of Clarence and nephew of Edward IV., offered a tempting opportunity to anyone having sufficient audacity to declare himself the prisoner escaped. One Lambert Simnel was persuaded to take the name of Richard, Duke of York, younger son of Edward IV., then to abandon it, and finally to substitute for it the name of Edward, Earl of Warwick. He found some support abroad among the enemies of England, and headed an invasion with a few German mercenaries. He was never formidable, and after his followers had been worsted in battle, he was, with quiet contempt, taken into the service of Henry himself. But false personation was one of the familiar devices of the age, and the title of Richard IV., King of England, was so great a temptation that it brought another claimant into the field. For many years the reign of Henry VII. was disturbed by the pretensions of a young man who succeeded in persuading a great number not only of foreigners but even of Englishmen that he was the younger son of Edward IV. There is good reason to believe that he really was the son of a Flemish Jew who seems to have been called Warbeck. The pretender, Peter, familiarly known by the diminutive Peterkin or Perkin, at length had the temerity to appear in England, was taken prisoner, and confessed himself an impostor more than once. His wife was generously treated by Henry; and he might, perhaps, have escaped, like his predecessor Simnel, with no more punishment than humiliation and a temporary imprisonment, had he not possessed a restless temperament and a resolute will; and had he not met with a new impulse to intrigue.

It happened that when he was a prisoner in the Tower of London the chamber assigned to him was

immediately below that which was occupied by the real Edward Plantagenet, Earl of Warwick, and last male representative of the House of York, whose name had been assumed by Lambert Simnel. The earl, it seems, was not in solitary confinement, but was visited by two gentlemen, Thomas Astwode and Robert Cleymond, who apparently held some office in the Tower, and who kept him in communication with the outer world. The three, it is alleged, formed a plan for the escape of the earl and for the deposition of the king. The gunpowder in the Tower was to have been fired, and in the confusion the conspirators were to have seized all the money and jewels in the treasury there, and to have proclaimed that a shilling a day would be paid to all who joined their standard. From the indictment against the earl it is not clear what was supposed to be the precise object of the plot, as it is stated in one place that he, and in another that Perkin Warbeck, was to have been made king. There appears, however, to be no doubt that a hole was made in the floor of the earl's chamber through which he could speak to his fellow-prisoner below, and that some of the last days of the last of the Plantagenet princes were spent in intimate converse with the bold and clever but unscrupulous son of the renegade Jew of Tournay.

Edward Plantagenet and Perkin Warbeck.

Many gentlemen had already been brought to the block for the support which they had given to Warbeck; the intrigue in the Tower was fatal to him and to the unfortunate Plantagenet also. For Perkin there need be little sympathy, as he again confessed himself an impostor before his execution. But for the young and inexperienced nephew of Edward IV. it is impossible not to feel some compassion. When arraigned before the Lord

High Steward, and the dukes and earls summoned to try him as his peers, he said not a word in defence, but simply pleaded guilty. In our time he would have obtained the mercy for which he had taken the most dignified manner of asking; at that time it seemed only a matter of course that judgment should be passed upon him, to be taken back to the Tower, and thence drawn through London to the gallows at Tyburn, and there hanged, cut down, disembowelled, and quartered, like any other traitor. It was a display of mercy, if he was simply beheaded on Tower Hill.

Much obloquy has been heaped upon Henry VII. for permitting the execution of Warwick. From a modern point of view, no doubt, the king's conduct appears utterly inconsistent with even the feeblest impulse of generosity. But from the point of view of the fifteenth century, which was now closing, it was strange, not that the first Tudor king sanctioned the death of the last male of the Plantagenets, but that he had suffered so dangerous an enemy to live during fifteen years of his reign. To grant Lambert Simnel his life, and to give an honourable provision to Lady Catharine Gordon, whom Perkin Warbeck had married, were acts of the soundest policy, but they were acts of which none of the Plantagenet kings had shown themselves capable. The reason was not that they were Plantagenets and Henry was a Tudor, but that a Tudor happened to ascend the throne at a time when the intellects of Englishmen had somewhat expanded, and when their hearts were beginning to beat in sympathy with the promptings of a somewhat less limited understanding. It could not yet be said that generosity had become a common virtue; it could not yet be said that justice was commonly

Abatement of cruelty under Henry VII.

tempered with mercy; but it could be said with truth that there were indications of a slight abatement of cruelty, though they were soon to disappear under the influence of fanaticism. It was remarkable, indeed, that a change in the features of the times was to be observed in the very midst of the resemblance borne by the attempts of Simnel and Warbeck to the events which followed the depositions of Edward II. and Richard II. The pretenders showed the old reliance upon the credulity of the age, and their supporters showed that credulity—a natural consequence of difficult communication and want of publicity—was by no means exhausted. But Henry maintained his position with comparative ease; and no series of vindictive executions followed the downfall of the rival claimants. No king of England with so bad a title had ever before held his throne with so little bloodshed. His accession may, therefore, be in many ways most justly regarded as a turning-point in the history of our nation.

Nothing indicated more clearly that the elements of society were about to be thrown into new combinations than the perseverance with which previous statutes against giving liveries and tokens were enforced, and with which their deficiencies were made good by new enactments. All the considerable landholders, inheriting the barbarous traditions which had been handed down by the invaders who established themselves upon the ruins of Roman civilisation in Britain, still regarded themselves as chieftains. All their inferiors in their neighbourhood were their retainers, to whom they gave liveries and tokens, or who, in other words, wore their uniform and rallied to their standard. It was impossible that a settled and peaceful government could exist so long as every gentleman believed he

The Tudor policy against liveries, tokens, retainers, and forcible entries.

had a hereditary privilege to make war on his neighbour whenever he pleased. Henry VII. has earned the thanks of posterity for the skill with which he discerned that the time had come when one of the greatest remaining obstacles to civilisation could be successfully attacked, and for the resolution with which he attacked it. Statute followed statute and prosecution prosecution; and though no statute and no policy can be so strong as an inveterate national habit, the policy and the statutes which make the reign of the first Tudor memorable had, with other causes, perceptibly changed the aspect of English society before the last Tudor died. The task was difficult and the process long, but no statesman who has studied history and character could expect that it would be otherwise.

A common gift from chief to retainer seems to have been a badge to be worn in the cap. Thus one of the Stanleys was in the habit of giving to his followers 'the Eagle's Foot,' and one of the Darcies 'the Buck's Head.' These tokens were sometimes of silver and sometimes gilt, and were, no doubt, highly prized by those who received them. There was a bond of sympathy between those who wore the same uniform, or the same device, wherever they might meet; and though they received nothing else from the lord, except perhaps a seat in his hall whenever they were hungry, they were always ready to do his bidding, partly from an inherited feeling of allegiance, partly from mere love of adventure.

The jurisdiction of the Star Chamber directed against them.

Thus the practice of giving liveries went hand in hand with the practice of making forcible entries on lands to which the right was disputed. It is the great glory of the Tudors, no matter whether they aimed at despotic power or not, that they

attempted to make the law of the land superior to the will of the local potentate. Not only were prosecutions for livery-giving and forcible entry among the most common of those entered upon the rolls of the King's Bench, but Henry VII. at the very beginning of his reign instituted, or, as is sometimes maintained, re-instituted a court for the special purpose of suppressing these offences. As in all cases in which the origin of a name is in dispute, a number of controversies have arisen with respect to this court—whether it was the Court of Star Chamber or not; whether the court, whatever its name may have been, was in accordance with the constitution; what was the meaning and origin of the term Star Chamber. To those who consider facts more important than words, history than etymology, it will appear a matter of little consequence whether there was or was not a king's chamber on which stars were painted, and whether Jewish 'starrs' or bonds were ever stored where the Court of Star Chamber sat. To those who have followed the development of our institutions and the history of crime down to the present point, it will appear a matter of little consequence whether an antiquary could or could not discover a legal precedent for the court which came into prominence under Henry VII., and whether it did or did not differ in some minute particulars from a court known as the Star Chamber before, and a court known as the Star Chamber afterwards. It is therefore needless to answer the question whether Henry VII. acted rightly or wrongly in giving effectual powers to a Committee of the Council or others (some of whom possessed special legal qualifications) to deal with the most pressing grievance of the age. The abuse of the Court of Star Chamber in later times has caused a

most unreasonable outcry against the court itself; the objection usually raised against it that the trial was not by jury might with equal justice be raised against more recent courts of equity. Trial by jury in cases of forcible entry, livery-giving, and riots and affrays, had long before been found to be wholly ineffectual, for the simple reason that the jurors were, according to law, selected from the neighbourhood in which the offence had been committed, and were under the influence of their liveries and their tokens just as their forefathers had been under the influence of the guilds.

Not only did the Tudors persistently do their best to check those acts of violence and fraud which had survived from ages of the deepest barbarism, but the chief business of the Court of Star Chamber long continued to be identical with the business of the court to which the authority of a statute was given in the reign of Henry VII. Even under Henry VIII. the court was not used exclusively, nor even principally, for crown prosecutions. Anyone might be a plaintiff, as well as the attorney-general, whose name, indeed, very rarely appears. The suits of most frequent occurrence relate to forcible entry on lands, laymen's houses, and parsonages, to the forcible carrying off of wood and fuel, to the taking of fish out of preserves, to affrays and riots—in short, to those offences attended with violence which have been minutely described in the fourth chapter of this history. The Star Chamber records afford the means of comparing the reign of Henry VIII. with the reign of Edward III.; and though in the reign of Henry VIII. there was a degree of violence which, from a modern point of view, is appalling, it is not difficult to discern that there had already been a great improvement since

the days which preceded the Black Death. Organised brigandage no longer forced itself into prominence; it was no longer probable that a town would be sacked and burned during a fair; and the robbers, numerous as they may have been, seem to have abstained, as a rule, from making the property of the king and the royal family their prey, though the king's waggons were attacked and robbed even in the reign of Henry VIII.

Respect for law and love of order were, however, not the characteristics of Englishmen, even at the time when the Tudors were succeeded by the Stuarts, much less at the time when the Plantagenets were succeeded by the Tudors. Violent opposition to the execution of a writ was a common offence under Henry VII.; and the sheriff's officers or bailiffs pursued a calling which was still dangerous under Elizabeth. To take up such arms as were at hand, swords, bows, arrows, and cudgels, for the purpose of rescuing a prisoner, and recovering goods which had been seized in execution of a legal judgment, seems to have been considered by some classes meritorious at the accession of Henry VII., and venial at least at the accession of James I. Even in the reign of Philip and Mary we find Lord Stourton keeping in his own custody two persons, whom he professed to have attached for felony, instead of delivering them to the sheriff; and it is afterwards proved that either he or his servants had murdered them.

Difficulty of creating respect for law.

An indication that law was beginning to prevail over force appears, without doubt, in the advantage taken, under the Tudors, of an old statute, which had previously been of little effect. Some, though by no means all, of the men who, in former times, would have met a threat with a blow, and would have sum-

'Sureties of the peace.'

moned their friends to fight the friends of their enemy, demanded sureties of the peace for their protection. But the form of the application has a brief eloquence of its own, which tells a story, told elsewhere in these pages, concerning the manners and customs of an earlier age. The applicants had to declare that they were in 'fear of death and mutilation of members.'

Relapses towards barbarism.

In the long process by which slight and gradual improvements were effected, there were individual instances in which the old barbarism seemed for a moment fully restored, and there were laws passed which, if useful at the time, were useful only in the particular state of society for which they were framed. There was a severity in the game laws passed under the Tudors which, to a modern eye, may appear altogether needless, and too near an approximation to the hated forest laws of old. But it should be remembered that the practice of breaking a park or chace for the purpose of taking game was an offence which had long been in close alliance with the offence of forcible entry for the purpose of seizing and holding lands. The game laws and proclamations of the sixteenth century could not fairly be described as class-legislation—certainly not as legislation directed exclusively against the lowest classes. If the monarchs of that age had not a very kindly regard for their meanest subjects, the subjects whom they most desired to hold in real subjection were the powerful landholders.

Case of Lord Dacre of the South an instance.

The danger that the country might still revert, in the rural districts at least, to its former state of anarchy, and the connexion of disputes concerning game with the private quarrels of landholders, are shown, not only by the ordinary proceedings

of the courts, but by a remarkable case which presents itself late in the reign of Henry VIII., and which yet has all the characteristics of the reign of Edward III. There lived at Hurstmonceaux in Sussex a certain Lord Dacre, commonly known as Lord Dacre of the South (to distinguish him from Lord Dacre and Greystock, who had lately been tried for treason). He assembled at his house a number of gentlemen and yeomen, who agreed to hunt with him in the park of Nicholas Pelham, Esquire, at Laughton, in the same county. The conspirators concerted their measures with care, brought dogs and nets, called 'buckstalls,'—no doubt for trapping deer—and bound themselves by oath to stand against all the king's lieges, and to kill all who might oppose them. They divided themselves into two bands, one headed by Lord Dacre, and marched by two different roads to the park. It happened that three men were standing on one of these roads, and, though no opposition was offered, and the men were, so far as is known, in no way connected with Pelham, they were attacked by Lord Dacre and his followers, who had resolved that no one should afterwards be able to give evidence against him or his supporters. The three were severely wounded; and, though two of them afterwards recovered, the third died, and Lord Dacre was arraigned before the Lord High Steward and peers for the murder. He pleaded Not Guilty when brought to the bar; but, after evidence had been given, he pleaded Guilty, and put himself upon the king's mercy. Sentence was pronounced upon him as a murderer. He was led on foot to Tyburn, and there hanged.

Such instances of atavism, to borrow a term from the naturalists, are precisely what a search among the records might have been expected to yield. Old habits retain

their vitality under most adverse circumstances, from generation to generation; and the more uncivilised they are, the more apt they are to reappear when supposed to be extinct.

Craft and treachery still accompanied violence; instances.

It has already been shown that craft and treachery accompanied violence among the knights of old, as among the savages of modern times. During the reigns of the Tudors, men in the highest positions still resorted to those mean arts which have now, at any rate, descended to a lower grade of society. Lord Seymour of Sudley, who was Lord High Admiral under Edward VI., entered into a conspiracy with Sir William Sharington, Vice-Treasurer of the Mint at Bristol, to obtain supplies for the execution of his ambitious projects by clipping and counterfeiting coin on a great scale. Offences against the coinage had long been, and still were, very common; but what is most remarkable in Lord Seymour's case is the tone of morals which it indicates. If it stood by itself, it would be insufficient to prove that noblemen and gentlemen saw no dishonour in dishonesty. But Seymour and Sharington were by no means exceptionally unscrupulous. The maxim that all is fair in war is not one of modern origin; and, as men had in previous generations been continually waging little private wars, or plotting insurrections, the maxim was nearly equivalent to the proposition that all is fair at all times. In the reign of Henry VIII. Sir Robert Wingfield has not the slightest shame, but rather takes credit to himself, in acknowledging that he has opened and read a letter addressed to Pace. When he wishes to obtain payment of a sum of money for which acquittances signed both by himself and by Pace are necessary, he counterfeits Pace's seal and signature.

All this is deliberately made known to the king and to Cardinal Wolsey, to neither of whom it occurs that any immediate reprimand is required, and who wait to see whether they can profit by the zeal of the ambassador. Their silence tells more of the character of the age than volumes of the most eloquent declamation.

Such facts as these aid us in the attempt to understand how it came to pass that false-swearing was still as common as in the fourteenth century. It was, if possible, more difficult to find a remedy against the perjuries of jurors than even against the turbulence of the lords. Perjury, fostered as it had been by the practice of compurgation (which had been perpetuated for the benefit of ecclesiastics), was the most thoroughly ingrained of all the English crimes. Down to the time at present under consideration complaints against it never disappear. In the reign of Henry VII. there was passed a special 'Act against Perjury,' in which it is stated that perjury is 'much and customably used within the City of London, to the great displeasure of Almighty God, and also to the disheritance and manifold wrongs of the king's subjects.' The jurors, it should be remembered, were still witnesses, and, in many cases, probably the only witnesses in a cause, and their offence was, therefore, doubly pernicious—it was perjury in which the perjurers had all the power of judges. During the reigns of all the Tudors, neither statutes nor reproaches had any effect in mitigating the evil, which was little, if at all, less prevalent in the time of Elizabeth than it had been in the time of Henry VII.

Perjury still one of the most common offences.

In very close connexion with the perjuries of jurors were the crimes of barretry, maintenance, and champerty. Common barretors were men—usually members of the

legal profession—whose practice it was to stir up litigation among neighbours. Their offence was easy and profitable in proportion to the undue influence which could be brought to bear upon jurors, because the person who was in the habit of suggesting lawsuits would soon lose credit when he failed to win the causes in which he had persuaded his clients to engage. The more respectable lawyers, to their great credit be it said, did their best to put down the barretors, against whom statutes were passed as early as the reign of Edward I. But barretry was a very common offence even under the Tudors, and could not be greatly diminished, much less rooted out, until a better tone of morals prevailed throughout the country, and, above all, until it ceased to be in the power of twelve witnesses, who were also jurors, to set truth and justice at defiance. Maintenance was not very unlike barretry in one respect, for it consisted in the support of a suit by a person who was not a very near relative of the suitor. But it was the act of the superior towards the inferior, and arose out of those mediæval ties by which man was bound to man, and especially out of the tie by which the lord was bound to his tenant or retainer. Champerty was still more like barretry, for it implied an agreement on the part of the person in whose name a suit was instituted to give a share of the lands which might be gained to the person who found the means of carrying on the proceedings. Champerty, maintenance, and barretry could be common only when corruption was extremely prevalent.

Barretry, maintenance, and champerty.

At one point, however, there was a great and a triumphant protest against corruption under the Tudors. It has been the fashion to represent Henry VII. as a

charge, inasmuch as he exacted from his subjects what had been exacted by his predecessors; but did not, like them, spend his revenue in military expeditions. He grew rich on the income on which his predecessors had been poor; and thus did not a little to strengthen his own power, and that of his dynasty. But when there was less of the pomp and circumstance of war, there was more leisure for all classes to consider the details of administration. Reign after reign there had been loud outcries against the collectors of the royal revenues; reign after reign there had issued letters patent, directing an enquiry into the grievances; reign after reign the grievances had remained precisely what they had been before. But in the reign of Henry VII. financial abuses became the prevailing topic of complaint, and there were no external events to divert attention. The two principal agents for filling the king's treasuries consequently incurred a hatred more bitter even than that which had been felt for all the agents who had previously done as they did. The complaints against them were precisely what had been heard ages before—that they made, on behalf of the crown, wrongful claims in connexion with land not held of the king directly, in connexion with wardships, in connexion with the grant of pardons, and in the matter of jurisdiction. There can be no doubt that all classes had great cause for dissatisfaction, that sums were exacted which those who paid could ill afford, and that the royal exchequer was not proportionately enriched. But the evil was inseparable from the system; and, though the farmers and collectors were dishonest, it was impossible that a real improvement could be effected until feudalism, with all its barbaric incidents, had been eradicated. The causes of the suffering which the people

Ancient forms of corruption; Empson and Dudley.

endured lay far away in the invisible past; the people expressed their sense of hardship by an outcry against two visible human beings—Empson and Dudley.

So long as Henry VII. lived, these two useful ministers were in no danger from popular clamour. But when he died, they were exposed to those perils which had always beset the most prominent men, and even the new king himself, at the beginning of a new reign. Many generations were yet to pass away before the sceptre could fall from one hand and be taken up by another in tranquillity. Empson and Dudley were both lawyers—both, perhaps, men of the world in the worst sense. Both possessed considerable influence, and Dudley had been appointed Speaker by the House of Commons. It was but natural that such men, living in such an age, and having a full knowledge of historical precedents, should attempt what had always been attempted at the beginning of every reign—to lead a dominant faction, and to put down with the strong hand all who were opposed to them. Henry VIII. was but eighteen years of age when he succeeded his father, and the competition for his favour—or, in other words, for such ascendancy as could be gained over a young and inexperienced man—was necessarily keen. Empson and Dudley did what had often been done with more success by others. They plotted, according to the indictments found against them, to 'hold, guide, and govern the king and his council by a force of armed men,' and to remove various 'dukes, earls, barons, and other magnates from the favour and council of the king.' They were imprudent enough to summon their supporters by letter, and to appoint a meeting in London. Many obeyed the summons, and marched towards the capital in military array. The movement was never formidable,

and was soon suppressed; and the letters of summons became evidence against the conspirators.

One was tried in London, and one at Northampton. Had there been no evidence against them, it was in the last degree improbable that, as juries were then constituted and as juries then acted, any jury would have hesitated to convict men whose very office was considered that of the extortioner. Empson and Dudley were both found guilty, and upon both was passed the sentence usual in cases of treason. So great has been the prejudice excited by the duties which they had to perform, that historians have almost invariably refused to consider the actual records of the judgment against them, and have preferred to regard them as mere tax-collectors, rather than as traitors. There is a rude sense of justice displayed in holding up to execration two typical mediæval publicans, who had the misfortune to live when the middle ages had nearly come to an end, and who certainly were not objects of admiration. The cries of the far-off past deserve, perhaps, to have a faint echo in the present; and the generations which have escaped from the burdens of feudalism and the worse burdens which preceded it, may express their opinions more forcibly in the concrete than in the abstract—by condemning two particular extortioners to infamy, than by condemning the system of extortion. This, at any rate, we may be sure was the rough mode adopted by jurors in the reign of Henry VIII.; and we may be sure, too, that there was joy throughout England when Dudley and Empson died. A victory appeared to be gained over something more important than those two men; and, in the protest which their death suggested, there was the suggestion also of great changes no longer very distant.

On the other hand, there was a great enemy to progress in the stubbornness of ancient superstition. The very men who held one arm ready to grasp the revenues of religious houses, as a substitute for oppressive taxes, were with the other clinging fast to the old doctrines of witchcraft. One of the most curious historical documents is the preamble to a statute passed at the beginning of the reign of Henry VIII. in favour of 'the faculty' of medicine and against ignorant pretenders. It is there stated that persons who could not even read—artisans and even women—commonly undertook the cure of every disease, for which they employed sorcery and witchcraft, to the grievous damage and destruction of many of the king's people.

This strange belief in magical arts was by no means restricted to the vulgar, but was still sufficiently strong among the nobles to bring them to the scaffold.

Ancient forms of superstition: Edward, Duke of Buckingham.

In the year 1521 Edward, Duke of Buckingham, who could in a certain sense boast that he was of the blood royal, was brought before the court of the Lord High Steward on a charge of treason. The chief point against him was that he had consulted one Nicholas Hopkins, a monk of the Carthusian Priory of Henton, who laid claim to the power of predicting future events. He showed himself as credulous and as easy a dupe as the silliest waiting-maid who ever gave a gipsy her mistress's clothes and jewels as the price of a handsome husband and an early wedding. Various promises of a very vague nature were made, firstly through a go-between, and afterwards to the duke in person. It was not until he had promised to give six pounds annually to the Priory to buy a tun of wine, and twenty pounds to make a conduit for the supply of water, and a liberal

gratuity to Father Nicholas himself, that the monk appointed an interview for further revelations. Then the duke heard the pleasing news that he was to be King of England. He was imprudent enough to act upon this prediction—to engage retainers, to prepare for a rising as soon as the king should die or sooner, and to swagger and bluster, with great oaths, before men who were incapable of fidelity to anyone. In the reign of Edward IV. his pretensions might, perhaps, have been dangerous; in the reign of Henry VIII. they were simply ludicrous; and it would have been more to the credit of the king had they been treated with contempt. But he was found guilty, and paid the penalty of his folly with his life.

If the Act of Attainder passed against Lord Hungerford, a few years later in the reign of Henry VIII., is to be trusted, the offence of Buckingham was repeated with scarcely any variation. Hungerford, it was alleged, consulted one Mawdelin (who used the arts of conjuration) to ascertain the time of the king's death. But for this and some other circumstances of aggravation, it is possible that Hungerford might have escaped the consequences of his complicity in the Northern Rebellion.

The same superstition displays itself very conspicuously throughout the whole of the Tudor period, and displays itself in its three mediæval forms of simple belief in witchcraft, of an appeal to the popular belief used for the purpose of religious persecution, and a similar appeal for the gratification of private animosity.

Other illustrations of them in the Tudor period.

Not only is the existence of witchcraft deliberately asserted in the statutes, but the State Papers show that Commissioners called before them 'all such as seemed to them to be touched or culpable in matters of

sorcery, witchcraft, poisoning, enchantment, or such like.' A case which illustrates the manners of the time in more ways than one is that of George Throgmorton and Frances his wife. The opinion of the Commissioners was that the wife, 'being overmuch given to give ear to fantastical practices of palmistry and such like devices, pretending to obtain her husband's entire and perfect love, had, at sundry times, conference with persons of that sort.' Throgmorton suspected that she 'went about his destruction,' and 'by diverse threatening and menacing he procured certain of the examinants to depose against' her. He did 'not only very sore and grievously menace them with imprisonment of the Tower or elsewhere, and to go to the rack if they would not confess,' but caused some of them to be imprisoned, and offered to become their friend if they would say what he wished.

Still more remarkable is the case which follows for the proof which it affords that intense superstition is closely connected with bigotry in religion. A bishop who did not live in an age when witchcraft was generally believed could hardly have attributed witchcraft to persons who differed from him in religious opinion. There was one John Coxe *alias* Devon, a priest against whom nothing more was proved or even alleged than that which he confessed upon examination, the crime of living for a month in the house of Sir Thomas Wharton, whose wife had a taste for secret masses, and concealed in her chamber sundry candlesticks, chalices, and other 'trumpery.' The letter of Grindal, Bishop of London, on this subject (dated April 17, 1561), and addressed to Sir William Cecil, the queen's secretary, is not very much to his credit :—

'I send you,' he says, 'enclosed the confession of

Coxe *alias* Devon, the priest, for mass matters, taken this present day after receipt of your letters. Surely for this *magic* and *conjuration* your honours of the Council must appoint some extraordinary punishment for example. My Lord Chief Justice sayeth the temporal law will not meddle with them. Our ecclesiastical punishment is too slender for so grievous offences; I thought it my part to offer it to your consideration, and so wish you in God well to fare.

'Yours in Christ,

'EDM. LONDON.'

Among the illustrations of the manner in which popular credulity was regarded as a convenient instrument for the gratification of revenge may be mentioned a list (also among the State Papers) apparently made for private use. It is described as: 'The names of the confederates against her Majesty, which have diverse and sundry times conspired her life, and do daily confederate against her.' First on it appears 'the Lord Paget' (who was attainted of treason in the twenty-ninth year of Elizabeth's reign). Then follow Sir George and Sir Walter Hastings, Sir George Peckham, and other men of distinguished names. Afterwards come 'Old Birtles the great Devil,' and opposite to his name, 'John Birtles hath yet left behind a certain old book of prophecy, wherein is great pictures, some with beards, some without,—so sheweth when this realm of England shall be subverted.' Further on appear, 'Darnally the sorcerer, the old witch of Ramsoney, Maude Twogood, enchantress, Mother Streaten, witch, Elinor Lowe, witch, Mother Davis, witch, Mother Gillaw, witch, Elizabeth Bradbridge and her ring, Christopher West, sorcerer.' But the personal feeling in the composition of the cata-

logue is shown by the entry, 'John Ludlowe the younger, who deceived me of my portmantuaes.'

During the Wars of the Roses and immediately afterwards, charges of witchcraft were more common than charges of heresy proper. The excitement of the civil commotions, and the popular belief that Edward IV. and his wife practised the forbidden arts, seem to have diverted the attention of laymen, at any rate, from mere errors in doctrine. But the fires for burning heretics were kept smouldering, and ready to be fanned into new flames at the earliest opportunity. Commissions issued even in the reign of Henry VII. concerning Lollardy as well as other offences. The clergy, too, as a body, were by no means disposed to give up their power of dealing with heretics, or to confine the definition of a heretic within narrower limits than before. Their object, indeed, was to render the term as elastic as possible, to give ecclesiastical courts the privilege of condemning whom they pleased, and to render themselves free even from the fetters of precedent. The secular courts did, however, retain a certain power, which has at least been the means of showing to posterity how great the ecclesiastical abuses were becoming, and what a spirit of opposition and even of irreverence they were exciting. In the case of persons imprisoned upon mere suspicion of heresy the temporal judge could, if the matter were brought before him, and if there did not appear to him to be sufficient ground for the charge, release the prisoner by writ of Habeas Corpus. In one instance the diocesan had deprived a man of his liberty simply for the crime of having denied that he was under any legal obligation to pay tithes to the curate of the parish in which he lived. In another instance a sturdy

Dissatisfaction with the Church inherited from past ages.

rustic had been excommunicated by the Archbishop of Canterbury, and had had the hardihood to remark that, in spite of the excommunication of the primate, he could not be excommunicated before God, because his corn yielded as well as that of any of his neighbours. Both these bold exponents of their own opinions were delivered from a bishop's gaol by the secular arm.

Henry VIII. came to the throne at a time when England had enjoyed what might, by comparison with past ages, be termed peace and prosperity during nearly a quarter of a century, and when a great number of his subjects held doctrines which were not considered orthodox at Rome, but which had been handed down from father to son for more than a century and a half. The unpopularity of the clergy before even Wycliffe taught or translated the Scriptures, the executions of Lollards under Henry IV. and Henry V., the outspoken contempt for the authority of an archbishop, the resistance to the collection of tithes under Edward IV. and Henry VII., and the action of the Oxford Reformers of 1498, were all indications of a current which had acquired strength in its course, and which was soon to overflow its banks. Those who were discontented with the ancient ecclesiastical system were not, it is true, all of one mind, but they were agreed that a reform of one kind or other was needed. Had there not been this strong support in the feelings and wishes of a great party, not even a king whose crown was as secure as that of Henry VIII. would have dared to attempt the changes which Henry VIII. effected during the later years of his reign.

The character of this king reflects with a remarkable fidelity the character of the age in which he lived, even to its contrasts and its inconsistencies. As the brutality

of the fourteenth century was not extinct in the sixteenth, so Henry VIII. not unfrequently appears guilty of acts and intentions which can only be described as brutal. As letters were reviving, and the printing-press was beginning to stimulate learning, so Henry composes and publishes a book. As ecclesiastical abuses were the great topic of the day, so Henry brings himself before the world as the champion of orthodoxy against Luther. As the minds of men were vacillating in religious belief, so Henry takes up one position only to abandon it for another. It is only the previous history of England which can explain all the contradictions exhibited in his conduct—which can explain how he could be rapacious yet sometimes generous, the Defender of the Faith yet under sentence of excommunication, a burner of heretics yet a heretic himself, the pope's advocate yet the pope's greatest enemy, a bloodthirsty tyrant yet the best friend to liberty of thought in religion, an enthusiast yet a turncoat, a libertine and yet all but a Puritan. He was sensual because his forefathers had been sensual from time immemorial, rough in speech and in action because there had been but few men in Britain who had been otherwise since the Romans abandoned the island. He was superstitious and credulous because few were philosophical or gifted with intellectual courage. Yet he had, what was possessed by his contemporaries, a faint and intermittent thirst for knowledge, of which he hardly himself knew the meaning. If his fingers took up a pen to tilt with the German doctor he was oppressed by the reflection that the act was perhaps not the act of a king, and that it more befitted a royal hand to lay lance in rest against some stout knight than to put quill to parchment against a

Character of Henry VIII. a reflection of the times.

renegade monk. Earnest, yet half ashamed of his earnestness, he allowed passion to decide for him when he feared to trust his reason. Like other men of his time he was groping in the dark for a vague something which seemed to be wanting, yet which it was impossible to describe; and when he felt that he was impeded in the search by searchers as blind as himself, or only a little less blind, he struck with the petulance of a child though unhappily with the force of a sovereign.

Henry's domestic relations offer a most remarkable illustration both of his character and of the age. He was hardly less licentious than any of his predecessors, but unlike any of them he took, in middle life, though not perhaps before, the most extraordinary pains to justify his licentiousness to himself. When he had looked on Anne Boleyn with the eyes of desire he did not, as many a king would have done, use the arts of a lover and the authority of a sovereign to seduce her; or, if he did, he afterwards resolved to possess her according to the forms of law and with the benediction of the Church. It is true that the proceedings which he instituted to obtain a divorce from his first wife, Catharine of Arragon, may have been suggested in part by the wish that there might be a male heir to succeed him. He may even have believed, with that self-complacency which is common to most men, that he was subjecting himself to great trouble and annoyance not for his own gratification but for the good of his country. When Anne Boleyn had ceased to please him, it may easily have escaped his discernment that courtiers ever on the watch knew his wishes even better than he knew them himself. He was too amorous to resist a passion for Jane Seymour, too scrupulous to gratify it

The morals of the age shown in his domestic relations.

while he had a wife yet living. His parasites assured him that the queen was a wanton, had sinned far and wide, had sinned, against the very promptings of nature, with her brother. He had read too little of that history which may be found in judicial proceedings to be aware how lightly such grave charges might be made. He may have believed, it may in charity be hoped he did believe, that his queen was guilty. Nor can we who live in the nineteenth century arrogate to ourselves the functions of a supreme court of appeal and pronounce, once for all, that she was either erring or innocent. We know that in an age not very remotely preceding, the leaders of any party did not scruple to make any charge which would crush an enemy, or to commit any crime which would serve or please themselves. The Anne Boleyn of the character given to her by her enemies might well have lived as the consort of a king in the sixteenth century. Accusers restrained by no regard for truth and no sentiment of compassion might well have presented themselves in the peers who were her judges. Such turpitude as that of Smeaton, who confessed, when arraigned, that he had been the queen's paramour, would suggest the existence of a depraved tone at court if even we had no evidence of the deeds of previous reigns. A court intrigue may, therefore, have procured an indictment against the queen's so-called favourites, and an indictment against the queen herself. It may have procured the verdict of guilty found against Noreys, Bryerton, and Weston at the special Sessions of Oyer and Terminer before two dukes, three earls, eleven knights, and the king's secretary. It may have procured the verdict of guilty found against the queen by the peers under the Lord High Steward, when twenty-six of them

were present and unanimous. But whether the queen suffered justly or unjustly the insight which these trials give us into the nature of the times is of the same value; it matters little—except as far as the memory of one woman is concerned—whether some of the frequenters of Henry's court were debauchees whom no crime could deter in the pursuit of pleasure, or others were perjurers and murderers who were destitute of all sense of justice. Henry himself, there can hardly be a doubt, was troubled with a conscience of which one effect was to render his vices more conspicuous than those of more callous evil-doers. Few kings but himself would, in any age, have permitted such a scandal as the public prosecution of his wife; few kings in an earlier age would, after having been twice captivated by a maid of honour, have waited twice until they could offer marriage.

From first to last Henry was consistent in his inconsistency. When, after the death of Jane, there was a Prince of Wales on whom the crown could descend, the king did not, like most of his predecessors, deliver himself up to a mistress, but virtuously instituted a search for a fourth wife. When the fourth wife was married to him, and proved herself, according to his notions of feminine grace, repulsive, he was still true to his principles—still preferred divorce to adultery. His cruelty to Anne of Cleves was less than his cruelty to Catharine of Arragon, only because the German princess was of so extremely phlegmatic a temperament that she could be content to live in England on a sufficient pension, and tranquilly contemplate the domestic life of Henry and his fifth consort. The proceedings by which he freed himself from that fifth consort were, perhaps, even more remarkable and more characteristic of himself and of his age than all

the remarkable and characteristic proceedings of his earlier life. The successor of Anne of Cleves was Catharine Howard, daughter of that Duke of Norfolk who had sat as High Steward upon the trial of Anne Boleyn. She had not been long married to the king when he was informed that she had been unchaste, not only after her marriage, but before. With a moral courage which, in this case at least, could not be attributed to self-deception in the shape of passion for another woman, he faced all the ridicule of another series of trials, and placed the matter before Parliament and the Court of King's Bench. Whatever may be thought of the attainder against Catharine, and of her execution, there can be but one opinion of the baseness of her kinspeople, and of the men who are said to have been her lovers. All of them confessed that everything laid to their charge was true. Dereham and Culpeper confessed that they had committed adultery with the queen. Lord William Howard, the queen's uncle, pleaded guilty to the charge of having concealed from the king the loose conduct of his niece during the time she was in the house of her mother, the Duchess of Norfolk. Catharine Tylney, Alice Restwold, Joan Bulmer, Anna Howard, Malena Tylney, Margaret Benet, Margaret Howard, wife of Lord William, Edward Waldegrave, and William Asheby all pleaded guilty to the charge of having concealed the knowledge which they possessed that the queen had been incontinent both before marriage and after, and Catharine Tylney to the charge of having acted as go-between to Dereham and the queen at Oatlands. It may, perhaps, be worthy of remembrance that, in an age when jousts were still held, and when chivalry was not yet supposed to be extinct, both the queens who

were accused of adultery were betrayed by their alleged paramours, and one was allowed to pass for a harlot by the members of her own family.

With the rest of Henry's domestic life this history has no concern, save to point out that even after the disastrous end of his fifth marriage he did not suffer his passions to set matrimony at defiance, but decently took to wife a widow, who survived him. It is hardly possible to explain his conduct, except on the supposition that, although in his youth one of the most accomplished, and, perhaps, one of the most licentious men of the day, he was, in his later years, animated by the puritan spirit, which had previously made the Lollards the enemies of the friars, which now displayed itself in a statute declaring incontinence among religious persons felony, and was a century later to display itself in a statute making incontinence penal in every class. If judged solely by a modern standard, there is little to be said in praise, or even in extenuation, of the acts by which he is best remembered. If judged in relation to the time at which he lived, he presents a favourable contrast to the majority of the men by whom he was surrounded. He was swift to punish, as strong kings had always been before him. He was passionate, as were all the nobles about him. He was vain to excess, and most vain where he had least cause for vanity, of his theological learning. He was fickle, as his courtiers were fickle, but he was not, like them, deliberately treacherous or ungenerous at heart. Where he most differed from them all was in the sincerity and the warmth with which he adopted any new opinion. The landholders, had they seen it possible, would gladly have reverted to the old disorder existing before the Wars of the Roses. To them liveries were

His inconsistencies explained.

more than the truth or falsehood of Lollardy, retainers than the obedience due to Rome. To him the security of his throne against the barons was much, the gratification of his strong animal instincts was much also; but he was, like the best men of the age, something more than a brute—something even more than a mere self-seeker. He was so earnest that, when once religious doctrines and the idea of religious reform had become a part of his thoughts, he could not restrain them from appearing in action. He made an attempt to govern himself according to the only part of his belief which at length became permanently fixed—his belief in the heinousness of adultery; but, in spite of his accomplishments, his struggles with his own hereditary nature were clumsy, and place him before us in strange contortions, which we can hardly admire, and which were not followed by complete success.

Importance of religion in the history of crime in the sixteenth century.

The changes and counter-changes made, in the sixteenth century, in the definition of crimes against religion are hardly less painful to record than any portion of the history of England. The Act passed in the reign of Henry IV. which gave every Ordinary power to arrest a person suspected of heresy, and after conviction to demand execution by burning at the hands of the sheriff, continued to be law until Henry VIII. had been twenty-five years on the throne. The power which the secular courts possessed of releasing the prisoner by writ of Habeas Corpus was of no great value, because it must frequently have happened that the prisoners had not the wealth or the influence necessary to escape from one jurisdiction by the aid of another. The ordinary could, therefore, in the majority of cases, determine what was the crime of heresy,

and what was not, and could inflict punishment at his discretion. When Henry had ceased to be considered by the Pope the Defender of the Faith, he procured the repeal of this old statute, with the object of rendering impossible a conviction for heresy on the ground that the accused had spoken 'against the Bishop of Rome.' In other respects the definition of the term heresy remained as vague, and the punishment for this indeterminate offence as cruel as before. It was expressly re-enacted that persons accused and refusing to abjure, or relapsing after abjuration, should be burned 'for example of others, as hath been accustomed.' The king's writ, however, was first to be obtained, and the ordinary could no longer demand of the sheriff immediate execution.

In the twenty-sixth year of Henry's reign it was formally declared by statute that the king was supreme head of the Church of England, with power to redress all abuses and heresies. The denial of the Pope's authority in England was now no longer a crime, but according to the 'Six Articles' passed in 1540, it was heresy to deny that the substance of Christ alone remained after the consecration of bread in the sacrament of the altar. It became felony to assert the necessity of communion in both kinds, felony for a priest, or anyone who had taken a vow of chastity, to marry, felony to deny that private masses were laudable, felony to deny that auricular confession was expedient. Three years later was passed a statute which was arrogantly described as being 'for the advancement of True Religion, and for the abolishment of the contrary.' True religion was defined to be such doctrine as, since the year 1540, had been or should be set forth by the king; and to the king was reserved the

Crimes against religion newly defined by statutes.

power of changing at any time, 'at his liberty and pleasure,' any clause or provision in the statute. Noblemen and gentlemen were permitted to read the Bible, in any edition except Tyndale's, to their own families, in their houses, orchards, or gardens. But, while this privilege was granted to the 'highest and most honest sort,' all artificers, apprentices, journeymen, serving-men of the degree of yeomen, or of lower degree, husbandmen, and labourers were forbidden to read the Scriptures to themselves or to others, in private or in public, on pain of one month's imprisonment for every offence. Women, too, were under the same prohibition, which was only so far relaxed in favour of noblewomen and gentlewomen, that they might read to themselves when alone, but not to others, any text of the Bible. Any lay person who presumed to teach anything in opposition to the 'godly instructions or determinations set forth by his Majesty' was, if convicted of a third offence, to forfeit his goods, and be imprisoned for life. Any clergyman preaching in opposition to the same royal creed was, if convicted of a third offence, to lose all his goods in like manner, and, as a heretic, to be burned to death.

From the passing of the Act of Supremacy to the last plot against Elizabeth's life, there was a curious confusion of offences against religion with treason. In the reign of Henry VIII. and of his son this confusion arose, directly or indirectly, out of the claim made by him as King of England to the headship of the English Church. In the reigns of his daughters it arose chiefly from the association of religious disputes with disputes respecting the succession, and from the sharp division of parties which was the consequence. A distinction, however, was

Treasons confused with offences against religion; a distinction to be maintained.

maintained by law, and appeared most plainly in the punishment of offenders; and it will be most convenient, as well as, from a legal point of view, most consistent with accuracy, to consider the two offences separately.

It would be tedious to relate all the particulars of all the trials for high treason which had a direct or indirect connexion with religious disputes, though it is necessary to give some indication of their number and importance. Suffice it to say that in the reign of Henry VIII. John Fisher, Bishop of Rochester, with three monks of the Charterhouse, Sir Thomas More, a number of actors in an insurrection in the north of England, commonly called the Pilgrimage of Grace (and among them one Margaret Cheyne, who was sentenced to be burnt), Sir Geoffrey Pole, a brother of Cardinal Pole (who, however, received a pardon), Sir Edward Neville, George Crofts, formerly Chancellor of the Cathedral of Chichester, Henry Pole, Lord Mountacute, another brother of the Cardinal's, and the Marquis of Exeter, with other supporters of the Cardinal's party, were tried and found guilty of treason in having denied the king's supremacy. An Act of Attainder was passed against the aged Countess of Salisbury, the mother of the cardinal, and in it were somewhat needlessly included the names of many who had already been convicted.

Treasons connected with religion in the reigns of Henry VIII., Edward VI., and Mary.

In the reign of Edward VI. there was a rising under one Ket, a tanner, which, though excited in part by a desire to 'kill the gentlemen' (who were commonly supposed to have raised the price of mutton by converting arable land into pasture, and who had excited animosity in some places by enclosing commons), was accompanied by a clamour at one time for a restitution of lands to the

Church, and at another for the Six Articles. Trials and executions were the natural consequence.

On the death of Edward, Jane, wife of Lord Guilford Dudley, a descendant of Mary, younger daughter of Henry VII., was for a few days placed on the throne, by the aid of the Duke of Northumberland, her husband's father. The only shadow of a legal pretext for giving the crown to one so remote in blood from the late king, was to be found in the letters patent of Edward, a boy of sixteen, who had been taught that no other disposition would be so favourable to the interests of the reformed faith. His chief instructor was Northumberland, whose faction had prevailed over that of Somerset, and whose triumph had, after the mediæval fashion, been recorded in the trial and death of his enemy. An attempt so violent as this to divert the succession could not fail to be met by violence at a time when force was still the most important element in the direction of public affairs, when there was a strong party in favour of the ancient religion, and when law and precedent were undeniably against the claim of Jane. Her overthrow was soon effected; and, within four months of Mary's accession, the Duke of Northumberland, the Marquis of Northampton, Sir John Gate, Sir Henry Gate, Sir Thomas Palmer, Sir Andrew Dudley, and Henry Dudley were brought to trial for high treason, as well as Lord Guilford Dudley and Jane herself. All either pleaded guilty, or were convicted. Soon after, when Mary's projected marriage with the Catholic Philip of Spain was made known, there followed a rebellion, of which Sir Thomas Wyatt and the Duke of Suffolk (father of Lady Jane) were the chief leaders. Queen Mary triumphed, not altogether without difficulty, over her enemies, and then, as might have been expected, blood flowed in plenty on Tower Hill and elsewhere in

England. Numbers of the inferior rebels, it is said, were executed without trial by any of the legally constituted courts. In subsequent proceedings, according to the ordinary laws of the realm, the names of a hundred and seventy persons are included in three indictments for the county of Surrey alone, and a hundred in four indictments for Middlesex. Foreigners resident in England at the time estimated that not less than four hundred persons suffered death for this insurrection. Among them were Suffolk, Wyatt, and other persons of note.

The reign of Elizabeth, though, in proportion to its length, less troubled than that of Mary, because the people acquiesced more readily in the new form of religion than in the old, was by no means free from conspiracies to which theological doctrines gave most of their weight. What Jane had been at first, and what, after Jane's execution, Elizabeth herself became to Mary Tudor, Mary, the daughter of James V. of Scotland, was to Elizabeth during many years of her reign. If one queen was to be deposed, another was to be set upon the throne. Those who disliked Mary Tudor and her principles were prepared to fight for Jane or Elizabeth; those who wished to dethrone Elizabeth and restore the power of the Pope would have set the crown on the head of the Scottish Mary, as, although excluded from the succession by the will of Henry VIII., she was the next heir after his children and their issue.

and in the reign of Elizabeth: Arthur Pole and Mary Queen of Scots.

About four years after Elizabeth's accession a plan was devised according to which Arthur Pole, who claimed the title of Duke of Clarence, was to act by the aid of Mary the part which Lord Guilford Dudley had acted by the aid of Lady Jane Gray. Arthur was the nephew of that Cardinal Pole who had incurred the wrath of Henry VIII. for denying the king's supremacy. He

was the grandson of that Countess of Salisbury whose execution was not the least horrible event of Henry's reign; and through her he was the great-grandson of that Duke of Clarence who perished for imputing sorcery to Edward IV. Mary was the granddaughter of Margaret, the daughter of Henry VII., who married James IV. of Scotland. Had Arthur Pole married and had issue by her, as the conspirators desired, there would thus have been a new fusion of Yorkist and Lancastrian blood, for Pole was descended from the House of York, and Mary from both houses, through Henry VII. and Elizabeth daughter of Edward IV. This consideration, however, was of little weight when compared with the religious interests which were at stake. The Romanist party maintained that Elizabeth was illegitimate because the Pope had pronounced against Henry's divorce from Catharine of Arragon, as well as because she had been pronounced illegitimate by statute. In that case the Scottish queen was undoubtedly the heir to the throne; and if Henry's will could have been set aside in her favour, and Arthur could have become her husband, there would have been a double triumph for the Church. Mary was known to be a good Catholic, and whenever men thought of opposition to Henry and to the royal supremacy, they thought of the names and the sufferings of the Poles.

It was believed that assistance could have been obtained from France, that a rebellion could have been raised in England, that Mary as queen could have created Arthur Duke of Clarence, and so have ended all dispute with respect to his claim, and that she could have reigned with him as her consort over the kingdoms of England and Scotland. Two of the conspirators, as was usual in

similar cases, sought the aid and advice of such spirits as could be summoned by the art of the sorcerer. They supposed that they received from some unknown world encouragement to proceed, and counsel how they should act. The supernatural teachings, however, were of no avail, for the plot was discovered before it could be put into execution. Pole and his associates were tried, convicted, and sentenced, but Elizabeth, with great wisdom, granted them a pardon.

The seven years which elapsed after Pole's conspiracy were most eventful to the Queen of Scots. She was married to Darnley, bore a son, was left a widow by the murder of Darnley, married Bothwell (if indeed marriage be the term to apply to this strange union), was imprisoned by her subjects, escaped, and became a fugitive in England. In England, too, she soon discovered that she was a captive, though not, as in Scotland, in immediate peril of her life. But a beautiful and, for her time, accomplished woman, who bore the title of queen, and who was next heir to the throne of England, could not be altogether without adherents and admirers, though the lovers of scandal were busy with her name. It occurred, or was said to have occurred, to the Duke of Norfolk and other members of the Romanist party, that it would be much to their benefit if he could arrange a marriage with her. It was true that she had already a husband, but the difficulty was not insuperable, as the expedient of divorce had often been tried and found to succeed.

Mary Queen of Scots and the Duke of Norfolk.

The indictment against Norfolk charges that he conspired to deprive Elizabeth of her crown and dignity as early as September 22, 1569. Mary had then been little

captive, and the English court held or affected to hold the opinion that it was her duty to clear herself of alleged complicity with Bothwell in the murder of Darnley. Norfolk had been forbidden to hold any correspondence with her on the subject of marriage, but had sent to her and received from her various letters and tokens, had lent her and her adherents large sums of money, and had attempted by all means in his power to become her husband without Elizabeth's consent. He knew that she had long before claimed the crown of England as hers, had denied the right of Elizabeth, and had used the arms of England conjointly with the arms of Scotland. Soon afterwards there was a rising in the north in Mary's interest, of which the chief leaders were the Earls of Northumberland and Westmoreland, who were outlawed and attainted. Norfolk, though not distinctly accused of having planned this rebellion, was charged with having traitorously aided the Earl of Westmoreland and the Countess of Northumberland with money after their flight. The most serious part of the allegations against him, however, was that he had in March 1571 opened a treasonable correspondence with the Pope, the King of Spain, and the Duke of Alva. Both men and money were to have been raised abroad; a foreign army was to have invaded England; Norfolk was to have joined it with what force he could; Mary was to have been proclaimed queen, and he was to have obtained her hand as his reward. The scheme was discovered; Norfolk lost his head, and sentence was recorded against some inferior persons who were implicated in his designs.

Among others who during this reign suffered for treasons closely connected with religious disputes were Felton and Irishman, who had the audacity to set up on

the palace of the Bishop of London a bull of Pius V. absolving the subjects of Queen Elizabeth from their oaths of fealty and allegiance; Campyon and his fellow Jesuits, accused of plotting the queen's dethronement and death; Somervyle, who was convicted of having formed a design to shoot Elizabeth, but who committed suicide before the time of execution; and Dr. Parry, who, it was said, had received through a cardinal the Pope's approval of the intended assassination of Elizabeth, and the assurance of absolution.

Felton, Campyon, Parry, &c.

Soon after Parry's conviction followed the great plot which cost Mary Stuart her head. It bore a great resemblance to those which had preceded, and was instigated by the same persons as the last—the English seminary priests abroad in correspondence with the courts of Rome and Spain. Assassination was one of the chief features in it, and the deed was to have been done by one John Savage, who is described in the indictment as a gentleman. An insurrection was to have been raised by Anthony Babington, a Derbyshire land-owner, Thomas Salisbury, a man of some influence in Denbighshire, and a number of other persons discontented with the 'pure religion.' The Queen of Scots was to have been liberated and a foreign army, chiefly from Spain, was to have set her on the throne of England. Such at least seems to be the simple outline of a plan which has excited a hotter controversy than, perhaps, any event in history.

Babington and Mary Stuart.

It was alleged, at the time, that Mary had been informed of the conspiracy, and had given it every encouragement in her power. It was also suspected that she had not been ignorant of the previous designs against Elizabeth's life, and had not discountenanced them. So great indeed had the danger

Association to protect Elizabeth against assassination.

been supposed to be, or had the court affected to believe it, that an Association had been formed for the queen's protection, all the members of which had bound themselves to avenge her death if she should be assassinated, and to pursue the assassins to utter extermination. They swore also that they would never accept as successor any person in whose favour the deed might be attempted or effected. The Association had the approbation of Parliament. An Act was passed to define the means by which the intentions of the associates might be lawfully carried out. The most important provision of this statute relates to any attempt or design against the queen made 'by any person, or with the privity of any person, that shall or may pretend title to the crown of this realm.' A commission might issue by the queen's authority, in virtue of which enquiry might be made into all such offences, and sentence might be given; and any person against whom judgment might be recorded was thenceforth to be excluded for ever from any claim to the crown.

Execution of Mary.

All this elaborate machinery was directed against Mary, and against her alone; and when Babington's plot was discovered, the time had come to put it into operation. The commission issued against her in accordance with the statute; and in spite of her protests, the commissioners proceeded to execute their office. She stoutly denied that she had favoured the conspiracy, or even known of it. The chief proofs were the actual correspondence between her and Babington, and the confessions of Savage and another conspirator. Confessions extorted by the rack, it must be admitted, are worth little as evidence; and it has been contended that Babington's letters to Mary, if genuine, were never received, and that Mary's supposed letters to Babington

were forgeries. Various other matters, not equally relevant, have at various times been imported into a most bitter dispute, in which previous history would hardly bid us to hope that the truth can be ascertained with absolute certainty.

The commissioners arrived at the conclusion that Mary was guilty. The Parliament a few days afterwards sent a petition to Elizabeth, in which they represented that, on grounds of public policy, the execution of Mary was necessary, and that there could be no prospect of tranquillity in England so long as conspirators could hope that Mary might be set upon the throne. Elizabeth first of all insisted that she required time before deciding so important a matter, and then expressed a desire that Parliament would consider some other means by which the objects they had in view could be attained. They replied with a repetition of their former request, and gave the same reasons at greater length. To this the queen rejoined that they must for the present content themselves with 'an answer answerless.' She did not sign the warrant for Mary's execution until February 1, though the judgment of the commissioners had been pronounced on the previous twenty-fifth of October. Seven days later the Queen of Scots was beheaded.

In every respect except one, the death of Mary was the counterpart of the death of Jane. Each suffered because she pretended a title to the crown, and because she was an actual or a possible centre around which conspirators might group themselves. The most important difference in the two cases was this: Jane, if not queen, was not and could not be anything but an English subject; Mary Stuart, if not the lawful Queen of England, had at least been at one time a

Her execution compared with that of Jane.

lawful Queen of the Scots. On this ground a protest was raised against the jurisdiction of the commissioners; and it is certainly difficult to see how an English Parliament can invest English subjects or an English Queen with authority to arraign a foreign sovereign. The fact that Mary had taken refuge in England from her own subjects, though it might in one sense have deprived her of her sovereignty, would not have been used to her disadvantage by any one who possessed the faintest prompting of generosity. Nor can it be said that there was good reason for detaining her in captivity after her flight to England. If it was just that she should be tried for the murder of Darnley, not England, but Scotland, should have been the scene of the trial. If she was regarded simply as a political refugee, she should have been permitted, as she wished, to take her departure for France. She was detained, as she was afterwards executed, on the ground of expediency. That, however, was a ground which had been held sufficient for bloodshed in every form in bygone ages. It was hardly to be expected that in the midst of religious animosities it would be possible to discern much improvement in the tone of public morals.

Painful as it is, there is, perhaps, no better illustration of crime among courtiers, than the alternatives offered on the one hand by a defence of Mary's conduct, and on the other by a defence of Elizabeth's. To assume innocence on one side is to assume the deepest possible guilt on the other; and in either case many persons of high rank must have been implicated. If Mary was, as she has been represented by the German poet Schiller, so pure that, after Darnley had been killed, she was innocent even of passion except when

The whole circumstances illustrate the morals of the age.

treacherously excited by drugs, there is no reprobation too severe for the English queen, the English councillors, and the English forgers who brought her to the block. If the evidence given against Mary was true, and the documents genuine, if the assassination of Elizabeth was deliberately planned by Mary and by the leaders of the Romanist party, there is no crime of which Mary might not have been guilty, and no indignation against her accomplices can be too strongly expressed. Yet there is no mean to be found between these two extremes. To clear one queen and her advisers, is but to blacken the other; and though in the one case the friends, and in the other case the adversaries of Rome might enjoy a triumph, the result to the student of manners and of crime is in either case almost the same. He learns beyond dispute, that late in the sixteenth century there were numbers of persons, far above the lowest classes, professing the utmost anxiety to hold a true religious faith, who were utterly devoid of all scruple when they wished to carry out a political design. It is possible, indeed, that Mary may have been guilty of the misdeeds imputed to her, and yet that Elizabeth may have been guilty of hypocrisy in feigning a compassion which she did not feel. Elizabeth's story of a warrant signed and sealed, but not to be executed without further orders, does not readily command belief. Nor are doubts set at rest by the prosecution of Davison, the secretary, who, as alleged, despatched the document contrary to her instructions. If it had really been through his unauthorised action that Mary suffered, a queen of such a temper and of such power as Elizabeth would have found means of punishing so enormous an offence in some other manner

she may indeed have hesitated before she resolved to take the life of her rival, it is beyond dispute that she afterwards had recourse to a mean subterfuge, worthy only of the age of chivalry. She wrote to Mary's son James to disavow what had been done, and assured him that she could never charge herself with that which she 'had not so much as a thought of.'

Security to Elizabeth's throne and faith through Mary's execution.

Perhaps the best justification for Mary's execution (so far as political expediency can justify such a deed) is to be found in the Spanish Armada which followed it as closely as the time required for preparations would allow. This expedition, formidable as it was to England, would have been doubly formidable had there been a centre round which native discontent could rally. But Mary's son James had been educated in the reformed faith, and there was no claimant of the succession for whom the Romanist party could allege even a pretence of right. Thus, when the moment of peril came, England had to choose, not between one queen with one faith and another queen with another faith, but between an English queen with one faith and a foreign invader with another. It was for this reason that Elizabeth, though not free from plots during the later years of her reign, had very much less to dread from them than in the earlier.

An illustration of the difficulty in which Elizabeth's enemies found themselves after Mary's death presents itself very forcibly in the Bull which Sixtus V. promulgated against the queen. After declaring her to be excommunicated and deprived of all authority, and her subjects absolved from all allegiance to her, and after requiring English subjects to aid the 'Catholic' army

concerning the succession are to be decided according to 'Christian equity.' Had Mary been alive, this piece of ecclesiastical composition would hardly have come to so lame and impotent a conclusion.

The sense of comparative security which Elizabeth now enjoyed, is shown also in the mercy extended to Philip, Earl of Arundel, who, though convicted of treason, was not executed. He had, as alleged, been a party to the conspiracies of Campyon, Allen, and other Jesuits or seminary priests; he was confined in the Tower at the time when the Armada set sail; he incited other prisoners to pray for the success of the Catholic enterprise, and heard a mass which he had persuaded one Bennett to say for its welfare. He was taken back to the Tower after sentence had been pronounced, and there died, but not by the axe, some years afterwards.

Not till five years after the collapse of the Armada, were there any open indications of a new plot against Elizabeth's life. Then, as alleged, one Patrick Cullen, who was in the pay of the Spanish king, set out from Brussels for England with a plan for her assassination. His design may possibly have been connected with that of the queen's physician Lopez, who had been for years in communication with the Spanish court, and who had undertaken that Elizabeth should be poisoned when an opportune moment should arrive. Both had accomplices or correspondents in Brussels; the designs of both were detected at the same time, and both were tried and convicted in the same year.

Assassination plots of Cullen and Lopez.

Undeterred by the fate of Lopez, one Edward Squyer, who is described in his indictment as of London, yeoman, attempted to poison the queen by a new device. The alchemists of the middle ages, in their

of Walpole and Squyer.

efforts to transmute other substances into gold, had produced by chance the salts of various metals. It occurred to one of them, who lived about the beginning of the sixteenth century, that these discoveries might be made of some use in medicine, and to him may be traced the first administration of some of the most powerful drugs. It then became known that mineral poisons could work their ill effects as well through the pores of the skin as through the mouth. Squyer, at the instigation of one better educated than himself, resolved, as many criminals have done since his time, to pervert knowledge to bad uses. At Seville he made the acquaintance of a priest named William Walpole, who acted in the interests, if he was not in the pay, of the King of Spain. Walpole gave him a compound enclosed in two bladders and various other wrappers, and persuaded him that if the queen's bare hand could by any means be brought into contact with a portion of it, her death would be certain. Then followed that curious mockery of the forms of religion which appears again and again in the records of crime. Walpole administered the Eucharist to Squyer, in order to bind him to the execution of the design, and to secrecy. The priest then began to threaten, and told him that 'he was in a state of damnation if he did not perform it, and that he must not fear death though it might seem very imminent (for what availeth it for a man to win the whole world and lose his own soul); and that if he did but once doubt of the lawfulness or merit of it, it was sufficient to cast him headlong into hell,' and seldom did that sin obtain pardon. One thing is necessary, and, if you prefer it before all others, I have my desire, and you shall be a glorious saint in heaven.' Then Walpole threw

of the cross on Squyer's head, and said 'God bless thee and give thee strength, my son, and be of good courage; I will pawn my soul for thine, and thou shalt have my prayers both dead and alive, and full pardon of all thy sins.' Thus encouraged, Squyer embarked for England, prepared, according to the indictment against him, to kill not only the queen, but also her favourite, Essex. He was unsuccessful, but it is said that he found an opportunity to smear the poison on the pommel of the queen's saddle just as she was about to mount. He cried 'God save the queen,' and so escaped suspicion at the moment, but was afterwards taken, tried, and convicted.

The attempted rebellion of Essex, though illustrative of the times, and an indication of the readiness with which a nobleman would take arms to gratify his ambition, was not, like most of the other conspiracies of Elizabeth's reign, treason prompted by religion. From that Elizabeth was free during the last four years of her life; her assassination was not again attempted after the failure of the plot in which Walpole attempted to make Squyer his instrument.

In whatever aspect it may be regarded, the History of Crime includes very much of the internal History of England from the time when Henry VIII. asserted his religious supremacy in this country to the death of Elizabeth. In other words, the religious ferment which displayed itself in the reign of Henry VIII. was perceptible in most of the greatest crimes of the period. A declaration published by authority in Elizabeth's reign distinguishes, with some show of reason, the offences in which religious opinion was the sole element from offences in which religious opinion led to action or conspiracy against the reigning

Simple offences against religion.

sovereign. The distinction has been observed in these pages. But a history of crime during the reigns of the Tudors would be very incomplete without some account of those executions for heresy which were not at an end even after the death of Elizabeth. They at once illustrate the barbarity of the age, and reduce to an absurdity the practice of inflicting punishment for holding a tenet. They were an inheritance handed down from times when men were more ready to act than to think, when action most commonly took the form of violence and cruelty, and when the commonest objects of thought were deception and fraud.

Lollards and Protestants.

It was said during a part of the reign of Henry VIII. that if a man held one opinion he would be hanged, and if the opposite he would be burnt. If it was treason to maintain the supremacy of the Pope, it was heresy to dispute doctrines which the Pope declared to be orthodox. It seems, indeed, that the first effect of the king's resolution to assert that he was the head of the Church in England, was the beginning of a new persecution for Lollardy. This term occurs in a re-enacting statute as late as the reign of Philip and Mary, and the clause 'to destroy Lollards' was not omitted from the sheriff's oath until the year 1625. The term Protestant had no relation whatever to any events which occurred in England, and was only indirectly connected with an objection to Romish doctrines. At an imperial diet at Spires, on the Rhine, a vote was passed with the object of protecting the ancient form of worship. Against this some Lutheran German princes protested, and afterwards joined in a confederacy known as the Smalcaldic League. They and their followers were called Protestants, and by a not uncommon confusion of

terms, those who had once been called Lollards were at last called Protestants in England.

There were, no doubt, many gradations of belief or unbelief in Lollardy itself. It included doctrines as different from Roman orthodoxy as any held in the Established Church, and as any held by the sects which the law now describes as 'Protestant Dissenters;' possibly even some which the Established Church and the Protestant Dissenters would alike repudiate. Any Lollard would have been as ready as the king to deny the supremacy of the Pope; some might perhaps have suspected altogether the authority of the Scriptures; all probably doubted the intercession of saints and the efficacy of pilgrimages and image-worship. Lollardy was, in fact, the beginning of free thought, not in the restricted sense often attached to the expression, but free thought in the simple signification of the two words.

Henry VIII., in the darker moods of whose later life may be detected some of the sterner genius of Puritanism, was, even when a zealot, a most crafty politician. When he saw that German princes were adopting the tenets of Luther, which might be described as the German form of Lollardism, he dexterously availed himself of the embarrassment thus brought upon the Pope to assert his own religious supremacy. But he knew how apt is religious fervour to be associated with political discontent, and had, perhaps, read of the designs attributed to Oldcastle, the greatest of the Lollard leaders. He therefore took care that his subjects should thoroughly understand how far they were permitted to be Lollards. They were allowed one of the points of Lollardism and no more, and that was the point which

Changes in the definition of heresy.

denied certain powers to the Pope, and gave them to himself as supreme head of the Church in England. Afterwards he perceived that there could be no disadvantage to himself in acting upon the Lollard outcry against monasteries. Somewhat later still, he favoured the project for an authorised translation of the Scriptures, probably through religious conviction, but possibly also because he believed that an English Bible was a book which might very much weaken the Pope, though it could have little or no influence in causing disaffection to the King.

During the period from the quarrel of Henry with the Pope until Elizabeth was firmly seated on the throne, the definition of heresy was in a state of continual variation, and those who loved to show their power by consuming live human bodies in the flames had excellent opportunities for the gratification of their tastes. Some men suffered at the stake for repeating the offence of selling Tyndale's Bible. One of the first cases of heresy which presented itself, however, was discovered in some expressions in the will of one William Tracy, after his death. Not having the gift of working miracles, the ecclesiastical authorities were unable to raise him from the dead, and therefore unable to inflict any pain upon him. But, either from some notion that the torments of another world could be inflicted by lighting a fire in this, or, let us hope, from the more humane idea that heretics might be frightened into orthodoxy, the corpse was exhumed and burnt. The order for this strange ceremony was given by the chancellor of the diocese of Worcester, by virtue of a commission from the Archbishop of Canterbury, who at this time was Cranmer.

Heretics in the reign of Henry VIII.; a dead body burnt.

Soon afterwards, James Bainham was burnt as a relapsed heretic in Smithfield, and Thomas Bilney at Norwich, both for holding some of the Lollard opinions. John Frith and Andrew Hewet were also burnt at one stake in Smithfield, because they persisted in denying the real presence. A number of foreign heretics, chiefly Anabaptists, afforded a similar exhibition, both in London and in the country, in 1535 and subsequent years. In 1539 suffered Forest, one of the Observant Friars, whose execution has been described by a contemporary in language which proves how little horror such scenes then excited :—'For him was prepared in Smithfield, in London, a gallows, on which he was hanged in chains, by the middle and arm-holes, all quick; and under the gallows was made a fire, and he so consumed and burnt to death. At his coming to the place of execution, there was prepared a great scaffold on which sat the nobles of the realm, and the king's majesty's most honourable council—only to have granted pardon to that wretched creature, if any spark of repentance would have happened in him. There was also prepared a pulpit, where a Right Reverend Father in God, and a renowned and famous clerk, the Bishop of Worcester, called Hugh Latimer, declared to him his errors; but such was his frowardness that he neither would hear nor speak. And a little before his execution, a huge and great image was brought to the gallows, which image was brought out of Wales, and of the Welshmen much sought and worshipped,' and was burnt under Forest. 'This freer when he saw the fire come, and that present death was at hand, caught hold upon the ladder, which he would not let go, but so impatiently took his death that

Scene at the execution of Forest.

nor so ungodly ended his life. Upon the gallows that he died on were set up in great letters these verses following;' of which it need only be said that they are too ribald for quotation.

The incident of the image is worthy of remark, as occurring just before the order that images to which special pilgrimages had been made were to be pulled down, together with the shrines of 'counterfeited saints,' and long before the Statute of Edward VI. against other images, in churches, which, during the whole of Henry's life, it was unorthodox to injure or revile. But what is most remarkable in the whole description is the utter want of pity for a fellow human being in torture. The mob is brought in to gibe and jeer after the time-honoured custom of savages, and literature is encouraged to disgrace itself in verses expressive of exultation over suffering. Such was the treatment, in the sixteenth century, of a person who happened at any moment to be on the losing side, who held, rightly or wrongly, any belief that the governing powers declared to be incorrect, and who was too honest to follow the fashion in telling a lie.

Lambert and Henry VIII.

Henry did not regard the title, which he still retained, of Defender of the Faith, as merely formal or honorary, but sometimes vindicated his claim to it by an argument with a heretic. One Nicholson or Lambert, a priest, was accused, like many a Lollard before him, of 'denying the sacrament of the altar to be Christ's natural body.' He appealed to the king as supreme head of the Church. A day was appointed for the hearing in Whitehall. A throne or 'siege royal' was set for Henry, 'scaffolds for all the lords, and a stage for Nicholson to stand on.' Lambert, it is said, was awed

by the presence in which he found himself. The bishops present attempted to convert him, 'but specially the king's majesty did most dispute with him,' and, as the courtiers said, with skill and dignity. Lambert, however, though unable to make a learned and argumentative defence, obstinately refused to admit that he was in the wrong. He was condemned, and soon afterwards drawn, and burnt in Smithfield.

All these executions for heresy were previous to the famous Act known as the 'Six Articles,' according to the first of which a person denying the real presence was, without permission to abjure, subject to the punishment of burning formerly inflicted on heretics who had relapsed. The statute, however, cruel as were its penal clauses, did not, immediately at least, add much to the fires of Smithfield. Under an enquiry instituted in London soon afterwards, it is said, indeed, that more than five hundred persons were accused of offences alleged to be within the Act. But malice of personal enemies was believed to be one of the chief causes which filled the prisons, and Henry, by the advice of Lord Audley, granted a general pardon. In the following eight years, during which the statute was in force, some lives were sacrificed which would perhaps otherwise have been spared; but if it be true, as alleged at the time, that 'certain of the clergy when they had no witnesses would procure some,' the undoing of the victims would have been brought about, even though the statute had never been passed.

Statute of Six Articles.

The connexion between treason and heresy had also become so very close that men were consigned to the flames as well as to the gibbet or the block by Act of Attainder. This was the fate of

Barnes, Garrard, and Jerome.

Barnes, Garrard, and Jerome, whose 'heretical opinions' are not even described in the instrument which condemned them to the stake. Cromwell was also attainted for heresy and treason combined.

Private vengeance could no doubt be very easily gratified in those times; but there was at least one instance of burning in which private vengeance could hardly have been a motive, and for which it seems impossible to discover any better reason than sheer love of cruelty, or a bigotry closely akin to frenzy.

Utterly irrational, at any rate, like the burning of a dead heretic's body exhumed for the purpose, was the execution in Smithfield of Richard Mekins. He had spoken, much after the fashion of a parrot, some idle words which he had chanced to hear, which it was said affected the sacrament of the altar, but of which he could not have understood the meaning. Information was given to Bonner, then Bishop of London, whom a mere whisper of heresy excited to a virtuous wrath on behalf of his Church. To him circumstances were nothing—belief, or the profession of belief, was everything. With his training and his fanaticism he was probably hardly aware that it was a cruel deed to burn in Smithfield a poor and ignorant boy, whose age was barely fifteen years.

Mekins, a boy of fifteen, burnt.

During the remainder of Henry's reign the executions for heresy were, so far as is known, not very numerous: there were about three-and-twenty in about six years. One of the sufferers was Anne Askew, whose sufferings and death have since excited more commiseration than they could have attracted when the burning of a woman, not only for heresy but for treason, was a common event.

Anne Askew.

In the few years during which Edward VI. was on the throne, orthodoxy became very nearly that which was afterwards accepted as orthodoxy under Elizabeth, and by the Church of England in later times. But, while the definition of heresy was continually shifting, the punishment of the heretic remained the same. Men seemed to be advancing in a strange order of battle, all trying to burn those who had gone a little farther than themselves. An Act was passed for the 'uniformity of service;' and commissioners were empowered to seek out heretics, and deliver the unrepentant to the secular arm. Many were apprehended and threatened for holding erroneous doctrines with respect to the divinity or the manhood of Christ. Some retracted; two suffered. One of the two was Joan Bocher, a woman who had taken to preaching, and who held some doctrines of her own with respect to the incarnation; the other was a Dutch Arian.

Heresy under Edward VI.

When the ancient religion was restored under Mary, very many of the doctrines of the reformers, which had been declared orthodox by persons in authority, again became heretical, and all who would not abandon them were in danger of the flames. The mediæval statutes relating to heresy were re-enacted, and among them the statute by which the sheriff could be required to burn a heretic, after conviction in an ecclesiastical court, without any special writ. Lawyers have disputed whether this Act really became law at the time when it first appears in the Statute-book. There cannot be a doubt but that it became law under Philip and Mary; and the power thus given to ecclesiastics has had indirectly a most pernicious effect in diminishing the materials for history. Could no heretic have been

The Marian persecution: burnings without writ, upon simple warrant from the ordinary.

burned without a writ, the enrolments of any year would have shown the number of heretics executed. But through the operation of this persecuting statute the historian is unable to bring either the possible exaggerations of one party or the concealments of another to the only test which could be with certainty applied. The absence of the writ, however, has a silent eloquence of its own.

A hope at first naturally suggests itself that, perhaps, the statute by which the writs became unnecessary may not actually have been put in force, and that the power to burn heretics without any warrant but that of the ordinary to the sheriff may not have been exerted. This hope, too, is strengthened by the fact that in some cases writs did issue—as, for instance, for the burning of Cranmer. The proceedings, however, of the Privy Council indicate, not only that the issue of the writ was exceptional, but also that the sheriffs were expected to obey the warrant of the ordinary for execution, and often showed some want of alacrity in obeying it. A person of so exalted a position as Cranmer could hardly be treated in the same manner as a heretical weaver or smith, and it is not surprising that the sheriff received a special order to burn him. So, also, when it was considered of importance that a number of heretics condemned at the same time should be burnt in different places, there were sometimes writs drawn up for the purpose; and a writ was made out for the execution of one Braunch, whose hand was to be struck off, before the faggots were lighted around him at the stake, because he had shed blood in a church.

On July 28, 1557, however, there were sent, by order of the council, 'letters to the Sheriffs of Kent, Essex, Suffolk, and Stafford, the Mayor of Rochester, and the Bailiff of Colchester, to signify what had moved them to

stay such persons as had been condemned for heresy from execution who had been delivered unto them by the ordinary.' Under date of August 7 in the same year, too, there appears in the council-book the following entry: 'My lords of the council having received a letter from Sir John Butler, knight, of the 5th of this month, whereby he writeth that his deputy hath respited a woman from execution that was condemned for heresy, and should have been executed at Colchester, their lordships considering that the said sheriff is answerable for his deputy's doing, hath appointed him to pay for a fine for this disorder the sum of ten pounds, which they have signified unto him by their letters of this date.'

The only inference to be drawn from these passages is that when any persons had been convicted of heresy by the ecclesiastical authority they were usually placed in the custody of the sheriff, with a warrant from the ordinary to burn them. The persecutors were by no means free from apprehensions that some of these numerous burnings might be attended by a popular outbreak, and there are entries in the proceedings of the Privy Council showing that it was necessary to send a strong armed force to prevent rescue and ensure order. There is, indeed, no doubt that the Marian persecution was a terrible fact, and little that her own contemporaries had already begun to regard their queen as deserving to be styled 'Bloody Mary.'

Though we do not, and never can, know how many unfortunate men and women were burnt for the crime of refusing to assert that certain propositions were true which they believed to be false, we do know that the number was great, and that many of the sufferers were distinguished reformers. Many bishops and other dig-

nitaries of the lately existing hierarchy perished at the stake, and their very names are commonly pronounced with reverence, as the names of martyrs in a holy cause. Yet the more numerous and less distinguished body of victims would, perhaps, if justice were done, be held worthy of more compassion and more respect. They had none of the motives which deter the leaders of a party from proclaiming themselves recreant before the world; and mercy might have been obtained by them more easily than by their superiors. They were unstained by the blood of their fellow-men, and they displayed a character which, apart from the question whether they believed rightly or wrongly, shows that they were at least superior to the sordid but too much honoured dictates of common-place worldly wisdom. To us of the nineteenth century it is impossible not to feel sympathy for any human being put to the torture; but that sympathy does not seem to be most deserved by men who had consented to the burning of others, and such men were Latimer and Cranmer.

It is much to the credit of Elizabeth or her advisers that, when there was another revolution in religion, there was not a series of burnings in retaliation for those inflicted under Mary. Many supporters of the ancient faith were tried, convicted, and executed as traitors, but not one was brought to the stake. There would, no doubt, have been some difficulty in representing those doctrines to be heresy which had had the sanction of the Roman Church for centuries. But such a scruple would hardly have been sufficient to allay theological hatred when once aroused; and Elizabeth's Council, though they could hardly boast a very great pro-

Heresy in the reign of Elizabeth.

some cruelties by perceiving that the cruelties of the preceding reign had not had the effect which was intended. The two first Acts passed in the Parliament now assembled had for their objects the settlement of religion and the definition of heresy. It was enacted, among other things, that any doctrine might be declared heresy by Parliament with the assent of the clergy in convocation; and a very terrible use might have been made of such a power. The older Heresy Acts, however, were again repealed, and the punishment of heretics became again dependent on the special writ for their burning which was alleged to be a part of the common law. No attempt was made to extirpate popery by fire, and the only persons who suffered the extreme penalty for their opinions under Elizabeth were apparently two Anabaptists.

To use the stake but sparingly, however, is not to act upon a policy of religious toleration. The very statute which undid what had been done under Philip and Mary was the foundation of that jurisdiction which afterwards incurred obloquy as the Court of High Commission, with its authority to 'correct errors, heresies, and schisms.' Its next neighbour in the Statute-book is the Act of Uniformity, which prescribes the use of the Book of Common Prayer, the penalties for using any other forms of service, and the fine for omitting to go to church. The political intrigues and plots of persons interested in the old religion rendered, as has already been shown, a clear distinction between treason and heresy extremely difficult; and thus it happened that, in the twenty-third year of Elizabeth's reign, it became treason to withdraw anyone, or to be

Intolerance in religion still the ruling policy: Recusants, Puritans.

withdrawn, from the established to the Romish religion. Twelve years later these conspiracies were alleged as the cause of a statute by which 'popish recusants' were forbidden to travel more than five miles from their place of abode.

There were recusants, however, who, except in treasonable devices, gave quite as much trouble as the popish. A recusant was a person who refused to go to church; and that portion of the Lollard or Puritan party which was not satisfied with the changes already effected supplied a great body of recusants of an opposite character to the Romish. These Nonconformists, now better known as Protestant Dissenters, used to join in 'assemblies, conventicles, or meetings,' for which offence they were subject to imprisonment until they accepted one of two alternatives—conformity or exile.

Offences against the statute for uniformity of prayer appear not unfrequently among the records of the Court of Queen's Bench. The Puritans, too, had the audacity not only to preach but to print their doctrines, and the Star Chamber began, perhaps, to incur obloquy from prosecutions connected with Puritan writings. In it, for example, Sir Richard Knightly, a deputy-lieutenant and a man of some position in his county, was arraigned with others for maintaining seditious persons, books, and libels. The offenders were described as persons who would have government in every several congregation, province, diocese, or parish. They had acted in defiance of a proclamation that no pamphlet or treatise should be put in print but such as should be first seen and allowed. They were fined and imprisoned during her Majesty's pleasure, and many others afterwards shared their fate. The liberty of the press was inseparably connected with

religious liberty and with liberty of thought in every form. But, on the other hand, many religious opinions may have been subversive of all government, and it may be true that liberty was dangerous, even if possible, before the further progress of civilisation had rendered the nation fit to enjoy it.

Importance of the changes effected in the sixteenth century; prospects of liberty, civil and religious.

Nevertheless, if we compare the condition of England upon the accession of the first Tudor with her condition upon the accession of the first Stuart, we see how important were the changes of the sixteenth century for all the centuries to follow.

It is easy to dilate upon the encroachments of the sovereign during this period, to show how near the action of clear heads and firm hands approached to despotism, and to bewail the lost liberties of the Commons. But the liberty which had previously existed—where it existed at all—was licence and anarchy. It was the liberty which the barons had wrested from King John, and of which the barons had always kept to themselves the greatest share. It was the liberty which perpetuated the spirit of private war, and which diminished the power of the crown only to increase the power of the land-holders and their retainers. It was the liberty which the man-at-arms could assert for himself, and which he would gladly have denied to every invention and to every art save that which could illuminate a missal, or build a church, or caparison a charger. It was the liberty of the knight to hunt in the parks and chaces of his neighbours, the liberty of the brigand to rob whomsoever he met, the liberty of the soldier to indulge in murder and rape wheresoever he marched. Much liberty in all these forms was destroyed under the Tudors; but the forms

and the words, which have often been mistaken for freedom itself, survived to bear a new meaning in later ages. Neither Parliament nor the principle of representation was destroyed ; and though the authority of an Act of Parliament was arrogated to a royal proclamation, it was the power of the lords rather than of the commons which was lessened, for there had never before been a time when a combination of lords could not overawe king and commons alike.

While the prospects of civil liberty, as distinguished from anarchy, were in no way darkened, there presented itself a new prospect, of which a glimpse had hardly been seen in previous ages—a prospect, though remote, of liberty in religious opinion. There began to appear a possibility that at some future time it might be a greater crime to kill a man than to differ from him upon a matter of doctrine, to steal than to prefer one ceremonial to another. Though, however, it may be permissible to speak of prospects, it would be a perversion of all the facts of history to assert that any real liberty was enjoyed before the time of the Tudors, or during their time, or for some generations afterwards. But the sixteenth century may fairly be considered the period at which the most cultivated minds began to doubt whether the whole theory of good government could be summed up in the one proposition that all subjects ought to accept the teaching of their rulers upon all points, and be put to a painful death if they ventured to think for themselves. The names of Sir Thomas More and Bacon may be brought forward as sufficient evidence that, though bigotry on one side or other was still the prevailing force, there were already minds familiar with the idea of tolerance, if not with its practice.

It is humiliating to reflect that modern tolerance is but the descendant of a compromise which allowed no toleration for the uncompromising, which punished even to death those who believed too many of the doctrines believed by their forefathers, and was equally severe to those who believed too few. The spirit which displays itself in the Act for the Advancement of True Religion is, in many respects, like that old spirit of the middle ages which always animated the dominant party, and which prompted the extirpation alike of a hostile party and of a hostile opinion. It displayed itself again and again, not only in the proceedings of the men who governed under Edward VI., not only in the religious counter-revolution under Mary, not only in the rigorous measures against Papists and Nonconformists in the reign of Elizabeth, but down to comparatively recent times. Even the writ for the burning of a heretic was not finally abolished till late in the reign of Charles II., though it was practically extinguished in the time of the Commonwealth; and the doctrine that Jews, Roman Catholics, and Dissenters ought not to suffer any civil disabilities had, a generation or two ago, but few supporters except among the Dissenters, the Roman Catholics, and the Jews themselves. Yet, though it is true that intolerance was conspicuous during the whole period in which the Church of England was being developed, it is no less true that the changes effected in the sixteenth century prepared the ground for the growth of tolerance and for all that expansion of intellect which tolerance implies.

Slow growth of tolerance.

That so much good should have been evolved out of so much evil is a paradox which is somewhat hard to understand when it first presents itself. It is a paradox

which might, perhaps, never have presented itself at all, had not the causes which had been long operating in favour of civilisation gathered strength in succeeding generations. The spectacle of diversity in religious observances, which not even the Court of High Commission could destroy, began, when once the minds of men had been unsettled by a change in the doctrines recognised by the State, to operate against the bigotry of the past. When, in a later age, the descendants of the townsmen who had once been villeins and slaves became the masters of a new empire through their knowledge of the laws of nature, new occupations gave a new tone of thought even to the uneducated. The more it is seen that craftsmen skilled in different kinds of work may meet on equal terms when work is ended for the day, the more it becomes possible for men to be friends who are not agreed upon the best possible form of religion. The more complex the relations of mankind the less room is there for prejudice and persecution. The separation of the English Church from Rome was a benefit; the divisions in the English Church were also benefits to the English Church herself, because in the end they rendered it impossible for her to become a tyrant.

Tolerance impossible without civilisation.

The final triumph of the reforming party effected a change of more importance, from a social point of view, than any event since the Black Death. During many centuries a popular outcry against the monasteries had been continually breaking out, and was never suppressed until the cause was removed. The attempt to revive them under Mary may at this distance of time be disregarded, as the work of destruction carried out by Henry VIII. was never undone, and

Social changes through the dissolution of monasteries.

society was in the end reconstituted with one element the less. In later generations numbers of men and women who would formerly have become monks and nuns devoted their energies to secular occupations, and, no doubt, contributed something to the greatness of England.

The poor not previously supported by the Church.

It has already been shown, in this history, that while lands were absorbed by the religious houses, there was not, even in the earliest times to which records extend, any corresponding gain to the poor. After the Black Death the number of 'vagabonds' greatly increased. They were persons who left their own kindred or county, either simply to avoid the necessity of giving their labour to a lord, or in the hope of finding employment in a town. During a long journey they naturally resorted to begging in one form or other, and, in proportion to the success of their demands, were more or less disposed to regard begging as their ordinary means of livelihood. They were the prototypes of the modern tramps or vagrants. The vagabond of old, however, had very formidable rivals in the 'limitours' or friars, who held a licence to beg within certain defined limits. The Church not only was not the support of poor laymen, but did not even maintain its own servants out of its own broad acres, and, as it grew richer, was continually asking for more alms.

Early attempts to suppress mendicity and vagabondage.

By the Statute of Labourers passed immediately after the Black Death, and by its subsequent re-enactments, attempts were made to put down vagabondage with the strong hand, and alms-giving to strong and healthy beggars was forbidden. These statutes tell us that, when the bonds of feudalism began

to be relaxed, the religious houses in no way prevented either poverty or vagrancy, just as the earliest of the Great Exchequer Rolls tell us that the sick and poor were relieved, so far as they were relieved at all, not out of ecclesiastical but out of public revenues.

As soon as the Wars of the Roses were at an end, mendicancy and vagabondage again occupied much of the attention of the legislature, and one alleged cause of 'the idleness of the people' was the conversion of corn-lands into pasture-lands, which was in some mysterious manner associated with the destruction of houses and towns —'some towns wherein formerly two hundred persons earned their livelihood being now occupied by two or three herdsmen.' It does not seem to have occurred to the legislators of the period that depopulation is caused by foreign and civil wars rather than by the substitution of one kind of industry for another, or that wool had been the chief English export from the earliest times of which records have been preserved, or that the gradual weakening of the feudal organisation had, for generations, been converting villeins and the children of villeins into labourers, without any hereditary claim on their owners or masters. These matters have already been touched in an earlier chapter. It must suffice in this place to repeat that the preambles of statutes, however valuable they may be as an indication of contemporary opinions, are of little authority as abstracts of previous history. They are commonly founded upon the petition of some interested class, which has set its own case in the strongest possible light; and thus a local grievance may be represented as a national calamity. It is probable enough

Series of Acts relating to beggars and the poor beginning long before, and continued throughout the period of the Reformation.

and not less probable that the cause was an increased demand for English wool. In this matter it might have been said of the English of those days—

> O fortunatos nimium, sua si bona nôrint,
> Agricolas !

The disappearance of villenage was, however, undoubtedly producing very serious effects, and multiplying the number of beggars. In the reign of Henry VII. there were two Acts passed with the object of repressing them. Vagabonds and idle persons were to be set in the stocks three days and three nights, to have no food but bread and water, and then to be put out of the town where they had been found; and any person giving them more than this bare sustenance was to be fined a shilling. But beggars unable to work were to be sent back to the hundred in which they had been born or had last resided. This last provision is, as it were, a link between the present century and the very remote past; its origin is the old notion of lordship and villenage, its later stage the law of parish settlement.

In the reign of Henry VIII., some years before the lesser monasteries were dissolved, there was passed an 'Act directing how aged, poor, and impotent persons, compelled to live by alms, shall be ordered, and how vagabonds and beggars shall be punished.' It was then provided that the justices of the peace in every county should 'divide' themselves, and should give licence, under their seals, to such poor, aged, and impotent persons as they should believe to have most need, to beg within certain limits. All who begged without such licence were to be whipped, or set in the stocks three days and three nights, with bread and water only. A 'vagabond taken begging' was to be whipped, and then

sworn to return to the place where he was born or last *dwelt*, and there 'put himself to labour.'

Another statute on the same subject was passed in the very session in which all monasteries not having lands to the value of more than 200*l.* per annum were given to the king, and its provisions were, therefore, entirely unconnected with any increase of beggars consequent upon the dissolution of religious houses. It is worthy of attentive consideration. All governors of counties, cities, towns, hundreds, hamlets, and parishes were to find and keep every aged, poor, and impotent person who had been born or had dwelt during the last three years within the limits of their respective jurisdictions, so that none might be compelled to beg openly. For this purpose there were to be 'common boxes and common gatherings' in every parish, and any person making open or common dole, or giving money in alms, otherwise than in this parochial fashion, was subject to a penalty of ten times as much as he had given. Every sturdy vagabond was to be kept in continual labour. Children under fourteen years of age and above five, if taken begging, might be put to service in husbandry or other crafts. Sturdy vagabonds were to be whipped and sent back to their previous abodes, as by previous statutes; but if they continued their roguish life they were to have the upper part of the gristle of the right ear cut off; and if they afterwards offended in the same way, they were to be adjudged and executed as felons.

It will be remarked that in these Acts there was a progressive severity of punishment, which indicates that the evils of vagrancy were continually attracting more and more attention. There is also a pleasanter feature in them—a rough sort of pity for the aged and infirm, of

which the first traces are to be detected in the alms granted, according to the early Exchequer Rolls, for the support of the lepers and the blind. The licences to lay beggars, imitated from the licences to the begging friars, must have tended to encourage idleness and vagabondage. The nuisance and the scandal had evidently become very great, when it was made part of the county and parochial administration to regulate the distribution of alms, and when indiscriminate alms-givers were severely punished.

The period of greatest activity in dealing with beggars and vagrants was thus not the period immediately succeeding the dissolution of the monasteries, but the period immediately preceding it. Mendicancy was an evil not caused by the withdrawal from the poor of a support which had been given them out of the lands of religious houses (for meat and drink had been given as freely by lay as by clerical land-holders), but easily traced back to the time of the Black Death, and even to an earlier state of society. When this fact is remembered, it is not difficult to understand the so-called Petition of Beggars—a document, indeed, which beggars had not sufficient education to draw up for themselves, but which nevertheless showed in its true light one of the aspects of popular feeling. Discontent with the use made by the Church of the enormous revenues at her disposal had again and again broken out, and it was only a natural climax to past history that 'the very beggars' should ask for the abolition of monkcraft.

Had there been no previous statutes to serve as guides, the Act passed at the beginning of the reign of Edward VI. might seem to have been called forth by a sudden increase of vagrancy, caused solely by the dissolution of monasteries. Following as it does the Act by

which a vagrant might be executed as a felon before any monasteries had been dissolved, its true character is sufficiently apparent. It is but one of a series, more barbarous indeed, according to modern notions, than any of its predecessors, but, according to the notions of the time, only a little more severe than that which it immediately succeeded.

The Statute of Vagabonds under Edward VI.

This famous Statute of Vagabonds might well have been passed in the days of Edward III. or Richard II., or even before the Conquest, and is a remarkable indication of the old feudal spirit still lingering among the more powerful classes. A runaway servant was to be branded on the breast with the letter 'V' (for vagabond), and adjudged to be the slave of any purchaser for two years. The owner was to 'give him bread, water, or small drink, and refuse meat, and cause him to work by beating, chaining, or otherwise' at any kind of labour, 'though never so vile.' If he absented himself for fourteen days at any time during the two years, he was to be branded on the forehead or cheek with the letter 'S,' and adjudged to be the slave of his master for ever; if he ran away a second time, the offence was declared felony, as in the reign of Henry VIII. It was also made lawful to put a ring about the neck, arm, or leg of one of these slaves. Idleness and vagabondage were thus made penal in as high a degree as any offence, except treason. At the same time, however, retrogressive though the Act was from one point of view, it was progressive from another, for it ordained not only, like the earlier statutes, that the aged, crippled, and weak should be relieved, but also that convenient houses should be provided for them 'by the willing and charitable disposition of the parishioners.' Thus the work-

house infirmary may be said to be of more ancient origin than the workhouse itself.

The provisions respecting slavery were repealed in the same reign. In the fifth year of the reign of Elizabeth the system of licensing beggars again received the approval of Parliament, but only in cases in which the parish had more poor and infirm persons in it than it was able to relieve. At the same time the relief of the poor was made to some extent compulsory: if any parishioner obstinately refused to contribute for this purpose, the justices of the peace at quarter sessions might tax him a reasonable weekly sum, and, if he refused to pay it, imprison him.

The poor laws of Elizabeth's reign.

Nine years later there was an Act showing a relapse towards the severity of the statute of Edward VI. The word slave, indeed, was omitted; but a vagabond above the age of fourteen years was to be grievously whipped, and burned 'through the gristle of the right ear with a hot iron *of the compass of an inch*,' unless some responsible person would take him into service for a year. If, after the age of eighteen, he fell a second time into a roguish life, he was to suffer death as a felon, unless some responsible person would take him into service for two years; and if a third time, he was to be unconditionally adjudged a felon. In the midst of this vacillation, however, the poor law, as now understood, was growing apace, for it was provided that assessments should be made *in every parish* for the relief of the poor.

Four years afterwards it was enacted that every city and town corporate should maintain a stock for setting the poor to work, and that there should be houses of correction in every county.

The punishments of boring the ear for committing

vagabondage a first time, and of death for committing it a second time, remained in force one-and-twenty years. In the thirty-fifth year of Elizabeth's reign they were abolished, and in the thirty-ninth was passed the very important 'Act for erecting Hospitals or Abiding and Working Houses for the Poor.' This, however, was only permissive—was passed only to give benevolent founders certainty that they might bestow lands and money without infringing any law or royal privilege. But, in the forty-third year of the same reign, it was provided by the 'Act for the Relief of the Poor' that convenient dwelling-places for poor persons unable to work might be erected upon waste or common lands, 'at the general charges of the parish.' It was at the same time enacted that there should be overseers of the poor nominated in every parish; and power was given to enforce, by distress or imprisonment, the payment of the amount at which any person was assessed. The overseers were to raise a stock of 'necessary ware and stuff' in order to set to work those of the poor who were not infirm, and 'competent sums of money for the necessary relief' of the impotent.

This was the process by which our poor rates, workhouses, and houses of correction were established. It will, however, be observed that there was not, even at the end of the reign of Elizabeth, a very clear distinction between the house of correction and the workhouse, between the house of punishment for the obstinately idle and the house of refuge for the poor unable to find employment. Infirmity or wilful indolence were practically assumed as the only two possible causes of failure to earn a livelihood.

A house of correction in the sixteenth century was a habitation which the managers did not render by any

means attractive to the inmates, but it was a practical illustration of the adage that necessity makes men acquainted with strange companions. There were the practisers of unlawful games—the forerunners of our modern skittle-sharpers, welshers, and gaming-house keepers. There were persons who 'used physiognomy, palmistry, or other abused sciences, tellers of destinies, deaths, or fortunes.' There were 'minstrels not belonging to any honourable person of great degree,' unlicensed buyers of rabbit-skins, sellers of aqua vitæ, petty chapmen, tinkers, pedlars, jugglers, bearwards, fencers, unlicensed players in interludes. There were begging sailors pretending losses at sea, and unable to show a licence from two justices living near the place where they landed. There were Irishmen and Irishwomen 'of the sorts aforesaid' who lived by begging. There were hedge-breakers, and petty pilferers of wood. There, too, were scholars of Oxford or Cambridge that went about begging, 'not being licensed by the Chancellor or Commissary.'

A house of correction in the reign of Elizabeth.

There was within the walls of these houses a reflection, as it were, of much of the outer life of England, of the continuing struggles between the old forms of life and the new. The demoralisation caused by the ancient system of permitting friars to beg is shown by the extension of the system to persons of various classes, who, one after another, obtained the privilege of asking the first comer to pay the expenses of any journey they might undertake. At the same time the persistence of the feudal spirit among the governing classes appears in every attempt to deal with beggars or with any of the poor. Before the Norman Conquest a man who had no lord was to be accounted a

Persistence of the feudal spirit shown in attempts to deal with the poor.

thief; in the reign of Elizabeth a man who had no lord and no master was to be accounted a vagabond. In addition to the classes already mentioned, the houses of correction were filled with 'idle labourers that would not work for the wages taxed, rated, and assessed by the justices of the peace,' and 'strong idle persons, having no land, money, or lawful occupation.'

It was as vagabonds (that is to say, as persons who ought to serve a master in some definite locality, but preferred to wander about the country in search of adventures) that the gipsies were regarded when they first came prominently into notice in the reign of Henry VIII. It was not so much because they 'deceived the people with palmistry' and were suspected of various felonies that they were obnoxious, as because they 'went from shire to shire.' In the reign of Philip and Mary they were declared felons if they would not depart within forty days; but if they would leave their 'naughty, idle, and ungodly life and company, and be placed in the service of some honest and able inhabitant within the realm,' or exercise some lawful calling, they were to be discharged of all the pains and forfeitures contained in the Act. Similar provisions were also re-enacted in the reign of Elizabeth, when it was further made felony to be seen 'in any company or fellowship of vagabonds calling themselves Egyptians.' Of such importance was this final statute against the gipsies considered that the record of a prosecution under it has been preserved in the secret bag of the King's Bench. Four yeomen of Medmenham in Buckinghamshire were accused of feloniously keeping company with a band of gipsies, and of 'counterfeiting, transforming, and altering themselves in dress, language, and behaviour to

The gipsies, and the crime of associating with them.

such vagabonds called Egyptians.' They were found guilty, and sentenced to be hanged.

The persons committed to the house of correction for fortune-telling were no doubt English people who had escaped detection when consorting with the gipsies, and had acquired from them some of the forbidden arts. These fugitives had left their native hamlets like the villeins of old, and fallen, in their wanderings, among gangs of gipsies, just as their forefathers had fallen among gangs of brigands. When they made their way to a town they might in some cases perhaps still find a welcome if they were content to accept service for some long period. But the runaway was no longer regarded by townsmen with the same favour as in the days before the Black Death—for two very obvious reasons. Labour had become more plentiful with the decay of the feudal system, and the employer of labour had himself imbibed some notions with respect to the division of classes which were practically derived from the old doctrine of lord and slave.

Relations between servant and master.

Some remarkable illustrations of the readiness with which the townsmen put into execution the laws relating to vagabondage and permanent service may be found in the archives of various boroughs. In the thirty-first year of the reign of Elizabeth was passed a statute (excellent indeed by chance, though not by intention, as a sanitary regulation) that no cottage should be erected unless at least four acres of ground were assigned to it, and that there should not be any 'inmates,' or more families than one, in the same cottage. Cities, boroughs, and market towns were excepted at this time from the provisions of the Act, but its spirit nevertheless pervaded the borough regulations even before the law was

made, and the mayor's licence was necessary for anyone who wished to take in an under-tenant. The object was to break down any attempt at the assertion of independence by persons who were not landed proprietors or otherwise of good substance. Juries of Lyme Regis accordingly present as a heinous offence that some fellow townsman is harbouring his wife's sister, or his own mother. Sometimes it appears that the person harboured is a wrangler from house to house, a common tale-teller, or a common picker or filcher, but the great ground of complaint always appears to be that she is 'masterless.' She ought to be able either to support herself in her own house or to justify living in another by some engagement of long duration as a servant. From these instances it is easy to perceive the connexion of the statute relating to cottages and inmates with the statutes affecting the poor, and with the famous statute passed in the fifth year of Elizabeth's reign to define the relations between servant and master.

There is a wide difference between this Statute of Labourers passed in the sixteenth century and the Statute of Labourers which immediately followed the Black Death; but great though the difference is, the resemblance is even greater. The leading principle is in both the same—that the unmoneyed and unlanded classes shall be compelled to work, and that they shall not have any voice whatever in determining their own remuneration. By the older statute they were required to serve their lords as villeins, or, if not villeins, at the rate of pay usual before the plague. By the new statute their wages were limited to the amount annually fixed by the justices after due consideration of the circumstances of each year; either to give or take more than the amount thus fixed

was an offence punishable by imprisonment. By the older statute the lord might lend his villeins in harvest-time; by the newer the justices might give a licence to labourers to work, in harvest-time only, in a county not their own. The name of servant was substituted for that of villein, the power of the justices had become superior to that of private lords; but all the old prejudices and feudal notions of government survived in forms only a little different from those of the middle ages. It had once been thought the perfection of organisation that a slave should be a slave for ever; it was now believed to be necessary that a servant or handicraftsman should serve his master at least a year, and should within that time have no liberty to direct his own movements except by a certificate from a justice of the peace, before whom also husbandmen had to show some reasonable cause if they wished to put away their servants.

Villenage itself, indeed, was now nearly extinct, and the descendants of many of the villeins of old had become copyholders—a class mentioned in the very statute of Elizabeth which relates to labourers and servants, and exempted in it from compulsory service. But even during some years of Elizabeth's reign there were villeins upon the crown lands who were allowed by her to obtain their freedom—for a consideration. This form of slavery had, as explained in the previous volume, long been dying out, but like the punishment of mutilation, long left its mark upon the character of the people. Nothing, perhaps, but such a violent measure as the Great Rebellion could have effected anything towards a rapid change in the prevalent tone of thought.

Relics of the old institution of villenage.

Among the many aspects of the contrast between the

new grouping of society gradually coming into notice and the old traditions handed down from the days of slavery, not the least remarkable were the growth of London on the one hand, and the attempts to check it on the other. In spite of all obstacles the City continued to increase in population; and suburbs began to appear where there had formerly been green fields. The dissolution of the monasteries must in the end have added to the inhabitants of towns by causing the men who would in former times have become monks, and the women who would have become nuns, to seek a livelihood in some lay occupation. But, as London had always been considered a city of marvellous size, every attempt to enlarge it was a cause of offence to the lords, who were jealous, as of old, of the burgher's wealth, and a cause of anxiety to all whose duty it was to preserve the peace and to suppress vagabondage. Proclamation was made, nearly in the terms of the subsequent Statute of Cottages and Inmates, that there should not be more than one family in each house, and that no new buildings should be erected within three miles of the city-gates. But proclamations were altogether ineffectual, and in the year 1593 was passed a statute enacting that no small buildings should be erected within three miles of London or Westminster, that no dwelling-house in either city or within three miles of either should be converted into more than one, that there should be no 'inmates' or lodgers within the prescribed limits, and that no commons within three miles of London should be enclosed. One of the principal reasons alleged for these restrictions was that it would be impossible to maintain order in a city larger than London as actually existing. The apprehension was certainly justified by past history; and there could have been no

Fears caused by the increasing size of London.

hope in those days of an improved police, for the most terrible scenes had been enacted under the system of watch and ward, according to which every man was a policeman when called upon to act.

A good system of police is most efficacious when society has so far advanced that there is a broad distinction between the criminal classes and the non-criminal, when the general tone of public opinion is against deeds of violence and robbery. But our present system of police would have been as much an impossibility in the reign of Elizabeth as the deeds done in the reign of Elizabeth would be impossible in our own time; and, even could it have existed, it would not have rendered the London of the sixteenth century in any degree like the London of the nineteenth. The fact cannot be too often re-asserted that human beings are chiefly what their forefathers have made them, and that the difference between any one generation and the next preceding is barely perceptible. It is only in the long course of ages that the advance of civilisation is marked, only a comparison of one age with another which can tell us in what direction we are progressing.

A good system of police impossible in the sixteenth century.

The inhabitants of London in the sixteenth century had to deal with difficulties which they did not much exaggerate, which were to a great extent inseparable from their own rough natures, and which we of the nineteenth century have some difficulty in realising. The disposition of the ordinary Englishman had still much of the savage in it; and the disposition of the savage displayed itself upon less provocation than was given by furious disputes about religion. In the year 1530 the household of the Bishop of Rochester was 'at his palace in Lambeth Marsh;'

Persistence of the old brutality shown in punishments: the Act to boil a poisoner alive.

and in the kitchen there stood, one day, a vessel filled with yeast and other 'things convenient' for making porridge. A cook, named Rose, threw some poison into this mixture. Sixteen residents in the bishop's house, and a number of poor persons, who were fed with the remains of the porridge, narrowly escaped with their lives; and a man and a woman were killed outright. A new statute was passed to meet this crime, and there is a statement in the preamble that poisoning had previously been a very rare offence in England, and that unless it was severely punished no man would in future have any security against death by such means. It was probably true that the subtlety of the Italian was not common in English life, and that an enemy was more commonly destroyed by the knife or the bludgeon than by the cup. It was also probably true that, as chemistry was not yet a science which could aid in the detection of murder, and as the tone of public morals gave no indication of any other check, the danger of a bad example by no means imaginary. The 'Act for Poisoning' was accordingly much in the spirit of the laws or dooms of Athelstane or Alfred. The offender was to be boiled to death without having any 'advantage of his clergy,' and all future offences of the same kind were to be deemed in law high treason. The statute was repealed not very long afterwards; but Rose was publicly boiled to death in Smithfield.

Mutilation: punishment for striking in the king's palace.

The ancient punishment of mutilation, though for centuries but rarely applied, except to the ears of an offender, had still survived, with much of the barbarism by which it had always been accompanied. Late in the reign of Henry VIII. an

for murder and bloodshed within the king's court, and reciting that such offences were often committed within the limits of the king's palace or house. The punishment for murder was the same as at the common law; but for merely striking, so as to shed blood, the loss of the right hand was the penalty—as it had been for many crimes before the Conquest. The offender, as in cases of murder in the court, was tried before the Lord Great Master, or the Lord Steward of the Household, and when found guilty suffered according to a most remarkable and carefully devised ceremony. He was brought in by the Marshal, and every stage of the proceedings was under the direction of some member of the royal household. The first whose services were required was the Serjeant of the Woodyard, who brought in a block and cords, and bound the condemned hand in a convenient position. The Master Cook was there with a dressing knife, which he handed to the Serjeant of the Larder, who adjusted it, and held it 'till execution was done.' The Serjeant of the Poultry was close by with a cock, which was to have its head cut off on the block by the knife used for the amputation of the hand, and the body of which was afterwards to be used to 'wrap about the stump.' The Yeoman of the Scullery stood near, watching a fire of coals, and the Serjeant Farrier at his elbow to deliver the searing-irons to the surgeon. The Chief Surgeon seared the stump, and the Groom of the Salcery held vinegar and cold water, to be used, perhaps, if the patient should faint. The Serjeant of the Ewry and the Yeoman of the Chandry attended with basin, cloths, and towels for the surgeon's use. After the hand had been struck off and the stump seared, the Serjeant of the Pantry offered bread, and the Serjeant of

the Cellar offered a pot of red wine, of which the sufferer was to partake with what appetite he might.

In the very year in which the statute was passed there was a case of striking in the king's house, at the Tennis Court, which was remarkable because the offender, at the last moment, obtained a pardon. The assailant was a knight, the person struck was but a servant of the Earl of Surrey; and the rank of the parties was probably not without its effect upon the issue. Sir Edward Knevet was brought face to face with all the hideous array described in the statute. But he was a courtier as well as a knight, and he sent a pressing message entreating that he might lose his left hand instead of his right, which might do good service to the king. Henry, who, when a good thing had been said, delighted to cap it with a better, replied that as the knight had a gentle heart and was in good repute among lords and ladies, he should not lose either one hand or the other, or land or goods, but should at once go free. Knevet was a very fortunate man.

The stocks, cucking-stool, brank, and pillory; cruel punishment of Penredd.

The ancient and savage practice of exposing a culprit to public view and trusting to the brutality of the spectators for the infliction of a sufficient penalty, in minor offences, was in full force in the sixteenth century and long afterwards. The mildest form of the device was the stocks; and it is related on credible authority that Wolsey was, in his younger days, set in the stocks, for some offence, by Sir Amyas Pawlett. The cucking-stool was still in use for scolds, and with it the brank, or scold's bridle, which was in fact a kind of muzzle. The pillory, however, was the most formidable of all the

by missiles, were the leading features. The mode of restraint was painful, and the ears of the offender were commonly nailed to the woodwork of the instrument, which was sometimes rendered the means of a very horrible .torture. One Timothy Penredd, for instance, was in the year 1570 found guilty of the repetition of a very old offence. He counterfeited the seal of the Court of Queen's Bench, forged and sealed some Queen's Bench writs, and attempted to impose them upon the sheriffs of London, so that two persons might be arrested. The crime, from a modern point of view, was most heinous; the punishment, from the point of view of the sixteenth century, was certainly very light, though anyone who should now propose to revive it would be execrated for his cruelty or confined in a lunatic asylum. The judgment against Penredd was that he should be put in the pillory on two successive market days, in Cheapside. On the first day one of his ears was to be nailed to the pillory in such a manner that he should be compelled 'by his own proper motion' to tear it away; and on the second day the other ear was to be nailed to the pillory in the same manner, and release was to be purchased only at the same price.

Of the execution for treason it is not necessary to say more here than that it was carried out with all its horrors upon all but traitors of the highest rank. Contemporaries, indeed, seem to gloat over its disgusting details. The death of the Nortons, uncle and nephew, is thus grimly told by a spectator:—'The younger man, after he had beheld the death of his uncle—as well his quartering as otherwise—knowing and being well assured that he himself must follow in the same way, seemed to be very repentant.' He made

Barbarising effects of the punishment for treason; instance.

a confession, and 'with that, the hangman executed his office; and being hanged a little while and then cut down, the butcher opened him, and as he took out his bowels he cried and said, "O Lord, Lord, have mercy upon me!" and so yielded up the ghost. Then, being likewise quartered as the other was, and their bowels burned, as the manner is, their quarters were put into a basket provided for the purpose, and so carried to Newgate, where they were parboiled; and afterwards their heads set upon London Bridge, and their quarters set upon sundry gates of the city of London, for an example to all traitors and rebels for committing high treason against God and their prince.'

Connexion of ferocious punishments with the use of torture.

To anyone who reflects upon the tone of satisfaction which pervades this passage and upon the ear-tearing case of Penredd, it will not appear strange that the torture-room was a recognised institution which excited but little, if any, public discontent. The use of torture, however, though proved by a greater number of documents during the Tudor period than at any other time in the history of England, was not brought in by the Tudor sovereigns. It has been made a special reproach against them solely because more written evidence relating to their reigns than to the reigns of previous kings has been handed down, or discovered by historians. There is no doubt that prisoners could be tortured, by the king's licence, with the object of extracting a confession, at least as early as the reign of Henry II.; and to seek for indications of humanity in earlier reigns would be like an attempt to draw blood from a stone. That the warrant to apply 'the question' was given only in exceptional cases may be inferred from the fact that a special licence was required, from the silly

boast of Fortescue in the reign of Henry VI. that torture was unknown to the law of England, and again from a statute of the reign of Henry VIII., in which the practice is mentioned in a tone of deprecation. But in an age when crimes (or deeds held to be crimes) were frequent, the exceptional cases were frequent also; and though few persons may have been tortured, in any year, in proportion to the whole of the persons accused, their actual number was nevertheless considerable—apart from those who became a mark for the wanton cruelty of gaolers.

Though the 'question' had been applied from time immemorial, the law of supply and demand had, in the reign of Henry VIII., introduced some refinements of torture not, perhaps, known a few centuries before. The rack had been imported, according to legal tradition, in the reign of Henry VI., and Skevington's or the Scavenger's Daughter was invented by Skevington, who was Lieutenant of the Tower in the reign of Henry VIII. These became the two principal forms of torture, one being as nearly as possible the opposite of the other. However revolting the details may be, it is necessary that they should not be passed over in silence, in order that it may be known what Elizabeth commanded to be done by her sign manual, what was the threat made by Laud to Felton, and what was the piteous condition of one, as Shakspeare says—

The rack, 'Skevington's Daughter,' 'Little Ease,' and the 'Dungeon among Rats.'

> New haled from the rack.

On the rack the prisoner seemed in danger of having the fingers torn from the hands, the toes from the feet, the hands from the arms, the feet from the legs, the forearms

from the upper arms, the legs from the thighs, and the thighs and the upper arms from the trunk. Every ligament was strained, every joint loosened in its socket; and if the sufferer remained obstinate, when released, he was brought back again to undergo the same cruelties with the added horror of past experience and with diminished fortitude and physical power. In the Scavenger's Daughter, on the other hand, the pain was caused by an ingenious process of compression. The legs were forced back to the thighs, the thighs were pressed on to the belly, and the whole body was placed within two iron bands which the torturers drew together with all their strength until the miserable human being lost all form but that of a globe. Blood was forced out of the tips of the fingers and toes, the nostrils and the mouth; and the ribs and breastbone were commonly broken in by the pressure. The British intellect has long been remarkable for mechanical inventions; in our own time, fortunately, it devotes itself to nothing more cruel than the manufacture of engines of war.

Of somewhat older date than the Scavenger's Daughter and the rack were the chamber in the Tower known as 'Little Ease,' where a human being could not stand upright or lie at full length, and the 'Dungeon among the Rats,' confinement in either of which gave stubborn spirits time for reflection. There were also some minor implements for causing pain, such as the thumb-screw, which may still be seen in the Tower of London.

Long continuance of the use of torture.

In many of the cases of treason (especially in those in which religious animosity prompted the plot or the prosecution), from the accession of Edward VI. to the end of the sixteenth century, attempts were made to extract confessions by the aid of torture.

In the reign of Elizabeth the practice showed no signs of dying out. The council books prove beyond all doubt that many of the suspected seminary priests or Jesuits were tortured, and that even in the time of Shakspeare a human being might still be thrown into the 'Dungeon among Rats.' There were, however, now some causes in operation which had the effect of introducing new and less barbarous punishments for some minor offences, and thus of preparing English opinion for the abolition of torture. Those causes, however, can be more conveniently described in another page.

Harsh and unfair treatment of persons on their trial.

It was inevitable that when the use of torture was common the treatment of a prisoner in a court of law should be very different from our modern practice. The whole theory of torture was that a person accused should, if possible, criminate both himself and others; and the judges, who could not legally order the torture, could question and threaten anyone who was arraigned.

The case of Nicholas Throckmorton an illustration.

In the reign of Mary there was a famous trial which arose out of Wyatt's rebellion. It is the first of which a complete report has been preserved, and it illustrates the tone of the judges' minds, the persistence of the ancient modes of thought, the still ineradicable partisanship of the darker ages. Sir Thomas White, the Mayor of London, is named first in the special commission of Oyer and Terminer by virtue of which Sir Nicholas Throckmorton was tried in the Guildhall for high treason. With him were associated a number of distinguished men, some judges of the courts at Westminster, and among them Bromley, the Chief Justice of England. There is no reason,

wise than in the manner usual at the time, though it is remarkable for an acquittal by the jury.

It had been enacted in the reign of Edward VI. that in all trials for treason there should be two lawful witnesses for the prosecution, who should, if still living, give their evidence in the presence of the accused at the time of the arraignment. No subsequent statute relating to treason was passed before the trial of Throckmorton; and written depositions alone were therefore insufficient. The judges barely acted according to the letter of the law; about its spirit they gave themselves no concern. The attorney-general had two witnesses in attendance, each of whom had made a confession in writing which implicated Throckmorton together with the witness himself. One of them was sworn and said that his confession was true. The other was offered by the attorney-general, and would have been sworn had not Throckmorton waived his right on the ground that in this instance the confession was immaterial or favourable to himself. The strongest points against him were in the confessions of persons whom it was not necessary to call in order to comply with the provisions of the latest Act upon treason; and of these the attorney-general made the most. It was certainly a great injustice that depositions extorted by the means with which the gaolers of the Tower were familiar should have been accepted as evidence against anyone except the persons who made them. Men seeing that their last chance of life and of escape from renewed torture was in making a false accusation, were tempted almost beyond human endurance; to them should have been applied the great Roman maxim, that no one who had confessed himself a criminal was worthy of belief when he imputed crime to another.

Throckmorton himself pointed out the injustice, but did not assert that there was any illegality in the acceptance of such testimony, which seems to have been accepted as a matter of course.

Witnesses for the defence were not allowed; one whom Throckmorton had called was summarily ordered out of court at the request of the attorney-general. Nor was the prisoner permitted to have the advantage of counsel. He had to rely entirely on his own wit and his own tongue, with the certainty that every expression he used would be turned, if possible, to his disadvantage, and that if he put forward a good argument he would be interrupted and probably silenced. When a deposition was read, he was told that it would be best for him to confess. When he very dexterously raised a question upon certain statutes, and asked the judges to refer to them, he was told that no books could be brought at his desire, and that the judges knew the law sufficiently without book. When he made a comment on precedents quoted against him, the attorney-general complained that he was allowed to talk too much, and the Bench vaguely threatened him with consequences. The statutes of which the judges would not suffer the text to be produced he was able to repeat from memory, word for word; but he was then told that the judges did not sit to make disputations. The whole proceedings were in fact an angry conversation in which the judges assumed the guilt of the prisoner, attempted to extract from him a confession or a compromising admission, and plainly hinted to the jury that there was sufficient evidence of his guilt. When the jury retired to consider their verdict, Throckmorton made a request, which was granted, that none 'of the queen's learned counsel should be suf-

fered to repair to them or talk to any of them.' This was strangely illustrative of the practices to which it was known that the prosecution was in the habit of resorting. The jury, left to themselves, had the courage to give a verdict of Not Guilty, which was evidently regarded by the judges as an act of astonishing insubordination. The Chief Justice cautioned them not to forget themselves, wished them to reconsider their verdict, and bade them take good heed what they did. They were firm, and they succeeded in saving Throckmorton's life. Though acquitted, however, he was sent back to the Tower on the ground that he might be required to meet other charges; but this was no unusual proceeding. The jury were then at once bound over to answer before the Privy Council whatever might be objected to them. Eight of them continued to maintain, even when brought before the council, that they had done no wrong in acting according to their judgment and conscience; and for this they were grievously fined, as a caution to all jurymen who should intend to be honest in the future.

The tone of judges towards prisoners was little improved for many generations, and was, indeed, too much a matter of tradition to be changed very easily.

Tone of judges towards prisoners.

It was not better in the court of the Lord High Steward than in such a tribunal as that before which Nicholas Throckmorton was arraigned; it was probably somewhat worse when a prisoner of inferior rank was being tried for some ordinary offence under a commission of gaol-delivery. The tendency to gloat over the misfortunes of the accused, to give as much pain as possible before judgment was pronounced, and to mouth out a sentence with bloodthirsty exultation, is to be detected in the earliest records—in the award of the

court upon Andrew Harcla already quoted. It survived beyond even the time of Jeffreys.

The first trial in the court of the Lord High Steward which has been fully reported, is that of Thomas Howard, Duke of Norfolk, in the year 1571. It very much resembles the trial of Throckmorton elsewhere. The duke asked to be allowed the assistance of counsel, which was of course refused, and to be confronted with the witnesses whose depositions against him were read. The latter request was no longer in accordance with the statute law, for the Act under which Throckmorton was tried had been repealed because 'it had been found too hard and dangerous for the prince.' What the common law was upon this point it would be difficult to state with precision, for the very obvious reason that the farther back the search for precedents is carried the greater becomes the confusion. It will be remembered that, in the ordinary courts of law, there was long no distinction between witnesses and jury, and that the exhibition of documentary evidence was the first step towards the separation afterwards established. Parliamentary proceedings on the other hand had always been most irregular, and designed rather to serve the purpose of the moment, for the strongest party, than to exhibit the working of principles definitely fixed. There is, however, a report extant from which it appears that at the trial of the Duke of Buckingham in the reign of Henry VIII. witnesses were called in person before the court of the Lord High Steward to confirm their written depositions. Had Norfolk been aware of this fact, he might possibly have urged it successfully; but there is no probability that he would then have been acquitted or

Court of the Lord High Steward: trial of Norfolk in 1571.

Apart from the want of civilisation common to every class, there was a special reason why there should be less uniformity in the manner of trying or condemning powerful men, accused of treason, than in the more familiar processes of law. Party feeling naturally runs high, and men act upon the dictates rather of passion than of reason. This was illustrated even in the eighteenth century, and was far more manifest in the less cultivated sixteenth. The very constitution of the Lord High Steward's court was a mere device for ensuring a verdict of guilty. The Steward was nominated for the occasion by the Crown; his assessors consisted of his own nominees alone, were sometimes but eighteen or twenty in number, and always an inconsiderable fraction of the whole House of Peers. No challenge was allowed, and the accused was thus entirely at the mercy of the king or queen, the person most interested in crushing him.

When Parliament was not sitting, this was long the most usual mode of proceeding against a peer after an indictment had been found. During the session, which, however, did not come round with the same regularity, and was not of the same length as in modern times, the High Steward, if appointed to preside at a trial, had, according to the opinion of later lawyers, no authority to exclude any of the peers, all of whom had a right to sit. When, however, Parliament was assembled, the most usual practice was to bring in a Bill of Attainder against the accused, whose enemies had the power of destroying him without any trial whatever. There was even then, of course, some pretence of considering the evidence on which the charge of treason was made, but no uniformity of procedure, nothing in the least deserving the name of a judicial investigation. Sometimes,

too, the Act of Attainder followed sentence passed in the court of the High Steward, of which it was a solemn confirmation. In short, there were no definite legal rules according to which it was necessary that persons suspected of treason should be tried. Even the origin of the court of the High Steward (properly so called), with a limited number of peers, is lost in the mists of antiquity. It must, however, have been strictly analogous to that of many other courts which sprang out of the ancient king's court or king's council, and which were, in fact, committees with delegated functions. The difference, however, between the High Steward's court and some others like it, such as that of the Star Chamber, was that it had no permanent existence, but was constituted and summoned according to the exigences of each particular occasion. But even for such a jurisdiction as this there is a very early precedent in the case of William of Wykeham, Bishop of Winchester, who was declared guilty of corruption by a committee of councillors specially appointed by King Edward III.

In the uncertain state of the law, in the absence, indeed, of all law, and the consequent inconsistency of precedents in proceedings upon charges of treason, it is idle to blame the individuals who condemned any particular prisoner. They might do as they pleased; and when they granted any request made by the accused for something which would now be conceded as a matter of bare justice without any request at all, they were, according to all tradition, showing great and unnecessary indulgence. To one who could be deprived of life by an Act of Parliament hurriedly passed, every delay, even though only to read the false deposition of a tortured criminal, was a favour. To confront with the Duke of

Norfolk the deponents against him would have been a favour which the men who tried him were not disposed to accord. Nor were either the peers constituting the court, or the judges who were in attendance to assist them, willing to entertain seriously any question affecting legal principles of general application. Norfolk, like Throckmorton, objected to the testimony of persons who had confessed themselves guilty of treason, and supported his objection by a passage in Bracton. He forgot that Bracton's rule applied rather to appellors than to witnesses as more recently understood, that in Bracton's time there was no clear distinction between a witness and a juror, and that a member of the court of the Steward was in the position of a juror sitting to try a peer. Catlin, the Chief Justice of England, evaded the point with the remark that the witnesses to whom the duke objected had not been attainted or indicted, even though they might have confessed. One of the counsel for the prosecution added, that if no one privy to treason could be accepted as a witness, no treason could ever be proved. This reasoning was not very conclusive, but had at least more weight than the authority of so ancient a writer as Bracton; and there could be no doubt that, whatever might be the theory of the law, the common practice had been to use as evidence the depositions, not only of persons who had confessed treason, but of persons who had even been convicted. In short, the chief object of a judge presiding at any criminal trial was to convict the accused if possible. He evidently considered himself to some extent a prosecutor on behalf of the crown, bound always to do the best he could for the sovereign whom he represented, and bound most of all when the charge was one of high treason.

The tone of the judges towards persons accused was no better in the ecclesiastical courts than in the courts over which laymen presided. The most prominent of these was the Court of High Commission. But as the materials from which an estimate of its proceedings may be formed became more abundant after the death of Elizabeth, the subject may find a more appropriate place in the next chapter. It may, however, be mentioned here that the Court of High Commission was, even in her reign, very unpopular; that instances occurred in which its power was illegally exercised; and that even where its power was legally exercised its authority was often openly resisted.

Tone of judges in ecclesiastical courts; unpopularity of the Court of High Commission.

A most remarkable feature, too, of the period of the 'Reformation' is the apparent absence of any sense of respect for holy places. Sacrilege and brawling in churches, as has already been shown, were very prevalent in earlier times; they do not seem to have become less prevalent during the religious excitement of the sixteenth century. In the preamble of an Act passed in the reign of Edward VI. it is recited that 'quarrelling, brawling, fraying, and fighting openly in churchyards' were common events. Persons offending by words only were to be punished by temporary exclusion from church at the discretion of the ordinary; those who laid violent hands on others were to be excommunicate. Striking with a weapon, however, was to be visited with penalties characteristic of the age. If the offender, at the time of committing the offence, was still in possession of his ears, he was to have one of them cut off, but if he had had the misfortune to lose them both for previous misdeeds, he

Want of respect for things sacred; brawling in church.

was to be branded on the cheek with the letter 'F' as a fraymaker and fighter.

The statute, however, though useful to the historian and the student of manners, seems to have had little or no effect in repressing the offences against which it was directed. They are by no means the most uncommon in the criminal records, even at the very end of the sixteenth century. But there were some causes which rendered them frequent, apart from that spirit of brutal violence which had descended from past ages.

Plays and interludes acted in churches; effect upon the turbulent Puritans.

In the earlier times the drama had taken the form of the Mystery or Passion play, such as is now to be seen only at intervals in a remote valley of southern Germany. But in the sixteenth century the popular taste had become changed, subjects unconnected with religious history were placed on the stage, and the popular demand for novelties contributed, perhaps, something towards the development of Shakspeare's genius. According to mediæval notions there was nothing blasphemous, nothing even incongruous, in representing by the aid of human actors the chief scenes in the life of the Saviour and of the other principal personages made known to us by the Scriptures. If there was no harm in the mystery-play itself, there was obviously no harm in allowing it to be performed in a church. When the modern drama began to take the place of the mystery-play, there was thus a kind of precedent for converting a church into a theatre; and, strange though it may seem, the precedent had its effect, and plays of the new type were acted in buildings which, if consecrated, were most convenient. These plays and interludes were exhibited elsewhere when another suitable place could be found, but the

exhibition in churches was by no means uncommon, and was probably justified on the ground that it taught the spectators how odious was vice and how admirable virtue.

Churches, however, in this way became associated in men's minds with other matters besides divine service. On the other hand, the Lollards of old had been developed into the Puritans, who, though much had been gained which the Lollards had desired, were still dissatisfied with the religion established. These stubborn zealots, like the very early Christians, were averse to shows and games of all kinds. They must have been more indignant with the 'queen's majesty's players' in Elizabeth's time than their forefathers were with the supporters of religious abuses in the reign of Henry V. They were not disposed by the traditions of their sects to feel any great reverence for such a ceremony as consecration; and when consecration was not sufficient to exclude such an abomination as was, in their eyes, a body of strolling actors, their reverence was not increased. The immediate effect of the 'Reformation' and the attendant circumstances was, therefore, rather to stimulate the ancient tendency towards forgetfulness of all decency in churches and the enclosures about them than to diminish it.

Though in the ordinary offences of the period were to some extent reproduced those of earlier times, there was, towards the end of Elizabeth's reign, a change in the proportions in which they occurred. In the sixteenth century many new statutes were passed, sometimes only for the purpose of declaring the state of the common law, or slightly modifying it, but sometimes obviously to

Change in the proportions of different crimes in Elizabeth's reign: offences against Trade Acts.

meet a change in the condition of society; and cases in which these Acts are transgressed become a considerable fraction of the whole criminal business. It is in violation of statutes passed for the regulation of trade that the end of the sixteenth century is seen to be most conspicuously different from the end of the fifteenth. Regulation was invariably identical with restriction after the ancient mediæval fashion; but the growth of restrictive measures proves the growth of the trade to be restricted, and there can be no doubt that the country was far richer when Elizabeth died than when Henry VII. ascended the throne. In earlier times one of the chief forbidden exports was coin; and Erasmus, after a visit to England in the reign of Henry VIII., suffered from a very severe application of an old statute which the officers of customs so interpreted as to deprive him of the money with which he had provided himself for his journey. During the Tudor period many manufactured goods became of sufficient importance to be the subject of similar measures; and at the end of the reign of Elizabeth there appear prosecutions for exporting not only grain and other provisions, as of old, but cloths, gun-metal, and bell-metal. At the same time the various manufactures were themselves the subjects of vexatious interference. Not only was the price of labour fixed, but the conditions of sale by retail as well as by wholesale were settled by laws of which the manifest object was to check innovation as much as possible.

During the Tudor period, too, an attempt was made to enforce some ancient religious observances by the aid of some crude generalisations in political economy. Persons who should be found guilty of having 'broken and contemned such abstinence' as was ordained for the

various fasts of the Church became liable to both fine and imprisonment. The reason for the interference of the legislature was that fishermen might be set to work, 'whereby much flesh shall be saved and increased.'

In nothing, perhaps, was the struggle of new forces against ancient measures of repression more apparent than in the numerous accusations of forestalling, regrating, and engrossing. The offences themselves had been the subject of legislation as early as the reign of Henry III., and appear afterwards in statutes of Edward III. and Richard II. In the reign of Edward VI. they evidently began to attract more attention, and an Act was passed in which they were carefully defined and the punishment for them declared. To forestall was to buy goods or provisions on their way to market or fair with the object of enhancing the price or preventing the supply; to regrate was to buy them up in a market-place with the object of there selling them again at a higher rate; and to engross was to buy corn standing, or generally to buy up sundry kinds of provisions for the purpose of selling again. The act did not apply to persons established as retailers, such as carriers, drovers, butchers, and poulterers, whose dealings were solely for the purposes of their legitimate trade. The object was to abolish, as far as possible, all middlemen between the producer and the retail dealer; and, however short-sighted our forefathers may have been in financial affairs, there can be no doubt that, if other considerations are omitted, the greater the number of middlemen between the producer and the consumer the higher will be the price. Every middleman requires a profit, towards which every consumer has to pay his share, and the knowledge of this elementary fact has in

Forestalling, regrating, and engrossing.

many ages caused a terrible outcry against persons who speculated in provisions. We now know that the evil rights itself, that, in his own interest, the middleman carries his stock to the highest market, and that if he attempts to gain an unfair profit he will be undersold by another of his trade. But the notion of free competition was hardly even conceivable in the sixteenth century, and the ancient laws were therefore enforced as being, what in fact they were, the only available means of keeping down the price of the necessaries of life. For the first and second offence against the Forestalling Act the penalty was comparatively light, but for the third it was the pillory, forfeiture of all personalty, and imprisonment during the king's pleasure.

Relation of the forestalling laws to the patents for monopolies.

Exactly parallel with the laws against forestalling, and their continual infraction, was the increasing practice of granting monopolies, and the discontent which it excited. At first sight the growth of monopolies appears altogether inconsistent with the Acts against forestalling, for what was forestalling but an attempt to secure a monopoly? Both the prohibiting statutes, however, and the grants of monopolies by royal letters patent had a common origin in mediæval restrictions upon trade, which in their turn had their origin in the grants of charters by sovereigns to towns. As has been already remarked, the earlier charters show that the men of one town desired quite as much to exclude the men of other towns from the advantages they obtained as to secure those advantages for themselves. The bye-laws of the boroughs were conceived in the same exclusive spirit, and in them is to be detected the model upon which the Forestalling Acts were framed. The monopoly has thus to be regarded in two aspects, firstly as

a gift to an individual, company, or corporation, and secondly as an interference with the free action of all persons not participating in the favour. The crown, in the first instance, arrogated to itself the right of permitting or forbidding a trade to exist; a part of this right gradually fell into the hands of Parliament, and showed itself in various Trade Acts; another part remained with the crown, and manifested itself continually, during the Tudor period, in the shape of monopolies.

Like the town-charters, the monopolies were not granted without a consideration, and Elizabeth made a great profit out of this branch of her prerogative. But she extended it so far that she nearly undid all the good which, from a mediæval point of view, might have been effected by the forestalling laws. It is curious to see two different ideas, both equally opposed to modern notions of free-trade, set in opposition to each other in the sixteenth century. There was apparently nothing which might not become the subject of a monopoly, no matter whether it was in the form of raw material or of manufactured goods. Provisions even were not exempt from this arbitrary mode of taxation, for there were letters patent which gave the exclusive right of selling dry pilchards, salt, and currants; and a member of the House of Commons exclaimed in Elizabeth's reign that there was nothing left to be added to the list except bread.

The chief cause, however, of the increase in the number of monopolies during the Tudor period was one which contributed not a little to England's subsequent greatness. This was the discovery of America, the impulse given by it to maritime adventure in every direction, and the consequent attempt to utilise distant lands for the purposes of commerce.

Monopolist corporations and maritime adventure.

The first great extension of trade was naturally an extension after the ancient fashion; and when companies were formed to traffic with the ports of some far-off country, the first thought of the managers was to exclude all other mercantile adventurers from the same field. Charters were granted for the incorporation of a few persons, with the privileges which could be purchased from the crown, and above all with a clause to the effect that those privileges were exclusive. It is unnecessary, for the purposes of this work, to give a list of the monopolist corporations which thus came into existence; it must suffice to mention that the growth of them culminated, at the end of Elizabeth's reign, in the rise of the famous East India Company which laid the foundation of our eastern empire. It is, however, of some importance to observe that out of the practice of granting monopolies, which restricted dealings at particular places or in particular goods, arose the practice, in favour of which there is very much more to be said, of granting letters patent to protect inventors against the appropriation of their inventions. It is one thing to decree that all the profit from the sale of ordinary wares shall be reserved for a favoured person or a knot of speculators, and another to decree that the genius and industry which create a new source of national wealth shall have exclusively such reward as their products command from the public.

The naval enterprise of the Tudor period has also a still more direct bearing upon the history of crime. The sentiments of the robber-knight and the pirate-chief still pervaded almost every class—not excepting even the sovereign. When Columbus had made his famous voyage and brought back the news of a previously unknown world, Henry VII.

Connexion of naval enterprise with the history of crime.

of England gave the Cabots a commission which tells in a few words what was the spirit of the age. These brave adventurers, with hearts as insensible of fear as that of the man who first trusted himself to the deep in a frail canoe, were instructed to discover the countries of the unbelievers, wheresoever to be found, and to set up the English flag, in token of possession, wherever they saw fit. In short, they sailed as pirates under royal authority, and the command with which they were entrusted was accepted and conferred as an honour. It was an honour, too, which might possibly be accompanied by immense profit, was coveted by others besides the Cabots, and granted a few years later by the same king to Hugh Elyot, Thomas Ashehurst, and their associates.

The buccaneer explorers of the sixteenth century; the Armada.

Some of the most famous names in English naval history are the names of men who began their seafaring lives as buccaneers. Booty and adventure were the objects which they steadily kept in view, and commonly enough attained. Raleigh, Frobisher, Hawkins, Drake, and Cavendish were successful adventurers, full of energy and daring, and with enough of the old feudal spirit in them to place themselves at the service of their sovereign in seasons of danger. At the time of the threatened Spanish invasion it was an act of undoubted patriotism to fit out a ship and put to sea in order to do as much injury as possible to the enemy. But the gentlemen to whom England was indebted for such gallant, and apparently disinterested conduct, had an eye to Spanish merchantmen as well as to Spanish men-of-war, and often brought into port ships laden with plunder. During the panic caused by the Armada, a great number of men of fortune went down to

the sea in ships, and there were, no doubt, many who did not come back the poorer for the venture.

Letters of marque, piracy, and the old spirit of private war.

Such enterprises as these have a very close connexion with the practice of granting letters of marque to privateers, which existed as late as the last great war between France and England. But on the other hand these enterprises were but a perpetuation on a somewhat larger scale of the 'reprisals' to which the ships of one nation had been in the habit of subjecting the ships of another, and which at one time were not uncommon between ships belonging to different English ports. They were, if the expression may be used, piracy more or less legalised, and sometimes not legalised at all. An attempt had been made in the reign of Henry V. to draw a distinction between reprisals which were legal, and acts which were piratical, and then for the first time letters of marque were defined. The statute upon this subject, however, seems to have had no effect in checking robberies at sea, by which England was continually embroiled with foreign powers. Nor, while the crown had to rely upon the efforts of private individuals for service at sea, was it possible that such a statute could be effectual. Towns could be compelled to furnish ships, and men could be forced to go on board in time of need; but it was only in the reign of Henry VII. that England began to possess a royal navy, which, however, was long insufficient for the protection of the country. The inevitable consequence was that the old spirit of private war was in full vigour at sea even after it was beginning to die out upon land. When there was danger, the Government had to connive at the misdeeds of men who were pirates according to any definition of the word, and was content to accept from them a share of the spoil.

The extent of the evil in the reign of Henry VIII. is shown by a remarkable treaty between him and Francis I. of France. So numerous were the clauses that they might well have been supposed to be effectual. Security was to be given when ships left port, and the mode of trial before the admiral or vice-admiral, on either side, was carefully defined. But, not very many years later, it was confessed, in the preamble to a statute, that pirates commonly escaped unpunished; and the jurisdiction over their offences was transferred from the admirals alone, to commissioners, of whom an admiral or his deputy was to be one. The enquiry was to be conducted on shore, and with the aid of a jury.

Statutes and treaties, however, were alike unavailing when the governing powers acted on the principle of not allowing their right hand to know what was done by their left, of upholding with one hand what was put down with the other. The State Papers and Public Records of Elizabeth's reign disclose a state of society which, from a modern point of view, is most lamentable. One whole volume preserved in the State Paper Office is endorsed 'The Book touching Pirates,' a title justified by the contents, which relate only to two or three years. But the worst part of the mischief was not that there were pirate ships afloat, but that the inhabitants of the coast sent out their best blood to seek a fortune at sea, and were always the fast friends of the rovers, whose return they eagerly welcomed. It was therefore necessary, if piracy was to be suppressed, that attempts should be made to punish not only the pirates themselves, but also all who aided and abetted them. Innumerable commissions issued for this purpose; but

The inhabitants of the coast the aiders and abettors of pirates; extent of the evil.

their very number, and their recurrence year after year, are a sufficient indication of their failure. They remain a curious monument of a state of society now happily no longer existing, and they have caused many a long catalogue of the names of offenders to be handed down with what a Greek tragedian might perhaps call a glorious infamy. Piracy was by no means extinguished at the end of the sixteenth century, nor had it even become very much less common than it had been in the middle. In the year 1574 the whole of the coast, from Poole to the Isle of Wight, was infested by pirates, who sought booty in the harbours when it was scarce on the open sea, and boldly sailed up the Southampton Water to threaten the ships at Southampton itself. M. de Ségur, who intended to embark there, was obliged to travel on to Plymouth before he could find a passage.

Effect of maritime discovery and commerce in softening manners.

It was remarked in the preceding volume that commerce, at the very birth, was infected with fraud; it is no less true, as we have just seen, that maritime adventure was at the very beginning infected with piracy. Yet commerce and maritime adventure have had more influence than, perhaps, any other agents, in softening the manners and changing the morals of mankind, and especially of the British people. Increasing intercourse with other nations, even though beginning in hostility, necessarily gives a wider range to men's thoughts. A more extended sympathy follows in due course, and then comes the abandonment of the rough and brutal habits inherited from the savage. But all this is the work of many generations; and long as was the time it required in the case of England, it might

from the general tendency to direct the energies of Englishmen into new paths.

There can be no doubt that the new discoveries led to new and more merciful punishments, and caused many men who would otherwise have found their way to the gallows, to seek a new home across the seas. The ultimate effect on a nation of withdrawing its most enterprising spirits can hardly be unmixed benefit; but if England showed less signs of turbulence in the eighteenth century than in the sixteenth, the emigrations of the seventeenth may fairly be assumed to have contributed something toward that result. The sentence of transportation, which first became of importance after the Rebellion of 1715, and probably had a considerable influence upon the subsequent history of this country, was very intimately connected with the adventures and piracies of the time of Elizabeth. It is usual, indeed, to consider an Act passed in her reign as the first statute by which transportation was authorised. But this opinion is not quite correct. Banishment did become one of the methods by which England was relieved of her rogues and vagabonds; but this was at most only an extension of the old law, according to which persons who had taken sanctuary might abjure the realm. They were not sent to a penal colony or to any particular place, but were cast adrift to live as best they might wherever they could. Many of them, however, would naturally associate themselves with naval adventurers in need of recruits, and many of them, no doubt, found a grave on American soil like criminals of a later age.

New and more merciful punishments: transportation.

A punishment still more closely associated with the maritime enterprise of the Tudor period is that of the hulks. In the statute by which it was enacted that rogues

might be banished, it was enacted also that they might be sent to the galleys. This idea can also be traced to the customs of past times, when men required for any service could be forced to perform it, and is closely associated also with the famous Act of Edward VI., by which a rogue could be made a slave. But the impulse given to the seafaring life had caused a scarcity of men for the performance of the humbler duties connected with it; and hence arose a punishment which has since been developed into the employment in dockyards enforced by our criminal law at the present day.

The hulks.

Any change which relieved the eyes of the populace from some of the spectacles of men hanging in chains or suffering torture in the pillory must, of necessity, have been beneficial. A writer who lived under Queen Elizabeth describes an incredible decrease of capital punishment. He asserts that during the reign of Henry VIII. there were hanged nearly two thousand minor criminals a year, and that in his own time the number had fallen to about four hundred. As, however, he does not appear to have consulted those records from which the information might have been obtained, and which are now, unfortunately, not all in existence, his figures must be regarded as merely conjectural. It may, nevertheless, be most readily believed that there were fewer executions, and even less crime at the end of the sixteenth century than there had been at any previous time in English history. A great number of causes contributed towards the same result. The throne was more secure, the country had increased in wealth, there was a law for the relief of the poor, which, however imperfect, was better than none, and (most important of

all) the restless spirits had learnt to seek adventures by sea rather than by land.

It is at the conclusion of the Tudor period that the effects of very remote causes begin at length to show themselves, and that the progress of great sections of the human family in knowledge and intercourse is seen to be accompanied by a change of manners. Had the mariner's compass never been invented, or never been made known to Europeans, Columbus could never have accomplished or even attempted his successful voyage to America. There had without doubt been many a slight improvement in ship-building from generation to generation, hardly noticed at each stage, but making in the whole a great difference between the sea-going capabilities of vessels in the twelfth century and vessels in the sixteenth. The father lifts the son on to his shoulder, and the son the grandson; and, when the climbers are not hurled down by political convulsions, a greater height is attained in each succeeding century.

Effects of the general progress seen at the end of the Tudor period.

The higher the point reached the wider is the range of vision; and progress in one direction leads almost infallibly to progress in others. When some men improve the means of locomotion by sea, others improve the means of locomotion by land. Similar wants, similar intellectual development, similar impulses of every kind, act and re-act one on another, so that the characteristics of an age may be recognised in a great variety of forms. In the sixteenth century, which, in spite of most formidable obstacles, was a period of great advancement, the universal law held good. With the increase of commerce and of maritime enterprise there was, of necessity, an improvement in the

Improvement in internal communications.

internal communications. Particular highways became the subjects of statutes in the reign of Henry VIII.: and in the reign of Philip and Mary the first general Act was passed for the repair of the highways of the kingdom. This last statute is remarkable for the statement in the preamble that the roads were 'both very noisome and tedious to travel in, and dangerous to all passengers and carriages.' It is important to observe that carriages, though they must still have been very rarely used for travelling, were yet thought worthy of mention. Before the time of Henry VIII. the sufferers by defects of road are described as horsemen or foot-travellers.

It must not, however, be supposed that the long series of statutes for the improvement of highways, of which the Act passed in 1555 was the first, had an immediate effect in giving England a number of well-made roads. That higher stage of civilisation was as yet in the far distance, like the abolition of piracy. It is evident, both from statutes and from proclamations, that the highways were infested with robbers, and that nothing better than the old system of watch and ward had yet been devised. But among the indications of a happier future the beginning of improvement in internal communications was certainly one; and it was something that Edinburgh could be reached on horseback from London in five or six days. There was another such indication in an event which was to happen after the death of Elizabeth, and which, like improved means of travelling, was to bring remote parts of the island closer together, but which, unlike the general progress of a nation, was wholly fortuitous.

Indications of a happier future.

CHAPTER VII.

FROM THE ACCESSION OF JAMES I. TO THE DEATH OF CHARLES I.

THE accession of the first Stuart to the throne of England was one of the most important steps in the civilisation of Great Britain, as it was the first step towards the destruction of some of the greatest hotbeds of crime—the 'Marches towards Scotland.' An indication of their character has been given in a previous chapter; and they long retained that character from causes wholly independent of the disposition of either Scots or Englishmen. These causes were of two kinds—one wholly distinct from the other. On the one hand the warlike spirit (which is always to be considered in the history of crime) was most keenly alive on the borders; and as deeds of daring were, from one point of view, very commendable when directed against neighbours who were or might at any moment become enemies, there was no very scrutinising enquiry into the motives with which they were done. On the other hand there was a fellow-feeling among some of the worst malefactors of the debateable land and the land adjoining it. As the writs of the English king were useless in Scotland, and the writs of the Scottish king in England, a horde of outlaws on one side of the boundary could give a friendly shelter to outlaws

Crimes on the border at the time of the union of the Scottish and English crowns.

who were fugitives from the other, and thus the Marches became a very paradise for murderers and robbers.

The State Papers of the reigns of Henry VIII. and Elizabeth afford materials so abundant that it would be easy to write a volume of Crimes upon the Border from that source alone. They show, further, that the lawlessness of the Marches and the violence of the spirit of private war which prevailed in the North were not without effect upon English bishops and English noblemen. They bring before us Lord Scrope and the Bishop of Carlisle, eagerly communicating to Lord Burleigh the opinion that one Fergus Greame and his faction might with advantage, in the interests of the queen, be let slip against Irvine of the Boneshaw, a false Scot who had maintained certain rebels. This, too, is in time of peace. The bishop, it is true, says he 'hates the bloody feuds of the Scottish borders,' but though 'private feud is the quarrel,' he thinks the queen ought to receive as much benefit as possible from it, no matter how. Such were the frontiers of England and Scotland upon the accession of James I.

The full advantages which were to be gained by the abolition of the Debateable Land, or border, could not, however, be attained until the Parliaments as well as the crowns of Scotland and England were united, a century later, nor even for some time after that union. Many of the old traditions would have survived, and with them would have been kept alive a spirit of nationality on either side of the Tweed, even though there had been but one Parliament in Great Britain, instead of two, during the reign of James I. Too much of the ancient violence still remained for any dynastic or legislative event to extinguish in a day or a year; but the union of the

two thrones through the succession of a Stuart is nevertheless a remarkable illustration of the influence which families or individuals may exercise upon national life and progress, and that too without any effort of their own.

In the nineteenth century we enjoy the full benefit of an event which was as fortuitous as any event can be, and which occurred in the beginning of the seventeenth. At the time at which it happened, the person chiefly concerned in it nearly lost his life through the violence and superstition inherited from still earlier ages.

When any pretext, religious or genealogical, could be discovered, it had always been the custom to oppose the accession of every new sovereign. The rule held good in the case of James I. For the first plots which were directed against him it is difficult to assign any reason except the general turbulence and lawlessness. There seems, however, to have been a vague wish to continue or revive the agitation in favour of Romanism which had been attempted again and again in the reign of Elizabeth, and to aid it by the old device—an appeal to the Court of Spain. Lady Arabella Stuart was now made the tool by the Romanising party, just as Lady Jane Dudley had been made a tool by the opposite party on the accession of Mary. She had no claim whatever to the throne. She was descended from Margaret, daughter of Henry VII., but through the offspring of a second marriage, whereas James was descended from the same daughter through the offspring of the first marriage with James IV., King of Scotland. According to the indictments against the conspirators, their object was to secure toleration for 'papistry and the Roman superstition.'

Plots following the accession of James I.: Illustration of the age from the career of Raleigh.

Among the accused was Sir Walter Raleigh, who, if guilty at all, must have been incited rather by that love of adventure for which he was famous, than by regard for the Catholic religion. Two of the others, George Brooke and Henry Lord Cobham, had, as alleged, expressed the sentiment that 'there would be no good until the king and all his cubs were quite taken away.' As a preliminary to this 'taking away,' James and his son Henry, the Prince of Wales, were to have been seized and imprisoned. Some of the plotters seem to have desired that James should retain the throne if he fell in with their wishes and submitted to their power; and that the Lady Arabella should be proclaimed only if he proved refractory. They intended to extort three promises from him—that he would pardon their treason, that he would tolerate the Romish religion, and that he would dismiss certain privy councillors.

The conspirators who were tried were with one exception found guilty. Brooke and two priests were executed as traitors, others were pardoned, and Raleigh was not, at the time, either executed or pardoned, but detained in prison, in accordance with a practice by no means uncommon. His subsequent fate was a curious illustration of the manner in which mediæval cruelty sometimes displayed itself in combination with more modern forms of life. After passing many years in the Tower, he succeeded in obtaining a commission not very unlike those of the Cabots and of Elyot. He was empowered to fit out an enterprise for the discovery of a mine in Guiana; and a fifth part of the profit was to be allotted to the king. The Spanish ambassador, who well knew the meaning of such expeditions, remonstrated, in vain. Raleigh and his followers fought the inevitable

fights with the Spanish colonists of the district, and he sailed back with those of his mutinous and piratical crew who survived, but without any tidings of the imaginary El Dorado. He was then made to suffer, for a fault which was not so much his as that of the king or the king's advisers who gave him his piratical commission. He was brought before the Court of King's Bench and, as a matter of form, asked what cause he could show why execution should not be awarded against him for the treason of which he had been found guilty fifteen years before. There was of course very much to be said against such an act of injustice. But justice and injustice were abstract terms which had not yet acquired any great value. As the Spaniards wished it, and as it was not inconvenient to James, the sentence was carried out, and Raleigh lost his head. Such, from one point of view, was the state of British civilisation in the year 1618.

In the famous Gunpowder Treason, the same elements may be discerned as in the conspiracy in which it was alleged that Raleigh was implicated. But Raleigh's case is rendered most remarkable by his voyage to the New World; the case of Guy Fawkes is made remarkable by his appreciation of the fact that gunpowder had now become the most powerful engine for the destruction of human life. It is, however, perhaps to Catesby rather than to Fawkes, that the idea of blowing up the parliament-house with gunpowder is to be attributed; and Catesby himself, perhaps, borrowed the idea from other plotters. It was probable, indeed, from the whole course of earlier history, that as soon as the destructive force of gunpowder was fully appreciated, the invention would be applied to their own uses by the conspirator and the murderer. And as Catesby and Fawkes

And from the Gunpowder Treason.

were imitators, so they also afterwards had imitators in Germany. The plot is most clearly described, so far as the leading incidents are concerned, in the official account of its discovery, and in the confession of some persons implicated in it.

A mysterious letter was delivered to Lord Mounteagle (from some unknown person) in which he was warned not to attend the approaching meeting of Parliament in November 1605. This he resolved to impart to some of the privy council, 'not so much in respect of any great credit' he gave to it, as because he thought himself in duty bound to make known everything in any way concerning the king's safety. At Whitehall he found, among others, the Earl of Salisbury (the principal secretary), to whom he first showed the letter. Salisbury at once said he had for some time been aware that the papists were 'full of practice and conspiracy' for procuring 'exercise of their religion.' It occurred then, to the Lord Chamberlain, to whom was entrusted charge of all places which the king had to visit, that there were some houses and rooms adjoining the chamber of Parliament into which he had never entered. It was resolved that a search should be made in these buildings, but not until immediately before the sitting of Parliament, so that the conspirators might not be 'scared before they had let the matter run on to a full ripeness for discovery.' The letter was shown to the king on his return from Royston to town. He approved of the decision already taken, and added a suggestion that all who should 'seek liberty to be absent from the Parliament' without apparent cause, should be watched.

Official account of its discovery.

The Lord Chamberlain, the day before the intended

meeting of Parliament, went to the House according to custom, and made an excuse to enter a cellar beneath. He found little to justify his suspicion until he was told that the cellar had been hired by Mr. Thomas Percy, a somewhat notorious papist. Lord Mounteagle had accompanied him during his search, and, as they left the building, expressed to him the gravest apprehensions. None knew Percy better than Mounteagle, who now considered the letter to himself a sincere warning of a terrible danger. The final search was delayed until eleven o'clock at night, and the task was entrusted to Sir Thomas Knevett, a gentleman of his majesty's privy chamber. Knevett arrested without hesitation a man who happened to be leaving the vault at the moment of his arrival, removed the coals and faggots, for storing which the cellar was apparently used, and discovered a mass of gunpowder. The prisoner did not scruple to confess, but rather boasted, that he would have fired the train on the morrow had he not been detected.

This man, who at first gave the name of John Johnson, was Guy Fawkes, 'a gentleman born in Yorkshire.' For two days he obstinately declared that he would 'reveal none of his accomplices,' and that he held the intended deed to be meritorious. He added that 'although much particular innocent blood should have been shed, yet in such cases, for the general good, such private respects must be passed over; that he was sorry it was not done, and for himself despised desire of life, deriding all torture or violence that could be offered to draw from him' any further information.

The official report continues somewhat grimly, 'Yet (all this bravery notwithstanding) by the good directions of his Majesty, as also by the particular labours and dis-

cretion of such part of his majesty's council as have been used as commissioners in this cause, attended by the attorney-general, who privately dealt with him in the Tower of London, the whole plot is clearly confessed by him.'

The good directions of his Majesty, which still exist in his Majesty's own hand, were these: 'If he will not otherways confess, the gentlest tortures are to be first used unto him; and so on, step by step, to the most severe. And so God speed your good work.'

Torture and confessions of Fawkes.

Fawkes's confessions, and his signatures to them, still bear witness to the manner in which the examiners proceeded. James's instructions to apply the torture, if necessary, are dated November 6. Fawkes was examined on the 6th, and again on the 7th; and it is evident, for two reasons, that threats and persuasion had then been the only engines applied to him. He confessed little that was not known before, and his signature on the 7th betrays no signs of suffering. Up to this time, all that was extracted from him was 'that about a year and a half ago he took the sacrament that he would not discover those which were parties to this conspiracy, and took also an oath to put also his hand, to his uttermost endeavour, to the execution of it, and not to discover it nor the conspirators.'

The conspirators, whom he refused to name, would have 'been glad,' he said, 'to have drawn any of what religion soever unto them,' and 'meant to have made use of all the discontented people of England.' Their object was that the king's daughter, the Lady Elizabeth, should succeed, and they intended to have married her to an English Catholic, and to have brought her up as a Catholic in the meantime.

On the 8th Fawkes added some particulars, but still without the names of his fellow plotters. He told how they hired a house at Westminster and sought to make a mine under the Upper House of Parliament, and began to work about December 11. At first the conspirators were five in number, and at this time they 'took another to them, having first sworn him and taken the sacrament for secrecy. And when they came to the wall, that was about three yards thick, and found it a matter of great difficulty, they took to them another in like manner with oath and sacrament, all which seven were gentlemen of name and blood, and not any was employed in and about this action (no, not so much as in digging and mining) that was not a gentleman.' Then he explained how they heard the sound of coals 'rushing' below them, and were thus led to hire the cellar in which the powder was laid. 'There is a passage (through which a pen has been run) in which it is stated that a proclamation of Lady Elizabeth as queen had been drawn up, 'as well to avow and justify the action, as to have protested against the Union, and in no sort to have meddled with religion therein. And would have protested also against all strangers.'

This information, not altogether consistent with itself, was considered insufficient, and on November 9, it is only too plain, the king's 'good directions' were carried out to their fullest extent. On that day Fawkes made a declaration, in which at last he gave the names of some of his associates—of Thomas Winter, Thomas Percy, Robert Catesby, John Wright, Everard Digby, Robert Keyes, Christopher Wright, Thomas Grant, Francis Tresham, Robert Winter, and Ambrose Rookwood. He did not, however, attach his signature until the following

day, most probably because the severity of the torture had deprived him of the power. On the 10th he signed, but was evidently unable to write more than one word—'Guido'—which still bears silent testimony, in its jagged and wandering lines, to the suffering of the man who scrawled it.

On November 17 Fawkes again signed a confession, in which some further not very important details were given. He then wrote his name in full, with a somewhat firmer hand, but one which evidently had not full control over the pen. On the following January 9 he underwent an examination relating to a mission of Sir Edmund Bainham to the pope, and he again signed his name with a very tremulous hand, which also appears to indicate a not very gentle application of 'the question.'

Disingenuous conduct of the prosecution.

Statements made under torture are never very trustworthy, and it is unsafe alike to accept them as true or to reject them as false. For this reason, among others, it is very difficult, if not impossible, to assign the due share of guilt to the various accomplices in the Gunpowder-plot. The difficulty is increased, too, by the not very scrupulous conduct of the prosecution, whose assertions are deserving of suspicion, as well as those of the accused. Fawkes, in his confession of November 9, had admitted that Gerard the jesuit was the person from whom the conspirators received the sacrament when they bound themselves 'to perform their vow, and not to reveal any of their fellows.' But he added that Gerard 'was not acquainted with their purpose.' Coke, the attorney-general, when preparing his speech for the approaching trial, underlined, with red ink, the words last quoted; and there remains a Latin word in his handwriting in the margin, to guard him against

reading the exculpatory passage when reading the rest of the document. He also received and acted upon some instructions sent to him, through Lord Salisbury, by the king's command, which were by no means ingenuous.

In the midst, however, of prevarications and misrepresentations, there remains the fact, which cannot be disputed, that there was a real conspiracy to destroy the king and parliament by gunpowder. The share taken by any particular individual is of little consequence in a history of crime, except as illustrating the feeling of a party. The extent of Garnet's guilt, and the nature of his relations with Anne Vaux, are fruitful themes for disquisition from one religious point of view or another, but are of little historical importance. Any attempt to show that the whole of the Catholic party was implicated in the conspiracy must be futile, for the simple reason that conspirators, however imprudent they may be, never make known their intentions to more persons than necessary. Any argument, on the other hand, to show that the design was repugnant to the Catholics as a body, because they indignantly repudiated it when it failed, must be very much weakened by the fact that unsuccessful traitors are not usually courted or claimed as acquaintances.

The plot was, in fact, an illustration of the age, in which men were still prone to violence, in which religion was still apt to become fanaticism, and in which the advantages of a settled government were not fully appreciated. It is probable, as Fawkes declared, that he and his associates were prompted by other motives besides a desire to restore the Catholic religion. From ancient prejudice, they may well have looked upon Scotland as a foreign country, and regarded with distaste the union of the two crowns.

The plot prompted chiefly, but not entirely, by religious motives.

But there can be no doubt that the persecution to which the Catholics were subjected, as recusants, was the exciting cause of the project. The conspiracy, indeed, had much in common with those of earlier times, in which superstition played a prominent part; and there remains, among the State Papers relating to the Gunpowder-plot, a confession of one Nathaniel Torperly, that he had cast the king's nativity 'by the precisest rules of art, to understand the truth.'

Religious animosities. The last burning of heretics in the reign of James I.

The religious animosities of the period were also shown in other forms besides that of plots against king and parliament. Two unfortunate men, who had expressed some religious opinions in language not considered orthodox, and who are described as Arians, were brought to the stake in 1612. The contemporary writers do not show any compassion, and one of them remarks that an 'obstinate miscreant heretic was burned at Lichfield, having more favour offered to him than he had grace to accept.' This was Bartholomew Legatt; his fellow-sufferer was one Edward Wightman, who was similarly executed in Smithfield a few weeks earlier.

In the case of Wightman the populace appear to have shown a little more humanity than the clergy or their friends. Neile, Archbishop of York, has described the fate of this poor fanatic. After he had been bound to the stake, and the faggots had been kindled, 'the fire,' remarks the servant of the Prince of Peace—'the fire scorched him *a little*. He cried out that he would recant. The people thereupon ran into the fire, and suffered themselves to be scorched to save him. There was then prepared a form of recantation, which he there read and professed before he was unchained from

the stake.' He was carried back to prison, and a fortnight afterwards brought into the Consistory, in order that he might renounce his heresies in a formal manner. But, says the archbishop, when there 'he blasphemed more audaciously than before.' A new writ 'for the burning of a heretic' was therefore directed to the sheriff, and Wightman this time 'died blaspheming.'

What, however, is most worthy of notice in this account given by the Archbishop of York is, that it occurs in a letter in which he is strenuously recommending a similar execution in the year 1639. He collected all the facts, and sent them to Sir Dudley Carleton for the information of the privy council, so that it might be thoroughly acquainted with the most recent precedents, and might burn Trendall, a stone-mason of Dover, as a blasphemous heretic ought to be burnt. He displayed so much zeal in this affair, that his ill-success is a little surprising. He wrote to Laud, then Archbishop of Canterbury (of whose sympathies he must have been well assured), enclosing copies of the proceedings in Wightman's case, and adding that the same course was followed in the case of Legatt. 'These punishments,' he concludes, 'I am persuaded did a great deal of good in this Church. I fear the present times do require like and exemplary punishment, which I refer to your grave consideration. I entreat you to make it known to the lords that I have sent you these things.'

Projected burning of heretics in the reign of Charles I.

All this enthusiasm was in the end of no avail, Trendall, either by recantation, or by death from natural causes, escaped the punishment intended for him, and was not even 'scorched a little.'

It was thus in the reign of James I. that occurred the last burning of a heretic in England; and the conduct of

the spectators when Wightman was first brought to the stake seems to indicate that the excessive cruelty which had descended from past ages, and which had been fostered by public punishments in various forms, was, among some classes, if not among clerical authors, at length beginning to be modified. The disappearance of burning, as even a possible punishment for religious offences, during the time of the Commonwealth, favours this conclusion, and shows that new occupations, and increasing commerce and manufactures, were slowly changing the dispositions of the people. The clergy were, of course, very much interested in the maintenance of all the old forms, and averse to changes of every kind.

Proceedings of the Court of High Commission: tone of Laud and other members.

Trendall's case was brought into the Court of High Commission, which had been, since the first year of Elizabeth's reign, the chief tribunal for taking cognisance of offences connected with religion. Its mode of proceeding, and the tone which prevailed in it, are, therefore, matters of some importance; and fortunately there exist copious reports of cases taken during the period which is the subject of the present chapter.

From the earliest age at which we have any record of their sayings, the inhabitants of most parts of the British Islands have been remarkable for their appreciation of the ridiculous. In less civilised times, the jokes were more grim than in the present century, and the form which they most frequently took was that of a coarse and deliberate insult from a judge to a prisoner. When Laud was Bishop of London he was one of the most distinguished wits of his day, and the reports of his sayings as judge bristle with sharp points ruthlessly used for the purpose of giving home thrusts.

In the year extending from the autumn of 1631 to the autumn of 1632, he and his coadjutors in the Courts of High Commission and Star Chamber, created, apparently without effort, the materials for a complete judicial jest-book.

One Lane was brought, with his wife, before the High Commission Court, principally for maintaining the doctrine of justification by faith alone, but also for asserting that he was perfect God and perfect man. Abbot, then Archbishop of Canterbury, was for dealing leniently with them if they would fall down on their knees and ask God's forgiveness, but Laud said that would not serve their turn. Sir Henry Martin, a Doctor of Laws, another of the commissioners, proposed that the man should be sent to Bridewell until the last day of term. 'By that time,' added the learned doctor, '*he will be less perfect.*' Laud at once seconded this motion, on the understanding that 'the severest discipline of Bridewell' was to be inflicted, and that the woman was to accompany her husband.

A poor crazy wretch named Viccars appeared before the same august tribunal, to answer a charge of having preached that Christmas ought to be kept at Michaelmas, that all who did not observe the whole law were accursed, and that all who did not hear two sermons a day, when they might, committed a great sin. 'His name is Viccars,' said the Bishop of Rochester, 'but he hath done things becoming the Vicar of Hell, the Vicar of Rome,' To this the Bishop of Norwich gracefully added, 'You have the Devil of Hell your captain.'

Joseph Harrison, a vicar, was accused of various offences; of 'having burnt an excommunication which was sent him,' of having celebrated marriages without banns or licence, under trees, and of having been a

'*common frequenter* of ale-houses, and a company-keeper with beggars, bedlam-men, and all sorts of people,' but especially tinkers. The Bishop of Rochester addressed him while on his trial as tinker, beggar, drunkard, and bedlam. While the Bishop of London was speaking, Harrison interrupted with the remark, 'My lord, this is contrary to what you promised me;' upon which Laud retorted very readily, 'The tinker would mend it.'

One of the finest sayings of Laud was brought out on the occasion of an application made by the wife of Lane, whose case has already been mentioned, for the release of her husband from Bridewell. She appeared on April 19, and the bishop ascertained by inspection of the register, that she had been married on the preceding twenty-third of February. He regarded her sternly, and accused her of being 'great with child.' 'It is a tympany,' said she. 'A tympany,' quoth he; 'a tympany with two heels!'

This last was by no means Laud's happiest effort, but there is a point beyond which it is impossible to follow him, and the reason may easily be inferred from the character of the last quotation. It would, however, be unjust to reproach him with the coarseness which was common to all men of his age. Nor ought he alone to bear the blame of that harshness and utter want of feeling which are shown in the treatment of persons upon their trial. But it is important that we should not conceal from ourselves what the treatment was—that we should know what is desired and praised by the admirers of Laud and the system which he represented. The illustrations just given are from a source hitherto unpublished, but any one who takes the trouble to read the many State Trials of the period will perceive

but little difference in any of the courts, but the Court of High Commission fairly bore off the palm in the contest of insolence towards prisoners.

Apart from theological hatred, there was a powerful cause operating for the preservation of the more ancient manners, in their original purity, by the Court of High Commission. The separation from Rome had not in any way destroyed the traditions of the English Church; and the proceedings of the Commissioners reveal the fact that the practice of compurgation had retained its hold upon the ecclesiastical mind, with little loss of power, since the days before the Norman Conquest. It was only natural and consistent that the men who would not abandon this relic of antiquity should be violently opposed to any innovation which might seem to weaken the position of a judge. The principle on which they acted appears to have been that the guilt of every person accused should be assumed as a fact hardly susceptible of disproof, but that when there was insufficient evidence of some offences, a clergyman, guilty or otherwise, might be excused if he possessed enough popularity in his own order to find a few fellow-clergymen who would consent to be fellow-swearers with him.

Compurgation still recognised in ecclesiastical courts. Illustration: connexion with perjury.

The old form of compurgation survived in almost all its pristine absurdity, and certainly cannot be said to have been modified into evidence of general character alone. The men who made oath on the side of the accused, and who could not in any way have been acquainted with the facts of the case, testified, not that they believed their friend to have been previously a person of irreproachable conduct, but that they believed him

to be innocent of the particular offence laid to his charge.

Instances in which recourse was had to compurgation just before the abolition of the Court of High Commission are sufficiently numerous to show that the practice was in no way exceptional. One of the most remarkable, however, was that of a Dr. Hooke, who was accused of simony, adultery, and other offences. In default of better evidence the prosecution relied upon 'the fame.' It seems to have been a general maxim of the time that 'the fame' might be admitted in corroboration of any charge, but was not to be accepted by itself as a sufficient proof of guilt. On the other hand, it never seems to have occurred to the court that, when there was an absence or insufficiency of actual testimony to facts, a prisoner ought to be discharged. The knot was then cut by the oaths of the accused and his friends. In the case of Dr. Hooke there was a difference of opinion among the Commissioners upon the question whether he should find compurgators with respect to all the charges, or only one, whether the compurgators should be laymen or clergymen, and how many there should be. In the end he had to find a Doctor and five Bachelors of Divinity to make oath on his behalf.

The mode of proceeding was this. There was first of all read in the church of the parish to which Hooke belonged, a 'certificate of the purgation' to be made in the Court of High Commission. After an interval of some weeks he appeared in court with his compurgators, when there ensued a scene by no means unusual in an age in which men who could not show illiberality in any other way showed it by dictating the length to which

'came in their cloaks,' and one of the Bachelors 'in a careless ruff,' and with 'his hair somewhat long. They were chidden,' and especially the Bachelor. 'And they were rejected till they should come as divines in their gowns; and they went and got them gowns and scarfs; and Mr. Holt (the Bachelor) had another ruff and a black satin cap on, and they appeared again. And then the cause was opened by the doctors both on the one side and the other. The promoters' counsel showed the accusation and the proofs against the doctor, and his counsel showed his defence. Which done, Dr. Hooke took his oath, swearing that he was not guilty of the crimes laid against him, nor any of them. And the compurgators were first demanded severally whether they, notwithstanding all that had been said, thought the doctor to be clear and innocent, and they all did answer severally "Yes." Then they took their oaths, swearing that they thought in their consciences that Dr. Hooke had taken a true oath.' And then the accused, who had been suspended, 'was discharged of his suspension.' It is no wonder that perjury was long one of the most prominent offences in England.

Compurgation and superstition.

Together with compurgation, the clergy did much to support the superstition which had existed in the times when compurgation was an institution for laymen as well as clerks. In the lapse of ages, witchcraft had ceased to be regarded as a form of heresy, and the cognisance of the supposed offence had been the subject of more than one statute, by which the worst forms of it were made felony without benefit of clergy. The Scots had always been at least as eager as the English for the punishment of witches, and James I. was as eager as any of the Scots. Before he ascended

the throne of England he had written a 'Dæmonology' to defend the belief in witchcraft, which Reginald Scot, an Englishman whose name should be one of the greatest in history, had had the courage to attack. Any child can repeat a meaningless form of words, or add another puny voice to a chorus of intelligible falsehood; but only a mature intellect of extraordinary power can divest itself of all the prejudices instilled by education and surrounding circumstances, and boldly maintain the truth against a whole world leagued together for the support of a lie. It is no small honour to England that she gave to the world, before the sixteenth century was ended, two such men as William Shakspeare and Reginald Scot—the one the greatest poet and dramatist, the other the boldest and most logical thinker since the time of the Roman or even Greek civilisation.

Reginald Scot and James I. on witchcraft.

When Scot's 'Discovery of Witchcraft' appeared in 1584, he was far more than a century in advance of his age. When James Stuart succeeded Elizabeth in 1603 he was, in spite of his pedantic writings, rather behind the age than in advance of it. The author of the 'Dæmonology,' however, could do more for the diffusion of his opinions than the author of the 'Discovery of Witchcraft,' who was now dead. Scot had been but a thinker: James was a king. Scot's work had been burnt by the hangman: James's received the sanction of a new statute. James had written in Scotland that he was moved to compose his work by 'the fearful abounding, at this time in this country, of those detestable slaves of the devil—the witches, or enchanters.' The Lords and Commons, when he came to the English throne, passed, as a graceful compliment to him, an 'Act against Conjuration, Witchcraft, and dealing with evil

and wicked spirits,' in which the subject was treated somewhat more in detail than in the earlier Acts, and with not less unhesitating credulity.

Thus it came to pass that a little more than two centuries and a half ago a Parliament, of which Sir Francis Bacon was a member, immediately after enacting that bigamy should be felony, solemnly pronounced the invocation or conjuration of any evil or wicked spirit to be felony also. To entertain, employ, feed, or reward such a spirit, to exhume any dead body, or any part of it—skin or bone—for purposes of hantment or sorcery, to practise any witchcraft by which anyone should be 'killed, destroyed, wasted, pined, or lamed,' was also felony, and punishable by death; and some minor forms of incantation rendered the persons guilty of them subject to the pillory. Convocation, in accordance with the traditional policy of the Church, was, of course, quite ready to assist the efforts of Parliament in so good a cause, and, in the attempt to suppress an imaginary crime, seems to have checked a growing habit of imposture among the clergy. It passed a canon that no minister should, without the licence and direction of his bishop, attempt to cast out any devil, under pain of the imputation of cosenage or imposture, and deposition from the ministry.

Statute of James I. against witchcraft.

It would be rash to assert that there was or was not any increase in the number of accusations of witchcraft after James's accession and the passing of the new Act. From this time onwards the sources of information become more copious; and there is great danger of being led into the belief that a crime is committed more frequently, simply because accounts have been preserved which in earlier times would

Causes of the apparent prominence of witchcraft in the seventeenth century.

have perished. Of one fact, however, there is no doubt —that from the beginning to the end of the seventeenth century witchcraft is one of the most prominent of all alleged offences; and, had not some pains been taken to ascertain how great a share of men's thoughts it occupied in earlier ages, there would have been a temptation to believe that all Britain became demono-maniacal at the time when the two thrones were united. The truth seems to be that the accession of an extremely superstitious sovereign to two thrones, at a time when the printing-press was in full operation and aided in preserving reports which would otherwise have been lost, has given an appearance of retrogression to a period which, so far as the lowest classes were concerned, was not much more free from superstitions than those which had preceded it. Still, it is melancholy to reflect how slow is the diffusion of knowledge, and how much progress is retarded when a royal author takes up his pen in the interests of ignorance.

Though, however, there were beyond all doubt very many executions for witchcraft between the accession of James I. and the death of Charles I., the persons who believed most firmly in this offence, and who contributed most to the literature of the subject, were as inaccurate in their statements as they were illogical in their reasonings. Their testimony is very nearly worthless. Those who convert dogs and cats into imps, and pins into instruments of the devil, convert tens into hundreds and scores into thousands. There is a remarkable instance of some loose talk of this kind in some letters addressed to Sir Edward Spencer in 1645. In one passage the writer says there were three hundred witches arraigned, and the greater part of them executed, in Essex and Suffolk

alone, in two years. In another passage the same writer brings the total down to two hundred, of whom he alleges that above one half were executed. The witness who fails to see the difference between the slaughter of nearly three hundred human beings and the slaughter of about one hundred may be considered altogether untrustworthy when he makes any assertion involving numbers.

If, putting aside these reckless exaggerations, we examine calmly some of the cases of witchcraft which were undoubtedly tried, we still discover quite enough to show in what a pitiable mental condition many of our forefathers must have lived —pitiable because exquisitely painful to themselves. In the year 1616 one Alexander Roberts, a Bachelor of Divinity and 'preacher of God's Word at King's Lynn,' took the trouble to write a pamphlet, adorned with an appropriate text of Scripture, in which he gave 'a true narration' of the witchcraft practised by Mary Smith, and of her execution 'for the same.' He, it seems, received her confession before her death. The purport of it was, that she had made a compact with the devil, and obtained from him the power of injuring the persons whom she envied. To prove the truth of her story and the reality of her evil gifts, she mentioned a number of instances in which her ill wishes had been effectual. A sailor who had struck her son lost his fingers, and it was evident that he was bewitched, because the doctors could not cure him of a malady from which he suffered. Other neighbours, male and female, against whom she bore a grudge, became afflicted with diseases which were beyond the skill of physicians, and which even witch-cakes would not permanently heal. Fat sows had grown lean, and one

Confessions of witchcraft brought about by various causes.

man had been known to become distraught. Could anything more be wanting to show that sorcery was no vain imagination? The worthy Bachelor of Divinity seemed to think that this confession of the witch's would suffice, but added, as of his own knowledge, that a big water-dog had entered the room of a Yarmouth fisherman, and run over his bed, and that the man had never since recovered his health.

The confession of Mary Smith, far from presenting any unusual features, is of a type which is excessively common. It appears, indeed, to have been an exception when a person convicted of witchcraft stubbornly denied to the last that the offence had been committed. The Essex witches in 1645 seem to have boasted of their own power very much after the fashion of Mary Smith in 1616, and there are many other well authenticated instances of the same kind. The question, therefore, very naturally arises—If there be no possibility of committing witchcraft, why have so many reputed witches died confessing that they suffered justly for having committed it? Perhaps the answer does not lie quite upon the surface; perhaps different causes have in different cases produced the same effect.

Men and women are not all constituted exactly alike. Some are far more spiteful and envious than others; some will hate those who have never injured them; some will cheerfully forgive a great and irreparable wrong. Among all the reputed witches there must have been persons of very different dispositions, and there is sufficient evidence that they did not all confess from the same motives. Those of most malignant temper—such, for instance, as Mary Smith—had probably in the beginning

partook of the character of the scold, and, after making themselves as disagreeable as they could to their neighbours, they probably expressed aloud some ill wishes against those whom they knew they had offended. Out of a great number of prophecies of ill one is sure to be fulfilled sooner or later; and when this happened, the witch's reputation was established. Together with the unpopularity, the reputed witch must have acquired a certain sense of power, which would have led her to encourage as far as possible her own belief in her own art. The belief, however, could not be seriously entertained without the aid of superstition. But it was easy to interpret the words of Scripture in such a manner as to remove all doubt whether there could be witches or not, and there was abundance of English teaching to confirm the interpretation. The thought of injury to another was commonly described as the prompting of the devil, and the scold who wished to think herself a witch would have no difficulty in persuading herself that she was in communication with the Evil One. Any brute which appeared to display unusual intelligence could readily be dignified with the name of an imp. Acquaintances would naturally fall away from a woman who had never been very agreeable, and who, after exciting aversion, had incurred suspicion. She would then brood over the ideas which had become most familiar to her, and the delusion that she had supernatural visitations would grow upon her year by year. Her dreams would be influenced by the thoughts of the day, and the mental images of the morning would be reproduced more vividly at night. In our own time women have noted some impossible acts of licentiousness in diaries kept almost from hour to hour, and have thus taught us how the witches of the seven-

teenth century persuaded themselves that they had admitted the Prince of Darkness to their beds.

This, or something like this, must have been the process by which the hallucination that they were witches became an inseparable part of the life of some crazy and unfortunate women. But, however much they may deserve compassion, there was another class of persons who died confessing the crime of witchcraft, and who are much more to be pitied than even these. It must have depended very much upon the habits and the character of the majority in any village whether the better or the worse natured woman became the reputed witch. Sometimes she may have begun life as the envied and the hated rather than as the envier and the hater, and for no fault of her own, but probably because of some superiority to the ill-natured neighbours by whom she was persecuted. If everyone about her chose to enter into a conspiracy against her, it was in their power to make her life a perfect hell upon earth. Such misery, so undeserved, may in many cases have brought about a confession of the charge of witchcraft as the means of putting an end to so wretched an existence. There is evidence to show that it brought about such a confession in Scotland, where the punishment of burning continued long after hanging had been substituted in England. And if a woman would prefer death by fire to life, it may reasonably be inferred that she would prefer death by hanging. In 1649 a number of women were arraigned for witchcraft at Lauder in Berwickshire. All were found guilty, and condemned to the stake, except one. But that one confessed; and, in spite of all remonstrance, persisted in her confession. At the moment of execution she said, 'As I

clare I am as free of witchcraft as any child; but, being accused by a malicious woman, and put in prison under the name of a witch, disowned by my husband and friends, and seeing no ground of hope of my coming out of prison or ever coming in credit again, through the temptation of the devil I made up that confession on purpose to destroy my own life, being weary of it, and choosing rather to die than to live.'

The correlations of ignorance and crime still presented also many other features like those of earlier ages. The practice, common in mediæval England, of drawing a dagger upon the slightest provocation has already been noticed. It was not uncommon even in the reign of James I. An Act, generally described as the Stabbing Act, was then passed to the effect that 'many inhuman and wicked persons in the time of their rage, drunkenness, hidden displeasure, or other passion of the mind' were guilty of stabbing and killing, and must be restrained. This form of manslaughter was therefore made felony without benefit of clergy.

Superstition and violence. Stabbing: brawls in churches.

Brawls in churches were little if at all less frequent than they had been in the time of the Tudors. Archbishop Abbot remarked in 1632 that, while he was Bishop of Winchester, causes appertaining to the ecclesiastical jurisdiction under him arose most frequently out of broils about seats, which, as they were an occasion of much discord, ought to be repressed. This expression of opinion was called forth by a case in which one Young disputed with one Broughton the right to a particular seat in a chapel. On a Sunday morning early, Young, in order to be beforehand with his adversary, sent his ploughman to occupy the seat which was the cause of

quarrel. Broughton afterwards entered the chapel, and acted very much as some remote ancestor might have acted in obtaining possession of a manor. The squire, in short, forgot everything but his asserted rights, seized the ploughman by the hair, knocked his head against a bench, thrust him out of the chapel, and threw his stick out after him. Young himself then attempted to take the place, and fared no better than his servant. In the afternoon the conflict was renewed, and the servants and tenants of both claimants came armed with staves for the fray. Broughton was the first in the field, and successfully resisted all attempts to expel him.

When such scenes as these were commonly enacted, it is not surprising that duels were frequent. All who have followed the present history thus far will readily perceive the ancient elements out of which the more recent practice of duelling had been developed. The small value of human life in the most barbarous tribes, the blood-feud of the days before the Conquest, which afterwards became the appeal of murder, the forcible entry as a means of settling disputes respecting land, the trial by battle, and the tournament, had all contributed something towards that form of private warfare which is not even yet extinct in Europe. In the reign of James I. the appeal of murder and the judicial combat were still parts of the law of England, and were so far from being obsolete that they were fully recognised even after his time. His opinions upon the subject of duelling are far more to his credit than his treatise upon dæmonology. Like many other sovereigns, he was (his pedantry and literary vanity apart) an illustration not altogether unfavourable of his own generation, with all the contrasts which it presented. He may, perhaps, have

Proclamation against duels.

had some selfish idea that the royal prerogative was infringed when subjects took upon themselves to fight; but, in the main, his efforts to check unnecessary bloodshed appear to have been honest and wholesome. It is evident from the action taken during the Commonwealth that the most practical men in England had arrived at the same conclusions as the first of the Stuart kings; and we, who live in a generation in which duelling is practically unknown to Englishmen, ought not to forget that James made the first serious attempt to suppress it by his proclamations. In the reign of Charles I. it was argued in the Star Chamber that the precedents of earlier times were against the custom; and it was, no doubt, easy enough to show that licences had been required when tournaments were held by subjects, and that private war was unlawful. All this theory, however, was no evidence whatever of general manners and customs, the nature of which is only too manifest upon reference to records. Not until recently had any serious attempt been made to check the habit of deciding private quarrels by arms, and then it had not been altogether effectual.

The reign of James I. was remarkable also for some legislation on other matters which have no small interest for the present generation. James, to his honour be it said, was anxious that his subjects should not be drunkards, and that they should enjoy such recreation as he rightly or wrongly considered innocent. Ale-houses had been the subject of an Act in the reign of Edward VI. This was commonly known as the Act touching the keepers of tippling-houses, and offences under it may be found without difficulty on subsequent rolls. In the first year of James's reign, and at intervals of no great length afterwards, new Acts were

Continued prevalence of drunkenness.

passed with the object of checking drunkenness; and in one of these it is recited that the reformation desired in the reign of Edward VI. had not been effected. A history written solely from the preambles of statutes would carry us back to the golden age, of which, however, no records have been preserved. But if we discard these summaries of history, written (as some other histories of ancient times are) from the imagination, we still have left to us the indisputable fact that drunkenness was considered very prevalent during a century preceding the Commonwealth, and that it attracted the notice of the government. The conclusion to be drawn is not that drunkenness had been increasing, but that men were becoming civilised enough to ask themselves whether something could not be done to keep their fellows sober.

All the restrictions upon tippling-houses had the approval of the Puritans, but the encouragement given by James to various sports and pastimes was by no means so well received. He had here to contend not only with religious prejudices, but with other and hardly less formidable traditions. The old sentiment that the slave, villein, or workman should have only such holidays as to his master might seem good, was by no means extinct. But, in addition to this, a long series of Acts of Parliament had been directed against many amusements for a very different reason. The theory appears to have been that all time devoted to quoits, tennis, bowls, or indoor games, was wrongfully taken away from the practice of the bow; and as late as the reign of Edward IV. the chief military strength of the nation was held to be in its archers. When gunpowder took the place of bow-strings the same argument could

Attempts of the Stuarts to check it by encouraging amusements.

no longer be used, but so strong was the influence of the past, that statutes were still drawn up in the same spirit. There arose, nevertheless, by degrees, a practice of licensing houses for some games, but all such licences were declared void in the reign of Philip and Mary. James, however, again directed licences to issue for bowling alleys, and places where cards and dice might be played. He also wrote a treatise in favour of permitting sports and pastimes on Sundays after the hours of divine service, and required the clergy to read it in their churches. Much animosity was excited by this dictation in a matter upon which many persons were excessively sensitive. A bill for the better observance of the Lord's day was not long afterwards introduced, and at length passed, which was, in principle, altogether opposed to James's book. James's successor, Charles, was nevertheless so ill-advised as to republish this controversial work, which had, no doubt, been written with the best intentions, and perhaps founded on sound principles, but had gradually become associated with the ideas of tyranny and immorality. The entertainments in which the populace took the greatest delight were those in which cruelty was the chief element—as, for instance, bull-baiting and bear-baiting; and a brawl in which human blood was shed was no uncommon ending of the day's amusement. Thus, through the rough manners of the time in part, in part through the intensity of religious feeling, and in part through the increasing political ferment, the honest efforts of the first two Stuart kings of England to solve a very difficult social problem, not only were unsuccessful, but may perhaps have contributed something towards the death of one on the scaffold.

There is less of enlightenment, and more of mediæval prejudice and intolerance, in some other proclamations of this period, than in that by which an attempt was made to repress drunkenness. Proclamation followed proclamation against eating meat in Lent; and, though it may be true that there was some idea of keeping down prices by preventing consumption, it is certainly not less true that these prohibitions were dictated chiefly by notions of religious discipline. Good intentions, no doubt, also prompted similar proclamations against the exchange of monies for profit, and the excessive use of gold and silver foil, as well as the statute of 1624 limiting the rate of interest on money to eight per cent. In the last it was provided (somewhat unnecessarily), 'that no words in this law contained shall be construed or expounded to allow the practice of usury in point of religion or conscience.' All such restrictions as these either are, or partake of the nature of, sumptuary laws, and they have the common property of failing to attain the object towards which they are directed. Attempts to extinguish drunkenness by prohibiting the sale of liquor are of the same character; but attempts to diminish it by providing counter-attractions for persons who yield readily to temptation, are indications of a far more enlightened policy. For them James I., and even Charles I. deserve credit, though their mode of action may have been unfortunate.

Proclamations against eating flesh in Lent: sumptuary laws in general.

The legislature of the period, too, appears to have made an effort, which would in modern times be considered laudable, to protect the public against one kind of infectious disease. The plague was a frequently recurring source of danger;

Felony for persons having plague-sores to leave their houses.

immediately after the accession of James I. it was made felony for anyone to go out of doors with a plague spot upon him; and the statute was renewed at intervals until the sixteenth year of the reign of Charles I. But little, if any, use was made of this law, and it is remarkable chiefly as an anticipation of a modern form of thought, which is even now of little practical effect.

New discoveries might appear to have effected nothing towards a change of old habits of mind, if attention were directed to charges of witchcraft alone. The extreme ignorance of the 'barber-surgeons' and apothecaries was probably one of the chief causes of misapprehension on this subject, as will be shown hereafter. Yet even the barber-surgeons, whom Sir Francis Bacon classed with butchers, and described as 'base mechanical persons,' were beginning to learn a little that had been unknown to their predecessors. We have seen how Squyer was said to have poisoned Queen Elizabeth's saddle, and how Fawkes was the great precursor of the modern assassins with infernal machines. In the reign of James I. there was also another atrocious crime, distinguished from those of the darker ages by the application of the new chemical discoveries which have been attributed to 'Basil Valentine.'

Application of chemistry to crime. Murder of Overbury.

The Earl of Essex, when he was but fourteen years of age, had been married, in accordance with a heartless, but by no means uncommon family compact, to a girl of thirteen. He was immediately afterwards sent abroad to travel, and did not return until he was eighteen. In the meantime, his young countess had fallen in love, and perhaps intrigued, with Rochester. She had, like many ladies who had lived before her, consulted a fortune-teller,

who, for the exercise of his craft, relied not a little upon a collection of obscene images and pictures. He also prepared potions to prevent and to procure desire. The one the countess gave to her husband, the other to Rochester. It is by no means impossible that there may have been some efficacy in the drugs which she administered to her husband. In the end she succeeded in obtaining a divorce in such a manner that she was not blamed for loving Rochester, but appeared to be a most unfortunate woman. She then married her favourite, who was created Earl of Somerset.

Among Rochester's most intimate friends had been Sir Thomas Overbury, who had strongly dissuaded him from the marriage, and whose advice had probably been made known to the countess. This offence was unpardonable in her eyes, and nothing but Overbury's death would satisfy her. His destruction was prepared by a series of intrigues which rendered his murder easy. The king, at Rochester's request, nominated him to the Russian embassy. As soon as he received the news, he hastened to inform Rochester, who advised him not to accept the appointment, as his advancement could be better secured in England. He suspected nothing, and acted as Rochester wished. Rochester then went to the king, whose imperious and suspicious nature he well knew, represented the refusal as gross contempt, and so worked upon James's weaknesses that a warrant was issued to lodge Overbury in the Tower.

An arrangement was made by which the previous Lieutenant of the Tower gave up his place to a friend of Rochester's. The next step was to procure the dismissal of the under-keeper of the Tower, and to put in his place a creature of the countess's whose name was

Weston. There was not even then a cessation of correspondence between Rochester and Overbury, who appears to have been of a most unsuspicious disposition. Communication was kept up by a Mrs. Anne Turner, who had been the countess's companion and agent in the earlier dealings with the fortune-teller. The messenger who had carried love-potions was easily enough persuaded to carry poisons; and the dupe who had trusted the false friend before, and given a warning against a treacherous woman, weakly allowed the two to destroy him. They sent him presents of food with which at least three kinds of poison were mixed at different times. But the drug which they chiefly employed was bichloride of mercury, or corrosive sublimate, which was then known as sublimate of mercury. The crafty apothecary whom they employed was aware that this preparation would produce symptoms indistinguishable from those of a loathsome disease. It thus appeared possible to disgrace Overbury in the very process of killing him, and to increase his malady under pretence of attempting to alleviate his sufferings. His tormentors, however, grew tired of a course of action fraught with too many delays; and he died very suddenly at last. Some said that Weston and the apothecary had smothered him; the indictment charges only that he was murdered by poison. Whatever may have been his end, the countess pleaded guilty to the charge of having procured his death, and the earl, after pleading not guilty, was convicted. Some of the inferior actors in this horrible tragedy were also tried, and were executed. The earl and countess were pardoned, and thus demonstrated that in the age in which they lived, no crime was thought deserving of punishment in nobles and courtiers except treason—unless indeed, as

was hinted, they induced the queen to favour them by means of witchcraft.

There was engaged as counsel in this case one of the greatest thinkers of any country or any time. The career of Bacon affords one of the most striking illustrations of that intermixture of old and new forms of thought and action for which the age was remarkable. The ancient charges of *scandalum magnatum* and corruption in office are inseparably associated with the name of a man whose philosophical method has changed the aspect of the world. He had been appointed lord chancellor but a very short time when a complaint of his conduct was made by a Mr. Wraynham in a petition to the king. Two decrees, as alleged, had been made by Bacon's predecessor, which had been 'cancelled by this lord chancellor in a preposterous manner.' This language was considered intemperate, and proceedings were instituted against Wraynham in the Star Chamber for the slander. A great number of precedents were cited to prove that Wraynham's offence had always been considered most heinous. They were undoubtedly sufficient for the purpose, but they also contributed not a little evidence that judges had in all previous times been corrupt. The question, however, which the court had to consider was not whether Lord Bacon had done what was wrong, but whether Wraynham should be punished for asserting that he had done what was not right. Upon this point no doubt was entertained, and Wraynham was fined and imprisoned for having spoken ill of a magnate.

Old and new forms of thought: appearance of Bacon at the trial of the Somersets.

The charges against him.

About this time there was a committee appointed by the House of Commons to enquire into abuses in the

courts of justice. A series of reports was made. Twenty-eight specific charges of corruption were drawn up against the lord chancellor, and presented in due form to the Upper House. He then sent to the Lords a written statement, in which he confessed his guilt in general terms, and prayed for mercy. With this, however, the Lords were not satisfied, and required him to answer the articles of accusation one by one. He made a further 'humble confession and submission,' admitting that there was at least some foundation for every one of them. But he urged that in many of the instances there were extenuating circumstances, that he had not in all of them taken a bribe before delivering judgment, but afterwards, and that in some the money received was no more than a loan. He did not, however, deny that he had sometimes accepted presents from suitors while causes were pending, but he asserted—no doubt truly—that he could not remember all the details of all the causes brought before him, and that he suspected his subordinates of some trickery in entering the orders. Still he made no attempt to exonerate himself from the imputation of gross misconduct, and in his last final appeal for grace he said: 'I do plainly and ingenuously confess that I am guilty of corruption, and do renounce all defence.'

Bacon has since been furiously attacked in verse and hotly defended in prose. He has been represented as the meanest of mankind, and as one incapable of moral wrong. Could he have effected as great a change in the manners of his own time as he effected in the scientific method of posterity he would, indeed, have been a giant among pigmies. But as he did not expect that his intellectual labours would

His faults were the inherited faults of his age.

be appreciated by his contemporaries, so he made no effort to be less corrupt than they were. He seems to have had ever present to his mind the fact that the men of his own generation were the men by whom and with whom he had to live, and that to affect a superiority of virtue would be to starve. Servility was in his day, as it had been long before, one of the shortest roads to promotion, and he did not hesitate to follow it. The acceptance of bribes was a recognised, if not a legal, mode of increasing a chancellor's official income, and he adopted it as other chancellors had done before. Other chancellors, too, had been ruined by political opponents, who accused them of practices which they had been at little pains to conceal. Bacon was neither more nor less guilty than his predecessors; he was in his lifetime only a little more unfortunate than some of them.

After his death, however, it has been his misfortune to suffer at the hands of apologists as well as detractors. An attempt has too often been made to represent him as having been more servile than he was, in order to prove that he was less corruptible. It has been argued that he might have regarded a confession (which, upon such a supposition, would have been most abject and contemptible) as the readiest means of obtaining a pardon or a lenient sentence for an offence which had never been committed. The whole tenour of his 'submission' is altogether opposed to any such construction: he grappled with each particular charge, placed the facts in the most favourable light, which, from a modern point of view, was not very favourable, and then declared, as every unprejudiced man with a sense of honour would now declare, that his acts were deserving of censure.

Surely there is something in this frank admission

which goes far to redeem the character of the great philosopher—something which would be lost if any part of the confession were taken to be untrue. 'Do not forget,' said he in his first appeal, 'that these are the common faults of an age as well as the faults for which the individual alone is to blame.' We now know that this palliation of his offence was in perfect agreement with all the facts of history. To what a height of moral perception must that man have risen who, in such an age, could repentantly proclaim himself a wrong-doer, when he had done no worse than most of his fellow-lawyers or fellow-officials!

His keen moral perception displayed in his pathetic confession.

His confession is, indeed, not the least among his many great writings. His sense of the evil wrought by his own evil deeds is expressed in language not within the reach of all the hypocrite's arts. He sees with the eye of a prophet a time when his name will be familiar as a reformer in all that relates to scientific discovery, and when men will ask why he was not good as well as great. He bewails the lost opportunity; but with an effort of which such a man as he could alone be capable, he resolves to do that which was only a little less difficult than to be incorruptible when all his associates were corrupt. With his own pen he holds himself up to reproach, and hails the coming of a time when such misconduct as his will be no longer possible. 'Though it be my fortune,' he writes, 'to be the anvil whereupon these good effects are beaten and wrought, I take no small comfort.' 'That hereafter the greatness of a judge or magistrate shall be no sanctuary or protection of guiltiness is (in a few words) the beginning of a golden world.' But his anguish when he reflected that this golden world was one in which he

was, he said, in words pathetic from their simplicity, 'as great affliction as, I think, a mortal man can endure.'

If not in practice, at least in perception, his moral had kept pace with his intellectual character. The golden world which he foresaw must to his contemporaries have appeared a dream, and was not to exist for some generations after Bacon's time. All the more honour to him who could, in the days of Mompesson and Michell, of Sir Henry Yelverton and Lord High Treasurer Middlesex, acknowledge his own errors, and ask others not to follow his example! Sir Giles Mompesson and Sir Francis Michell were the holders of monopolies affecting inns, alehouses, and the manufacture of gold and silver thread. It was alleged that, in order to extort money more readily, they had, without warrant, erected a court, imprisoned the king's subjects, and exacted bonds by threats; that they had afterwards, by the use of improper influence, obtained warrants and a proclamation which gave some colour to their illegal deeds; and that they had then exceeded the authority which they pretended to enjoy by virtue of the power thus wrongfully acquired. The exposure of their misdeeds had a good effect more immediate in its operation than the fall of Bacon, for an Act was passed by which all monopolies were thenceforth declared void. This statute, however, did not injure 'the true and first inventors' of any new manufactures, but permitted the grant of privileges to such persons for fourteen years, and was the foundation of our modern patent laws. Sir Henry Yelverton was attorney-general when Michell and Mompesson were in the full tide of prosperity, and he, too, was convicted of aiding the monopolists by various malpractices. He attempted to throw the blame on

Illustrations of corruption among his contemporaries.

Buckingham, then lord high admiral. He ought to have formed a better estimate of his own and Buckingham's position; he gained nothing by this defence but a heavy fine for having been guilty of slandering a magnate. In the same year proceedings were instituted in Parliament against Sir John Bennett, for bribery and corruption while he was judge of the Prerogative Court of Canterbury. Only three years later Middlesex was impeached for having, while lord treasurer, accepted bribes from the farmers of the customs. He denied the charge, but used an argument which indicated in the clearest manner the habits of the time. It was, that he had 'been a judge these eight years, and no complaint brought against him for corruption or bribery, which he hoped would weigh much with their lordships!'

Such was the age in which Bacon lived. His lament that he had not been in his actions superior to the conduct which he reprobated in theory is very touching. For one who should sin in our day as he sinned in his there could be no excuse. For the man who condemned himself because he had not set a good example instead of following the bad examples around him, there ought surely to be, if not admiration, at least compassion rather than blame. If he did not, it is certain that he could not, resist altogether the influences around him. If his moral character was not immaculate, his intellectual character also was not free from taint. The man who, as a chancellor took bribes, as a philosopher could not declare himself free from the belief in witchcraft. In this respect he was inferior to Reginald Scot; in respect of his corruption he was inferior to many men of more recent times to whom temptation has never been offered.

Effect of surrounding circumstances shown in his intellectual as well as his moral character.

Yet it is but fair to believe that such a man as he owed all his errors to the ancient grooves in which he had been placed at birth, and that his greatness would have been still greater, both in deed and in thought, had he been born in more favourable circumstances. There was, here and there, great development of intellect at the beginning of the seventeenth century, but there was little diffusion of culture; and it was impossible that the general ignorance, coarseness, and corruption should not re-act on the higher natures.

The contrasts presenting themselves in the life of Bacon recur again and again, though less strongly marked, in the period immediately preceding the Commonwealth. In the midst of the outcry against monopolies, and of the usual complaints that trade was decaying, the East India Company was prospering, obtaining new charters, and exciting adventurous spirits to competition. The difficulties of internal communication were still so great that the price of corn underwent the most violent fluctuations, and a suggestion was made that it might be equalised by establishing stores at stated intervals throughout the country. Yet the traffic on the roads had so far increased that in the reigns both of James I. and of Charles I. there were proclamations for regulating it, of which the most remarkable prohibitions were that carts or waggons should not be allowed to pass if with more than two wheels, or with more than five horses, or with a load of more than twenty hundredweight. At the same time correspondence had increased so much that a postal system between England and Scotland was brought into operation in 1634. The mail was of course carried on horseback; and it is about this time that the

Extinction of brigandage: communications: the post: the highwaymen.

highway robber finally takes the place of the more ambitious brigand, who had ceased to exist. His highest achievement was to waylay the mail, as that of his predecessor had been to beat the king's servants and gain possession of a portion of the king's treasure or a portion of the queen's jewels. The motive which prompted the exploit was in each case the same, and the highwayman of the seventeenth and eighteenth centuries had descended, by means of an unbroken tradition, from the knightly outlaw of the days before the Black Death. But the conditions of life were already changed, and the gentleman who earned his living on the road was of a race which, like that of many a noble beast of the forest, was doomed to extinction. The end, however, was not to be just yet; and although many greater men had robbed and been unknown to fame, there were still to be nearly two centuries during which a horse and a pistol might suffice to gain an income and the admiration of all who saw more virtue in enterprise than in honesty.

Growth of wealth and population.

That increase of wealth which the highwayman, ignorant of history, might have thought an unmixed benefit to himself, was the most certain indication that his profession must come to an end—that the number of persons willing to earn a subsistence by the peaceful occupations was increasing. In other words, it was becoming the interest of a larger class to make an end of that lawlessness which had been one of the chief characteristics of the middle ages. A modern financier might smile at the idea of prosperity conveyed by an export trade of little over two millions, and an import trade of about the same amount. This, however, which was the average during the reign of James I., seems to have been considerably in excess of

the trade during Elizabeth's reign, and the improvement (in spite of the usual complaints) continued until the outbreak of the civil war. In 1641 the customs of England yielded no less than half a million. In 1613 they had yielded less than a hundred and fifty thousand pounds; in 1590 they had been farmed for forty-two thousand, and earlier in the reign of Elizabeth for fourteen thousand. There is, and always has been, a progressive decrease in the value of money, and for that reason an apparent is not always a real gain. But that there was a rising tide of prosperity just before and for some years after the accession of James I. is established by the more certain evidence of a growing population. From 1570 to 1600 the inhabitants of England increased more than fifteen per cent., and from 1600 to 1630 more than sixteen per cent. The injury caused by such a commotion as that of the struggle between the parliament and the king may be estimated from the fact that between 1630 and 1670 the population increased only three per cent. This check in the growth of the nation must, no doubt, be attributed in part to the battles which were fought, and to the plague which followed the Restoration, but it must also be attributed in part to the adverse effects of an unsettled government upon trade.

The very prosperity of the country, however, at the beginning of the seventeenth century, aided not a little in bringing to pass the troubles which gave it pause. Religious and political discontent had been associated one with another from the earliest times at which we have evidence of any discontent at all. The Puritans, who had inherited the traditions of the Lollards, had not obtained all that they desired by the Reformation. The greater part of them

Social and political effects of an increasing commerce.

were of the commercial class—of the class which had not inherited land. They were the chief occasion of the proclamations and statutes against increasing the size of London for which the reigns of Elizabeth, James I., and Charles I. are remarkable, as well as, perhaps, of the similar proclamations by which land-owners were directed to leave the city and live in their own houses in the country. By them trade had been developed, and through them the port of London had become more and more a place of resort for all trading purposes. The traders wished to reside where their trade could be most conveniently carried on; the non-traders were attracted to the spot where intercourse was easiest and amusement most readily to be found. When roads are few and ill-made, the capital is almost the only common meeting-ground for those who have no sympathy with the founders of capitals as well as for those who make both town and country rich by their industry. Thus sumptuary laws are made against classes of the most opposite dispositions, and made to be broken by all alike. When the Puritans became governors, they were no less terrified by the increasing dimensions of London than kings had been before them, and legislated to check the evil with no better success.

It was not, however, only in the growth of London that the expansion of commerce was giving embarrassment. An increasing trade brought an increase in the customs dues, and a stronger spirit of independence among the traders and their representatives in the House of Commons. Hence arose the quarrel between the king and the parliament, which, in the end, brought a royal head to the block. In the earliest times of which there are any records there was no House of Commons in

existence, but, as already explained, the chartered towns sent representatives to Westminster, who made, as it were, a bargain with the king's representative, the Chief Justice. This was the first step towards giving the burgesses any control over the amount of tallage or other tax at which any borough was assessed. When parliamentary representation began, the Commons voted those supplies (including import or export duties) which the king had previously levied without any vote at all. The earliest functions of the Lower House were thus to fix the amount of any grant to the king, rather than to decide whether it should or should not be made, and the first Act on the subject, passed in the reign of Edward I., probably meant little if any more. Thus there grew up the custom of voting tonnage and poundage—or, in other words, a certain toll upon wines and dry goods—at the beginning of every reign, and usually for the life of the sovereign. As might have been expected from the previous history of the revenue, the tax was always levied, even though Parliament might for a time omit to vote it. But the inevitable result of accumulating wealth was that the vote which had long been given as an eager expression of loyalty, with the object of escaping more grievous burdens, came at last to be regarded as open to debate. It was possible, but not certain, that the necessities of the state might still be supplied as they had been centuries before; and the House of Commons, which had made some difficulty upon the subject of money in the reign of James I., granted Charles I. tonnage and poundage for a year only, instead of for life.

The Peers rejected the unusual Bill sent up by the Commons, and Charles, like his predecessors, continued to levy the duty. The king failed to perceive that the

times were changed; the Commons were hardly aware how completely precedent was on his side, though statutes might have appeared to be on theirs. If they had the power to grant, they argued naturally enough, they had also the power to withhold. He argued, not less naturally, that to deprive him of any right enjoyed by his predecessors was to encroach on his prerogative and alter the constitution. His reasoning was sound, but his course of action unwise; their pretensions were just and reasonable, but could not be fully maintained by an appeal to history. The breach grew wider and wider as each side displayed more and more aversion towards compromise. The Commons drew up their famous Petition of Right, interpreting the earlier statutes from a point of view which might even now be called modern. The king, reluctant to yield what his predecessors had firmly held, yet unable to assert positively that law was in his favour, after a vacillation which was most impolitic, conceded what was asked with a bad grace. He practically admitted that previous occupants of the throne had wrongfully levied taxes, wrongfully kept innocent men in prison, wrongfully exercised military authority, and that he would have followed their example as far as he could. This was mere weakness and want of judgment; a stronger, a wiser, and, perhaps, even a less scrupulous man would have avoided this apparent confession of wrong, and would have given up royally that which it was impossible to retain. He who gives quickly gives doubly, says the old Latin proverb; he who hesitates before he gives often destroys all the value of the gift. The king was at least as certainly in a position to accord a favour as the parliament to demand a right. But he lacked good

Causes of the quarrel between king and parliament.

advisers; and the pride and pedantry of the Stuarts were the worst possible prompters in such an emergency.

The counsellors in whom Charles most confided were Strafford and Laud. Strafford was the stronger and greater man of the two, but was not endowed with much discrimination. He saw that the Commons wished to increase their own power at the expense of the crown. He believed that aggression was a better as well as a bolder policy than mere defence, and advised 'The Thorough' or complete, and, if necessary, forcible repression of the Commons. With great singleness of purpose he gave all his energies to the service of his master, whom he wished to see in the position of a more primitive monarch and absolute sovereign, assisted only by a council. He misunderstood both the signs of the times and the character of the king. He failed to perceive that it was more difficult than in any previous reign to establish arbitrary government, and that Charles wanted the qualities of a monarch. From no man was the penalty for lack of judgment more rigorously exacted than from Strafford. He was impeached, the impeachment was abandoned, and for it was substituted a Bill of Attainder. Had the Lords found him guilty upon the impeachment, the king might have had some difficulty in granting a pardon, because it must then have been assumed that the evidence of treasonable practices was sufficient. But when the Bill of Attainder was passed by Commons and Lords, the king might with a better grace have withheld his consent. He might have saved a faithful subject, and at the same time have made himself the champion of the very wholesome principle that no man should be condemned without a fair trial. Charles, as usual, hesitated; as usual, he offended the Commons

Death and character of Strafford.

by showing how reluctant he was to do as they wished, but in the end consented to the death of his truest friend, and yet gained nothing by his treachery.

Archbishop Laud deserves from one point of view more, from another less, sympathy than Strafford. He was impeached at the same time, but his impeachment, like that of Strafford, was allowed to drop, and, like Strafford, he suffered at last (though not quite so soon), through the introduction of a Bill of Attainder. It is needless to point out that the fate of these two men—as of many who had preceded them, as, indeed, of all who have perished by Act of Attainder—was the result of party passion rather than of deliberate investigation. Laud, as an aged man with a hot temper, deserved, perhaps, more consideration than Strafford, and he was of the two the less to be feared. There is not very much to be apprehended from an archbishop who gives his mind to postures when not only the position but the very existence of the clergy is in danger, to holy meats and feasts and fasts when every living is threatened, to copes and stoles when even the gown and the surplice are exciting a hostile clamour. Laud, whose demeanour in the Court of High Commission has already been described, brought upon the king whom he advised all that theological hatred which he had indiscreetly roused, in addition to the growing political discontent. He was more intemperate and yet had a less definite purpose than Strafford. But most of his faults seemed to be part of his narrow-mindedness and his weakness; and his apparent cruelty arose in some degree, perhaps, from want of perception, from inability to consider what must be the feelings of others. He was neither amiable nor admirable in character, and yet,

Death and character of Laud.

perhaps, not quite worthy of martyrdom on the block, even at the height of political fury.

Abolition of the Courts of Star Chamber and High Commission.

With Strafford and Laud fell the Courts of Star Chamber and High Commission. The one, established chiefly for the good purpose of checking forcible entries and reducing local magnates to obedience, had been made an engine of oppression by the crown. The other, established for the purpose of enforcing uniformity of religion after the separation from Rome, had gradually become associated with the idea of persecution as applied to members of various sects known by the general name of Puritans.

Case illustrative of the later action of the Star Chamber.

Enough has already been said of the proceedings of the Court of High Commission. The abuses of the Star Chamber are too well known to need much illustration here; and the case of Prynn and his 'Histriomastix' is familiar to everyone. Another of the cases brought before the court, however, may serve as an even better indication of the character of the age. One Alexander Leighton, a Scottish Doctor of Divinity, was accused, in the year 1630, of libel—of 'framing, publishing, and dispersing a scandalous book against king, peers, and prelates.'

He seems to have used intemperate language, to have called the prelates 'men of blood,' ravens and magpies, antichristian and satanical, the canons 'nonsense canons,' the king's consort a 'daughter of Heth,' and to have made various offensive remarks upon the government, and the persecutions of the time.

In execution of the sentence passed upon him in the Star Chamber he was taken before the High Commission and there degraded. On the same night 'he broke out of the Fleet.' He was taken again in Bedfordshire and

brought back to the prison. On Friday, November 16, according to the diary of the Bishop of London, part of his sentence was executed upon him at New Palace at Westminster, in term time, in the following manner :—

'1. He was severely whipped before he was put in the pillory.

2. Being set in the pillory, he had one of his ears cut off.

3. One side of his nose slit.

4. Branded on one cheek with a red-hot iron with the letters S S, signifying a stirrer up of sedition, and afterwards carried back again prisoner to the Fleet, to be kept in close custody.

And on that day seven-night, his sores upon his back, ear, nose, and face being not cured, he was whipped again at the pillory in Cheapside, and there had the remainder of his sentence executed upon him, by cutting off the other ear, slitting the other side of the nose, and branding the other cheek.'

The abolition of any jurisdiction on the ground that it has been habitually used for the purpose of doing injustice would be a terrible blow to the strongest system of administration. It weakened the fast declining authority of Charles I., who could never reconcile himself to the most prudent course of action until the opportune moment had gone by, and who attempted to retrieve past errors of vacillation by new errors of imprudent haste. He continued to levy taxes by his own authority after he had agreed to the Petition of Right, and made a demand for ship-money when the Commons denied his right to tonnage and poundage. After he had timidly allowed Strafford to be executed, he went with reckless rashness to the House

A civil war inevitable.

of Commons and demanded the surrender of five members. He always chose the wrong moment to threaten, to strike, or to conciliate. With better judgment, or better advice, he could hardly have attained such absolute power as Cromwell, but he continually thwarted his own purposes by the exhibition of his own incompetence. Englishmen would probably not have consented to be ruled by the will of one man before they had had some experience of a Commonwealth; but had they been willing to submit, their submission would have been given only to one who had proved himself capable and vigorous.

In such circumstances as these a civil war became inevitable, a war in which the strong will and the set purpose were sure of victory over fitful energy and irresolution. With the incidents of the struggle we are not now concerned, but its issue in the king's execution cannot be disregarded in a history of crime.

The evils which are inseparable from the encouragement of the military spirit were seen in full operation as soon as the parliamentary army was triumphant. The Long Parliament, which had called into existence the most irresistible of armies, was carved to a new shape by the sword of its own forging. Even the House of Commons was permitted to sit and to vote only in such a manner as the military leaders considered expedient. This assembly, after having been duly purged by Colonel Pride, voted that Charles should be tried by a High Court of Justice to be constituted for that purpose. The House of Lords, still nominally in existence, met to the number of sixteen, and rejected the Bill. The Commons, assuming that they had fairly represented the people, whom they declared to be the

A High Court of Justice to try King Charles I.

source of all power, quietly ignored the decision of the Lords, and proceeded to the nomination of the court and the preparations for the trial.

It is indisputable, on the one hand, as the judges declared at the time, that there was no precedent for the erection of a court by a vote of the Commons, either with or without the assent of the Lords, to try a king of England. It is no less indisputable, on the other hand, that articles of accusation had been exhibited against previous kings in Parliament, and that victorious factions had pronounced sentence of deposition against Edward II. and Richard II. The proceedings against those two sovereigns may be most aptly compared with the proceedings against a subject by Bill of Attainder, in which no fair trial is allowed. The proceedings against Charles I. very much resembled the trial in the limited court of the Lord High Steward, in which the prosecution, to all intents and purposes, nominates the judges. Such words as justice and fair play become mere mockeries in all these cases. Nothing is really considered except expediency, as it may happen to appear at the moment to the party in power. The Commons had prevailed over the king—a section of the Commons, together with the army, over the rest. The victors believed that their best policy was to do with Charles I. what differently constituted factions had done with two of his predecessors, but they resolved to do it in a more open and therefore somewhat less reprehensible fashion.

The precedents for the accusation of a king.

'Charles Stuart, King of England,' was brought to the bar in Westminster Hall to answer 'a charge of high treason and other crimes,' exhibited by the solicitor-general 'for and on behalf of the people of England.'

It was alleged that he had been entrusted with a limited power to govern, according to the laws of the land, and not otherwise; that he had afterwards attempted to rule according to his own will, and to overthrow the rights and liberties of the people; that he had levied war to the same ends, and had so become 'guilty of all the treasons, murders, rapines, burnings, spoils, desolations, damages, and mischiefs acted and committed in the said war, or occasioned thereby.' He was therefore 'impeached as a tyrant, traitor, murderer, and a public and implacable enemy to the Commonwealth of England.'

His condemnation was a foregone conclusion from the time when the Commons nominated commissioners to try him. Sentence of death was passed upon him. Whether it was expedient or not that he should be executed (from the point of view of those who condemned him), is a question to which men will always give different answers according to their mental constitutions. That he would have been put to death in any previous age by any party strong enough to depose him there can be little doubt. Almost every precedent must have told him of his impending fate. The utmost that he could have hoped was that he would not be assassinated in secret, like Edward and Richard, but would be brought to the block, like Jane and like his grandmother Mary. In this just expectation he was not disappointed. The tone of morals had at least been somewhat improved since the days of Roger Mortimer; and the men with whom Charles I. had to deal were neither cowards nor fools, and were not behind their age in political education. None can refuse compassion to the unfortunate king, whose ill fate it was to live in times when the soundest judgment might have

In what sense Charles's execution in public was a martyrdom.

been at fault, and to be by constitution infirm of purpose and indiscreet. Yet even the most bigoted believers in the doctrine of the divine right of kings must admit that the men who brought Charles to the scaffold brought in the whole nation as witnesses to their deed, and made no attempt to evade responsibility. If they acted wrongly, they did not act meanly, and thus they testified to the world that they had risen a little superior to the age of chivalry.

The crisis was in one sense without precedent, for the party now dominant had never been dominant before. The issue was also in one sense without precedent, for no king or queen of England, whose title was undisputed, had ever been publicly executed as a criminal. The death of Charles I. is at once the most dramatic and the most impressive incident in English history. Through fear or through zeal the whole people were consenting unto it. To whichever side our sympathies may incline, we may all regard King Charles as a martyr—as one who, in his own person, bore witness to the calamities which may befall a nation when irreconcileable political passion is permitted to hurry it into a civil war. It matters little for the interests of the country whether the right has been all on one side, or all on the other, or partly on both, when the masked executioner raises the axe which is to cut through his sovereign's neck, and a moment afterwards turns to the excited crowd, saying, 'Behold the head of a traitor!'

CHAPTER VIII.

CRIME DURING THE COMMONWEALTH.

ON the day on which Charles I. was put to death the Commons passed a Bill by which it was made high treason against the Commonwealth to proclaim his son or any other person king. On the 17th of March following was passed another Bill, according to which the regal office was, as it were, put in commission, and was 'not to reside in or be exercised by any one single person.' The supreme authority was, thenceforth, to be in the existing and 'successive representatives of the people of this nation, and in them only.' Any attempt to revive the late form of government rendered all persons implicated in it liable to be 'adjudged traitors against the Parliament and people of England.' Two days afterwards the Commons ordained and enacted 'that from thenceforth the House of Lords in Parliament' should be 'wholly abolished and taken away.'

New definitions of treason.

* Such violent changes in the government of the country afford endless subjects of dispute to those writers on constitutional history who imagine that abstract principles of government were accepted before governments began to rule. But as constitutions, like civilisation in general, are the growth of ages, it is

The abuse of the doctrine of precedent.

worse than mere pedantry to enquire whether there was or was not constitutional authority for what was done in 1649. A precedent existing in bygone ages would not necessarily justify an act or a series of actions in the seventeenth century. The absence of any kind of precedent would not necessarily prove that anything done in the seventeenth century was incapable of justification. The further we look back in the history of any nation the more probable it is that we shall discover barbarism in its institutions and even in its form of government. The questions whether there ought or ought not to be a king or queen, and whether, if there ought, the office should be elective or hereditary, are of too great importance to be decided by any reference to the customs of a barbarous tribe; and it is to the customs of some barbarous tribe that the search for precedents, if continued far enough, invariably leads.

Were the sole purpose of history to teach veneration for antiquity, and to deter men from doing that which has never been done before, it would be well that every record of the past should be destroyed. We had better be in ignorance of the manner in which our remote ancestors lived than seek among savages or semi-savages the rules which should govern a civilised people. The true use of precedent is to teach how existing laws should be administered rather than how new laws should be framed.

In the Act by which we find 'the kingly office abolished,' it is stated that 'a most happy way is made for this nation to return to its just and ancient right of being governed by its own representatives or national meetings in council.' The leaders of the rising Commonwealth might have said with more truth that any party which

had the will and the power to overthrow the existing government had, from time immemorial, assumed to itself the power of constituting a new government, of its own. They might also have said, without fear of contradiction, that, in all ages and in all countries, any attempt to subvert the supreme authority, as actually existing, had been considered equivalent to high treason, and that what is treason to-day may be loyalty to-morrow, and what is loyalty to-day may to-morrow be treason. They might have added that unless these principles were admitted all government would be impossible, and every nation in continual danger of anarchy.

Notwithstanding the Statute of Edward III., therefore, the change now made in the definition of treason was by no means so great as it appears at first sight, and was very little greater than the change made after the Revolution of 1688. It related only to the persons who were protected by the law: upon the execution of Charles I. as upon the accession of William and Mary, the adherents of the legitimate heirs of the throne were declared traitors, and the highest persons in the state were designated traitors by the legitimate heirs.

Some kind of executive power was of course necessary, as the whole business of the nation could not be transacted by a legislative body so numerous as the House of Commons. This power was entrusted to 'The Keepers of the Liberty of England, and the Council of State.' The Rolls of the period show that the writs which formerly issued in the name of the king now issued from 'The Keepers of the Liberty of England, by authority of Parliament,' the ancient legal forms being in other respects fully preserved. The men who thus assumed a portion of the

Treason against the Keepers of the Liberty of England.

regal functions naturally enough desired the protection formerly accorded to the royal person, and thus an Act was passed to the effect that it was high treason to 'plot or endeavour their subversion.' It followed of course that it must be treason to withdraw any soldiers or officers from obedience to the existing government, or to assist any foreigners in an invasion of England.

The difficulties with which a new government has to contend were illustrated when John Lilburne was prosecuted in 1649, under the Act just mentioned, for publishing seditious writings. He was a republican, he had served in the parliamentary army against the king, and he had had some experience of the noted Star Chamber. But the government which he had helped to establish did not please him more than the government which he had helped to overthrow. The power of Cromwell's invincible army was regarded by him as an instrument of tyranny. The Parliament, he said, did not relieve the nation from oppression, but divided the profitable places among its own members. In short, he had discovered in a few months that revolution is not, in all cases, a royal road to the perfect happiness of a nation.

Curious persistence of old traditions shown in the trial of Lilburne.

All this was what might have been expected, but the trial of Lilburne disclosed a very remarkable state of public feeling, and showed how great a force may be an erroneous historical tradition, and a sense of wrong without any foundation in fact. He was arraigned at Guildhall by virtue of a special commission, in accordance with innumerable precedents. He disputed the authority of the court on the ground that it was not constituted in accordance with his interpretation of a passage in Magna Carta. Not content with this, he maintained that the

judges of all courts were mere cyphers, and that the decision of all questions of law, as well as of fact, rested with the jury. 'You,' he said to the court, 'that call yourselves judges of the law, are no more but Norman intruders,' and he further described their function to be that of saying 'Amen' to a verdict.

This is the old clamour for the laws of the Confessor revived after the lapse of nearly six hundred years. Lilburne was evidently not aware that the jury, in the sense in which he used the term, was an institution of far more recent origin than the ordinary courts, or than courts sitting under special commissions. He did not know, and the judges before whom he appeared were ignorant, or would not condescend to inform him, that juries had in former times been witnesses, and that to be indicted was practically to be convicted. He did not know, and none who heard him seem to have known, that the 'Norman intruders' (as he called the judges and the lawyers) were the men who had rendered possible such a trial as he was then receiving, and that before the Conquest, and even generations after it, he could have been acquitted only by compurgation or ordeal.

It is true that, from a modern point of view, reasonable ground of complaint might be found in the manner in which he was treated, just as it is true that his own tone and language were intolerably insolent. He was abusive to the court and he was browbeaten by the judges—like others before him, from the earliest times at which trials were reported at length. He was apprehended for one offence and tried for another. The jury were plainly directed by the court to find him guilty. He was acquitted, and was nevertheless sent back to the Tower. In short his case was in many respects a repe-

tition of that of Nicholas Throckmorton. The parallel, too, was continued in a somewhat curious manner. He was released after about a fortnight's further imprisonment, but was afterwards banished by an ordinance of Parliament, and his return was declared felony. He had the audacity to commit this felony, for which he was tried again, but was again acquitted. The jury which had the courage to pronounce him not guilty was brought before the Council of State, just as Throckmorton's jury had been brought before the Privy Council. The jurors in Lilburne's case showed how deeply they were affected by the traditions of which he had availed himself, and by his pretended knowledge of legal history, in their answer :—it was that they 'looked upon themselves to be judges as well of law as of fact.'

Treason against the person of the Lord Protector.

While the discontented spirits were looking for impossible precedents in the past, and showing how very dangerous is a little knowledge of law, Cromwell was doing his best to establish a government which would give security not only to his own party but to all lovers of order who were not royalists. When he became Protector, the definition of treason was again somewhat modified, because he was, in all but name, King of England, and the law protected him as it had protected other kings. In legal documents in which the 'Keepers of the Liberty of England by authority' had displaced the name, style, and title of the king, there now appeared 'Oliver, Lord Protector of the Commonwealth of England, Scotland, and Ireland, and the dominions thereunto belonging.' The surname 'Cromwell' was no longer used, and Charles I. was in fact succeeded by Oliver I. By an Act passed in 1656 it was declared

high treason to attempt, compass, or imagine the death of the Lord Protector.

Sentence on Sundercombe: remarkable declaration of the judges.

The judges, it is related on very good authority, expressly decided that to 'compass or imagine' the death of the chief magistrate, no matter what might be his title or by whom the office might be filled, was high treason according to the common law. The original document in which this solemn decision may have been recorded, has, like many others, disappeared. Though, however, it is much to be lamented that we can never know the precise words in which this most important principle was expressed, there is at any rate sufficient evidence that, in one form or other, the doctrine was applied during the Commonwealth. Among the many plotters against the life of the Lord Protector was one Miles Sundercombe; and the view of his offence taken by the judges is indicated clearly enough by the writ for his execution. This has fortunately been preserved in a Roll of the King's Bench, and is worthy of remark as being, unlike similar records before and after the time of the Commonwealth, in English. It shows the continuance of all the old forms, with the slight change of the King's Bench into the Upper Bench:—'Oliver, Lord Protector, &c., to the Sheriff of Middlesex, greeting. Whereas we, in our Court before us in the Upper Bench, have considered that Miles Sundercombe, late of the parish of St. Martin in the Fields, in the county of Middlesex, yeoman, otherwise called Miles Fish, late of the parish of St. Martin in the Fields aforesaid, in the county aforesaid, yeoman, for High Treason touching our person, whereof he is indicted and attainted, is committed by our said Court of Upper Bench aforesaid to the Lieutenant of the Tower of

London, and from thence through the middle of the City of London unto the gallows of Tyburn shall be directly drawn, and upon the gallows there shall be hanged and shall be (then living) laid upon the ground, and his entrails out of his body shall be taken, and shall be burned (he being then living), and his head shall be cut off, and that his body shall be divided into four quarters, and that his head and quarters aforesaid shall be placed where we shall appoint them; therefore we command you, firmly enjoining you, that, upon Saturday the fourteenth day of this instant month of February, you go to the said Tower of London, and him the said Miles Sundercombe, otherwise Fish, of the Lieutenant of the said Tower of London you do receive, and do execution upon him in form aforesaid, as it ought to be.'

The 'high treason touching our person' had evidently been recognised by the judges, or the warrant could never have issued. Their justification is to be found, perhaps, not so much in statute or common law as in the necessity of preserving the nation from continual plots and anarchy.

With crimes against the civil authority, crimes against religion also underwent a change of definition. Years before the execution of Charles and abolition of the office of king, the Puritan spirit, which had for centuries been a power in the nation, had effected a great triumph. In June 1643 Parliament declared that the existing church-government was a great impediment to the reformation and growth of religion. At the beginning of 1645 was passed an ordinance 'for taking away the Book of Common Prayer, and for establishing and putting in execution of the Directory for the public

New definitions of crimes aainst religion: abolition of the punishment of burning for them.

worship of God.' In August 1645 the use of the Book of Common Prayer was made punishable by fine, and for the third offence by imprisonment. In 1646 and 1648 followed a number of ordinances, by which archbishops and bishops were to be abolished, and 'classical presbyters' to take their place, and the counties of England were to be divided and settled into presbyteries and congregational elderships. A scheme of 'church-government' was 'ordered and ordained' in 1648, and thus, so far as forms and ceremonies were concerned, a complete revolution was effected before the death of the king.

It was a harder task to deal with matters of faith, and the difficulty seems to have caused a little hesitation. It was not until 1656 that there was an attempt at constructive as distinguished from prohibitive legislation in matters of doctrine, and even that took only the form of a petition to Cromwell (to which he gave his consent), that a confession of faith might be 'agreed by his Highness and the Parliament.'

The greatest glory of the Commonwealth is that, although it owed its existence in a great measure to fanaticism, and although it became in many respects a military despotism, it was more tolerant in matters of religion than any government which had preceded it. The example was set in an ordinance of 1648 'for punishing blasphemies and heresies.' Errors of doctrine were then divided into two classes. To preach or maintain those which were considered most subversive of the leading principles of Christianity was an offence which, if obstinately continued, was punishable by death as felony. To preach or maintain those which were considered of less importance was an offence punishable by imprisonment until the offender should find sureties for his future

good behaviour. Thus, for the first time, execution by fire ceased to be the legal punishment for any form of heresy, and thenceforth no heretic was burned in England. All honour for this to the law-givers of 1648, who rendered inevitable the statute by which the writ for the burning of a heretic was finally abolished and tolerance carried still further in the reign of Charles II.!

In 1650 was passed an Act 'against several atheistical, blasphemous, and execrable opinions, derogatory to the honour of God and destructive to humane society.' The penalty for upholding these doctrines, which are enumerated at some length, and include the pretence of being God Almighty in the flesh, was for the first offence six months' imprisonment, and for the second banishment; the offender could be punished by death as a felon only in the event of his returning from exile without licence.

The same indications of an approach towards tolerance were manifested when it was agreed, in 1656, that a confession of faith should be prepared. Dissentients (so long as they held what were then accounted the fundamental doctrines of a pure Christianity) were to have the advantage of 'endeavours to convince them by sound doctrine.' But they were not to be 'compelled by penalties nor restrained from their profession, but protected from all injury and molestation in the profession of the faith and exercise of their religion.' Persons, too, who might accept the 'public profession' of faith, but 'differ in matters of worship and discipline,' were to be 'capable of any civil trust, employment, or promotion in these nations.'

Growing tolerance how restrained.

Such liberality as this is in striking contrast to all the earlier legislation of England. It was, however, provided at the same time 'this liberty' should not 'be

extended to popery or prelacy, or to the countenancing such who publish horrible blasphemies, or practise or hold forth licentiousness or profaneness under the profession of Christ.'

The mention of 'popery and prelacy' with blasphemy may seem incongruous, but it was suggested by a very sufficient reason. Cromwell, who permitted Jews to reside in England for the first time since the reign of Edward I., was far above the pettiness of religious persecution. So long as doctrines relating to another world did not threaten the security of his power in this, he was content that men should teach and believe what they pleased; and he had sufficient influence to restrain the fanatics who supported him. But, on the one hand, there were preachers of such 'blasphemy,' or rather such doctrines in morals, as would render every form of government impossible; on the other hand, both the 'papists,' and the persons who had lost ecclesiastical offices and good livings through the establishment of presbyteries, were naturally eager for a Restoration. The blasphemers were thus associated with the holders of the more ancient beliefs, not so much from religious as from political motives; and according to the standard of previous history they were all most leniently treated.

It is fortunate for the character of Englishmen that what was attempted in the days of Oldcastle did not succeed before the days of Cromwell, fortunate for the memory of Cromwell himself that he did not live a century earlier. Lollardism had for generations been a most formidable element in English society. A successful movement against the ancient hierarchy would in the time of Oldcastle have been almost certainly followed by

many vindictive burnings of the priests who had been burners of Lollards, just as Wat Tyler's men imitated the legal fashion of executing nobles for treason. A revolution in civil government immediately after the persecution under Mary could hardly have failed to be accompanied by similar atrocities. But in the middle of the seventeenth century, men were at any rate a little less violent and cruel than they had been in the fourteenth, and there were none living who could remember the flames lighted by revenge and bigotry in the sixteenth. Thus it came to pass that, under the stern rule of the Protector, the supporters of 'popery' (though they might lose two thirds of their property), and the supporters of 'prelacy' (though they might, if obstinate, suffer a year's imprisonment for using the Book of Common Prayer), were in no danger of such pains and penalties as were visited upon the deniers of the king's supremacy in the reign of Henry VIII.

Though, however, the Commonwealth was, in comparison with the governments of previous ages, remarkably tolerant, religious fervour and the simulation of it gave a distinguishing feature to some criminal accusations of the time.

Religious and moral ferment: remarkable doctrines preached and put in practice.

One of the most invariable effects of religious emotion, and of great changes in religion, is to direct attention to the relations between the sexes. The heaven of the Mohammedans, the calumnies upon the early Christians, the recriminations of various Christian sects, the mad self-sacrifice of Origen, the monasteries of the middle ages, the tenets of some modern fanatics in Russia, and of many communities in America, alike bear testimony to this universal law. It was most forcibly illustrated both in the morals of

England during the Commonwealth, and in the morals of England after the Restoration. The Act of 1650 relating to blasphemous opinions shows what extraordinary doctrines had become prominent, and renders unnecessary any minute exposition of the vagaries into which innumerable teachers had led their followers. Not only did men declare that they were equal and the same with the true God, in honour, excellency, majesty, and power, but that adultery, incest, and fornication, as well as murder, might be committed without sin, and 'were as holy and righteous as the duties of prayer, preaching, and giving of thanks to God.' Some went so far as to maintain 'that heaven and all happiness consists in the acting of those things which are sin and wickedness,' and 'that such men or women are most perfect and like to God or eternity, which do commit the greatest sins with least remorse.'

Illustration from the case of Naylor.

One of the most notorious advocates of opinions which may be described in general terms as belonging to this class, was James Naylor. His religious insanity, or his deliberate plan for gratifying his licentiousness, displayed itself first in his teaching that a man might lawfully enjoy the pleasures of love with any woman of his own sect. In order to show by his practice that he was sincere in his preaching, he illustrated the doctrine by an intrigue with a married woman named Roper. The congregation of Independents to which he belonged, however, did not regard him as a prophet, but as a pervert, and excluded him from their body. He asserted his superiority to the misguided persons who had shown themselves his enemies by announcing that he was not like them a man, but God. He assumed the name, and pretended

to be endowed with the attributes of the Saviour. He soon had followers, especially women; and their faith in him was not easily shaken. When he was brought before a committee of the Commons to answer for his blasphemies, one Dorcas Erberry deposed that after she had been dead two days in Exeter gaol he laid hands on her and raised her to life. He was asked whether this was true, and replied 'I can do nothing of myself, but there is a power in me from above.' To the very precise question whether he was the Son of God, he replied 'Thou hast said it.' The deputy-sergeant of the Commons, to whose custody Naylor had been entrusted, gave evidence that the disciples of this self-styled God would surround his chair, meekly kneeling on their knees, or sitting on the ground, and singing, 'Holy, holy, to the true God, and great God, and glory to the Almighty.' This scene was enacted the whole day long, and Naylor calmly accepted the homage as his due.

The committee resolved that he was guilty of blasphemy, and a great impostor and seducer of the people. Their sentence was that he should be set in the pillory in Palace Yard, and be whipped thence to the Old Exchange by the hangman; that two days afterwards he should be pilloried at the Old Exchange; that on each occasion he should wear a paper setting forth his offence; that at the Old Exchange his tongue should be bored through with a hot iron, and his forehead branded with the letter 'B'; that he should afterwards be carried to Bristol, and ride through it on a horse's bare back, with his face to the tail, and be publicly whipped on the market-day next after his entry into the city; and lastly that he should be committed to solitary confinement in the Bridewell in

London, without pen, ink, or paper, and without any support but such as he could gain by his labour.

His faithful followers did not desert him in the hour of persecution. The melancholy farce was played out to the last, and he carried to his dungeon the recollection of the irreverent worship rendered to him even in the pillory. His wounds had been licked, his feet had been kissed, and the adoration he had received appears almost to have made him believe in himself—if, indeed, he was not a lunatic from the first. In prison he would not work, and fasted three days, in the hope apparently that his godhead would enable him to live without food, or that his gaolers would relent. But he was at last convinced that, if he did not eat, his manhood would suffer the pangs of death. The rigorous execution of the sentence proved a remedy for his mental affliction, or for his hypocrisy, and, like many a better man, he set to work to earn a meal. He was, however, released after about three years' imprisonment.

Nothing would be easier than to bring forward a number of other instances in which is to be found the same intermixture of religious enthusiasm or hypocrisy with a suspicious latitude of doctrine, and of practice, affecting the relations of the sexes. It was probably this tendency to make the revolution recently effected a means of enjoying unbridled licentiousness, which led to the passing of a very famous and much ridiculed Act for the punishment of incontinence. Incest and adultery were made felony. In cases of less serious breach of chastity each man or woman was for each offence to be committed to the common gaol for three months, and to find sureties for good behaviour during a whole year afterwards.

An Act against incontinence rigorously enforced.

The judges on circuit and the justices of the peace now dealt with these offences, which had previously been under the ecclesiastical jurisdiction. In the absence of complete documentary evidence, it is impossible to ascertain precisely how many persons suffered for them. But charges arising out of them could, like other cases, be removed into the Upper Bench, on the Rolls of which court they are to be found in sufficient numbers to show that the law was rigorously executed. The form of indictment for simple incontinence was copied (with the requisite changes) from the form in use for another offence.

Instances could hardly be appropriately given in the text of this work, but references to some will be found in the notes. They would, perhaps, raise a smile upon modern lips, but the Act by virtue of which they came into existence was an attempt, and apparently an honest attempt, to deal with one of the greatest difficulties which beset human society, however constituted. It was prompted, no doubt, by the austere puritanical spirit on one side no less than by a desire to punish such men as Naylor on the other. But it has a significance apart from all questions of religion, and apart from the stern policy of repression by which all new governments are compelled to hold together the foundations of society. It is an assertion of the principle that monogamy is the most salutary institution for the joint welfare of men and women, and ought to be strictly enforced by law. Any departure from the rule of life thus laid down was naturally enough considered by the lawgivers deserving of punishment as a crime.

Political and physiological bearing of this Act, and of the subject with which it deals.

The subject is, unfortunately, one which cannot be exhaustively considered without a due regard to physio-

logy and statistics. It is an undoubted fact—a law established by the widest possible induction—that, although more males are born than females, there are always more marriageable females than males living in this country. If, therefore, all the males were compelled to marry at any fixed age, and a law of monogamy were faithfully obeyed, there would be a number of females by no means small doomed to a life of celibacy. This is an evil for which a partial remedy is found in nations or sects which recognise polygamy. It is an evil which might have found a not inappropriate expression in monasteries, had monasteries been inhabited by women alone. But it is an evil over which human legislation cannot exercise any efficient control until human legislation can assert its power over the natural law that the expectation of life is greater for the female infant than for the male.

To make simple incontinence a criminal offence is, therefore, to remove it from its true position as an offence against certain religious ordinances, and at the same time to ignore, what the state is bound to consider in all legislation affecting matters of life and health, the immutable laws of physiology. It is, however, unfortunately true that, as society is at present constituted, the unmarried woman who errs is often made to suffer a more terrible penalty than was exacted in the days of the Commonwealth. The shame is hers, but not her fellow-sinner's, and, though a magistrate may secure her a bare support for her infant, the pleasures of maternity become for her a pain, the prospect of which is often so appalling that she commits murder in the hope of avoiding it. Ridiculous as may appear the Act of 1650, and wrong as it may be in principle, we must nevertheless admit that the great social

problem which was unsolved in the seventeenth century remains unsolved in the nineteenth.

Legislation upon matters which do not immediately affect the well-being of the state is often unnecessary and much to be deprecated. But when a nation is young or a government is newly constituted, there is usually more coercion in small matters than when a great state is in the full tide of life and security. During the Commonwealth the insecurity always felt by men who have recently seized the chief power co-operated with the puritan spirit in imposing social restrictions, of which many were vexatious in practice if laudable in design. These, like the attempt to suppress incontinence, showed that the legislators of the period considered themselves to be censors of morals, and competent, in that capacity, to impose their will upon all who might differ from them in opinion.

Censorship of morals: restrictions upon amusements: observance of the Lord's day.

There were few institutions to which the puritans were more averse than the drama. A number of different sentiments contributed towards this dislike. In the first place, the early Christians had avoided spectacles of all kinds on the ground that some of them were in honour of pagan deities. It was a part of the creed adopted by the radical reformers in religion that the primitive Christians were to be imitated in all things; and, without considering what had been the original objection, they followed the original practice, though pagan worship had long died out. Party spirit was also not without influence, for it was but natural that Roundheads should regard as sinful that which Cavaliers regarded as simply entertaining. The old performance of mystery-plays, and even of other plays, in churches had also had the effect of associating actors and acting with the idea of ecclesiastical

abuses.' If we reflect upon all these causes, it is not difficult to present to ourselves the frame of mind which made one of the highest forms of human art appear to be an invention of the devil. The natural consequence was, that as early as 1647 an ordinance was passed, according to which all persons who had acted in any playhouse in London were to be imprisoned and punished as rogues. Early in the following year there was another ordinance that the seats and boxes in playhouses should be pulled down, that persons who could be proved to have acted should be publicly whipped, and that spectators of stage-plays should be fined five shillings for every offence.

One cause of such repressive measures, in addition to those which have already been suggested, was, no doubt, the idea, possibly not altogether incorrect, that play-houses have an attraction for dissolute persons, and so indirectly aid in bringing about looseness of morals. The objection, if valid at all, applies to every kind of amusement which brings men and women together in public; and the puritans were sufficiently consistent to prohibit some pastimes for which there is no such defence or recommendation as can readily be made for the drama. In 1654 matches for cock-fighting were forbidden, and the reason given was that they were 'commonly accompanied with gaming, drinking, swearing, quarrelling, and other dissolute practices.' The ordinance would have been more creditable than it is to the period of the Commonwealth had it indicated a sentiment, which seems to be of quite modern origin, that the sport of cock-fighting is unjustifiable because cruel to the birds employed in it.

Horse-racing was threatened with the same fate as cock-fighting. It does not, however, appear to have been abolished except for a period of six months, though

betting upon races as well as gaming with cards or otherwise was prohibited. The observance of the Lord's day was the subject of careful legislation, and attendance at some place of public worship was required of every one, not only, as before, to distinguish recusants from others, but with special regard to the sanctity of the day. Sunday travelling and trading were strictly forbidden, and anyone 'profanely or vainly walking' during the hours of divine service was subject to a penalty. An Act of the reign of James I. was repealed and another passed in order that profane swearing might the more effectually be repressed. In short, the whole tendency of the legislation was to lay down for all men a rule of life which should be applied even in the minutest details.

Meeting of extremes: Ecclesiastical Institutes and Commonwealth laws.

However good may have been the intention with which these laws were made, however wholesome they may have been in their operation, there can be no doubt that the principle upon which they were framed was that which is apparent in the Penitentials, Confessionals, and Ecclesiastical Institutes of the days before the Norman Conquest. The power of the hierarchy had been transferred to laymen; and the laymen, like their predecessors, began to dictate rules of action in matters which affected the individual in his private capacity rather than in his relations to the community at large. One man could not be injured because another took a walk on the Lord's day, nor could playhouses and play-actors demoralise persons who kept aloof from them. The true principle of law in such affairs seems to be that punishment should be inflicted only where substantial damage is suffered either by the state or by one individual at the hands of another. If a man who walks abroad on Sunday molests

his neighbours, there can be no doubt that, in the interests of the public peace, he ought to be punished. So ought the playhouse-keeper if he manages his business in such a manner as to create a disturbance. So, too, ought any one whose mode of life is such as to affect injuriously the health or property of others. But to carry punishment beyond these limits is to enter upon that line of policy which ends with crushing out all freedom of action and all freedom of thought. For this, however, the men of the Commonwealth can hardly be held responsible, as it was one of the inheritances of the past.

Effect of puritanical austerity upon the execution of earlier laws.

The austerity which had thus become the prevailing tone was naturally somewhat destructive to the sense of humour, and had the effect of placing some strange documents upon record. It may be admitted that football played in the high street of a town might cause inconvenience and be a kind of nuisance. Yet there is an appearance of incongruity when the game is described in legal language, and the offence of taking part in it is brought before the Court of Upper Bench. The following indictment hardly befits the gravity of so august a tribunal :—

An indictment for playing football.

'Kent.—Before the justices of the peace it was presented that, at Maidstone, in the county aforesaid, John Bishop, of Maidstone aforesaid, in the county aforesaid, apothecary, with force and arms did wilfully and in a violent and boisterous manner run to and fro, and kick up and down in the common highway and street within the said town and county, called the High Street, a certain ball of leather, commonly called a football, unto the great annoyance and incumbrance of the said common highway, and to the great disquiet and disturbance of the good people of this Commonwealth

passing and travelling in and through the same, and in contempt of the laws, etc. And to the evil example of others. And against the public peace.

'Which indictment the Lord Protector etc. caused to come before him.'

Among the various restraints in favour during the time of the Commonwealth may be mentioned one, of which, however, the origin was considerably earlier, upon drinking. The regulations now became somewhat more stringent than before. On the days of recreation allowed to apprentices and servants in place of the abolished Church festival-days, search was to be made in taverns and alehouses, and any servant or apprentice drunk or disorderly, or remaining in such houses after eight o'clock in the evening, was to be apprehended and taken before a justice of the peace. It is stated in an ordinance of the year 1654 that watermen and others frequenting wharves were 'very ordinarily drunk,' and the Commissioners of Customs were therefore required to be very strict in enforcing the laws against drunkenness upon such persons, whom their officers were authorised to apprehend.

New attempts to diminish drunkenness.

Sufficient attention has now been directed to that aspect of crime which presents itself during the Commonwealth through the semi-religious nature of the revolution which had been effected. There is another aspect which presents itself in all countries and all ages after any violent change in the form of government. The leaders are necessarily men of courage and ability, or their leadership would soon come to an end in such troubled times. But there are always many men in every country whose spirits are as restless as those of the leaders, yet whose

The inevitable effects of revolutions. 'Killing no murder.'

courage is, perhaps, less, and whose capacity is certainly inferior. The busybodies of this lower rank have the envy and petty jealousy which are innate in them developed to the utmost by the rapid march of events and the sudden rise of greater men than themselves. The success they are able to see, but the cause is beyond their mental vision, or, if seen, is too unpleasant to themselves to be admitted as a fact. They frame to themselves some such question as this: 'If Oliver is as good as a king, am not I as good as Oliver?' They end by forming all kinds of plots, play into the hands of the party which has lost power, and commit themselves to the sentiment of 'Killing no murder.'

Such are the inevitable effects of revolution, and happy is the nation which, like ours, succeeds in effecting and carrying out a compromise between revolution and hereditary monarchy, and obtains a government sufficiently elastic to bear the strain of recurring discontent, yet sufficiently firm to keep its organisation and save the country from anarchy. To this most fortunate solution of a great difficulty after 1688 we are in no slight degree indebted for the fact that we are not as Germans and Russians on the one hand, or as Frenchmen and Spaniards on the other. Such a compromise was impossible under Cromwell, and the latter part of his Protectorate was troubled by schemes of rebellion and assassination such as appear only too often in neighbouring countries in our own time. In such a state of society true freedom becomes impossible. Repressive measures seem to become necessary for the safety of the ruling powers, and a government not less severe than that which has been overthrown is built up out of the ruins of the old institutions.

As early as 1650 it was found necessary to establish a 'High Court of Justice,' and commissioners were from time to time appointed for the trial of political offences. To such a tribunal there were of course the same objections as to any other tribunal except judge and jury sitting in one of the ordinary courts. The High Court of Justice naturally invited comparison with the Court of High Commission and the Court of Star Chamber. In some respects, however, it most resembled the court of the Lord High Steward, in which a limited number of persons chosen for the occasion sat in judgment on a person accused of treason. It was, no doubt, an engine for securing the conviction of plotters when the state of public opinion rendered the verdict of a jury somewhat doubtful.

'High Court of Justice.'

While, however, these facts show the doctrine that assassination is justifiable to be usual in certain circumstances rather than peculiar to any race or nation, and while they illustrate a truth as old as the days of Plato, that certain phenomena are common to all revolutions of government, they do not call for any further remark. But there is a wholly different characteristic of some laws passed during this period which deserves attentive consideration, and affords a striking confirmation of opinions already expressed in the present history.

The men who had the chief power—the men who were the legislators during the Commonwealth—were on the average of far lower rank than those who had preceded them. Cromwell himself, though he was of gentle blood, and though nobles were glad to marry his daughters, was the subject of many a jest because of the brewery at Huntingdon.

England's great debt to the men of the Commonwealth.

Yet, strange though it may seem, posterity has declared by the most unambiguous of all language—imitation—that the most important laws put in operation during this period were fair and enlightened. The men who had made money by trade showed that they were no mere hucksters, and set many an example which statesmen of another age were ready enough to follow. The men, in short, who had themselves been the founders of their own fortunes proved (what surely could little need proof) that they were not deficient in intellect, and that, if some fanatics wished recklessly to demolish everything, there were more wise men who could discern where the old abuses had been most pernicious, and what was the just and sufficient remedy to apply.

Had Oliver filled the throne by right of inheritance, or had Charles I. possessed Cromwell's discernment and strength of character, the reign of either would have been far more glorious than any which had preceded it. The Revolution of 1688 would then have been unnecessary, and the national progress would not have been interrupted by the rebellions of 1715 and 1745. To so great an extent are nations, and must nations be, at the mercy of dynasties and of individuals! The foundation of much that is best in our present system was, however, surely laid by those stern republicans who lived in the middle of the seventeenth century. To them we owe the principle of the Habeas Corpus Act, if not the Act itself. To them we owe the abolition of military tenures, if not the Act by which those tenures were finally abolished. To them we owe the example of a more determined effort to check the practice of duelling than had been made before, or was made for some generations afterwards. To them we owe the first enrolment of all

legal pleadings in the English language. To them we owe the first law in which the punishment for the most extreme religious opinions falls short of burning; and to their influence may fairly be ascribed the subsequent extinction of the writ for burning a heretic.

Few will deny that this is a splendid series of achievements. It is, too, one of immeasurable importance in the history of crime and civilisation. It implies the gradual decay of the feudal and hierarchical traditions inherited from barbarous and semi-barbarous ages. It implies the disappearance of the worst evils of the days when every little lord had his prison and his rights of pit and gallows, when private war sprang naturally from the relations between the lord and his retainers, when the narrow-minded bigot could make a hell upon earth for the man who dared honestly to express an opinion honestly formed.

The great commotion of the period between the accession of Charles I. and the restoration of Charles II. brought to the surface many a phase of thought and many a practical suggestion of which the value was fully recognised when prejudices had become softened by the lapse of time. It has been already shown that the same commotion also brought to the surface both phases of thought and modes of life which cannot be regarded with so much satisfaction by anyone except those enemies of all existing states of society who have no practicable scheme of their own to substitute. But in addition to these two classes of thought and action there were the dregs of the ancient barbarism which also displayed themselves in turn, and presented a curious contrast amid the whirl of new ideas.

The worst signs of the times the effect of earlier ages.

To describe them at length is unnecessary; but as the *peine forte et dure* was most conspicuous among them, and as public opinion did not demand its abolition for more than a century afterwards, its rigorous application during this period must not be forgotten.

Strangeways and the *peine forte et dure.*

One of the most remarkable cases of pressing of which the particulars have been handed down is that of Major Strangeways in 1658. It is remarkable as an illustration both of the *peine forte et dure* and of a prevalent form of superstition. He was accused of having caused the death of his brother-in-law, and, when the body was viewed by the coroner's jury, he was required to take it by the hand and to touch the wounds. There was in those days a popular belief that a corpse would bleed on the approach of the murderer—a relic of the old sentiment which permitted such an institution as the ordeal. But, with a curious inconsistency, the men who would have accepted the bleeding as evidence of guilt would not accept the absence of bleeding as evidence of innocence. Strangeways was accordingly sent to trial.

At the Old Bailey he refused to plead, and made no secret of the reason. If he stood mute he could not be convicted, and could not, therefore, forfeit his lands, which he had thus the means of preserving for his heir. He was warned in the usual manner, and the sentence of the press was in due course pronounced against him. It is needless to repeat the hideous details which have already been given once in the present work. It appears, however, from the account of the manner in which the sentence was executed, that even in the infliction of this cruel torture there had been kindled just the faintest spark of mercy. There had grown up a custom

of placing a sharp piece of timber under the back of the sufferer in order to hasten his death. In the case of Strangeways this compassionate act of inhumanity was omitted; but an attempt was made to relieve him of the pains of existence in another fashion. A portion of the mass of iron and stone laid upon him was placed anglewise over his heart; and, when it was discovered that the press itself was insufficient to crush the life out of him, the attendants added the weight of their own bodies. This scene lasted eight or ten minutes; and, when it was over, the bruised and mangled body was exposed to the public gaze.

There seems to be little doubt that Strangeways had committed the crime of which he was accused; and, if he was indeed guilty, his fate suggests the reflection that some of the greatest criminals may possess some of the qualities which, in all ages and in all countries, have been held to deserve admiration. No Spartan could have shown more courage and endurance than were shown by Strangeways; the Roman Regulus can hardly be said to have displayed a greater heroism than he, and his motive was an affection in which he could not have been surpassed by even the most tender mother sacrificing herself for her child.

The period of the Commonwealth also furnishes a striking indication that in some respects all ages are akin, and that some actions which have been classed as crimes follow an immutable physiological law. The entries of suicides on the Upper Bench Roll for one year are sufficiently numerous for examination; and it is possible at length to supply a defect caused by the absence of complete sets of the earlier coroners' rolls. In modern times it is

The suicides of the period illustrate an immutable physiological law.

found, year after year, that for every woman who kills herself there are two or three men who also put an end to their lives. Out of seventy-seven cases of suicide in the year 1656 there were fifty of males, twenty-six of females, and one in which the sex is not known. It is thus seen that more than two hundred years ago the law according to which male suicides preponderate over female was operating as it is operating now. This fact may not, perhaps, appear at first sight very remarkable; but a little reflection will probably lead to the conclusion that it is one of the most remarkable facts in the whole history of civilisation. There was never a time in which religious and political excitement reached a higher pitch than during the Commonwealth, and in the year 1656 this excitement had been many years prolonged. There is, perhaps, nothing in which the sexes differ more than in proneness to mental excitement, and nothing by which the excitable woman is more readily excited than by religious fervour. There appears to be here an infallible test by which to determine whether any external circumstances can affect that inward and invisible organisation which produces uniform results. Yet, even under wholly different conditions of life, the results in the main preserve their uniformity. Here surely is a subject for the consideration of those modern teachers who think that it would be well if women could be as men, and that there is no mental distinction of sex except one which can be destroyed in the schoolroom. There are lessons also to be learnt from the physiological law of suicide in connexion with physiological laws of another kind by which crime is affected, but it will be best to treat them as a whole elsewhere.

In the meantime the subject of suicides in the seven-

teenth century cannot be dismissed without a remark upon the difference of the light in which they were then regarded, from that in which they are regarded now. It is now the custom (and the exceptions are very rare) to find a verdict that suicide was committed while the person committing it was of unsound mind. Our forefathers had no such tender feeling for the reputation of the dead or the fortunes of the living. Their verdict (except in cases of notorious insanity) was invariably one of *felo de se*, the effect of which was not only that the body was ignominiously buried, but that the representatives of the deceased lost all claim to his property, which was forfeited. Of the seventy-seven cases already mentioned the jury found no more than three to be cases of insanity. Of seventy-four dead bodies it is said that they were 'indicted for that they did wilfully and feloniously kill and murder themselves.'

The doctrine of insanity in suicide not then developed.

It is a question worthy the consideration of the legislature whether suicide should be regarded as a crime—a question which in no way affects the morality of the act. It is obvious that the law can have no terrors for one to whom life has no attractions, and that all legislation for the punishment of suicide must be vindictive rather than deterrent. The suicide himself, if not restrained by affection for those who are near and dear to him, will not be restrained by any other consideration. All that the law can do is to punish the survivors, already suffering an unmerited affliction. Of course the matter could not be regarded in this light during the middle ages, and it was only consistent with those times that the law of suicide should be as blindly vindictive as most other laws. But sympathy has

Is suicide a crime?

developed itself in the last two hundred years more than in all the previous history of the world. Coroners' juries usually regard the crime of suicide as a legal fiction. Might it not cease to be even so much as a legal fiction, and become simply an occasion for sorrow and pity ?

CHAPTER IX.

FROM THE RESTORATION TO THE REVOLUTION.

WHEN the master-spirit of the age had passed away, when the son of the great Protector had shown that he was not made of the stuff by which dynasties are founded and that he had no ambition to be Richard IV., King of England, when Monk had, like a god in a classical play, come down from the North to cut the knot of state affairs and restore the heir of Charles I. to the throne, the family of Stuart had before it the brightest future that had ever been offered to any royal house. The nation had condoned all previous offences, and the bitter experience of the past might well have appeared a warning which would make a repetition of the old mistakes impossible. The interests of the whole people and of the king were identical; the people were ready to give the king a loyal support if he would only consult his own welfare by respecting their liberties.

The Restoration: character of the Stuarts.

It was, however, the misfortune of the Stuarts—a misfortune for the nation as well as for themselves—that they never exhibited a sound and sober judgment. They appear to have been more well-meaning than many more prosperous sovereigns, but unhappily they could play only two parts. The part which they played best was that of the indolent voluptuary; the part which they

played worst was that which they were perhaps most anxious to play well—that of director of public affairs. There was a narrowness, a deficiency in their intellectual constitution to which even courtiers could hardly be blind. A Stuart author was of necessity a pedant, a Stuart schoolmaster would of necessity have been a martinet, and a Stuart king—when he asserted his kingship—was of necessity a tyrant.

One of the earliest public events after the restoration of Charles II. was the passing of an Act of Attainder against dead men—against Oliver Cromwell, Ireton, and Bradshaw. For such an Act there was, no doubt, sufficient precedent, and unhappily this was not the last time such an Act was to be passed. But the impotent desire for revenge displayed itself in a form still more revolting, and worthy rather of bigoted mediæval ecclesiastics than of statesmen who lived only two hundred years ago. Just as Tracy's body had been exhumed in order that it might be burnt for heresy in the reign of Henry VIII., the bodies of Cromwell, Ireton, and Bradshaw were exhumed in the reign of Charles II. in order that they might be hanged at Tyburn and buried beneath the gallows. All the grace and dignity of the Act of Indemnity (which it was of course necessary to pass when the Restoration was effected) were lost by this exhibition of petty and pedantic vindictiveness. Charles and his advisers appear to have had some doubt whether his subjects could in any other way be thoroughly convinced that the offences of the men whose corpses were dragged to Tyburn was treason.

Attainder after death: the bodies of Cromwell, Ireton, and Bradshaw hanged.

While, however, these incidents prove that Charles

that, according to all previous custom, a victorious political party might have been expected to wreak its vengeance severely upon its fallen foes, and treat the mob to a spectacle of death. The trial of the regicides, which followed shortly after the Restoration, would probably have been conducted in the same manner at the same time under a nobler king than Charles. The days had not yet come when a prisoner defending himself against a charge of treason could obtain a fair hearing. The definition of the offence, so far as it was definable, had of course reverted to the form in which it had been before the Rebellion. During the period of the Commonwealth, however, the custom had been to produce the witnesses for the prosecution in court, and not to convict solely on written depositions obtained in secret. This wholesome change was tacitly adopted afterwards, and the regicides had so much benefit as was to be derived from it.

Trial of the regicides.

There are indictments upon record against forty-nine persons who had not only conspired to deprive King Charles I. of his crown and dignity, but had 'slain and murdered him, against their allegiance, to the great infamy, disgrace, and shame of all people of this kingdom of England.' It was not to be expected that men on their trial for such an offence as this would have much lenity shown to them by the court; and those who were arraigned were browbeaten and treated as guilty before the verdict was pronounced, just as other men had been before the Commonwealth. With the single exception that the witnesses gave their evidence openly in court, the trial of the regicides was conducted in precisely the same manner as the earlier trials of which the particulars have been handed down. Out of the forty-

nine, twenty made their escape and were outlawed. Of the remainder who were actually brought to the bar, one was Hewlet, found guilty and ordered for execution, as having been the man who, 'being clad in a frock and with a visor upon his face, struck the king upon the neck with an axe which he held in both his hands.' The twenty-eight others were included in one indictment, and were all convicted except three who pleaded guilty; of these, however, only ten were executed, and the rest were sent back to Newgate to await the king's pleasure. This clemency, however, was more apparent than real. Out of the twenty-eight who were thus tried, nineteen had surrendered themselves in accordance with the terms of a proclamation in which hopes of pardon were held out to the judges who had sentenced Charles. I., if they would give themselves up, although they were excluded from the benefit of the Act of Indemnity. One of the ten who were executed was Scroope, who was also one of the nineteen. All might have fared better had they fled the country, as they might easily have done, before Charles had landed. Nor was any mercy shown in the mode of execution. The year in which the Royal Society was founded was the year in which Harrison saw his bowels burnt before his eyes, and died proclaiming his faith in the divine inspiration of the republicans who had brought Charles I. to the block.

The thirst for vengeance was not satisfied for some time after the Restoration, and a careful watch was kept by English representatives at foreign courts for regicides who had escaped. John Barkstead, John Okey, and Miles Corbet were discovered in Holland, captured, brought to England, and executed, without trial, upon their outlawry in 1662.

In the same year, was also tried Vane, one of the men most distinguished in the recent events, who, though not one of the regicides, had been excepted from the Act of Indemnity. The object with which he was destroyed appears to have been to impress upon Englishmen the extreme danger of an active and zealous obedience to any ruler but the hereditary sovereign. Vane had acted as a member of the late Council of State, and as Secretary of the Navy to the Commonwealth. His fidelity to the government which he had served was regarded as treason by the government which afterwards established itself, but which had no authority recognised by the nation at the time when the alleged offence was committed. He argued with much force that the statute of the reign of Henry VII. which declared the support of any king actually in possession of the throne to be no treason, was applicable to his case, and that the style and title of the chief magistrate or magistrates could not make any difference to the principle there affirmed. If, however, the matter be calmly regarded from the historical point of view it does not appear that Vane's argument was tenable. The statute on which he relied was passed to meet a particular state of circumstances. Two rival houses possessing the blood royal, had been asserting their claims to the royal succession; and it is evident that the legislature contemplated only the possibility of the alternate success of York and Lancaster. It would be absurd to maintain that the Parliament of Henry VII. would have deliberately asserted the projects of Oldcastle to be no treason if rendered successful by the stronger part of the people; and the men of the Commonwealth did but succeed in that which Oldcastle had attempted. Vane

Trial of Vane: his justification.

might have found his true justification not in precedent but in public policy. The man who serves his country faithfully and well cannot be a traitor, no matter whether he receives his orders from King, or Parliament, or Protector. The mere enunciation of such a doctrine as this, however, would have been held to be little short of treason when Vane was on his trial. That ancient spirit of partisanship which had descended from the days of compurgation and private war still gave intensity to every quarrel; and it is not strange either that Vane died the death of a traitor, or that Charles II. wrote to the lord chancellor before the trial was over, upon the subject of putting him 'out of the way.'

For this mode of dealing with an enemy, however, Charles deserves no more severe reproach than that he did not rise superior to tradition and superior to his own age. His practice was to interfere not only in cases of alleged treason such as Vane's, but in appeals upon suits between party and party in the House of Lords. He would go down to the House during the hearing, converse familiarly with one lord and another, and give a hint, or more than a hint, with respect to the side on which the scale of justice should incline. But for such party manœuvring he had recent precedents as well as those of a rougher and more remote antiquity. Hobbes, too, one of the clearest of English thinkers, to whose labours in psychology we owe the first definite statement of the laws of association, survived the Restoration many years, and was not ashamed to write a justification of injustice in this form. He maintained that when the private interests of an individual were to be affected by the decision of an assembly, no blame should be incurred by the person

Defects in the administration of justice: royal interference.

who made as many friends as possible, even though they could be made only by gifts of money.

It cannot be denied that these and other practices were altogether inconsistent with an impartial administration of justice. But there was, perhaps, never a period at which all discontented persons were so unanimous in praising an imaginary past as the middle of the seventeenth century. Again and again the rights of the freeborn Englishman are represented to be the inheritance of a time when the majority of Englishmen were slaves, and when the rights of those who were not could be effectively maintained by the strong hand alone. We have seen how Lilburne complained of lawyers as Norman intruders; one more instance of later date may suffice to illustrate the subject. It may readily be found in the case of Penn and Mead, when they were indicted for taking part in an unlawful assembly—a case which reflects more than one characteristic of the age.

Persistence of the belief that justice was better administered before the Conquest: case of Penn.

After an exchange of impertinences between Penn and the court, brought about by the quaker's habit of neglecting to take off his hat, he said, 'I affirm I have broken no law, and would know upon what law you ground your indictment.'

The Recorder: 'Upon the common law.'

Penn: 'Where is that common law? If it were common it should not be hard to produce' (and more to the same effect).

Recorder: 'If I were to suffer you to ask questions until to-morrow, you would be never the wiser.'

Penn: 'That is according as the answers are. I design no affront to the court. But if you deny me oyer of that law you suggest I have broken, you evi-

dence to the whole world your resolution to sacrifice the privileges of Englishmen to your sinister and arbitrary designs.'

At what earlier period of English history Penn supposed he would have had a more impartial hearing in an English court of justice it is difficult to imagine.

The jury in Penn's case showed as much determination as the juries which tried Nicholas Throckmorton and Lilburne. They would not find him guilty of anything but 'speaking in Gracechurch Street.' This was no offence, unless the speaking was to an unlawful assembly, and they were sent back more than once to amend their verdict, the recorder at last remarking, 'I will have a positive verdict, or you shall starve for it.' In the end the verdict given was simply one of 'Not Guilty.' The court then fined each of the jurors forty marks 'for going contrary to plain evidence,' and ordered that they should be imprisoned until the money should be paid.

Slow development of modern trial by jury: position of jurors in the seventeenth century.

Trial by jury had now arrived at a stage about midway between its modern phase and that phase in which it appeared when Bracton wrote, when there was no clear distinction between grand jury and petty jury, and when oral testimony in open court was unknown. After the Restoration the examination of witnesses in court had become the uniform practice even in cases of treason and felony. But on the other hand, full counsel was not allowed to prisoners arraigned for treason until 1696, and some generations were yet to pass away before persons accused of felony enjoyed that privilege, or could have the witnesses in their defence examined on oath. The jurors were not yet directed to hear the evidence with minds previously unbiassed. They were not only permitted,

but expected, to decide by the light of their own knowledge of the facts as well as by the light which could be thrown upon the facts by the witnesses. It was held, indeed, by one judge as late as 1670, that they must give a verdict 'even though no evidence were given on either side in court,' and that for this purpose they were chosen from the neighbourhood in which a dispute had arisen or a crime been perpetrated. This was, perhaps, an extreme opinion in the year 1670, but there is no doubt that juries were still guided quite as much by their own sentiments and prejudices as by any statements made on oath in their presence.

In the cases of Throckmorton, Lilburné, and Penn, the feelings of the jurors were so excited by a skilful defence that the ancient spirit of partisanship was made to display itself in an acquittal showing courage and wholesome resistance to dictation. But though these trials were indications of a coming improvement in the administration of justice, it would be as great an error to suppose that impartiality and independence were the chief characteristics of juries, as that consideration for prisoners was commonly shown on the bench at any time before the Revolution. The whole of the relations of the jurors to the persons concerned in any trial rendered the free exercise of their judgment almost impossible. Even when their own knowledge of the facts was not the chief reason for their decision, their likes or dislikes had no small influence upon the credit which they gave to a witness who was also a neighbour. Upon this subject the judges appealed to them in a fashion not adapted in all circumstances to the discovery of truth. At the trial of one Robert Hawkins for felony, in 1669, a Mr. Wilcox gave very important evidence against the prosecution. 'You

that are of the jury,' interposes the Lord Chief Baron, 'do you know this Mr. Wilcox—of what credit he is?'

'We have known him a long time,' reply the jury, 'and know no harm of him.'

'He looks with an honest face,' adds the Lord Chief Baron; and in due course a verdict of Not Guilty is returned, partly on this knowledge and testimony of the jurors, and partly on the evidence brought before them.

In trials for political offences, as has already been shown, an acquittal was commonly followed by a fine upon the jurors. In trials of every kind the jurors were commonly rewarded by the successful parties. The influence of wealth and high position was thus almost unlimited.

Although, therefore, trial by jury may at this time have been very much better than compurgation or ordeal, and may have given promise of still further improvement, it certainly was not yet an institution of which a civilised people could reasonably be proud. With partisanship among the jurors, with partisanship among the witnesses, and with corruption and extortion in the courts, there was no small probability that the guilty, if rich, might be triumphant, while the innocent, if poor, might easily incur punishment, and were certain to be still further impoverished by the payment of exorbitant fees.

Without a due appreciation of the usual mode of proceeding in courts of law, it is impossible to make a just historical estimate of either of two very important episodes in the history of crime—the Bloody Assise and the career and trial of Titus Oates. The conduct of Jeffreys must be judged by the standard which his predecessors and his contemporaries had set up; the success

of Oates can be explained only by the inherited general tendencies of his dupes, together with the particular circumstances in which he lived.

The tone and manner of Jeffreys on the bench were the tone and manner of his brother judges, lay and ecclesiastical. Whatever reprobation he may, according to modern notions, deserve for them, the same reprobation is equally deserved by Abbot and by Laud, and is deserved by the greater part of the bench of the seventeenth century.

Tone of the judges, lay and ecclesiastical: Jeffreys one of a numerous class.

The traditions of the darker ages weighed heavily upon them all, and the greatest blame which any one of them appears, in this respect, to merit is that he did not rise superior to his own generation. The conduct of the bishops in the Court of High Commission has already been sufficiently illustrated, and the conduct of the judges in the king's courts has also been incidentally mentioned more than once.

There is little reason to doubt that Hyde or North, had it fallen to the lot of either to try the west-country rebels, would, in words at least, have dealt with them as severely as Jeffreys. When Jeffreys sat at previous trials, his ordinary manner was certainly not more offensive than that of judges who are held less infamous. In the case of Algernon Sidney he met the usual delay of the prisoner in pleading, and the usual request for a copy of the indictment and the aid of counsel, in a manner which, if it differed at all from that of his contemporaries, was a little more gentle than usual. At the trial of Hampden for conspiracy he used language which might almost be taken to indicate some improvement of tone. The counsel for the defence made an objection to a proposed juror, in overruling which Jeffreys added, 'If I was Mr.

Attorney (counsel for the prosecution), I would not contest for any particular man to be a juryman; I speak that as my advice.' 'In his final charge he dealt with the very dubious evidence of Lord Howard, the principal witness, if not quite impartially, at least without the usual violence of dictation: 'I leave it to you, gentlemen, whether upon this evidence you will take it upon your consciences and oaths to say that my Lord Howard is guilty of wilful and corrupt perjury. Then you must find the defendant not guilty. But if you think he has proved the matter fully, and his testimony is supported by the other witnesses, then, gentlemen, you must find the defendant guilty.' The attorney-general, it is true, had said that the king was 'pleased to go less in this case than in the others'-which had arisen out of the same alleged plot or plots. But if King Charles II. is to have all the praise which may be accorded to the more gentle expressions used at the trial of Hampden, King James II. should have all the blame of the more severe expressions used at the trials of Monmouth's followers. Royal influence may, without doubt, be discovered in the conduct of Jeffreys on both occasions; but the fact that it may be discovered is at last only another illustration of the mode in which justice was commonly administered at a time when the judges held their offices no longer than during the king's pleasure.

Jeffreys' notoriety caused by exceptional circumstances and political animosity.

Monmouth's rebellion, it should be remembered, occurred at a very critical juncture in the affairs of England. James II. had come to the throne in circumstances which were, in one sense, without a precedent. His brother Charles, whose heir he was, had passed twelve years in exile when claiming the royal title. His father had died on the scaffold only thirty-six years before;

and there were still living many persons whose sympathies were with the principles of the Commonwealth, and perhaps more who simply distrusted the new king. In earlier times the custom had been, upon the death of every sovereign, to dispute by force of arms the right to the succession. The exceptions to this rule were excessively few, and it was hardly possible that, after the recent interregnum, the legitimate heir should be at once permitted to wear the crown in peace. Nothing was more natural than that Monmouth, an illegitimate son of Charles II., should assert his legitimacy, and should find supporters against James. It would have been marvellous had James found no rivals. But on the other hand he must have felt such rivalry to be the more dangerous from the recent weakening of the royal authority. He was of a temperament by no means amiable or forgiving; but a less vindictive man than himself would not have foregone his vengeance altogether after the battle of Sedgemoor. He found a ready instrument in Jeffreys, but he might have found an instrument equally ready in many others, and did find one in Jones.

We live nearer to the days of Jeffreys than to the days of Thorpe or Tresillian; and his cruelties, therefore, appear larger in our eyes, while the screams of his victims and their kin reach us far more distinctly. We are apt to forget how hot was party passion, and how false often was friendship in his time. When we read his speech to Herbert, who had been appointed his successor as chief justice, we naturally consider unbecoming such language as this: 'Be sure to execute the law to the utmost of its vengeance upon those that are now known (and we have reason to remember them) by the

name of Whigs. And you are likewise to remember the snivelling Trimmers.' But such was the character of political warfare at the time, a warfare in which the king did not scruple to take a side. The wording indeed of the sentence which refers to the Trimmers shows distinctly enough that Jeffreys was speaking not only in his own name, but in that of the king whose conscience he was keeping.

After his master had been deposed, his political rivals and even the men whom he had befriended denounced his conduct in the House of Commons just as the leaders of factions had always attempted to ruin their adversaries. If we read the debates and other abuse of the period, and accept the invective in the literal sense of the words, we must believe that the object of it was a monster without his like in history. If we look beyond, to the manners and customs of preceding ages, we can hardly fail to perceive that Jeffreys was a judge of the ordinary type, whose notoriety was caused chiefly by the traditions of the past and by the circumstances in which he was placed.

The Bloody Assise : popular exaggerations.

It is not pretended that when Jeffreys held his Bloody Assise he caused anyone to be executed who had not either pleaded guilty or been convicted by a jury. His system of browbeating and bullying terrified the jurors, the prisoners, and all his audience except the counsel for the prosecution. But to bully and to browbeat were, according to all precedent, but parts of his duty. If the convictions were more numerous than they should have been, the chief fault must have been in the operation of trial by jury as then existing. It was quite impossible for Jeffreys to hang any prisoner who had been acquitted; and

if the jurors were afraid to acquit when they believed the person tried to be innocent, they were themselves guilty of murder, committed to save themselves from fine and imprisonment. Jeffreys commonly ordered the convicts of the lowest class to be executed on the day of conviction; but those who have blamed him on this account have not perhaps considered that the first Act which regulated the time of execution was not passed until the reign of George II., and that a murderer was even then to be put to death the next day but one after sentence. It was to be expected that executions would be numerous and follow quickly after sentence when the king desired that the actors in a dangerous rebellion should be sharply punished.

The proportion of persons executed to persons accused of having taken part in the rebellion appears also to have been forgotten by some historians. The Bloody Assise was not an indiscriminate massacre of all who could be captured, nor even of all who were convicted. In the gaol book of the western circuit the marginal note 'to be drawn and hanged' is not affixed to the majority of names; and it is apparent from the record of the later Assise under Chief Justice Herbert that great numbers were spared by proclamation and pardon.

One of the most painful cases tried by Jeffreys was that of Alice Lisle; and her execution has contributed not a little to the infamy in which he is held. She was the widow of John Lisle, one of the most conspicuous of the regicides, who was present on the scaffold when Charles I. was executed. The fact that her son fought against Monmouth and his followers was no atonement for such an offence in the eyes of James II. She was indicted for high treason, as an accessary, on

Fate of Alice Lisle: Jeffreys and James II.

the ground that she had harboured one of the rebels named John Hickes. Her offence was not considered the less because Hickes was a nonconformist minister. She declared, however, that she had not received him with any guilty intent, and that his connexion with the rebels was unknown to her. She argued, too, that as Hickes had not himself been convicted of treason, she could not be convicted of harbouring a traitor. This objection would have saved her had she been tried for any ordinary felony, as the judges had uniformly acted on the maxim that a person accused as an accessary could not be convicted until the principal had first been found guilty. But as it had never yet been the custom to allow a fair trial in cases of treason, an exception could not be made in favour of a regicide's widow. The objection was roughly overruled; it was assumed without evidence that dame Alice was aware of Hickes's guilt; the jury timorously found her guilty; and sentence was recorded against her 'to be drawn to the gallows and burnt with fire until she should be dead.'

Jeffreys ordered that she should be executed on the afternoon of the day on which she was convicted, August 27, yet he was not so insensible to all considerations of humanity as to refuse the petition of some Winchester clergymen who interceded on her behalf, and he granted a respite until December 2. In the meantime strenuous efforts were made to obtain a pardon. It was then seen that James, rather than Jeffreys, was inexorable, and that nothing short of Alice Lisle's life would satisfy him. He grudgingly allowed to her that favour which had long been shown to women of noble birth—death on the block, instead of death at the stake—and she was beheaded in

When Lord Delamere was tried in the court of the Lord High Steward and Peers a few months later, Jeffreys had become lord chancellor, and was appointed high steward for the occasion. It may be suspected that the king was 'pleased to go less in that case' than in some others; but whether he was or not, the conduct of Jeffreys was, as compared with that of other judges, almost courteous. 'Good my lord,' he said at one time to the prisoner, 'take your full liberty, and ask what questions you please; for I know my lords here will be all very well pleased that you have all scope allowed you that can be.' From the fact that Delamere was acquitted it may also be inferred that his trial was as fair as any trial for treason could be in the existing state of the law.

Jeffreys and Lord Delamere.

The fate of Elizabeth Gaunt indicates no less clearly that Jeffreys was the instrument rather than the instigator of cruelty. She, like Alice Lisle, was arraigned as an accessary after the fact. Justice Jones, who presided at her trial, blustered and intimidated in the same manner as Jeffreys. The chief witness against her was one of the most despicable of mankind. He was James Burton, who, according to his own statement, had been one of the rebels, had been concealed by Mrs. Gaunt after he had been outlawed, had received meat and drink from her, and money to aid him in his escape. He then gave evidence against his benefactress as the price of a pardon, and the jury had no more discrimination or humanity than to take his word and find her guilty. There was no pardon, nor even remission of sentence for her, and she perished in the flames, either innocent of the offence with which she was charged, or a martyr to the promptings of her own kind heart.

Justice Jones and Elizabeth Gaunt.

The generation which had seen Elizabeth Gaunt die with calmness and composure at the stake, and made no effort to change the law by which women could be burnt, was the first to throw stones at Jeffreys. Later generations continued to burn their female petty traitors, and to point the finger of scorn at Jeffreys, as if no man had ever been so wicked or so cruel as he. And in recent times it has been the custom to speak of him as the one bad judge whose example is to be avoided, or to couple his name with that of Scroggs in a fellowship of infamy. In his public capacity Jeffreys performed the task assigned to him in the rough and brutal manner which was traditional upon the bench. His private character was said to be in many respects open to reproach, but so had been the character of many of his predecessors. His greatest crime in the eyes of his contemporaries was, perhaps, that from very small beginnings he had raised himself to a peerage. This was an offence which had not been pardoned in Wolsey or in Thomas Cromwell, and was not to be pardoned in Jeffreys. He was called a butcher for his conduct in trying the rebels; he would have been little blamed for his butcheries had he had no political enemies or jealous acquaintances.

Jeffreys and Scroggs, like Empson and Dudley, are the scapegoats of their age.

Jeffreys and Scroggs are to the judicial class what Empson and Dudley are to the class of mediæval ministers of finance. Dudley and Empson were cruel extortioners; Scroggs and Jeffreys, when required to be so, were cruel judges. They all had the misfortune to live at a time when cruelty was a part of the national character, when prisoners were tortured in gaol, and crowds gloated with eager eyes over an execution for treason. No one, regarding their conduct from a modern point of view,

could extenuate it; no one who has made himself familiar with the past would see in it anything exceptionally bad. We have the good fortune to live at a time when excessive tenderness rather than mercilessness is the characteristic of the age. To us Jeffreys cannot appear otherwise than as a ruthless brute. But the real contrast is, in fact, not between him and any judge now on the bench, but between the seventeenth century and the nineteenth. There can be no harm in regarding Jeffreys as the type of all that is worst in judgeship, but he ought to be regarded as the type to which his fellows and his predecessors conformed. If we wish to realise to ourselves that bygone state of existence from which we have emerged, it may be useful to us to call up in imagination the angry scowl and bellowing voice of Jeffreys, as he sent the followers of Monmouth out of court to be hanged. But he should be to his generation what the particular is to the general in logic. When we ask ourselves what is a town, we think of some particular town with which we are acquainted; when we ask ourselves what were judges during the reigns of the Stuarts, we may think without injustice of Jeffreys. With him, in one sense, ends the worst period in judicial affairs; for after the Revolution the judges held their appointments on different terms, and were far more independent of the crown. But the tone prevalent among any well-defined class of men is sustained generation after generation, and cannot be destroyed in a day by an Act of Parliament. With new conditions of existence, new manners gradually crept in; but in the courts of law this process was excessively slow.

Before the Bloody Assise there had been many executions of prisoners by military authority. The fact

that Colonel Kirke had served in Moorish campaigns may have rendered his nature somewhat more savage than it would otherwise have been. But this was not the first time that English soldiers had refused all quarter on British soil, nor was it to be the last. There were causes in operation far stronger than the individual temperament of judge or general, and those causes were the passions inevitably excited by civil war, and the traditions, precedents, and habits of thought and action inherited from previous generations.

Kirke, like Jeffreys, a natural product of the age.

More terrible than all the cruelties of Feversham, or Kirke, or Jeffreys, but, like them, brought into being by the influence of the past upon existing circumstances, was the conspiracy of Titus Oates and his accomplices. The trials of which he was the cause exhibit all the ancient spirit of partisanship in combination with violent religious animosities. The fear of Popish plots which began when the Church of England separated itself from Rome had never quite died out in the reign of Elizabeth, had been revived by the Gunpowder Treason in the reign of James I., had been in some measure associated with the idea of a Restoration during the Commonwealth, and was justified during the reign of Charles II. by the fact that there really was, about 1678, a scheme of some kind to subvert the established religion.

The influence of the past, and of surrounding circumstances, in producing an Oates.

The opportunity was most favourable for any needy scoundrel who considered himself an adept in lying. The habitual liar is usually not a man of genius, and does not suppose that he is. He trusts rather to the credulity and stupidity of his victims than to any ingenuity of his own. He rarely possesses so much as a memory good enough

to save him from self-contradiction, but believes in the power of his impudence to carry him through a difficulty by any new lie which will serve his turn for the moment. In beginning a series of falsehoods he has not usually sufficient intellect to make the first a mere invention; he has only sufficient cunning to misrepresent some event which has actually occurred, or to pervert some words which have really been spoken. When hard pressed he shuffles, and doubles, and tries to divert attention from the main point. Even when forced to give a definite reply, he seldom rises to the dignity of pure fiction, but only answers falsely to a question suggested to him. While he wants the moral perception which would confer upon him the sense of shame, he wants even the intellectual perception which would enable him to see the whole of his danger. If he possessed either the one or the other he would be a more truthful man. But his very deficiencies give him audacity, which is commonly aided by a powerful physical organisation. He often makes religion a cloak, and wraps himself up in his superior goodness when wicked men suspect him.

Such a man was Titus Oates, and in such men there lurks much of the savage. He was coarse and gross in his animal constitution. Though short of stature, he yet had the neck and the chest of a tall man, and no doubt enjoyed that powerful circulation which is conducive to rapid action, but not to sustained thought. He affected to be open in manner and genial in conversation. He made friends as well as dupes among the unwary, and easily drew towards himself the kindred spirits among whom he could select the tools necessary for the execution of his schemes.

Not only did he possess a physical and mental

organisation well fitted for the part he was to play, not only did the times afford him an excellent opportunity, not only had past ages prepared his own mind and the dispositions of his contemporaries for his career, but he had been brought up in an atmosphere of religious tergiversation which was not common even in the days of his parents. In the year 1649 there lived one Samuel Oates, a clergyman, against whom there issued a warrant for his arrest because he had not renounced certain errors as required by an ordinance of Parliament made in the previous year. He seems at this time to have made a slight mistake in choosing his party, but as soon as the Commonwealth was firmly established he hastened to atone for his error and became an Anabaptist. His son Titus was now brought up as an Anabaptist also until the Restoration, when the prudent father again changed his religion, and the dutiful son followed his father's example. The father obtained a living, after having become fully convinced of the advantages of episcopacy; the son went to Cambridge, and afterwards, like his father, took orders.

Oates's origin and early training.

Titus Oates had thus been educated to regard his own interest as the one motive of action, and religion as the profession in which the principle was to be applied. Father and son alike must have been familiar with the whole process of ecclesiastical compurgation, of which the chief effect must have been to destroy all respect for the sanctity of an oath. There is, therefore, no cause for wonder that Titus was from his youth upwards known as a person 'not of that credit to be depended on.' Soon after his ordination he had the misfortune to be indicted for perjury. He seems, in escaping conviction, to have lost the confidence of his neighbours and parishioners, as

well as a living which he had had interest enough to obtain; and he went about seeking fortune by such arts as his father's career had taught him.

After having been a chaplain in the navy, and left that service in disgrace, he appears 'destitute of employment' in London. He has numerous interviews with a Sir Richard Barker, through whom his father had been presented to one of the parochial churches at Hastings. In Barker's house there lived a Dr. Tonge, a clergyman, who was busy writing an 'Index to the Jesuits' Morals, a satirical discourse,' which was intended to 'quicken the sale' of two volumes he had already translated and published. This Doctor, according to his own account, had 'by his own intelligence and discourse with very knowing persons observed the Popish Plot to advance very strongly,' and he wished to discover and defeat it as far as possible, as well as to sell copies of his book. Oates and Tonge soon discovered that they were most congenial in temperament, and agreed that they would 'if possible subsist and live together upon the revenue of their pens in this combat with the Romanists.'

The connexion with Tonge; the visit to St. Omer.

Some months had been spent in this occupation when Oates suddenly resolved to 'go among the Jesuits in search of their plot,' as he afterwards alleged—and perhaps really with the object of learning some names and facts which might contribute to the 'revenue of his pen.' It is certain that he soon afterwards went to the seminary at St. Omer, and not less certain that he parted from the Jesuits there with feelings of disgust which were cordially reciprocated. There is no reason to believe that he was ever trusted, though once sent by them into Spain to transact some unimportant business. The

confidence which, according to his own account, he desired to betray, he never succeeded in winning. That he was base enough to turn any information which he might have obtained against the friend or benefactor who gave it there is no doubt; but he was not even skilful enough to dispel the suspicions of the men with whom he associated every day.

'Dr.' Oates and 'Captain' Bedloe.

In 1678, this thrice renegade son of a twice renegade father, the whole of whose schooling had been in treachery, and whose only standard of morality was success, found himself once more in England a beggar. But he was now soon to become the 'Reforming Protestant, Mr. Oates.' He placed himself on a level with his friend Tonge by prefixing the word 'Doctor' to his own name. He had either no degree at all, or, as he afterwards asserted, a degree from some very obscure university abroad; the object of this small imposture was to make the ignorant public believe that he was a divine of some position, and it was, no doubt, of service to him before the cheat was discovered. Another of his associates was a chemist named Kirkby; and to this triumvirate were added from time to time a few assistants, conspicuous among whom were a man who called himself Smith, and one Bedloe who called himself 'Captain.' By their united efforts a conspiracy was put into execution of which it is to be hoped the world will never again see the like, and among them all the two who most distinguished themselves by brazen impudence were 'Captain' Bedloe and 'Dr.' Oates.

Charles II. took great delight in the chemical experiments which were now beginning to be made. For this reason Kirkby was a convenient instrument in the hands of Oates and Tonge. He was not altogether unknown

to the king, and readily undertook the task assigned to him. There was some difficulty in speaking to Charles when unaccompanied by his brother the Duke of York who, it was supposed, would thwart the scheme. One morning early, however, Kirkby took up his station in the outer gallery of the palace at Whitehall, and waited until the king came out for the accustomed walk in the Park. As soon as Charles appeared, a paper was presented to him by Kirkby, in which there was a request for a private audience of a quarter of an hour. He asked for some explanation, and was told that his life was in great, and perhaps, immediate danger. In the end, the interview was granted, and after that another. Tonge was introduced, and some papers were shown which had been drawn up by Oates. Kirkby and Tonge now had the impudence to urge upon Charles the necessity of a secrecy so strict that no living being but themselves should know what had passed, or see the documents in which the pretended plot was described. The emissaries of a Titus Oates were to be the only advisers of the King of England!

The king informed of the pretended Popish Plot.

Charles, however, was not quite so weak as the conspirators believed, or, perhaps, more indolent. He entrusted the investigation of the affair to the Lord Treasurer Danby, who did not immediately lay it before the rest of the Council. Oates kept himself in the background, his name was not even made known to Danby for some time, and he was described mysteriously as the 'intelligencer' who was still associating with the Jesuits and learning more of their plans. New details were added to the alleged plot day by day, until matters seemed ripe for action, and the pretended necessity for

secrecy gave place to a project for appearing before the Council. Oates was then brought to the front; it was suggested that he should have the management of the whole case, and produce the witnesses as he saw fit; and Tonge did not forget to mention that the labourer is worthy of his hire, and that expenses should be paid.

The scheme, however, might perhaps have failed but for the pains taken to inflame the public mind and the occurrence of some unforeseen events. Before the matter had been investigated by the Council, Oates went to Sir Edmondbury Godfrey, who was a justice of the peace, and gave formal information of the alleged plot. Not very long afterwards there was found in a ditch the dead body of Godfrey with his own sword thrust into it, and some marks of strangulation about the neck. A cry was immediately raised by Oates and Bedloe that the papists had atrociously murdered him because he was a Protestant, and because he had received Oates's deposition. Three men of obscure station were selected to be tried as the agents, and were of course convicted. Bedloe was the chief witness against them. Some confirmatory evidence was given under the influence of torture and intimidation by an alleged accessary. There was little else against them except a statement made by Oates, who professed to have been told by Godfrey that 'several popish lords, some of whom were now in the Tower, had threatened him, and that he had been dogged for several days.' Considered by the light of our present information the trial gives no more indication that Godfrey was murdered by Jesuits or papists than that he was murdered by Oates or Bedloe. It is not probable that the truth can ever be discovered; but if motives alone be regarded,

Murder of Godfrey.

the papists had nothing to gain by his death, the accusers of the papists were very much assisted by it.

The murder (if murder it was) and the excitement which followed it, aided the operations of Oates and his accomplices at a time when they were otherwise favoured by fortune. Among the persons whom they alleged to be implicated in the plot was Edward Coleman, who was known to be in the confidence of the Duke of York, and who had been secretary to the Duchess. It is not impossible that Oates may, by listening and prying during his sojourn at St. Omer, have heard that Coleman was a good friend to the Jesuits. But it is hardly necessary to suppose that he had any more knowledge than was to be attained from common report, from the tattle of court servants, and from the malicious whisperings of enemies. Coleman's papers, however, were seized; a correspondence between him and La Chaise, and other Romanist leaders, was discovered; and the correctness of Oates's information was at once assumed.

Oates's credit established by the conviction of Coleman.

Coleman's was the first of a series of trials in which the informer ran a successful career of perjury. Oates gave evidence against Coleman which was distinctly at variance with statements made by him before the king in council. Some questions asked by the Lord Chief Justice, and by the attorney-general, showed that the contradictions had excited suspicion. The main charge against Coleman, however, was that he was engaged in an attempt to bring in the religion of the Church of Rome by the aid of the King of France. The letters which had been found proved, beyond all possibility of doubt, that he had desired and expected the destruction of the 'pestilent heresy' with which England was afflicted, and that, in

order to effect so good an object, he was prepared to accept 'aid and assistance,' whencesoever it might come. Such language as this would obviously predispose any judge and jury (during a time of religious excitement in the seventeenth century) to condemn the person who had used it, rather than to weigh very carefully any evidence pointing in the same direction. Coleman was found guilty, and the verdict had far more remote and disastrous effects than his execution. It established the credit of Oates.

Clumsy construction of his pretended plot.

None could now deny that there had been some project to subvert the Established Church; none could deny that Oates had mentioned one of the persons implicated in it. Thenceforth he had the power of representing the plot to be whatever he pleased, and of giving what names he chose to the plotters. The scheme which he had drawn up with the aid of Tonge, and which he attributed to the papists, showed that its authors were devoid of ingenuity and of constructive power. It revealed the intention of making an appeal to minds as coarse as their own, and of heaping together as many exciting details as possible. It had no originality whatever, but consisted of fragments wrenched out of earlier history, and heaped together without skill or method. If there is any principle at all to be detected in it, the principle is that which brings into existence the worst kind of melodrama, that of accumulating horrors without regard to probability or possibility. Lopez, the queen's physician, was to have poisoned Elizabeth, and therefore Wakeman, the physician of Charles's consort, was to have poisoned Charles. There was an old superstition that silver bullets went more surely to the mark than leaden, and therefore

Charles was to have been shot with silver bullets. Stabbing had been a common mode of putting an enemy out of the way, and therefore Charles was to have been stabbed. Whether he was to have been shot first, stabbed afterwards, and poisoned last of all, or in what order he was to have died this threefold death is not apparent. The great fire of London was fresh in the recollection of everyone; and therefore the Jesuits intended to burn not only London but all the great cities of England. Changes of government were not to be effected without rebellion, and therefore there was to have been a Catholic insurrection. Foreign aid was the usual hope of insurgents, and therefore the King of France was to have landed a large army in Ireland. In the confusion the Catholics were to have cut the throats of the Protestants, after the manner of other massacres; and so the great purpose of the Jesuits was to have been effected. It does not seem to have occurred to Oates and his associates that the disappearance of all the towns, and the slaughter of the majority of the population by the minority, would have rendered some other parts of the plan a little difficult of execution. The throne was to have been offered to James, Duke of York, on terms like those to which King John had consented. In which of the burnt cities he was to have made his seat of government Oates took no pains to consider, though assassination was carefully set down as the punishment for refusing the offer. In the same way there were to have been a Catholic chancellor without a court, a Catholic treasurer without treasures, Catholic officers of all kinds without offices, and Catholic bishops without cathedrals. Oates was, no doubt, correct in his supposition that the Jesuits would take without scruple as much

power as they could; he seems to have forgotten that they were not fools.

Favoured, however, by the fortunate discovery of Coleman's letters, Oates could now accuse, or stay an accusation, at his will. Contradict themselves as they might, the knot of perjurers could always secure a verdict against their victims. The tide of public opinion had set, beyond all resistance, in one direction. Scroggs, as judge, of course browbeat the prisoners and anyone who might venture to appear as a witness in their favour; and those who were bullied by Scroggs were in danger of being torn to pieces afterwards by the mob. When Oates swore that he was in one place, at a time when it was distinctly proved that he was in another, the Chief Justice 'thought Mr. Oates rather justified by the testimony offered against him than discredited.' Thus life after life was sworn away, and among them the lives of some who pointed out that if Oates had merely pretended conversion to Rome, as alleged by himself, and had taken the Sacrament after the manner of the Roman Church, his conduct was of precisely the same character as the conduct which he attributed to the Jesuits. All argument was useless against blind prejudice; and the conspirators attempted to secure their position by instituting a reign of terror, so that none might presume to doubt their word.

He institutes a Reign of Terror.

At the trial of Wakeman, the queen's physician, whom Oates accused of a design to poison the king, the Chief Justice Scroggs departed from the usual custom of browbeating the prisoner and his witnesses, and browbeat Oates and Bedloe, the witnesses for the crown, instead. He acted probably upon a hint from the court, for Oates had previously had the impudence to say that the

queen had intended to be revenged on her consort for breaches of the marriage-vows. Scroggs on this occasion declared that Oates and Bedloe were not to be believed; and Wakeman was acquitted. It had been dangerous to question the reality of the plot in either House of Parliament, and the two perjurers seem to have thought themselves stronger than any one judge. They presented 'articles of high misdemeanours' against the Chief Justice for having 'curbed' them while giving their evidence. *Scandalum magnatum*, however, such as this, was still a serious offence, and they were threatened with proceedings in the Court of King's Bench, after which the matter was apparently allowed to drop by mutual consent.

From this time forward Oates's popularity began to decline, for, though on his evidence Lord Stafford was afterwards found guilty by the Peers, the inconsistencies of his story would not bear dispassionate investigation, and he had made many enemies by his arrogant demeanour. When at the summit of his success, to use the words of Jeffreys, before whom he was afterwards tried, 'all other people appeared below him. Greater respect was shown him than to the branches of the royal family; and in public societies sometimes this profligate villain was caressed and drunk to, and saluted by the name of the "Saviour of the Nation."' He had a great fall from this height; but so persistent is the folly of mankind that he was never quite without believers, and his later career affords an illustration of the age hardly less remarkable than his pretended plot.

He is called the 'Saviour of the Nation.'

After the prosecutions which he had instigated had come to an end, the Duke of York, whose name, like the

queen's, had been associated with those of the alleged plotters, instituted proceedings against him for slander; and as the person maligned was the heir presumptive to the throne, the judgment was necessarily severe. Oates was required to pay 100,000*l.*, or, in other words, received sentence of imprisonment for life. It was quite impossible that he could find such a sum, and he was of course sent to gaol until he should obey the order of the court. He was then accused of perjury on two distinct indictments, tried on both, and convicted on both. At the first trial it was proved by no less than twenty-two witnesses that, at the time when he had sworn he was in London, carrying treasonable documents from one knot of papists to another, he was in fact at St. Omer. He had no answer to make except that as his word had been taken before, it ought to be received again, as sufficient to refute the testimony of any number of papists. At the second trial it was shown that, at the time when, according to his statement, one Father Ireland had received him in Russell Street, Father Ireland was not in London. He had still nothing to say except that the witnesses were papists. His defence showed no less poverty of invention than the details of his Popish Plot, and no more regard for facts. Of the witnesses against him at the second trial many were Protestants, but he had become so accustomed to lying that he thought a lie would serve his turn even when all who heard it knew that it was a lie and nothing else. Of course he attempted to raise side issues, and to divert attention from the question under consideration; but that is the common device of all liars, and in no way distinguished Oates from the rest. In intellect he was the most commonplace of men. All the success he

He falls, and is found guilty of perjury.

attained he owed to the absence of every scruple and to the possession of an unlimited stock of impudence.

One of the most remarkable incidents in these trials was the production of a witness (Oates's associate Smith), who was to have sworn that Oates had suborned him to perjure himself in the testimony which he had given. Chief Justice Jeffreys, however, ruled that the evidence of a man who came to prove an act of perjury previously committed by himself could not be received. This was a most wholesome decision, and ought to be remembered to the credit of a judge of whom it has commonly been believed that he would never listen to any objection made on behalf of a prisoner. An attempt by Oates to suborn one Clay was, however, established by competent witnesses, and aided not a little in ensuring his conviction.

After the verdict of guilty had been found at both trials, there was a consultation among all the judges of England, who agreed that crimes of such a nature as Oates's were left to be punished according to the discretion of the court, provided only that the judgment did not extend to life or member. The sentence passed on him was, that he should pay a fine of two thousand marks, that he should be stripped of his canonical habits, that he should walk round all the courts at Westminster with a placard showing the nature of his offence, that he should then stand in the pillory at the gate of Westminster Hall for an hour, and on the following day for an hour at the Royal Exchange, that on the third day he should be whipped from Aldgate to Newgate, and after an interval of one day from Newgate to Tyburn, by the hands of the common hangman. On the 9th of

The sentence.

Cross, on the 11th opposite the Temple, and on April 24 at Tyburn.

The whipping was executed with a will, but Oates was, before his death, again able to make use of that partisanship by which he had risen into notice and power. As the design of a reconciliation with Rome was commonly attributed to James II., so the welfare of Protestantism was commonly associated with the name of William III. After the Revolution, Oates drew up a petition, in which he alleged that he had been unjustly convicted. The Commons, in the most unreasoning manner, took up the cry. They resolved that the indictments on which he had been tried were drawn up in the interest of the papists, the verdicts corrupt, and the punishment illegal. When they sent to the Upper House the Bill in which all this passionate declamation was contained, the Lords made some amendments, which the Commons angrily rejected. William III., however, did but carry into effect the wishes both of the Lords and of the Commons when, in answer to an address from them, he granted Oates a pardon and a pension for life.

Objections to the sentence: Oates pardoned and pensioned.

Of the reasons commonly assigned for this gift of a competence to such a criminal there is only one that will for a moment bear investigation—the alleged illegality of the sentence. But it is not by any means certain that there was any serious legal objection to the punishment inflicted on Oates, except, perhaps, so far as it related to his canonical habits. There was a statute of Elizabeth's reign which declared what was the least penalty for perjury and subornation, but the power of the judge to exact a greater was expressly reserved.

Justification of the judges.

might proceed as they did. Fine, imprisonment, the pillory, and whipping were all recognised engines of the law in cases of misdemeanour, and it would be difficult to prove that there was any recognised limit to their application. It is not impossible that the judges may have been influenced by the king and the revulsion of party feeling, but their deliberate conclusion is at least as much deserving of respect as the heated reasonings of politicians immediately after a revolution. Nor, if they made a mistake, is it one which can be very clearly brought home to them. The common law was a law of precedents, reaching back to a time when the forms of trials were altogether different, and when perjury could not have been committed as it was committed by Oates.

A few centuries before, he would have been treated as an approver—a person who, confessing himself to have been implicated in some felony or treason, gives up the names of his associates. When an approver of earlier days failed to obtain a verdict of guilty against any person accused, he was hanged without further ceremony; and this would have been the fate of Oates when Wakeman was acquitted, had the proceedings been in the form of the ancient appeal. But if Oates was not to be punished as a false appellor, it followed that he must, if punished at all, be punished, as in fact he was, according to the analogies to be detected in other cases of misdemeanour. The older common law regarded the appellor and the jurors as the only witnesses, and even the law of attaint for a false verdict was not applied to jurors in criminal cases. If, therefore, there was no punishment for Oates as a false approver, there was no punishment for him as

the Act of Parliament, which expressly gave discretionary power to the judges.

The whole history of Oates's pretended plot, of the executions which followed upon his evidence, of his own conviction, punishment, and subsequent prosperity, illustrates at every stage that ancient habit of partisanship which can be traced back to the days of compurgation and ordeal. Whether the spirit of justice will ever fully triumph over it is a question which the future has yet to answer. We certainly cannot have grown worse since the time of Oates, but it is not a happy reflection that such a creature could live and thrive years after the Royal Society had been established. Nor is his career one which can strengthen the belief of the teachers who insist that education in the ordinary sense is a specific to secure the person educated against criminal tendencies. Oates was the educated son of an educated father, and his chief accomplice was another educated clergyman. The operation of education in preventing crime is real, but is not by any means simple, and is not effected solely through books and schoolmasters.

The ancient habit of partisanship shown throughout the career of Oates.

When Oates was whipped through the streets of London, he and the executioner were unconsciously teaching the spectators that lesson of callousness to the sufferings of others which he and they and their ancestors had been learning and repeating from the earliest times. This was a kind of education which pervaded the whole of English society, displaying itself on the one hand in the atrocities committed by English soldiers on their fellow countrymen, and on the other hand in the hardness of heart which affected all controversies or accusations touching religion

Oates not altogether an uneducated man: education and crime.

or superstition. The knowledge of the Greek alphabet, or of some polemical works on theology, could hardly affect of itself the moral character of the person attaining it. But when the man who has been taught to read pursues his reading with discrimination and reflection, he may discover some principles of value, and afterwards—perhaps very long afterwards—diffuse a knowledge of them among his fellow countrymen. A traditional belief and a conventional habit of action can hardly be changed in any individual by the mere process of acquiring information which has no direct bearing upon the habit or the belief.

This truth has been illustrated again and again in the history of England and of some of her greatest men; it was most forcibly illustrated in the person of Sir Matthew Hale. He was by his contemporaries held to be 'a judge whom, for his integrity, learning, and law, hardly any age could parallel;' and later generations must admit that there was less to blame in his general conduct and more to admire in his attainments than in the conduct and attainments of other prominent men of his time. Yet one of the most remarkable incidents in his life was a trial over which he presided at Bury St. Edmunds, when Lord Chief Baron, in 1665. In his charge to the jury he then solemnly declared he 'made no doubt at all that there were such creatures as witches,' and passed sentence of death upon two unfortunate women convicted of witchcraft.

Learning of Sir Matthew Hale: his belief in witchcraft.

In Hale's case the very learning which he possessed was one of the causes of his error. His mind was full of legal precedents and of endless recondite mediæval lore; and out of his knowledge he justified his belief. 'The

against such persons as witches, and such had been the judgment of this kingdom.' This was, however, only a statement in other words of the undoubted fact that a particular form of superstition had been handed to generation after generation from time immemorial. Hale's researches had been so directed that the very perfection of his education—the education of mere reading—had positively disqualified him for the reception of new ideas. Nor was he the only man upon whom similar causes had wrought a similar effect, for it is related that he not only 'took a great deal of pains and spent much time in this trial himself, but had the assistance and opinion of several other very eminent and learned persons.'

The witchcraft imputed to the accused on this occasion was of the ordinary kind—disease caused by the aid of the devil. One of the witnesses deposed that his children were afflicted with fits and saw the witches in visions. 'They would cough extremely, and bring up much phlegm,' said the father. He seemed to think this very important, but added, with the usual truthfulness of witnesses in his time, that the phlegm was accompanied by crooked pins, and once by 'a twopenny nail with a very broad head;' and as a convincing proof he produced pins to the number of forty in court, together with a twopenny nail. After such evidence as this did Hale pronounce his famous confession of faith in the working of the Devil through the agency of old women.

Medical and other evidence in cases of witchcraft.

There is, however, one class of testimony in this trial, as in the trial of the Devonshire witches a few years later, which enables us to understand how scientific education may in the end affect persons who have not themselves participated in it, and may assist in eradicating superstition and cruelty. The evidence of experts is, in our own

time, very often open to grave animadversion; but it is as Hyperion to a Satyr when compared with the medical evidence given in 1665 and 1682. The physicians had been unable to heal the persons who, as alleged, had been bewitched; and they deliberately came forward to swear that there could be no cause for their failure except the employment of witchcraft against them. Dr. Brown of Norwich gave a most elaborate disquisition on the subject. He communicated to the court the latest opinions of science respecting the humours of the body; he illustrated in the witness-box the 'subtlety of the Devil.' He then explained how the working of those humours in certain relations with that subtlety was effected by witchcraft, and how it brought about, as its physiological result, a flux of pins.

When a court of law quietly sits to hear such instruction as this, it may be fairly asked whether education in error is not worse than the absence of all education whatever. The dogmatic teaching of what is false does mischief to an extent which is altogether incalculable. The education which is of value is that which leads the pupil to think for himself and assists him with proper instruments for pursuing his enquiries. The British intellect is fortunately so constituted that when circumstances are favourable—when peace and commerce bring prosperity—the spirit of investigation is not to be suppressed. Ludicrous as was the evidence given by Dr. Brown, the mere fact that he was called, and that it was now becoming the practice to enquire of physicians whether the symptoms attributed to witchcraft could not be otherwise explained, was in itself a healthy sign of the times. It was an indication, at least, that Reginald Scot had not lived in

advance, men would be prepared to give up some at least of their superstitions.

Slow progress of scepticism respecting the possibility of the offence.

Other proofs are not wanting that in some individuals among the superior classes the popular belief in witchcraft was already shaken. In the preface to the report of the very trial at which Hale professed himself a believer, it is stated that 'things of this nature' were at the time very much controverted 'by persons of great learning on both sides.' A letter of North's, too, on the subject of the Devonshire witches, written in 1682, betrays a lurking doubt of their guilt which, however, is stifled partly by the considerations which influenced Hale and partly by considerations of expediency. 'We cannot reprieve them,' he writes, 'without appearing to deny the very being of witches, which, as it is contrary to law, so I think it would be ill for his Majesty's service, for it may give the faction occasion to set afoot the old trade of witch-finding, that may cost many innocent persons their lives which the justice will prevent.' What he feared was that the neighbourhood would, after the mediæval fashion, work its own will on an unpopular inhabitant by pronouncing her a witch and killing her without a trial. The apprehension was not unfounded, and may aid us in estimating the progress then made by civilisation.

Social correlations: superstition, cruelty, fraud, violence.

The correlations of national growth were still in accordance with earlier history. While superstition was so little affected by the diffusion of knowledge, and cruel punishments were still the most common amusements provided for the people, there was a great field for the application of cunning to dishonest purposes, and a positive encouragement to deeds of violence. Frauds were still common in trade,

riots among the lower classes, plots and treachery among the upper.

Mutilation of an enemy—a practice inherited from the days when the loss of a member was one of the legal punishments—still met with no discouragement at court. Sir John Coventry let fall in the House of Commons an expression which amounted to no more than a jest upon the partiality of Charles II. for actresses. Some officers of the guard (by the king's desire, it was said) waylaid him, and succeeded in his nose, though he made a gallant defence against superior numbers. The Commons, being of opinion that there was not in law any adequate punishment for this offence, passed a Bill making it felony without benefit of clergy. The Bill at last became a statute which protected, as far as penalties can, the eyes, the tongues, the lips, the noses, and the limbs of Englishmen. This Act, generally known as the Coventry Act, was, like many others, hurried through in a fit of passion—as was shown by the clause providing that the persons who had attacked Coventry should be incapable of receiving the royal pardon. But the insult to a member of their own body forced upon the legislature a conviction that such a breach of the peace as was implied in the deliberate mangling of a human being deserved to be regarded as a serious crime, and not as a trifling wrong to be remedied by the obsolete appeal of maihem, or an action for damages. The offence has not, even now, altogether disappeared among the lowest classes, but the last important case among persons of a higher position occurred in the reign of George I.

The Coventry Act.

In the reign of Charles II., too, there was a curious imitation, on a smaller scale, of one of the great mediæval crimes. A Colonel Blood devised a scheme for carrying

off the crown jewels from the Tower. They were, in proportion to the wealth of the kingdom, worth very much less than the royal treasure stored at Westminster which the monks had helped to steal in the reign of Edward I. But there was not a little of mediæval audacity in the enterprise, which was planned by a man who had many points of sympathy with the mediæval knights, as well as with the highwaymen of his own time. He had served under Cromwell. He had afterwards been implicated in the design to raise an insurrection in Ireland. When it failed he had escaped to England, where he was not afraid to remain. The Duke of Ormond, the Lord Lieutenant who had prevented the intended rising, was afterwards attacked by him at night in St. James's Street, probably at the instigation of a private enemy. Blood and his accomplices might easily have killed the duke, whom they bound and carried off on horseback, and whose servants were not within reach. Nothing, however, would satisfy them but an execution at Tyburn, and they had proceeded some distance towards the public hanging-place when Ormond was rescued and they had to fly for their own safety. In spite of his past misdeeds, Blood was regarded by Charles II. as a proper recipient of the royal pardon, and of a reward, after the attempt to carry off the regalia. The king, no doubt, had his reasons; and the fate of Coventry showed that the profession of the bully was not altogether discountenanced in high places.

Colonel Blood.

In addition to the ordinary dangers which continued for many more generations, London was still subject to periodical commotions when the apprentices took their holidays. After the Restoration, it is said, there were as many as ten thousand of them

Commotions in London: the apprentices: gradual disuse of the knife.

in the City. They had not forgotten the traditions of the good old days when the London lads had taken their fill of slaughter during Wat Tyler's rebellion, or when roystering merchants had been in the habit of attacking houses for sport in the time of Richard I. Their instincts were to do as their ancestors had done before them—to draw blood and capture booty. Customs, however, had so far changed that these adventurous youths were not permitted to carry any arms except cudgels. It is doubtful whether, when London was rebuilt after the great fire of 1666, the ancient practice of setting bars or chains at the ends of streets was continued. But tactics similar to those in ordinary use against earlier rioters and other malefactors were adopted against the apprentices, bodies of whom commonly found their progress stopped by detachments of spear-men guarding particular thoroughfares. Sometimes they attempted to force their way against all opposition, and a serious tumult ensued; when more peacefully disposed, they contented themselves with such amusement as could be derived from broken heads inflicted or suffered without an attack upon the guard. But lawless though these outbreaks may appear, they present in some features a marked improvement upon similar scenes in the middle ages. Some allowance must be made for the youth of the actors in them; and the practice of carrying no more deadly weapon than a stick was a most healthy sign of the times. Englishmen had once been quite as ready with the sword or the dagger as men of any other nation, and the modern English prejudice against the use of the knife in a brawl may perhaps be dated from the seventeenth century.

In country as in town the first impulse seems to have

been to find a remedy for every grievance or supposed grievance in force. Some weavers thought themselves wronged by the introduction of engine-looms. They therefore banded themselves together, and went about with the object of destroying all these machines, or as many as possible. This was precisely what might have been expected, and was an example often followed even in later times. But, like the restriction of apprentices to the use of the cudgel, the introduction of new machinery in manufactures was a very hopeful indication of progress, and not less worthy of attention than the turbulence which was inherited from a past generation.

Riots against machinery.

As, however, so much of the mediæval spirit remained, it was inevitable that, when the succession had been so recently interrupted, and when religious animosities were so strong, there should be many plots and treasonable intrigues. The attempt of Monmouth to win the throne for himself may be regarded as the effort of an ambitious man, who took advantage of sundry currents of popular opinion to gain his own ends. But these currents were of such force that, although they did not carry the sceptre into the hands of Monmouth, they did in the end carry it out of the hands of James II. and into the hands of William III. Jealousy of the royal power had never slept after the Great Rebellion; how keen was the fear of popery was shown by the success of Oates's perjuries. These events rendered the end of the reign of Charles II. very unquiet, and even gave some cause for apprehension that he might be involved in a struggle like that which led to the death of his father.

Plots and intrigues: events leading to the Revolution.

James, during the life of Charles, unfortunately for

himself became reconciled to the Church of Rome. The Commons, wild with terror of popish plots, wished to exclude him from the succession, and passed Bills for that purpose, which could not, however, be carried in the House of Lords. Charles was naturally displeased with the attack upon his brother, and naturally unwilling to summon a Parliament whenever he was not compelled by his necessities. The Commons, whenever they were permitted to meet, revenged themselves by discussing Bills which threatened the power of the crown. The king, on the other hand, seemed resolved to strain his prerogative to the utmost. He attacked the City of London by a writ of *quo warranto*. The charters to the towns had, as already explained, been the beginning out of which had been developed representation by burgesses in Parliament. They were very dear to the townsmen from other old associations, and especially from the liberty which they allowed of managing local business by local committees. The writ to enquire by what authority certain privileges were exercised was very ancient, and was applicable to the corporation of any town. It was nevertheless extremely vexatious in its operation, and might easily be converted into an engine of extortion and oppression. In this light it was regarded in London, where it excited some tumults; and though London and other towns had in the end to submit and to pay for new charters, the money which was extorted and the changes of municipal constitution which were effected were but a poor compensation for all the ill-feeling aroused.

Discontent, as in earlier times, began to take the form of conspiracy. Two plots were formed—one to raise an insurrection and alter the succession, or, as some wished, the form of government—the

Rye House Plot.

other, commonly known as the Rye House Plot, to assassinate Charles. In the first some of the most eminent of the popular party were implicated: how far any of them were cognisant of the second it is not easy to determine. Before either could be put into execution a discovery ensued, through the treachery of one of the inferior persons concerned in the Rye House Plot. Then followed the inevitable arrests, the inevitable trials for treason, the inevitable outcry that the trials were not fairly conducted. Party passion of course ran high, but not so high that it was thought necessary to take the issue out of the jurisdiction of the ordinary tribunals. William, Lord Russell, Algernon Sidney, and some men of less note were found guilty of high treason after trial. None suffered by Act of Attainder, by which it would have been possible to destroy them without any question of misdirection by judges, false construction, or insufficient evidence. That kind of fairness which interprets facts and law alike to the advantage of a prisoner was not then to be expected. It was made out on evidence which appears sufficient, and which is confirmed by the confession of some of the sufferers on the day of execution, that the persons executed had some share in some kind of plot. It had always been the custom to interpret the law which required two witnesses to an overt act of treason as strongly against the accused as possible, and so the law was interpreted now.

Execution of Armstrong.

The ancient law of treason, according to which execution without trial could be had upon the person who fled, and, after indictment, was outlawed, had been so far modified in the reign of Edward VI. that, if the fugitive surrendered himself within a year,

Armstrong, who had been a fellow-conspirator with Russell and Sidney, escaped abroad, but was captured and brought back within the year. Jeffreys, who was then chief justice, held that the capture was no surrender within the meaning of the Act. There can hardly be a doubt that he was technically in the right, though it may have been unjust to assume that Armstrong would not have yielded himself within the year. The harshness was in apprehending him before the year had expired, and there was no illegality in the manner in which he was put to death.

These events, however, excited the greatest rancour, as was shown not only immediately afterwards, but by the action of the Convention Parliament at the time of the Revolution. It was then unanimously resolved that Armstrong's capture should have been considered a surrender. Still, no Act was passed; but Armstrong's outlawry was reversed upon a writ of error in the King's Bench founded on a technical objection which had no reference whatever to the alleged erroneous ruling of Jeffreys. The sentiments which displayed themselves in the Convention Parliament, however, must have been those which prevailed when James II. came to the throne, four years earlier. His brother (perhaps at his suggestion) had already provoked the nation almost past endurance by a pedantic assertion of the prerogative in accordance with precedents raked up from the darker ages. At a time when conciliation could hardly have appeased the Commons who had desired his exclusion, his first acts of kingship were new provocations. He repeated the error of Charles I. in attempting to make his revenue indepen-

Accession of James II.: the prerogative and the laws.

Commission; he increased the standing army which had necessarily come into existence when the feudal organisation was definitely abolished; and by his whole conduct he suggested a suspicion that he intended to make himself an arbitrary sovereign, and to force his will upon the nation alike in matters civil, religious, and military. The sense of grievance afterwards found its most definite expression in the Bill of Rights, in which the power claimed by James of suspending or dispensing with laws or their execution, is solemnly declared illegal.

There is a grim irony in the fate of this unfortunate king. However wrong in principle may to modern eyes appear his attempt to suspend the operation of any laws, the particular instances in which he gave offence were in laws which more tolerant generations have seen fit to modify. He wished to dispense with the penalties inflicted for some religious offences by some intolerant statutes, which were the offspring of the Reformation. It may be, and almost certainly is, true that his object in proclaiming a general toleration was to favour men of his own creed in particular. Had he not been in the position of a sovereign, he might fairly have been described as a popish recusant. He could not but desire to abolish such an anomaly. But he professed to be anxious that Protestant dissenters as well as Catholics should enjoy full liberty of conscience. It was suspected, perhaps with good cause, that such unwonted indulgence was to be followed by persecution after a reconciliation of the Church of England with Rome. But while the motives may be open to suspicion, James's Declaration is a fact, and it gave, in appearance at least, such freedom

enjoyed in reality for many generations afterwards. The Toleration Act passed in the reign of William III. was very different in scope.

It is thus but too evident that at the end of the seventeenth century many mediæval prejudices were still surviving, and that the majority of Englishmen regarded as criminals all who, in religious matters, thought or acted very differently from themselves. Treachery and double-dealing, too conspicuous in the middle ages, were again most conspicuous in the stirring events which drove James from his throne. It may be true that the application which was made to William of Orange by Englishmen of the highest position and influence was, in the end, beneficial to the country. But it is no less true that some of those who made it were guilty of the greatest duplicity, and can be justified, if justified at all, only by the event. They entered into a conspiracy by which they succeeded in effecting a revolution with the aid of a foreign army. They played in this a far less noble part than James himself, who persistently refused the military aid tendered him by the King of France. They ran the risk of beginning a civil war in which two English parties would have been aided each by foreign armies, which might have assumed the dimensions of an European war to be fought out on English soil, and which might have ended in the conquest of England itself by a foreign sovereign. They could not have foreseen that James would have had the magnanimity, or the weakness (no matter which), to sink alone rather than be supported from without. They must have been impelled at least as much by religious and party passion

Survival of mediæval prejudices and barbarism shown in the events of the Revolution.

and the doubtful morality of their enterprise considered as a whole do not appear in a more favourable light when judged by the conduct of some of the individual actors in it. The men who owed their advancement to James were as ready to fall away from him as the rest. Churchill, who was a master of strategy, abandoned his benefactor at the right moment. His desertion might have been set down to his love for his country had he not afterwards shown himself perfectly willing to betray her. Of James's daughters one was the wife of the invader, the other remained with her father until his danger became serious, and then, like the rest, left him to his fate. Had he been a worse man than he was, he might in our days have expected some sympathy from his own children. They were probably not more unfeeling than other women of their time; but they showed that, in the excitement of a great political crisis, the last Stuart king of England could be made to suffer through his offspring as keenly as the first Plantagenet.

Compromise between the principles of the Commonwealth and those of absolute monarchy.

Though the substitution of William and Mary for James II. on the throne of England was an event of great importance, its effect upon the subsequent history of the country may easily be, and indeed often has been, exaggerated. It was in fact the outward and visible sign of a compromise between the principles of the Commonwealth and the principles of absolute monarchy. But some such compromise had been inevitable since the Restoration, and perhaps even before the accession of Charles I., as the only alternative to successive outbreaks of civil war. The liberties which were secured at the time of the

castle and his followers had vaguely desired, for which the men of the Commonwealth had struggled, and which Charles II. had, under pressure, seemed not indisposed to grant. Charles, like James, had assumed the dispensing power, but, unlike James, had afterwards renounced it; and when the Habeas Corpus Act was passed, in the thirty-first year of his reign, nothing but extraordinary imprudence in the sovereign could have rendered a revolution necessary.

The relics of feudalism had been finally swept away by the Commonwealth; the poor laws were reconsidered and improved soon after the Restoration; a system of posts was established, and with it there was a general improvement in internal communications. The growth of a standing army, which was regarded with evil eyes as a device of the sovereign to oppress the people, was in itself a testimony to the disappearance of that military spirit which had prevailed in feudal times when every able-bodied man was a soldier. There was, in short, on all sides a fair promise of that state of society which is comprehensively described as civilisation, and which is characterised by the absence or diminution of many acts now held to be crimes. By the exercise of a little forbearance and discretion the Stuart kings might have secured for their descendants, as their successors on the throne, all the honour which is reflected upon the sovereign of a great and prosperous country. James by his mismanagement somewhat retarded the national progress, and allowed the policy which was strictly national to be associated with the name of a foreigner.

State of England compared with that of foreign countries at the end of the seventeenth century.

The greatness of the opportunity which James neg-

lected may be estimated, in some measure, from the state of foreign countries in which feudalism, with many of the evils inseparable from it, still exercised a powerful influence. In France, even during the brilliant reign of Louis XIV., commissions were issued to hold the 'Grands Jours' bearing a very strong resemblance to the commissions of our own justices of Trailbaston, which had long fallen into disuse. The commissioners travelled into the provinces and instituted special enquiries regarding assassination, pillage, rape, incendiarism, and the practice of executing forged writs or orders of court. The mention of extortions, corruption of officers, intimidation of the ministers of justice, and detention of prisoners for long periods without trials, suggests forcibly to the recollection the condition of mediæval England. Some lords even imprisoned their enemies in dungeons in their own houses or castles, without any justification except their own alleged feudal rights. In some places there was still continued the old practice of private warfare, and in remote districts the vassal or the inferior seems to have been at the mercy, if not at the absolute disposal, of the land-holder.

In Germany far less progress had been made than in France, for what was, perhaps, exceptional in France was the ordinary rule in Germany, where also brutal public punishments were the usual spectacles for the amusement of the populace if not the effectual preventives of crime.

If therefore England, towards the end of the seventeenth century, appears in a state of very imperfect civilisation when judged by the standard of two centuries later, she had at least no reason to be ashamed of her

condition as compared with that of her neighbours. The struggle against mediæval barbarism was long and severe wherever it was made. In England it was becoming successful before the Revolution, and that too in spite of the pestilence which had checked her commercial prosperity, and to some extent demoralised the inhabitants of her capital in the year 1665.

CHAPTER X.

FROM THE REVOLUTION TO THE LAST STUART REBELLION.

A FEW years after the Revolution was accomplished, the state of society which had previously existed was illustrated in a very striking manner by an Act of Parliament made for the abolition of sanctuaries. In theory they had no existence, or existed on sufferance only to secure that which has been secured by recent legislation—the protection of the debtor against imprisonment for debt; in practice they were criminal quarters where the officers of justice were set at defiance, and where no man's life was safe unless he had the privilege of being an inhabitant.

Relics of the past: the sanctuaries of England.

The history of these places runs, to a great extent, parallel with the history of civilisation. The privilege of sanctuary was closely connected with the privilege known as benefit of clergy. By the one the criminal escaped through the sanctity which he enjoyed in consideration of the fact or the fiction that he had taken orders; by the other he gained protection from the sanctity which belonged, as was supposed, to consecrated ground. In the earliest Christian times, any criminal in England might take refuge in any church, and be quit upon abjuring the realm, which of course involved forfeiture of everything

the advantages which they once owed to the Church. It is to be presumed that in the earlier part of the reign of Henry VIII. sanctuary gave protection even to a traitor, for it was specially enacted in the twenty-sixth year that no person accused of high treason should enjoy the privilege. At the same time also there were certain places, which were allowed to be 'places of tuition and privilege,' in addition to churches and their precincts. These were in the year 1540 declared to be only Wells, Westminster, Manchester, Northampton, Norwich, York, Derby, and Launceston. The ancient custom of assigning a port and forcing the sanctuary-man into exile seems to have been extinct in the sixteenth century. The towns mentioned were, in fact, cities of permanent refuge for persons who should, according to ancient usage, have abjured the realm, after having fled in the ordinary way to a church. There was a governor in each of these privileged places, and he had to muster every day his men, who were not to exceed twenty in each town, and who had to wear a badge whenever they appeared out of doors. But when these regulations were made, the protection of sanctuary was taken away from persons guilty of murder, rape, burglary, highway robbery, and arson, and their accessaries—in other words, from all the greatest offenders. The law of sanctuary was then unchanged until the reign of James I., when, in words at least, the privilege of sanctuary was altogether denied to criminals.

The passing of a statute, however, did not in early times necessarily lead to the establishment of a state of society such as the framers of the law desired. Sanctuaries, like savage passions, were for many generations stronger than a mediæval police or

The sanctuaries of London.

ambitious law-givers. In the reign of William III. not only were there sanctuaries in England, but they existed in places not even mentioned in the statute of Henry VIII.—in places where Henry had failed to suppress them. In London and its neighbourhood they abounded. To a fugitive in the extreme east a convenient retreat was offered by the Minories; to one in Fleet Street by Salisbury Court, Whitefriars, Ram Alley, and Mitre Court; to one in Holborn by Fuller's Rents; to one in Gray's Inn Lane by Baldwin's Gardens; to one in Southwark by Montague Close, Deadman's Place, the Clink, and the Mint. Southwark was notorious for its sanctuaries early in the fourteenth century. They, no doubt, as well as their rivals or allies on the northern side of the Thames, had maintained themselves without interruption from the time of their first growth. Nor did even the statute of William III. finally extinguish the Mint, which survived to become the subject of new complaints, and of a new statute, as late as the year 1722.

The demoralisation caused by these relics of antiquity was unhappily not restricted to the encouragement which they afforded to criminals in need of an asylum.

Clandestine marriages in the sanctuaries and elsewhere.

It was a common complaint in the beginning of the eighteenth century that 'multitudes of honourable and reputable families had been greatly injured, and many of them utterly ruined, by clandestine marriages solemnised in taverns, brandy-shops, alehouses, and other houses within the liberties of the prisons of the Fleet and King's Bench, and in the Mint and other pretended privileged places.' It was proved at a trial in 1716 that ten register-books for marriages were kept in houses about the Fleet Prison, that in one of them were entered two thousand clandestine marriages solemnised

in one year, and in each of the other nine almost as many. These disorders were brought to the notice of Parliament in 1718, but without effect. Leave was given to bring in a Bill upon the subject, but no Act was passed for some time afterwards.

About the time when the sanctuaries were extinguished there existed another remarkable institution which, it may be believed, gained new strength from the measures put in force against them in 1697 and 1722. The ancient system of police, never of any avail to suppress crime in any state of society, had been entirely outgrown in the eighteenth century. But, if it was powerless for good, its evils still remained in force; and the perpetrators of crimes handed down for many generations sought protection, by a kind of instinct, in that guildship which had given protection to their forefathers.

The great receiver: organisation of theft.

Genius may display itself in crime as well as in science, or art, or strategy; and there arose, in the first quarter of the eighteenth century, a great leader and a great organiser in the commonwealth of criminals. Like many a better man who has risen to eminence, he had the discrimination to perceive the great want of his age. In the year 1718 an Act was passed, by which it became felony without benefit of clergy to take a reward for aiding in the restitution of stolen goods. In earlier times a receiver had been a person who received the thief or robber, either with or without the spoil. But with the increase of property, and other changes in the state of society, it became necessary to direct more attention towards the plunder than even towards the plunderer. Jonathan Wild was a man who would have

mediæval instinct, he acted upon the principle that whatever might be the object or the value of any statute made for the repression of crime, true spirit and courage would be shown in resistance.

Jonathan Wild and the thieves' guild.

In the republic of the thieves' guild Jonathan Wild became as it were a dictator; but like many of the great men of the middle ages, he owed his greatness to double-dealing. From small beginnings he became, in London at least, the receiver-in-chief of all stolen goods. He acquired and maintained this position by the persistent application of two simple principles; he did his best to aid the law in convicting all those misdoers who would not recognise his authority, and he did his best to repair the losses of all who had been plundered and who took him into their confidence. By degrees he set up an office for the recovery of missing property, at which the government must, for a time, have connived. Here the robbed sought an audience of the only man who could promise them restitution; here the robbers congregated like workmen at a workshop, to receive the pay for the work they had done.

Wild was, in some respects, more autocratic than many kings, for he had the power of life and death. If

His system and his power over the innocent and the guilty.

he could reward the thief who submitted to him, he could hang the robber who omitted to seek his protection. If he could, for a sufficient fee, discover what had been lost, he could, when his claims were forgotten, make the losers repent their want of worldly wisdom. He was not above his position, and never allowed such a sentiment as generosity to interfere with the plain rules of business. He carried a wand of office, made of silver, which he asserted to be an indi-

Valuable goods he carefully stowed away in some of his numerous warehouses; and when there was no market for them in England, through the apathy of the persons robbed, or the dangers to dishonest purchasers, he despatched them on board a ship of his own to Holland, where he employed a trustworthy agent. Like barbarian monarchs he gave presents when he wished to express a desire for friendship and assistance; and, in order that the recipients of these favours might not be compromised, he retained a staff of skilled artisans who could so change the appearance of a snuff-box, a ring, or a watch, that not even the real owner could recognise it. When satisfied with the good service of any of his subordinates who might be in danger he gave them posts in his own household, with money and clothing, and found employment for them in clipping and counterfeiting coin. He did not even restrict his operations to London, but, in imitation of other great conquerors and pillagers, or, perhaps, through the independent working of his own intellect, he divided England into districts, and assigned a gang to each; each had to account to him, as the counties of old to the king, for the revenue collected. And as a well-appointed army has its artillery, its cavalry, and its infantry, so among Jonathan Wild's retainers there was a special corps for robbing in church, another for various festivities in London, and a third with a peculiar aptitude for making the most of a country fair.

The body-guards of a sovereign are usually chosen for their appearance, or for tried valour in the field. Wild's principle of selection was somewhat different. He considered that fidelity to himself was the first virtue in a follower, and that fidelity was certain only when there was absolute inability to be unfaithful. For this reason

the greatest recommendation which any recruit could possess was that he had been a convict, had been transported, and had returned before the time of his sentence had expired. Such a man as this not only had experience in his profession, but was legally incapable of giving evidence against his employer. Through his actions he was always in the power of Wild, who, as the law stood, could never be in his power. Thus Wild's authority was in two ways supreme. Nor was he the first man who ever abused such authority. He did what political parties had done in earlier times. He used without stint or scruple all the means at his disposal either to ensure his own safety or to crush anyone whom he suspected. It was necessary, according to the public opinion of his time, that a considerable number of thieves and robbers should be hanged; he satisfied at once the popular notions of justice and his own principles by bringing to the gallows all who concealed their booty, or refused to share it with himself. When required, he provided also a few additional victims in the form of persons who had committed no offence whatever. Sometimes he destroyed them because they were unfortunately in possession of evidence against himself, sometimes only because a heavy reward had been offered for the conviction of anyone who might have perpetrated a great crime, and because, with the gang at his back, it was quite as easy to prove the case against the innocent as against the guilty, and not less convenient.

His arrest, trial, and execution.

At last, however, in spite of the completeness of his scheme for robbing and bearing false witness, he was himself brought to justice. The manner in which he fell was by his confederates, no doubt,

his authority had he not shown now and again that he was prepared to incur risk for the good of the community over which he presided. A highwayman was apprehended near Bow: Wild came to the rescue, and aided him to escape from his captor. For this offence Wild was committed to Newgate. When he was thus rendered powerless, the fear with which he had been regarded began to be diminished, and witnesses were less reluctant to give their evidence against him. This he foresaw, and begged earnestly to be tried at once on the single charge then made against him, or to be allowed at large on bail. He was, however, detained; information after information was sworn respecting his past deeds, and when he was brought to trial he could have had but little hope of mercy. He was hanged on May 24, 1725.

Decrease and gradual cessation of forcible entries.

With the relics of the ancient state of society still to be found in the town-sanctuaries, and such an organisation as that of Jonathan Wild, there were, even at the beginning of the eighteenth century, some indications of the difficulty with which the idea of property in land had prevailed over the idea of the savage that he may take who can. In the year 1700, though forcible entries can no longer be described as common, there is still no great effort required in order to discover some instances of them. In a roll for the twelfth year of the reign of William III., no less than eleven cases of violent seizure or detention of land are mentioned. A century and a half earlier it would have seemed impossible that the number could in any year have been brought so low; a century and a half later the thought of asserting a claim to a manor by force would hardly have occurred to anyone but a madman. But the

extinction of an offence which has once been very common is evidence of far greater progress than is shown in a mere diminution of frequency. Forcible entry was practically extinct before the first half of the eighteenth century was completed, and has never been revived in its ancient form. This is perhaps the greatest triumph of law and order over violence and rapine to be found anywhere in the history of civilisation.

'Riots, routs, and affrays' become less common.

It would be erroneous to suppose that, when force was ceasing to be the means of deciding rival claims to land, an appeal to force had become uncommon in every class of life. When the cases of forcible entry are reduced to eleven, there are in the same year instances of 'riots, routs, affrays, and unlawful assemblies' occurring only a little less frequently than at the end of the reign of Elizabeth; and even in the middle of the eighteenth century, though they have become considerably less common, they have by no means disappeared from the rolls. The influence of a better example has already had its effect, but it has by no means sufficed to counterbalance the habits, the traditions, and the propensities handed down from the days when the Empire of Rome was broken.

Riot against the East-India Company in 1697.

At the end of the seventeenth century and long afterwards, it was an instinct with artisans and workpeople of all kinds to attempt the redress of a grievance by violence. In the year 1697, for instance, there was a formidable riot in London. Imported goods, like machinery, were regarded as a source of injury to the men who had to live by the labour of their hands in England. The trade with

believed by the populace to possess the greater part, if not the whole, was supposed to be taking the bread of the mouths of the silk-weavers. In addition to other goods, manufactured silk was no doubt brought to England in great quantities, and was readily purchased by all classes which could afford the outlay. The natural impulse of the sufferers was not to seek a distant remedy by making improvements in their own art and underselling their rivals, but to gain an immediate advantage by destroying their adversaries and securing a monopoly for themselves. A great assemblage, principally of weavers, appeared in the streets, and marched, bent on mischief, to the India House. In the hope of gaining access to the treasures within, they made an attack with great resolution and perseverance. As they were on the point of success, however, some troops were brought up, and the rioters took to flight.

On sea as on land there was much of the lawless spirit of the middle ages still to be detected. There was everywhere the same outcry against the monopoly of the old East India Company; and a sense of hardship, for which there may have been some cause, may have aided in bringing about acts for which there could be no justification. But the buccaneers of the days of Elizabeth had no unworthy descendants in the buccaneers of the days of William III., Anne, and the first two Georges. The captains of many a pirate crew had taken to the sea not from any abstract notions of the expediency of free trade, but because the hot blood of their ancestors was strong within them, because they loved the excitement of a struggle with the waves and with their fellow-men, and preferred a life of plunder to a life

Persistence of the old buccaneering spirit.

The pirate's life was of course one of constant adven-

He committed depredations on ships trading to either Indies. If he could not find a Portuguese ship or fleet to plunder, an English ship would content him for the time; and if he could find neither, a Dutch or French vessel would serve his turn. Superior force had no terrors for him or his crew; and when his men were sober he could rely on the advantage of superior skill and determination. He would fight and take a larger ship than his own, and convert it afterwards to his own use. The captive crews were commonly willing to serve under his flag; and when he had lost men in action there was no lack of recruits to fill up the gaps. When afloat he was a little king, such as, perhaps, had been one of his forefathers in the days when land or goods could be seized by a chief and a body of retainers, and held against other chiefs with similar ideas of morals. When he grew old and preferred a life on shore, he had amassed sufficient wealth to enjoy the comforts of such civilisation as existed; and if his previous avocation was suspected, it was by no means impossible for him to find acquaintances who would sympathise with him.

Attempts to suppress piracy.

Some attempts, not indeed very well conceived, were made, by statute and otherwise, under William III., and in succeeding reigns, to clear the seas of the buccaneers who infested them. The task, however, was excessively difficult, because pirate ships could be manned, with the greatest ease, not only in England but in the American colonies. Whenever there was a war, too, there was some difficulty in drawing a distinction between a pirate and a privateer's man, except in so far as a privateer's man was licensed to act as a pirate by letters of marque. And when the

war was over the privateer's men cruised as before, but without a licence.

Setting a pirate to catch pirates: Kidd, Bellamont, and Somers.

One of the most remarkable efforts to suppress piracy in the reign of William III. ended in complications which from a modern point of view are somewhat ludicrous. Lord Bellamont, acting as Governor in New York, recommended to the king a scheme suggested to him by one William Kidd. It was that Kidd should be entrusted with a powerfully armed ship, and should sail with a kind of roving commission to attack pirates wherever he could find them. Why Kidd should be despatched on such a service rather than any known and tried officer in his Majesty's service Lord Bellamont did not satisfactorily explain. The Admiralty, though indisposed to act on any plan of its own, was firm enough in refusing to give up its functions to Kidd. Investments, however, were at that time not plentiful; and thus, incredible as it may seem in our day, a company or partnership was formed for the purpose of equipping a vessel which Kidd was to command, and which was to destroy the pirates and bring a profit to the shareholders or partners out of the spoil. But what was still more strange was that some of the leading English noblemen subscribed to the venture—Orford, Shrewsbury, Bellamont, Romney, and even Somers, the Lord Chancellor. Letters patent issued by which the proceeds of the expedition (excepting the tenth part reserved to the king) were granted to the subscribers; and under these happy auspices there sailed one day from London, with a strong and gallant crew, the 'Adventure Galley,' commanded by Captain Kidd.

Whether the partners were deceived, or knew the Captain's character, and supposed they were acting with

great discrimination, it would be difficult to ascertain; but events soon showed that they had set a pirate to deal with pirates. Captain Kidd was perfectly familiar with the business which he had undertaken, and was well able to estimate the relative difficulties and profits of attacking ill-armed merchantmen on the one hand and well-armed pirates on the other. He preferred the more lucrative and less dangerous occupation. His ship was better manned and better equipped in almost all respects than those of other pirates; and in a very short time he became the terror of the seas in which he sailed, and collected sufficient plunder to make him rich for the rest of his life. He hoped, if called to an account, to escape the consequences of his misdeeds by the invention of some plausible story, and had the assurance to return to New York. The scandal was so great that he was arrested by order of Lord Bellamont, sent over to England, tried, convicted, and hanged.

In his fall he nearly dragged down with him some of the leading shareholders in the venture, and chief among them Lord Somers. The political opponents of the Chancellor naturally made the most of the disgrace which had fallen on the expedition. The matter was mentioned in the House of Commons. A motion was proposed to the effect that the letters patent in favour of Kidd's enterprise were contrary to statutes and dishonourable to the king. Had it been carried it would have been a vote of censure upon Somers, who, as Chancellor, was responsible for the patent. It was, however, lost, and, to that extent he was exonerated. In the course of the debate it was imputed to him and the other subscribers that they had knowingly attempted to profit by the gains of a pirate. For such

an accusation, so far as it related to Kidd's piracy, there was no foundation. But it is impossible to deny that whatever profit might have accrued must have been derived, indirectly at least, from piratical exploits. The goods and the ships that might have been captured would have become the prize of the captors, subject to any case which the original owners might succeed in establishing against them in the Court of Admiralty. But though it might have been foreseen that the persons who had in the first instance been robbed by pirates would probably fail to make good any claim after the capture of the pirates' ships, the adventurers must have known that they intended to appropriate stolen wares. Even the vessels in which the pirates sailed had, in most cases, been carried off by fraud or force; and only the wildest political partisanship can, from a modern point of view, elevate the proprietors of the 'Adventure Galley' into highly moral and scrupulous patriots. That they acted only in accordance with the spirit of their times, and not basely as compared with other public men, is perfectly true. But it is no less true that what might have been called innocence then would now be called guilt.

Tone of the age illustrated by Johnson's 'Pirates.'

The tone of public feeling with respect to the deeds of pirates, was, at the beginning of the eighteenth century, excessively lax. One Captain Charles Johnson wrote with much industry and considerable skill 'A General History of the Robberies and Murders of the most notorious Pirates.' He announced that he had undertaken the work not so much for the information of posterity, or even to amuse his contemporaries, as because 'it is bravery and stratagem in war

accordingly, the leaders of the pirates become heroes and are dignified with the title of captain. There are to be found narrated at length the doughty deeds of Captain Avery, Captain Martel, Captain Bonnet, Captain Thatch, Captain Vane, Captain Rackam, Captain England, Captain Davis, Captain Roberts, Captain Worley, Captain Lowther, Captain Low, Captain Evans, and their crews. There also are told the somewhat questionable stories of two female pirates, who are held up to admiration as heroines, and who, if they did what they are said to have done, were worthy descendants of the female brigands of the fourteenth century. Throughout the work there is an evident admiration of the courage shown by the pirates, and though they are sometimes described as wretches for having perpetrated some great atrocity, and much is said of the evils of piracy in general, there is no difficulty in perceiving that the good qualities of the particular individuals are supposed to atone for the bad.

Among the piratical heroes of this period the greatest appears to have been 'Captain' Bartholomew Roberts.

'Captain' Roberts: the pirates' laws: pirates and crusaders compared.

His career as a pirate, and the chain of circumstances which made him what he was, throw no little light on the seafaring adventures of the eighteenth century. The pirate 'Captain' England took a vessel of which one Howell Davis was chief mate. After some vicissitudes Davis himself became a confirmed pirate, and a 'Captain' among pirates. One of his greatest exploits was the capture of three vessels at once, and among them of the 'Princess,' of which Roberts was second mate. Roberts had no hesitation in joining the band of his captors, and soon became extremely popular among them. Six weeks later Davis

was so unfortunate as to fall into an ambuscade, and Roberts, whose qualities had been duly appreciated, was at once elected 'Captain' of the crew.

His deeds were worthy of the piratical succession which he could boast. He was among pirates what Richard Cœur de Lion was among crusaders—a valiant slayer of men himself, and a stern enforcer of discipline among his crew. Like Richard, he carried with him a set of rules for the government of the men who served under him; and his rules were curiously like the rules of Richard, though, if all of them have been preserved, they were certainly more merciful. None were to play at cards or dice for money under Roberts; and under Richard there was a very similar restriction. The men were forbidden to strike each other on board ship in both cases; according to the rules of Roberts disputes were to be settled by a duel on shore; according to Richard's the penalty for striking with the hand was to be three duckings in the sea, and for drawing blood with a knife the loss of a hand. The pirates, if they stole from one another, or committed a fraud on board ship were punished by 'marooning'—by being put ashore at some inconvenient place. Sometimes the ears or the nose of the offender would be slit in addition. A crusader if he committed a theft was also punished by marooning, but he was shaved to boot, and boiling pitch was poured upon his head, and a cushion of feathers shaken upon it to mark him. Roberts, too, instituted a curfew, and ordered that all lights should be put out at eight o'clock at night.

In character there was little to choose between a pirate and a crusader. The one had as much and as

had transmitted his courage and his instincts to the pirate. Both were familiar with cruelty, but both, perhaps, were ignorant that cruelty was cruel. To burn the Jews' quarter when the Jews were screaming for mercy seemed to the crusader a meritorious rather than a culpable action. To burn a shipful of negro-slaves, because the captain would not come to terms, seemed a very natural action to a pirate, to whose mind the shrieks of a black man probably did not suggest the idea of human suffering. The pirate, like a mediæval king, knew how to command and how to ensure the respect of his followers. Roberts, indeed, might have been described as not only a captain but a commodore, for he had ships in his train in addition to that in which he sailed. When he was killed, and his gang was captured, his crews numbered no less than two hundred and seventy-six men. Of these, fifty-two were executed. They all met death without fear, and most of them with deliberate blasphemy. A few said, not altogether without a show of reason in those days: 'We are poor rogues, and so hanged, while others no less guilty in another way escape.' It was rarely indeed that a pirate was found wanting in fortitude. But a few years later (in 1729) one John Gow, when arraigned at the Old Bailey stood mute, and was ordered in the usual manner to the press. His terror of this torture was so great that when the preparations were made he begged to be taken back into court, and consented to plead.

Crews of war-ships and pirates.

The indulgence with which the deeds of pirates were regarded by the public was, in spite of statutes and fitful attempts to repress piracy, not altogether discouraged by the government. As in earlier

all murders and felonies to men who would serve at their own cost in time of war, so it was the custom at the beginning of the eighteenth century to proclaim grace to buccaneers and pirates who would assist his Majesty's fleet. This, with the practice of giving letters of marque, gave far more countenance to the pirates than could be taken away by all the carefully worded formalities of Acts of Parliament.

The men who became pirates had been reared among associates with as little regard for human life and as little compassion for human suffering as themselves. Since those far-off days when every port, like every lord, was ready to engage in a private war, the crews which manned merchant vessels, and privateers, and the king's ships of war, and the pirate-ships too, had sprung for the most part from the inhabitants of the coast. They were a hardy race, whom danger could not appal and whom pity could not move. In their households, though the perils of the deep may have been the common topic of conversation, there was no sorrow for the merchant who lost his all by shipwreck, no respect for the corpses washed on shore, no thought how to save the mariner still struggling with the waves for his life. To these rough men and women the sea was a livelihood. To-day it might deprive them of a father, a husband, or a son; to-morrow it might carry wealth up to their very doors. When one brother was being hanged as a pirate at Sierra Leone or in the West Indies, another might perhaps be in command of a man-of-war, and a third employed in wrecking somewhere on the sea-board of England.

Piracy and wrecking.

As early as the reign of Edward I. an Act had been

had been established that when a man, a dog, or a cat escaped alive out of any ship, it was not to be accounted a wreck; that is to say, both the vessel itself and the cargo which it carried were still to remain the property of the original owners. In other cases the sovereign or the lord of the manor claimed wreck as one of his rights, and enjoyed as much profit from it as his tenants or neighbours were honest enough to give up to him. In such an age as that of Edward I., however, the effect of enacting that the preservation of a life would deprive the coastmen of their spoil was not to protect the merchant, but to destroy the sailor. To save a human life was to lose the prey which might otherwise be gained, and there would be no difficulty in relating instances in which drowning men were killed in order that their murderers might enjoy a share of the plunder.

In the reign of Anne an Act was passed which was in substance little more than a confirmation of the law as it stood in the reign of Edward I. The preamble gives a melancholy picture of traders falling into the hands of robbers who behaved as savages, and of cargoes snatched from the waves and hidden where they might escape the eye of justice. In order that the statute might be the better obeyed, it was to be read four times every year in the parish church of every seaport town in the kingdom. But the powerlessness of legislation to destroy in a day the habits and sentiments transmitted through many a generation from a far-off past was never more clearly illustrated than in this attempt to take away from the wreckers their ferocity and rapacity, and to give them, by the aid of legal phraseology, gentleness and honesty

effected a change after years and generations; but for the moment it appeared almost useless. A contemporary lamented that in spite of every effort the character of the worst districts was little improved, that most barbarous deeds were still done when a vessel was driven on shore, and that yet more stringent regulations were required. It is strange that men should have hoped to change their fellow-men in a few months by repeating a form of words which had been upon the statute-book for centuries, and for centuries had been ineffectual.

If it was natural that where pirates were numerous wreckers also should abound, it was no matter for wonder that men who were converted into sailors against their will, by press-gangs, should have had no scruple in becoming pirates when they found the opportunity. It would be difficult to over-estimate the evil which must have been done by forcing industrious labourers, artisans, and tradesmen to serve on board a man-of-war, and turning them adrift as soon as the ship was out of commission. There was once, indeed, an outcry raised that impressing was contrary to law, and an infringment of popular privileges enjoyed from time immemorial. Such an idea could have arisen only in a mind lamentably ignorant of the whole course of history. The government could claim the services of British subjects as seamen on two distinct grounds, either of which might be considered a sufficient justification.

Piracy and impressment: the origin, evils and advantages of impressment.

In early times, before the Black Death, and by law indeed afterwards, the lord could command the labour of his villeins to perform any work of local necessity—as, for instance, to gather in the harvest of a neighbour. In the

same way the king might require his subjects to aid in any work which could be considered of public utility, and for which it was difficult to find volunteers. The most striking instance, perhaps, in which this right was exercised, presents itself in the Palatinate of Durham. The life of a miner is to be envied less even than that of a seaman; and it was even more difficult to find men who would pass their days in hewing coal or heaving iron ore than men who would take to the sea, which, with all its perils and its restraints, offers sometimes both excitement and pleasure. The bishop, within the limits of his county palatine, exercised the functions of king. All the ordinary writs were in his name instead of the king's, and in all ordinary circumstances his power was neither less nor greater in his territory than that of the king himself elsewhere. He accordingly, as soon as there was danger that neither coals nor iron could be obtained for want of labourers, put an end to the difficulty at once by a commission to seize as many men as might be required, and set them to work in the mines. Such arbitrary power as this was no doubt a relic of the ancient institution of slavery; but, none the less, all who attempted to find in history an argument against impressment could only discover that impressment was one among many branches of a far-stretching prerogative.

Apart, too, from the general state of slavery out of which the nation has emerged, the claim of the state to the service of all its able-bodied citizens in time of national danger could be established not only by ancient custom, but by the still better argument of obvious expediency. The early history of every people is the history of a fierce struggle for existence against external

under the so-called feudal system, military service was a condition upon which even the freeman held his land. And this condition might be traced back to the time when savages owned no individual property, when all the members of the tribe had to defend their common possession against another tribe fighting to gain possession in common for itself. Service against an enemy at sea is, when ships of war are invented, as much a necessary part of military duty as service on land; and it would be as unreasonable to draw a distinction between the liability to serve in the two cases as to allow that soldiers might desert their standard whenever a new implement of war might be invented.

Men might therefore undoubtedly be impressed to serve as sailors by virtue of a double prescription, which is implied in various statutes; and however great the hardship might be, it must always be remembered that greater hardships would follow a foreign conquest. Nor is it to be doubted that if a foreign invasion were seriously threatened, even in our own more civilised times, we should see both press-gangs and a conscription; and the patriotism of the nation would render both endurable. The evils would then, perhaps, be hardly less than they were generations ago, but they would be the inevitable evils which we inherit from ages of barbarism. Civilisation would be in no respect to blame, for civilisation and the military spirit are always opposed. The blame would rest with those nations which are always regarding the earth as one wide battle-field—which act as though there were no higher aims in the world than to give generals titles, to convert kings or consuls into emperors, or to take subjects from one emperor and give them to another.

Ancient tendencies shown in the prevalence of highway robberies.

Thus the press-gangs, with the crimps and all the iniquities connected with them, can, like the piracy with which they were closely associated, be distinctly traced back to a time when they present themselves to those who search for them in still more glaring colours. And if on land highway robbery was but a faint reflection of the brigandage of old, it was still, at the end of the seventeenth and at the beginning of the eighteenth centuries, a danger which every traveller had to consider, and against which he had to make careful provision. He was not in the same peril as in the reign of Edward III., for though the highwaymen were pleased to call themselves 'gentlemen of the road,' and may have numbered one or two broken men of gentle birth among them, they were becoming a class by themselves, and falling in rank with the disappearance of general lawlessness. But, for many reasons, a long journey was a venture not to be lightly undertaken. Stage-coaches, indeed, were in existence, but the roads were still in such a condition, in many parts of the country, that it was the custom to travel on horseback as it had been four hundred years before. The best evidence of the ordinary means of communication is in the fact that even the mails were carried on horseback. And it was no uncommon event for the mail to be attacked; a notable instance, indeed, occurred in the year 1720, when the Bristol mail was robbed by one Norton or Horton, who was tried and found guilty, but who escaped a public execution by suicide.

During the first fifty years after the Revolution highway robbery was one of the most ordinary events of life. On this subject it is somewhat interesting to contrast the diaries of Evelyn and Luttrell,

both of whom wrote at the end of the seventeenth century.

Evelyn set down chiefly matters of personal interest to himself—the marriage of a daughter, or a visit to a friend, or something extraordinary in the weather. He noted also great political events, but he is rarely betrayed into the mention of anything so commonplace as the deeds done upon the high road. He seems to have taken them for granted, very much after the fashion of a mediæval chronicler, and calls attention only to a political plot or some other crime on a scale unusually large. He tells us of a 'signal robbery' in 1693 of the tax-money, as it was being carried from the North, through Hertfordshire, to London. The escort was attacked by a number of desperate men who had previously dismounted all travellers on the road and placed them under a guard in a neighbouring field. The treasure was taken, the horses of all possible pursuers were killed, and the robbers rode off unmolested with the plunder. But it is possible to read month after month of the diary, and find no indication that life and property were miserably insecure.

Lesson upon this subject taught by the diaries of the period and by records.

The pages of Luttrell, on the contrary, teem with accounts of violence, robbery, and execution for crime, and show, by contrast with Evelyn's diary, how inadequate must be the annals of any one mediæval chronicler to place before us the internal history of the people, and how necessary is reference to the records of the courts. The whole month of January, 1693, is dismissed by Evelyn in six lines, and without any reference to criminal acts. A single day (the third) according to Luttrell brought to light events which, if they occurred in our time

in the course of a year, would cause a panic, and probably the discussion of more than one bill in Parliament. On the previous day (Saturday) a notorious highwayman named Whitney had been taken 'without Bishopgate. He defended himself for an hour, but the people increasing, and the officers of Newgate being sent for, he surrendered himself.' On the Sunday two more of his gang were also seized and committed. 'One kept a livery-stable in Moor Fields.' A highwayman was also taken in St. Martin's church. The same day 'a Jacobite meeting was discovered in Johnson's Court in Fleet Street, where about a hundred persons met.' The same day also 'seven persons, at five in the morning, broke into the Lady Reresby's house in Gerard Street and bound her with two daughters, the maids, with two footmen, and then rifled the house.' The news had that day arrived that a son of Colonel Blood had been arrested as one of the robbers of the Portsmouth mail. Three 'hectors,' on the Sunday evening, had come out of a tavern in Holborn with their swords drawn, and begun to break windows; a watchman had asked them to desist, but one of them had run him through and left the sword in his body. Lord Danby and Captain Stringer had just fought a duel. And, to show how little terror the gallows had for the adventurous spirits of the time, Luttrell announces that 'yesterday three coaches were robbed coming from Epsom'; the robbers told their victims that they 'borrowed' the money to maintain Whitney in prison.

Day after day Luttrell has the same story to tell—especially with respect to highway robberies. Had he been the only writer of the time, and had his diary been compared with the chronicle of some monk of the

far-off past, to whom private warfare was so familiar as to be unworthy of narration, it might have been supposed that the end of the seventeenth century was a time of brutal barbarism as contrasted with the twelfth century or the fourteenth. It is only in the records that the truth can be discovered, and they tell us of continuous improvement over long periods of time, though with many pauses and even retrogressions which might mislead the student of any particular period. They, too, show us how completely a later age is the descendant of an earlier, and how necessary is a minute investigation of the past to anyone who would legislate for the present. Our ancestors of the seventeenth and eighteenth centuries believed highway robbery to be essentially a feature of their own times. It never occurred to them that the highwaymen whom they hanged were but the representatives of men who had sometimes, indeed, been outlawed in earlier ages, but who had more commonly succeeded in life through the possession of the 'knightly' virtues.

Of the highwaymen who may be considered to have carried on the tradition handed down by Ercedecne and other outlaw knights, one of the chief was Parsons. He was the son of a baronet, had been sent to Eton, and had passed a little time in the navy. In earlier years he appears to have been guilty of little but the ordinary follies of youth carried to excess. He made, however, the acquaintance of a rascal through whom he became more and more deeply involved in debt, until at last his case seemed desperate. The first stage, after obtaining goods for which he could not pay, was to obtain money under false pretences, the next to purloin jewels, and the last to take the road as a

Parsons, Turpin, Sheppard, the Waltham Black Act, &c.

highway robber. He was at length captured, tried, and hanged, in the year 1750.

As a History of Crime has no concern with the biographies of criminals except where they may throw light upon the character of the age, or upon the causes which may affect the commission of various offences, it is needless to trace the careers of such well-known law-breakers as Turpin the highwayman, or Sheppard the burglar. Nor is it necessary to dwell at length on the Waltham Black Act, called into existence by events which were exceptional in the time of George I., but which had been of common occurrence a few generations earlier. To some persons living in the eighteenth century it, no doubt, seemed very terrible that a statute should be required to declare the penalty for entering a forest in disguise, for hunting deer unlawfully, for robbing a warren, for destroying fish, and trees, for maiming cattle, or for shooting at any human being maliciously. They little thought that these offences which appeared to them so formidable were but evidence of a feeble attempt to reproduce a state of society with which their ancestors had been perfectly familiar, and that their own indignation proved the progress which had been made.

Thieves at the fairs: Jenny Diver.

In the fourteenth century a fair was one of the greatest opportunities for brigands and malefactors of every kind; in the eighteenth century it still offered an opportunity to evil-doers, though no longer to brigands. Before the year 1740 there lived one Mary Young, otherwise known as Jenny Diver. She was one of a very large gang of thieves, who strove, with no little ingenuity, to make crime progress with the advance of mechanical inventions. She would appear in a neighbourhood where she had never been seen before,

and act the part of an interesting invalid. She was never more happy than when in church or chapel. A servant would go before her, and secure a place in some convenient pew; a footman would follow after, with prayer-book and other necessaries. Her supposed condition was such that she alighted with difficulty from her sedan chair, and at once gained the sympathies of all who had sympathy to give. If her figure was somewhat bulky, it was easy to divine the cause; and if her hands seemed almost powerless, she only deserved the more pity. It was difficult for her to rise when it was required by the forms of the service that the congregation should stand up; and if she sat with her hands crossed in an attitude of meek devotion, none could have the heart to blame her. Little did her neighbours suspect that this devout woman was rifling their pockets while apparently engaged in prayer—that her real hands had been hidden beneath the sham rotundity of her body, and were being used with dexterous activity while her false hands reposed on her knees. She found herself perfectly at home either in London or at some place of resort in the country; but if there was one adventure rather than another in which she delighted, it was to take up her abode at the best inn in such a town as Bristol while the fair was at its height, and prey upon the unsuspecting country-people, as perhaps some remote ancestor had preyed, though with different appliances, four hundred years before. Her career was brought to a violent end at last, and she was hanged 'for privately stealing.'

While the tendencies of past ages were thus proving themselves stronger than political revolutions and than changes of religious faith, the penal laws were modified as little (though perhaps quite as much) as the nature

of the people. The existence of sanctuaries in a city which had outgrown its ancient boundaries, and some at least of its ancient barbarism, was generally felt to be an evil which must be repressed with a strong hand. Yet another abuse, the same in origin and not less mischievous in application, was permitted to survive, though in a somewhat new form.

Persistence of old traditions in other forms: modifications of privilege of clergy.

During some generations, persons who had taken benefit of clergy had, in order that they might afterwards be recognised, been burnt in the hand. In the year 1698 was passed a statute which, had it long remained in force, would have indicated that civilisation was dying out rather than progressing. It is there enacted that, where-as many evil-disposed persons might be deterred from offending should the brand upon them be made more visible, a new method of burning is to be adopted. Thieves allowed benefit of clergy are thenceforth to be burnt with the usual mark 'in the most visible part of the left cheek nearest the nose, which punishment shall be inflicted in open court, in the presence of the judge, who is directed and required to see the same strictly and effectually executed.'

Only eight years afterwards, however, the law-givers had the wisdom to discern that the barbarism lurking in the natures of people semi-civilised, or even wholly civilised, is not to be repressed by setting a barbarous example in the execution of the laws. In a new statute it is declared that the punishment of burning in the cheek had 'not had its desired effect by deterring offenders from the further committing crimes and offences, but, on the

livelihood in any honest and lawful way, become the more desperate.'. The previous Act was therefore repealed.

By the repealing statute, also, benefit of clergy was practically declared to be in law that which it had long been in fact, the means of showing mercy to criminals convicted for the first time. What was at first a privilege giving practical impunity to all members of the clerical body who had committed any offence, became a privilege shared with them by educated laymen. When burning in the hand was substituted for ecclesiastical compurgation in the reign of Henry VII., little remained of the ancient institution except its name. But until the reign of Anne it was necessary for a successful claim of clergy that the claimant should be adjudged able to read. The advantages were therefore restricted to a class, and the allowance of them became the subject of many abuses. But, by the statute now under consideration, any person convicted of a felony to which benefit of clergy was not denied was, upon his own request, to be reputed and punished as a clerk convict, without any reading whatever.* The effect was that the criminal always carried with him in his burnt hand the register of his previous conviction, and could not possibly evade the law which debarred him from enjoying the privilege a second time. The judges had also the power conferred upon them of committing clerks convict to a house of correction for a period not exceeding two years.

Successive changes thus made a relic of extreme barbarism the first step towards a modification of the ferocious laws which deprived a man of his life by a brutal mode of execution for a very petty transgression. The first offence, if not too great or too little to be within benefit of clergy, met with a punishment which, apart

from the hideous custom of branding, could hardly be called excessive. Many crimes, however, were by various statutes made felony without benefit of clergy, and persons convicted of them were ruthlessly executed. According to such rules was justice administered in England, such was the clumsy fiction by which alone justice was tempered with mercy even in the eighteenth century. Branding was not discontinued until the reign of George III., and benefit of clergy was not entirely abolished before the reign of George IV.

Case of Fielding and the Duchess of Cleveland, &c.

About the time when the statute for burning in the cheek was repealed, there occurred a very remarkable case in which benefit of clergy was demanded for an offence to which that statute did not apply. Robert Fielding, a man in the position of a gentleman, entertained the design of retrieving his estate by wedding a woman of fortune. His wish became known, and he was assured that a Mrs. Deckan was sufficiently well disposed towards him to become his wife, though he was so little acquainted with her as not even to recognise her features with certainty. Nevertheless, when he was told that Mrs. Deckan would prove her affection for him by coming to his lodgings to be married, he sent in great haste for a priest to perform the ceremony. The lady came, and the marriage was solemnised. Mr. Fielding, however, soon afterwards discovered that his bride was not the rich Mrs. Deckan, but a penniless trull named Mary Wandsword, whom he had taken to wife at the mere suggestion of some clever conspirators. Still he was not to be thwarted in his purpose by this mishap, and not long afterwards persuaded Barbara, Duchess of Cleveland, to accept him as her

first wife to keep his secret, and was tried at the Old Bailey for bigamy. He was found guilty, but claimed his clergy. In earlier times a person guilty of felony was deprived of the privilege if it could be shown that he was a bigamist even in the clerical sense of the term, which included more than the same term in the modern sense. But in the reign of Edward VI. an Act was passed which gave benefit of clergy to the bigamist; and Fielding's claim was allowed, for, indeed, it could not legally be denied. In the ordinary course of law he would have been burnt in the hand, but he produced a warrant from Queen Anne to exempt him from this disgrace, and was simply liberated on bail. It might be wished that such mercy had been shown to a more deserving person.

Continued use of the *peine forte et dure*: first stage towards abolition: disuse of other torture.

The terrors of the *peine forte et dure* were still brought to bear upon persons who refused to plead. Nor were the obstinate simply threatened as a matter of form; they were actually pressed, as in the middle ages, if they persisted in their obstinacy. As an instance may be mentioned the case of Burnworth, who was arraigned at Kingston in 1726 for murder. He stood mute, and continued to stand mute after the usual warning; he was removed according to the ancient fashion, and placed under the weight. His fortitude was not equal to that of Strangeways, but was, nevertheless, sufficiently remarkable. For an hour and three quarters he bore the torture, and sustained life and resolution under a pressure of nearly four hundredweight. At last, however, he succumbed, and asked for mercy. He was brought back to the bar, and then boldly pleaded Not Guilty. All his sufferings availed him nothing; he was found guilty, and hanged.

Although, however, the press was not abolished until fifty years after its efficacy had been proved upon Burnworth, there were some faint indications of a desire to use a more gentle remedy. To Englishmen of the nineteenth century there may not appear to be any great mercy in tying the thumbs together, and drawing the cord tighter and still tighter until the sufferer finds the use of his tongue. Without actual experiment it would be difficult to pronounce whether the weight or the whipcord inflicts the more cruel pain. Still it is, perhaps, only fair to suppose that our ancestors believed they were showing some tenderness when they applied torments, not to the whole of the trunk, but only to the thumbs. Instances are by no means rare. Burnworth himself had his thumbs tied before he suffered the *peine forte et dure*, and we may perhaps consider that when John Durant in 1734 was forced to plead at the Old Bailey by means of the thumb-torture, aided only by threats of the press, he was, as it were, a harbinger of the happier days to come, when a person standing mute would be held to have pleaded Not Guilty.

Still we must in common honesty confess that our civilisation is only skin-deep when we remember that the following scene occurred in open court in London considerably less than a century and a half ago. Durant, it must be remembered, either was or pretended to be deaf and unable to read:

"*Court*: 'If he remains obstinate, he must be pressed.'

Whitesides, bawling (to the prisoner): 'The court says you must be pressed to death if you won't hear.'

Prisoner (*Durant*): 'Ha!'

Court: 'Read the law, but let the executioner first tie his thumbs.'

Then the executioner tied his thumbs together with whipcord, and with the assistance of an officer drew the knot very hard.

Prisoner: 'My dear lord, I am deaf as the ground.'

Executioner: 'Guilty or Not Guilty?'

Prisoner: 'My sweet, sugar, precious lord, I am deaf, indeed, and have been so these ten years.'

Executioner: 'Guilty or Not Guilty?'

Court: 'Hold him there a little. . . .

. . . . . .

'Now loose the cord, and give him a little time to consider of it, but let him know what he must expect if he continues obstinate, for the court will not be trifled with.'"

Then the prisoner was taken away, but in five minutes was brought back again, and pleaded Not Guilty!

Apart from the *peine forte et dure*, it does not appear that torture of any kind was practised in England after the earlier part of the seventeenth century. Torture for the purpose of extracting confession was one of many abuses which, in England at least, did not survive the Commonwealth. In Scotland it was formally abolished by statute in the reign of Anne. Great Britain may thus claim to have been nearly a century in advance of any of the other leading European countries; and England may claim to have been two centuries in advance of a German State, where torture continued to be legal as late as 1831.

While, however, unconvicted prisoners might be subjected to the whipcord and the press, the treatment of convicted criminals, as may readily be supposed, was not very humane. The pillory, indeed, comes most conspicuously into notice after the Revolution—not, perhaps, because more of-

Continued use of barbarous punishments: the pillory: instances.

fenders were pilloried, but because the punishment was one of the most brutal appeals to public opinion, and public opinion began, about the end of the seventeenth century, to be more faithfully recorded. Foremost among the persons exposed to the jeers and violence of the mob in this instrument were the brood of approvers, whose trade had descended from time immemorial. The pardon and pension granted to Oates, the most infamously mendacious of his tribe, served as a direct encouragement to other plot-mongers, who thought they might safely risk a pelting and a whipping for a comfortable income. A Jacobite plot seemed, in William's time, to be what a Popish plot had been a little before—probable in itself, and therefore easily invented. One William Fuller attempted to adapt the trade of Oates to new circumstances, and was within a little of succeeding. But fortunately suspicion fell upon him before he had sworn away a single life. He was tried, convicted, and (in addition to other penalties for his iniquity) set in the pillory.

After Fuller came Young, familiarly described as Parson Young, who also, when reduced to distress and imprisonment, found himself in possession of information affecting Marlborough and other leading men of the day. To the mediæval crimes of perjury and subornation of perjury he added the mediæval crime of forgery; but in spite of his ingenuity he was detected through the clumsiness of his accomplices. He, too, was sentenced to stand three times in the pillory, where he was pelted, it is said, as few had been pelted before.

Parson Young was not by any means the only person in orders who stood in the pillory during this period; nor were pretended Jacobite plots the only causes of this misfortune. It is, however, unnecessary to heap up

instances, and it may be sufficient to mention that in 1729 a clergyman named Kinnersly was condemned not only to pay a fine and be imprisoned, but to the pillory also, for having forged a number of notes of hand.

With the pillory there still existed the most horrible of all punishments—the stake for female traitors. It is strange that when burning was abolished as a mode of executing heretics, it should still have been retained for the terror of the weaker sex. The fact shows that in the progress of human affairs nothing is of such slow growth as humanity. In the reign of William III. there does not appear to have been any consciousness that the penal laws were, in many respects, disgraceful to any community but a tribe of savages. At the beginning of the year 1693, for instance, there is an entry in Luttrell's diary that 'Mrs. Merryweather was condemned to be burnt for printing King James's Declaration, and other treasonable pamphlets.' This is followed week after week by speculations whether Mrs. Merryweather would escape by betraying her accomplices; but the methodical note-maker never wastes his ink in making any reflections upon the sentence, or upon the expediency of calling together the populace to gloat over the agonies of a woman in the flames.

Public opinion respecting the stake for women.

Mrs. Merryweather, as it chanced, did not die by fire: She obtained a pardon, and, perhaps, thought treachery better than martyrdom. But other women, long afterwards, were less fortunate and testified, by their deaths, to the persistence of the savage's instincts. In 1721 Barbara Spencer was convicted of coining. For this offence a man would now be sentenced to penal servitude of some duration; a woman would also be liable to a similar sentence, but

The burning of Barbara Spencer in 1721.

the greatest possible leniency would be shown towards her, and the utmost possible consideration would be given to the probability that she had acted under male influence. In Barbara Spencer's time coining was high treason. She was sentenced to be burnt. She betrayed at first a not unnatural horror of the death before her; but when the hour came, she recovered much of her fortitude. She was bound to the stake at Tyburn; and never was the injury done by public executions to public morals more hideously shown than on July 5, 1721. Her last wish was that she might say a prayer in peace. But the mob which had come out to take its ease and its pleasure had no mind to sacrifice its rights for the comfort of a criminal. A woman at the stake was a good butt for filthy missiles and ribald jests; the yelling rabble would not permit the poor wretch to collect her thoughts or to hear her own words, and instead of sympathy they gave her stones. When the fire was kindled, even the consuming flames must have seemed less cruel than the men and women standing around.

and of Catharine Hayes in 1726.

Not very long afterwards, there was a case in which the punishment was more appropriate—if, indeed, there can be degrees of appropriateness in a punishment which no one with the least compassion for human suffering, or the least reflection upon the effects of example, would think of inflicting. Catharine Hayes was convicted in 1726 of having aided and abetted the murderers of her husband. This offence was petty treason, for which the sentence was the same as for high treason. There is no doubt that the crime of Catharine Hayes was immeasurably greater than that of Barbara Spencer, and that if any woman deserved to die at the stake it was she. But to burn one Catharine

Hayes was not the way to prevent the possible deeds of another. The fact that the law of treason was considerably modified in the reign of William III. for the purpose of securing a fairer trial, and that yet the punishment for women was not abolished, is one proof the more of the excessively slow growth of civilisation.

It would have been no less just or unjust to hold up superstition as the mark of the eighteenth century than so to hold up any other inheritance from the days of lawlessness and ignorance. In 1703 one Richard Hathaway was arraigned at the Surrey Assizes as a cheat and impostor. He had pretended that he had been bewitched by one Sarah Morduck, and that he had therefore been, for ten weeks at a time, unable to eat, had vomited pins, had become dumb and blind, and had found relief only when he could scratch the witch. The poor woman was in continual danger of her life. The mob would attack her in church, or wherever they could find her. She changed her abode, but still she was followed and persecuted. At last she obtained a warrant for the apprehension of Hathaway and another; but Sir Thomas Lane, before whom they were brought, was a firm believer in witchcraft. Such a crime he held to be a sufficient provocation for any violence; and in order to ascertain whether she had been guilty of it or not, he directed that she should be again scratched by Hathaway. The impostor was of course glad enough to give an easy proof that he had been bewitched, scratched his accuser, and immediately declared that he had recovered his appetite. When he had eaten greedily of bread and cheese the matter seemed as clear as day to the justice, who at once

Continued but diminished belief in witchcraft.

committed Sarah Morduck to prison, and it was not without much difficulty that he would permit her to be bailed. When, however, Hathaway was brought to trial, a jury had sufficient good sense to convict him. But it appeared in evidence that he had enjoyed a wide-spread sympathy, and that considerable sums had been collected for him. He might indeed have escaped, had it not unfortunately for him been proved that during his pretended fasts he had been actually seen to eat, and that his supply of pins to vomit came from a reserve judiciously kept in his pockets.

It was some indication of progress that even one person suspected of witchcraft could gain a triumph over her persecutors; and, in spite of the almost universal belief (which all the incidents betrayed) in the possibility of the offence, the issue of the trial was at least a good omen for future enlightenment.

The persistence of superstition, however, both now and for some generations to come, gave much of the ancient acrimony to all religious disputes. A populace which believed implicitly in witchcraft was much more easily excited to a religious riot than a populace such as that of our modern cities, which would treat an accusation of witchcraft as a joke. While the old credulity remained, the mob could be swayed as easily in one direction as another if either one religious extreme or the other was presented to it as worthy of persecution or contumely. It thus happened that the No Dissent riots of 1710 and the No Popery riots of 1780 were the counterparts of each other, each excited by a shallow-minded busybody. The No Popery riots belong to another chapter of this history; but the No Dissent riots are too strongly characteristic

Continued but diminished violence in religious disputes: the Sacheverell riots: Woolston.

of the earlier part of the eighteenth century to be passed over in silence.

A Dr. Henry Sacheverell, an enthusiastic member of what was and is known as the High Church party, had made himself notorious for his opposition to dissenters. With his religious opinions he mingled certain political opinions, such as the doctrine of non-resistance to the will of the sovereign—without regard to the principles on which the Revolution had been effected. He had preached and printed two sermons which in the latter half of the nineteenth century would have been allowed to die their own natural death, but for which in the year 1710 Dr. Sacheverell was made the subject of an impeachment of high crimes and misdemeanors. He had previously been a person of no great importance in the eyes of anyone except himself; but the extraordinary mode of procedure gave him an extraordinary popularity. Unthinking and uneducated people believed that any such latitude of belief as would tolerate either popery or dissent must be the inspiration of the devil. The mob was therefore in favour of Sacheverell, not so much because he held the abstract doctrine of non-resistance, as because he had shown a most unfaltering hatred of dissenters in the concrete. The House of Lords, indeed, found him guilty upon the impeachment of the Commons (though by no means unanimously) and passed upon him a sentence altogether out of proportion to an offence worthy of impeachment. He was forbidden to preach for three years, and the sermons which had been the origin of the charge were burnt by the common hangman. But the greatest sufferers by these proceed-

London against his religious adversaries. The ringleader was Daniel Damaree, a waterman, whose war-cry was 'High Church and Sacheverell for ever! Huzza!' The rioters sacked two of the dissenters' meeting-houses, pulled them down, and made a bonfire out of so much of the spoil as they did not keep for themselves.

Not very long afterwards an offence which in moden times would be punished at most by deprivation, and consequent loss of income, was most severely visited upon a Bachelor of Divinity named Thomas Woolston. Like many persons who have succeeded him, he accepted certain passages of Scripture in a merely allegorical sense, and he published some writings on the Miracles which were held to be blasphemy. He was prosecuted in the Court of King's Bench, and after verdict of Guilty had been pronounced, he was fined 100*l.*, sentenced to one year's imprisonment, and required to give recognisances for good behaviour during the rest of his life. As he would not undertake to be silent, or to change his opinions on the subjects on which he had written, he never recovered his liberty.

Slow but steady increase of commerce, wealth, and population.

To anyone who, in studying the history of crime, began with the time of the Revolution, it might appear that the state of the country was too dark for any previous state to have been darker. It is only by the careful investigation of earlier ages that it is possible to understand how great was the progress which had been made in the middle of the eighteenth century, small though that progress may have been when compared with the results attained a hundred years later.

advance of our present civilisation, had been allowed to progress, without much disturbance from abroad, for many generations. Elizabeth's reign had been one of comparative tranquillity, troubled, indeed, by threats of Spanish invasion, but not marked by such a drain on the national resources as there had been in the time of the crusades, or when the kings of England were struggling for the throne of France. The destructive wars between Scotland and England had been brought to an end by the accession of the Scottish King James to the English throne; and when in later years the Scots and English fought on British soil, the struggle was not national on either side, but a civil war for opinions upon which both the English and the Scots were divided. The military spirit had, therefore, ceased to retain its ancient strength, and in proportion as it was exhausted, the spirit of commerce and invention gained a power which was, indeed, already asserting itself, but which was to be displayed in more splendid fashion a few generations later. Men were already beginning to think and to write with some skill upon the principles of trade, or, as we should now say, of political economy. They were struck by an increase in the wealth of the country since the year 1600, which to them appeared, and, as a percentage, was undoubtedly, enormous, but which, considered as a total, would to modern eyes seem ludicrously small. There had also been a similar increase of the population. From the year 1600 to the year 1750 the gain was about 1,700,000, and between 1700 and 1750 rather less than half a million. The whole of the figures, however, for England and Wales were excessively low, as the highest and most carefully made estimate gives for the year 1600 a total of

total barely exceeding six millions, and for the year 1750 a total of about six millions and a half.

Many ancient restrictions on commerce still enforced.

The diminution of ignorance with the increase of the population and of wealth was apparent at first rather in the efforts of particular individuals than in the manners or customs of the nation or the acts of the legislature. Though there were works published of which the subject might be described as political economy, there were statutes still in force which expressed the opinions of the darkest ages upon matters of commerce, and had been founded on maxims almost as old as any of our records. Offences against the statutes to prevent forestalling, regrating, and engrossing still appeared upon the rolls, were still punished severely enough, and might even upon repetition be punished, as in the days of Edward VI., by the pillory. The Act of Elizabeth's reign 'touching divers orders for artificers, labourers, servants of husbandry, and apprentices,' was still in force and still enforced. Wages were ascertained and fixed yearly by justices in sessions. To give or to receive wages at any higher rate was an offence punishable by imprisonment; and the rolls of the Queen's Bench show that the statute was no dead letter. There is even a little evidence that the practice of paying workmen in kind instead of in money, though forbidden by a statute of the reign of Edward IV., still lingered in some districts, and was the cause of discontent.

Persistence of ancient frauds: false stamps, coining, clipping, and counterfeiting.

With the ancient ignorance of commercial principles, there remained the ancient practice of fraudulent dealing in the chief branches of commerce. It was found necessary to appoint inspectors, with power to enter mills and examine the woollen cloths made in them—in short, with functions

as nearly as possible the same as those of the alnagers of old. Penalties were provided for abuses and frauds in the dyeing trade. The stamps of British and Irish linen (the originals, in part, of our modern trade-marks) were frequently counterfeited, and foreign linens were bought, stamped, and exported, to the deception of purchasers abroad. These evils, however, do not appear to have increased with the increase of trade, for they do not come into greater prominence either in the statute book or in the rolls.

Severity of punishment seems to have had no more effect during this period than before in checking offences against the coinage. It is impossible to turn over a few pages of Luttrell's diary without seeing a note upon 'clippers.' In one page it appears that some of them have been sent to the Gatehouse; in another that they are hanged at Tyburn. In the preamble of a new statute it was alleged that the current coin had of late been 'greatly diminished by rounding, clipping, filing, and melting.' There existed, it seems, 'a trade of exchanging broad money for clipped money,' and it was therefore enacted that any person convicted of exchanging a sum in unclipped silver coin for a larger sum 'in tale' should forfeit ten pounds for every twenty shillings. This penalty was light enough in proportion to the punishment for counterfeiting; but, as though to prove that the old love of mutilation was still by no means extinct, there was added a clause that anyone knowingly having in his possession any clippings or filings of the current coin should not only forfeit five hundred pounds, but should also 'be branded in the right cheek with a hot iron with the letter "R."'

The very ancient crime of clipping was naturally

accompanied by the very ancient crime of counterfeiting seals. In March 1694 it was discovered that there had been a great plot, apparently in the interest of the Jacobites. The seal of the secretaries of state had been counterfeited; Secretary Nottingham's handwriting had been forged upon several blank warrants and passes; counterfeit badges, made in imitation of those commonly worn by the king's messengers, had been discovered. The wearers of the badges, it was said, were to have taken the lords lieutenant and deputy lieutenants in the various counties: they would thus have crippled the military resources of the kingdom, so that James might safely have landed while William was in Holland. There was very little novelty in this device, for false tokens and false warrants, as well as false coin, had been the common implements of traitors and other criminals generation after generation.

With the promise of a new state of society there was, as it were, a foreshadowing of the evils to which a nation made great by commerce is most subject. It is worthy of remark that just as commerce was infected by fraud at its very birth, and just as the men who discovered the ports of far distant lands were pirates, one of the earliest experiences of the public in great trading companies was that of shameless double-dealing and deception. The monopolies of earlier times had had two distinct effects: they had excited the jealousy of persons who could not profit by them, and had set men thinking how profits could be made in similar fashion. The result, as wealth increased, was a number of projects varying in magnitude from the South Sea Company on the model of the East India Companies to the most short-lived bubbles which exploded in

Ancient dishonesty and more modern companies: Bank of England: South Sea stock.

a day. Foreign wars had given us a national debt which seemed to be of alarming magnitude as early as the year 1720. But the possibility of lending money to the nation was in itself a suggestion that money might be profitably employed in other investments. England had contracted a debt of a million in 1692, and during the next three years there was a mania for companies, some of which were most transparently fraudulent. From the year 1695 to the accession of George I. there was little opportunity for the smaller trading ventures, as the national debt increased from one million to fifty-four, and, no doubt, absorbed the greater part of the savings of Englishmen.

As, however, in the centuries immediately succeeding the Norman Conquest, the crown had increased its revenues by granting charters to towns—as in the sixteenth and earlier part of the seventeenth centuries the policy had been to grant monopolies for a consideration, so in the latter part of the seventeenth and in the beginning of the eighteenth centuries the Government perceived that there was a possibility of raising funds by means of companies. Had the Government not been in serious pecuniary straits in 1694, the Bank of England would not have sprung into existence—in that year at any rate. But as experience then showed that when money had been borrowed for a national purpose, the company which had been the agent in borrowing might continue to enjoy a prosperous career even in the midst of innumerable bubbles, it was only natural that when a new difficulty presented itself the successful expedient should be tried again. In 1694 twelve hundred thousand pounds had been borrowed from the Bank, and the

dition of lending the sum required. In 1711, when it was seen that the war was drawing to a close, a part of the liabilities of the nation was a floating debt of about ten millions. Harley, who was then Chancellor of the Exchequer, succeeded in carrying an Act by which the duties on various imports were assigned for payment of the interest on this amount at the rate of 6 per cent. *per annum*. He also proposed that the lenders should form themselves into a company, which should enjoy a monopoly of the trade to the South Sea, and by his persuasion they were actually incorporated as 'The Governor and Merchants of Great Britain trading to the South Seas and other parts of America.' By this contrivance the Government relieved itself from immediate pressure, and converted the floating into a permanent funded debt. But one of the provisions of the treaties, signed when the Peace of Utrecht was concluded, was that England should have the privilege of supplying the Spanish American colonies with negroes for thirty years. The benefit, if benefit there was, of this Asiento Treaty fell to the lot of the South Sea Company. And thus a considerable section of the holders of the English national debt were converted into traders, a part of whose recognised business was to supply America with negro-slaves from Africa.

After these successes, the Government began to look upon the South Sea Company and the Bank of England as the two great sources from which money could be most easily drawn. In 1719 a suggestion was made that a device similar to that which had been applied to the floating debt in 1711 might be applied to other portions of the national liabilities. In the following year both the

corporation which had the less to lose naturally offered the more. The South Sea Company could easily outbid the Bank, and after long debates in Parliament the offer of seven millions and a half was accepted in return for the privilege of converting about thirty-four millions of national debt into South Sea stock. The company was to receive five per cent. *per annum* on the amount until 1727, and afterwards four per cent. In order to effect this operation, which required an increase in the capital of the company equal to the amount for which it rendered itself liable, both the old members and the public at large were invited to subscribe. Hence arose the famous South Sea speculation, and the innumerable bubbles by which it was accompanied.

Except, perhaps, in some insignificant mining shares, there has never been so great a rise in any worthless security as there was in South Sea stock in the year 1720. The company, it should be remembered, had hitherto been remarkable for nothing but failure, so far as its mercantile ventures were concerned. But when the second South Sea Act was passed in 1720, all classes alike were inspired with the belief that the transactions which were insufficient to pay a high interest on ten or eleven millions must yield a return incalculably great upon forty or fifty. Subscribers rushed in headlong, and in a few months the price of the one hundred pounds stock was more than a thousand pounds.

The fraudulent company-mongers of 1720.

Such credulity as this could not fail to act as a stimulant to the classes which prey upon the credulous. If fortunes could be made out of nothing by South Sea stock, why not by any other kind of stock? The public

schemes, some of which, it may be remarked, appeared upon the surface very much more practicable than the South Sea scheme itself, and have even been successfully carried out in more recent times. One of the 'promoters,' —to use a modern term—suggested a company for trading in human hair, and there can be no doubt that the traffic now gives a profit to individuals, if not to companies. Another had a plan for converting salt water into fresh; and though the conversion might not be lucrative, it is beyond all question practicable. It was inevitable, too, that the old notion of the alchemists should be revived, and that there should be companies for the transmutation of the metals. Perpetual motion is the dream of some men, who are not altogether without ability, at the present day, and was, of course, a good Stock Exchange cry in the year 1720. Humour is one of the distinguishing characteristics of the British intellect, and it was, therefore, only natural that some one should propose to make the fortunes of his neighbours by importing asses of a gigantic breed from Spain. The means, indeed, mattered but little, provided the end to be attained was wealth; and everyone from the lacquey to the prince believed that wealth was within reach if only he held stock in a company. The Prince of Wales (afterwards George II.) became governor of a Welsh copper company; and many other projects of a character with which our own generation is quite familiar were rendered popular through the names of well-known dukes. Considerable skill, too, was shown by the adventurers in attracting persons who had a little money, but who were yet not rich. In some cases a shilling only, and in others a sixpence was required as the first instal-

than a shilling was required for an allotment of a thousand pounds. Upon a capital of a million or two, such deposits were by no means inconsiderable, and left a handsome balance to the company-monger after the rent of the subscription room had been paid. One ingenious financier, indeed, took a room for only a day, occupied it during only half the time for which he had taken it, and yet made off with a considerable sum when he left it. He was a greater humourist than even the ass-importer. He had, he announced, a great idea, for the success of which secrecy was absolutely necessary. He would tell what it was in a month, but in the mean time capital was required, and happy would be the men whose capital entitled them to a return. All that he expected to gain in a month he was fortunate enough to gain in a morning; and about a thousand silly gamesters paid him, in a few hours, two guineas each for a share of—Nothing.

To a philosopher of the laughing school of Democritus not the least amusing part of the comedy, which was about to be transformed into a tragedy, would be the complaint raised by the South Sea Company against its rivals in popular favour. On one pretext or other its managers had legal proceedings instituted against the public officers of the more transparent bubbles. Disclosures were then made which had the effect of awakening some of the speculators from their dreams of infinite wealth. Prices began to fall, and new projects could no longer find subscribers. So far the South Sea directors attained their end; but it was inevitable that as the apparent success of the South Sea Company had called forth a number of imitators, the distress of the imitators should react upon the company. When Englishmen

were so far restored to their sober senses as to perceive that they might employ their gold with more hope of profit than in an attempt to convert lead into silver, they also began to doubt whether the South Sea schemers could or would make all their fellow-countrymen rich. Then followed a panic which, if regard be had to the resources and population of the country, was the most terrible that ever afflicted England. All who had been buyers in August were sellers in September, and while a host of minor projects were utterly swept away, the unfortunate holders who had given a thousand pounds for South Sea stock only a few weeks before, had difficulty in finding purchasers who would offer a hundred and fifty. Innumerable families of almost every rank were ruined; and, as commonly happens, in similar circumstances, the greatest sufferers were those who had had but little to embark in the venture and had embarked it all. The fatherless and the widow were brought to beggary, for women had been among the most eager of the gamblers. The clergyman who could not sympathise with the dissenting minister upon any other subject, could sympathise with him upon the blessings of poverty, with the advantage of experience on both sides. The tradesman learned too late that he had done wrong in despising the little gains of his trade, and, in the greed for splendour, lost even his shop. Statesmen of all shades of opinion had attempted to improve their fortunes by the aid of the stock-jobber; and, as they had better information, they made more or lost less than their inferiors in station. Those of them, however, who did not suffer in substance, became bankrupt in reputation.

ably causes anger which is by no means discriminating in its objects. The men and women who were ruined in 1720 might well have been angry with themselves for their own credulity, and with the directors of the South Sea Company for spreading false reports; they seem, however, to have been most angry with the Government and with the intriguers of high rank who had, perhaps, contrived to be saved and even to be enriched at their expense. There cannot be a doubt that great frauds had been committed, and that members of both Houses of Parliament had received bribes for the 'promotion' of the South Sea scheme. A share of the spoil had been given to the king's German mistresses; and the Prince of Wales had grown richer, it was said, by forty thousand pounds before he had abandoned his copper company. A parliamentary enquiry into the origin and management of the South Sea scheme was, therefore, for many reasons, necessary. It was the best mode of diverting attention from higher quarters to the South Sea directors; and each party thought it might be made, like the enquiries of earlier times into heresy or witchcraft, a very useful political engine. The politicians who were guilty of corruption were as ready for a party struggle as those who were innocent, and everyone thought he could lay the blame on an enemy, and at the same time satisfy the public with respect to himself.

Corruption of statesmen and forgery disclosed by enquiries into the management of the South Sea scheme.

The debates in both Houses were furious. Charges and recriminations were bandied to and fro, perhaps without much regard to truth, and certainly without any regard to temper. Lord Stanhope, who was perhaps as little involved as any of the politicians of the day, died of the excitement caused by a wrangle with the Duke

of Wharton. Everyone, of course, denied all complicity with the wrong-doers, whoever they might be, and almost everyone clamoured for vengeance. The villains must not be permitted to escape, was the common cry, they must give up their estates, they must be thrown into prison, they must be hanged, they must be tied up alive in sacks, and thrown into the Thames.

Out of all this hot talk came an examination of five of the South Sea directors at the bar of the Lords, and a secret committee of the Commons to inspect the company's books. The directors did not deny that stock had been distributed to obtain votes for the passing of their Act, and it was in the debate following their admissions that Stanhope lost his life. According to the report of the Commons' committee, great sums in real or fictitious stock had passed through the hands of Lord Sunderland, the prime minister. It was not clear that he had himself made a profit out of the wreck, but it is by no means improbable that he made arrangements with the directors by which he could use their paper for the corruption of members of Parliament. If this was done, it was only natural that he should be declared innocent of fraudulent dealings by the men whom he had bribed. He lost his office, however, and could never afterwards regain it. But the mere act of bribing members of Parliament was, in those days, so venial an offence, that none but political opponents would attempt to make a serious charge out of it, and Walpole, who was the presiding genius in calming the South Sea panic, was afterwards the most notorious of all ministers who bought the votes of followers. It is

ages, which at once gives probability to the gravest accusations made against men in high places, and, from one point of view, extenuates their dishonesty. Dishonest though they may have been, they were not so much more dishonest than their contemporaries as ministers of the present day would be who should imitate the doings of Aislabie. This man was Chancellor of the Exchequer during the South Sea mania, and Parliament came to the conclusion that he had most unscrupulously made use of the scheme and of his public position to serve his own private interests. He was expelled from the House, and committed to the Tower. If he did not deserve this fate more than others who escaped, there can be little doubt that his punishment was not out of proportion to his misdeeds.

The directors of the South Sea Company who happened to be in Parliament were, like Aislabie, expelled from it, and declared incapable of holding any office under Government. Their estates were seized for the benefit of the sufferers, and some of them either were, or succeeded in representing to the world that they were, poorer after their connexion with the company than before. Whatever frauds may be perpetrated, there are always in similar cases some men whose greatest fault has been negligence or easy temper, rather than a deliberately fraudulent intention. There were, no doubt, some of this character in 1720, and, though they cannot be held blameless, there is good reason to believe that they suffered, as many had suffered before, because party passion ran high, rather than because there was any strong belief in their criminality. A contemporary, however, the author of the 'Annals of Commerce,' who was one of the South Sea Company's clerks, and who says all

that can be said in extenuation of the conduct of the directors as a body, does not attempt to deny that in order to ensure the success of the scheme they gave either the company's stock or the company's money to persons of influence. He admits that their friends were allowed to be in the position of subscribers or non-subscribers as the stock rose or fell in the market, and that the books showed numerous instances of a tampering both with the names of the holders and with the amounts of the holdings.

It is a remarkable fact that the most disgraceful acts attributed to the South Sea directors and their political allies are precisely such as might have been imitated from the parliamentary and other political deeds of a very much earlier time. For this reason, perhaps, the similar commercial disasters of later days have been, relatively to population and wealth, less terrible, less distinctly traceable to criminal intent, and less obviously accompanied by criminal actions. In 1720 the old feeling of partisanship, which made one man and his friends the enemies to death of another, was distinctly apparent in Parliament; the old evils of corruption and extortion again came to the surface—corruption on the part of the men who had money to give, extortion on the part of the members who wished to receive as much as possible; above all, the great mediæval crime of forgery played a conspicuous part, and the accounts of the South Sea directors, like the charters of monasteries, and even the rolls of the king's courts, bore the silent testimony of fraud in their erasures.

The corruption disclosed by the enquiries into the management of the South Sea scheme was but part of a great whole, and, though the sums which passed from

hand to hand might not have been so great, would have existed in one form or other even if no attempt had been made to lighten the national debt, and if neither the South Sea Company nor the Bank of England had been projected. Corruption and partisanship had descended hand in hand from the earliest times of which any records, in the proper sense of the term, remain. Mankind had not been growing worse generation by generation until the mercenary spirit culminated under Sunderland and Walpole; but there was a fiercer light beating on the public men of their days than had been thrown on the public men of an earlier period, and as they lived nearer to ourselves, we are able to see them more clearly as they were. After the reign of Charles I. the House of Commons was of greater importance than it had ever previously been, and the ancient principles of action were perhaps applied with more than the ancient skill to new combinations of circumstances. There had been a time when a member of the Lower House was hardly worth a bribe, and when a peer took his bribe in the form of land which had belonged to a political rival. Gifts of money were then accepted by commanders of garrisons and judges of the king's courts, and the various officers of state had been guilty of peculation from time immemorial. The politicians of the eighteenth century did but follow an endless series of precedents.

Corruption inherited from past ages: distinguishing features of corruption at the beginning of the eighteenth century.

It was probably not merely by chance that one of the most notorious names associated with parliamentary corruption was that of a judge—a cousin, and in early life a follower of Jeffreys,—whose misfortune it was to bear the blame of all the traditions upon which he acted. To Jeffreys, perhaps, Trevor owed his first

advancement in life and his appointment as Master of the Rolls; from Jeffreys, perhaps, he learned that mediæval audacity and unscrupulousness by which he was enabled to act the double part of briber and bribed. He was Speaker of the House of Commons under James II., and he may be regarded as a sort of conduit by which many of the worst modes of thought and action were carried over the wide chasm in our history made in some sense by the Revolution. He was not the inventor of the art of buying votes, which can be traced back in a rudimentary form as far as the Cabal administration of Charles II.

Illustration from the conduct of Trevor and Danby.

The Earl of Danby adopted and developed the tactics of the Cabal. He was one of the chief agents in supplanting James II., and seating William and Mary on the throne. He placed at the service of the new sovereigns the devices by which he had served the old, and his experience taught him that he could have no better subordinate to work out his designs than Sir John Trevor.

Danby, now created Marquis of Caermarthen, and Trevor, again Speaker, with the assent of William III., which was given with real or feigned reluctance, deliberately set themselves to pass, by the aid of bought votes, such measures as might seem expedient. Both of them illustrated the adage that men cannot touch pitch without being defiled. Both of them were accused of receiving, as well as of giving, bribes; and both were disgraced because the charge was believed to be true. Trevor, being the inferior, suffered most. He accepted a thousand pounds to aid in passing an Act for a City Orphanage. In the following session a com-

mittee of the Commons was appointed to inspect the books of the Corporation of London, and of the East India Company. The transaction with Trevor was then discovered and reported to the House by the committee. It was moved that he had been guilty of a high crime and misdemeanor; as Speaker he was compelled to put the question, and himself to declare the motion carried against himself. He was afterwards expelled from the House; but the morality of the age was such that no attempt was made to remove him from his position as Master of the Rolls.

Caermarthen, if more fortunate, appears to have been not less guilty. As Sir Thomas Osborne he had been raised to the peerage by Charles II., with the title of Earl of Danby. For his services to William, before William was on the throne, he was made a marquis; and his subsequent conduct was so little displeasing to the king that he was created Duke of Leeds. His impeachment was twice voted by the Commons, once as Earl of Danby, and once as Duke of Leeds; but on neither occasion was he tried. The first time he was accused of being concerned in some arrangements by which the court of Charles II. was supplied with money from the French king. In this he may have been acting under Charles's direction, and without any immediate interest in the proposed transactions. The second time the charge was one from which no such excuse could exculpate him. The committee which discovered that Trevor had accepted bribes from the City Corporation, discovered also that Sir Thomas Cook, the Governor of the East India Company, had been entrusted by the directors with large sums of money for purposes not clearly defined. A portion was traced, if not into the hands of the duke, at

least as far as his house. Cook, of course, did not give to the duke in person what was given. He had agents, and the duke had agents too. He entrusted to one Firebrace that which Firebrace entrusted to one Bates. What Bates received from Firebrace he handed over to Roberts who was a confidential servant of the duke. As soon as the committee met, the money was paid back; and when the committee made its report, Roberts disappeared. The absence of the man whose evidence would have been of the greatest importance caused the second impeachment of Leeds to be abandoned like the first. But there was some improvement shown in the spirit of the age by the fact that the duke never quite recovered his previous influence. Still, it could hardly be said that he was disgraced; and he retained to the last the wealth accumulated in a skilful and not over-scrupulous political career.

When the corrupters were themselves corrupted, the members who were willing to be bribed by a minister were naturally as willing to take gifts wherever they could be found, and to help themselves whenever opportunity presented itself. Among the consequences of this state of society were most unseemly disputes in the House of Commons. One Charles Duncombe, goldsmith, banker, and late cashier of the Exchequer, brought in 1698 a charge of peculation against the Commissioners of the Treasury in general, and particularly against Charles Montague, afterwards Lord Halifax. On this occasion the tables were turned, and it appeared upon enquiry that Duncombe himself had, while holding his office in the Exchequer, been guilty of frauds in effecting which he had employed a forger to assist him. This, indeed, he confessed; and, as there

Duncombe and Montague: Bill of Pains and Penalties.

was some difficulty in bringing him to justice by the ordinary process of law, there was introduced into the House of Commons a Bill of Pains and Penalties to deprive him of two-thirds of his whole property. It passed the Lower House, but the Lords, much to their credit, threw it out. Duncombe probably deserved all and more than all the punishment which the Commons wished to inflict on him; but if rascals guilty of an offence against which there appears no sufficient legal provision were each to be the subject of an Act of Pains and Penalties, they would do a far greater injury to society than if they remained unpunished. In the one case they would only show that the law is, as it always must be, more or less defective; but in the other they would soon destroy law altogether, and place the lives and liberties of their countrymen at the mercy of a body without legal training, and easily led away by the passions of party. It is to be hoped that, whatever may be the future of England, there will never be drawn either another Bill of Attainder, or another Bill of Pains and Penalties.

In the commotion caused by the discovery of Duncombe's misdeeds the charge against Montague was for a while forgotten. There had, indeed, been no difficulty in disposing of it in the first instance, because the majority of the House of Commons was on Montague's side. The time came, however, when he was not so strong; and then it was said again that he was corrupt, as it was said of almost every minister who lived in the period now under consideration. In the end he had to resign office, with nothing definitely proved against him (except that he had received from the king a reward for his services), but under a wide-spread suspicion that he

had grown rich by those practices which made politics a dishonourable trade.

Montague was the chief patron of Paterson, who was the projector of the Bank of England. Out of physical corruption comes new life, and out of moral corruption have grown all our financial institutions. The great gambling mania, which began a little before the establishment of the Bank of England, subsided for a time, only to break out again and be more sharply repressed when the South Sea bubble burst in 1720. But as bribery preceded, and flourished throughout this remarkable period, so the practice was carried on to a later generation, and was accompanied, as at first, by fraud and peculation. For twenty years after the South Sea disaster, Robert Walpole was chief and almost absolute minister; and unless he has been greatly wronged by his contemporaries, and by his son Horace, he kept his power by the judicious distribution of money, both to secure seats in Parliament and to secure the votes of members. Before he attained his highest position, as early as the year 1712, he was involved in transactions which would now be considered very discreditable—and again in 1717, in order to obtain the reversion of an office for his son. He had, however, only done as others commonly did; and his conduct indicated not so much his own depravity as the character of his age. When, year after year, he maintained himself in office, he excited the jealousy and anger of men who were prepared to do as he had done in order to occupy his place. They alleged against him as crimes the acts by which, no doubt, many of them had profited; and though a secret committee to investigate his conduct was unable to establish anything definite against him, he left

Conduct of Sir Robert Walpole.

office without having given any satisfactory explanation of the expenditure, which was ascertained, of great sums of money for secret service, or of the means by which he had risen from comparative poverty to opulence. During Walpole's administration, as before, less powerful but still conspicuous men were detected in offences with which government by the purse is very closely connected. Among them, Sir Robert Sutton, who had been the British ambassador at Paris, had, as discovered by a parliamentary committee, been guilty of misappropriating the funds of a charitable society, and was ignominiously expelled from the House in 1731.

Horace Walpole, the son of Robert, lived nearly to the end of the eighteenth century; and it is easy to discern in his writings an almost unhesitating approval of the means by which his father retained office, and a contempt for any minister who might be so weak as to have any hesitation in buying a vote. He is not a writer to be implicitly trusted, but his vanity was so great, and was so inseparably associated with the position to which he was born, that he may be trusted when he admits his father to have been guilty of the conduct which his father's adversaries, for their own purposes, declared to be reprehensible. Nor is there any reason to doubt him when he represents Pelham as following in the footsteps of Robert Walpole. No man was a greater lover of gossip, or had better opportunities of gratifying his taste, than Horace Walpole; and, although he would undoubtedly have spoken as maliciously as possible of Pelham, his malice would have taken a different form had Pelham never given a bribe to a member of Parliament. He would have said that Pelham was too much

Conduct of Pelham.

wiser Robert Walpole had done. What he did say is one of the most remarkable illustrations of the tone of thought of the eighteenth century. It was this:—'In his knowledge of the revenue, Pelham and all other men must yield to Sir Robert Walpole, though he and all other men made the same use of that knowledge—which is to find new funds for the necessities of the government—and for the occasions of the administration. By those occasions I mean corruption, in which I believe Mr. Pelham would never have wet his finger if Sir Robert Walpole had not dipped up to the elbow. But as he did dip, and as Mr. Pelham was persuaded that it was as necessary for him to be minister as it was for Sir Robert Walpole, he plunged in deep. The difference was that Mr. Pelham always bribed more largely as he had more power; for when it tottered he the less ventured to prop it up by those means, as he was the more afraid of being called to account for putting them in practice.'

However ill-natured Horace Walpole may have been, and however much his writings may sometimes remind us of the posture-master, there is no doubt that his insight into character was most penetrating; and, in the passage just quoted, he has shown a thorough appreciation of the manner in which political necessity has influenced political actions. Not only had corruption long been the rule in politics, but when Pelham became First Lord of the Treasury he found corruption the rule still, and the wealth of the country greater than it had been at any previous time. But he found also that greater publicity rendered bribery a more dangerous game than of old. The greater danger made him more timorous than some of his predecessors, and caused him to hesitate where they would

have gone boldly on. This was the beginning of a new state of society, in which money, at any rate, was no longer to be given as the price of support to a minister. The old state practically lasted Pelham's time, and, no doubt, many years longer, but seems to have been quite at an end early in the nineteenth century.

Charges of treachery and bribery in the military service: Marlborough.

It may be said that during the period now under consideration the more eminent a man was the more certain he was to incur, justly or unjustly, the charge of peculation. The practice, of which Barillon has told us, of giving French gold to English statesmen descended, there is too much reason to believe, from the days before the Revolution to the days after it; and the struggle of dynasties naturally fostered the avarice which feeds upon treason. Thus it happened that one of the most successful of English generals lies under the suspicion of having betrayed English lives to French muskets, and of having grown rich by transactions more than dishonest. An age must, indeed, have been corrupt which hands down to our admiration, as its greatest and most honoured man, a man whose character for the sentiments of honour and for common honesty it is so difficult to defend as that of Marlborough.

Marlborough, however, is the last of our great British generals who have been accused of such treachery as was commonly alleged against our mediæval commanders in the older French wars. The expedition sent in his time against Brest was the last which could have cried with any semblance of justice, 'We are betrayed!' And, though a lover of abstract principles would naturally predict that there could be no great increase of purity in

in others, it is still a most remarkable fact that corruption begins to disappear in all the higher grades of society about the same time. One of the chief causes was the growing power of public opinion.

Corruption in the legal service: case of Lord Macclesfield.

About the year 1715 the corruption in the courts of justice began at length to be regarded as a national grievance. In our own time, if similar evils were suspected or known to exist, they would probably be exposed in some of the newspapers. In the earlier part of the eighteenth century the printing-press lent its aid towards finding a remedy in the form of broadsides. In one of the most remarkable of these publications, 'delivered at the lobby of the House of Commons,' is suggested the need of 'an enquiry into several corruptions relating to the administration of a great part of the laws of England.'

It was alleged, and with some show of reason, that it was customary for the Lord Chancellor and Master of the Rolls "to take new year's gifts from the counsel and other practicers and officers of the court, and to make their domestic officers accountable for the profits of their places.' It was also said that the two Chief Justices 'still received new year's gifts from the Marshal of the King's Bench and Warden of the Fleet Prison, and that some of the judges shared fees with their clerks, both in court and in their chambers.' On circuit, it was believed the judges 'received presents (as in former times) from the capital officers of corporations, the circuit counsel, and as many of the country gentlemen as would keep up the custom.' Various other corruptions were rightly or wrongly suspected, and vaguely or precisely indicated in similar effusions. Unsupported accusations of this kind are worth very little in themselves, but the bursting of

the South Sea bubble led to a remarkable confirmation of the popular suspicion in some most important particulars; and it may reasonably be inferred that what was true of one court was true of others.

One of the most unfortunate contemporaries of Walpole and Marlborough, though perhaps not the most guilty, was Thomas Parker, Earl of Macclesfield and Lord High Chancellor. In those days there were certain officials known as Masters in Chancery, to whom were entrusted the moneys of suitors in the court. After the collapse of the South Sea and other companies one of these Masters absconded, and a serious deficiency was discovered in the Masters' offices. A great outcry was raised against the Chancellor, who was considered responsible for the misdeeds of his subordinates—not only because they were his subordinates, but because, as it was alleged, they had paid him for their places. In less troubled times, perhaps, Macclesfield might have held on; but the groans of ruined men and women forced him to resign, and forced Parliament to take some further action. The king himself (George I.) communicated to the Commons certain reports which he had caused to be laid before him, and shortly afterwards an impeachment of high crimes and misdemeanors was voted against Macclesfield in the Lower House. A bill to indemnify witnesses was then introduced and carried—a necessary measure, perhaps, at such a time, and by no means unusual, but a most dangerous precedent, and one full of encouragement to the perjured informer.

Twenty-one articles of impeachment were presented by the Commons to the Lords, but they all had reference to the dealings of the Chancellor with the inferior officers of Chancery. It was alleged that when one of the

Masterships or other offices was vacant he was in the habit of selling the place for money, that he had connived at the fraudulent disposition of the property of suitors by the men whom he had corruptly appointed, and that he had attempted to conceal the misdeeds of the absconding and the other dishonest Masters. The answer of Macclesfield was practically a confession of the acts imputed, so far at least as the appointments were concerned, but a justification on the ground of ancient and uninterrupted usage. This defence was in one sense complete, in another sense worthless. Corruption had been the vice of men high in office from time immemorial, and it was corruption which had always given the chief pecuniary value to high offices. But, on the other hand, there had never been an age within the reach of records, when corruption had not been, nominally at least, criminal. Chancellors and other judges, it was true, had been in the habit of taking bribes; but they had always taken the bribes at their peril, and had sometimes, like Bacon, suffered for the taking. Precedent, no doubt, was in favour of Macclesfield up to the point when he was called to an account; but he was wrong in supposing that precedent would operate towards rendering his course legal in the eyes of the Lords. Others had been accused and had been acquitted in similar circumstances, not because they were held to have acted as became them in doing what they did, but because they had supporters enough to declare that what they did they had not done.

Popular clamours were so loud that Macclesfield could hardly have escaped had his case been better, or his defence more skilful, or his friends more numerous than they were. The mere sale of the Masterships was

possibly not even illegal, but the Chancellor could not clear himself of a guilty knowledge that the moneys of persons who had sought the protection of the court had been used partly to pay his price as the seller, and partly to furnish the Masters with capital which they lost on the Stock Exchange. It was in the power to traffic with money which did not belong to them that the Masters sought a return for the sums which they expended in the purchase of their offices. It was in the consciousness that this was the power which he sold that lay the real crime of the Chancellor. But though there is no reasonable doubt that Macclesfield was corrupt, and altogether indifferent to the interests of wards and suitors in Chancery, there is also no doubt that, like Empson and Dudley, he was a most unfortunate man. Had his lot been cast in times before the rise of the South Sea Company, he might have taken his perquisites and died in peace. But society was in a state of transition, and he suffered, not because he fell short of the recognised standard of morals, but because he failed to perceive that the standard which had long been recognised was not quite suited to the age and the special circumstances around him. The Lords unanimously found him guilty, and their sentence was that he should be fined thirty thousand pounds, and be imprisoned until the sum was paid.

Out of evil—it might, indeed, be said out of injustice to Macclesfield—issued much good. The time had come when it was necessary that, if society was to be held together at all, there should be some confidence between man and man, apart from the family tie, and from the dependence of retainer upon lord, which were the bonds in earlier ages. Commercial dealings were now becoming common to all classes; and

Reform effected in Chancery through the growth of commerce.

all classes were beginning to have an interest in commercial morality. Land had ceased to be the only investment for money; and the dealings both of possible suitors in the Court of Chancery, and of the Court of Chancery itself in their behalf, were beginning to be more diversified than they had been in earlier times. The Court of Chancery, in fact, could no longer continue in existence if its ancient corruptions were to remain in existence with it. The anger of ruined South Sea stockholders was not to be despised, and it was very fierce in its denunciations of the court. The thirty thousand pounds which Macclesfield had to pay were applied towards the satisfaction of claims against the Masters, who had probably lost their own money by their speculations with the money of others, but who were commonly associated in the minds of sufferers with the odious South Sea frauds. And thus by the force of events—or, as it appeared at the time—of a frenzied eagerness for wealth, of a repentance which was a clamour for vengeance, and of a reasoning which was most illogical—the Court of Chancery began to undergo a reform. But in the midst of all this commotion it is not very difficult to perceive the even tenour of national progress. Had there been no accumulations, no accumulations could have been invested in the South Sea and kindred companies; the wealth which had been growing required an outlet somewhere, and the bubble which floated in one direction might have floated in another with precisely the same result. The fate which overtook Macclesfield might possibly have overtaken the next chancellor instead of himself; or some greater man than Macclesfield might have been equal to the occasion, might have gained glory where Macclesfield gained only dishonour, and might have him-

self initiated the changes which were forced on Macclesfield's successor after Macclesfield's conviction. But the main result would have been the same. The old abuses could not be permitted in the altered state of circumstances; and Lord Macclesfield, not being a man of genius, allowed himself to be disgraced, and Lord King to earn without difficulty the honour which had been within his own grasp.

Macclesfield attempted, too late, a reform which would have made him famous had he seen the necessity for it in good time. When the malversations of the Masters were discovered, he ordered that, in future, every Master should deposit all trust-moneys in the Bank of England, in a chest, of which there were to be three keys, one for the Master, one for certain officers known as the Six Clerks, and one for the Governor of the Bank. After Macclesfield's impeachment and sentence, King made an order which was in substance identical with Macclesfield's; the Masterships were no longer sold; and some Acts were passed for the better management of the moneys of suitors in Chancery, and for the transaction of Chancery business in general. King's name is therefore associated with the first important change in the management of the court; and though the change left abuses enough remaining, it was one of many indications that a time was approaching when justice would begin to deserve the name.

Concurrently with various other causes, a change effected in the wording of the judges' commissions soon after the Revolution aided gradually in introducing a softer and more refined manner upon the Bench. The direct or indirect interference of the sovereign to influence the court while cases were

The judges' commissions: gradual change in the tone of the Bench.

pending had been one of the many grievances of which English subjects had to complain. It had descended from the far-off days when the king sat in person to administer the law; and it was so far justified by legal etymology that the Judgment Roll of the Crown side of the King's Bench was always headed Pleas before the King, and the court itself was sometimes described as the 'Coram Rege' Court. All the judges, too, had originally only a delegated authority from the king, or the king and council, and, as a natural consequence, the authority could be resumed at the will of the grantors. Up to the reign of James II., they had therefore been appointed to hold their offices during the sovereign's pleasure. But when a king had been set aside there was an excellent opportunity for rendering the judges responsible to the nation or its representatives rather than to the sovereign alone. It was accordingly settled by the Act for the Limitation of the Crown, in the reign of William III. (though not without some previous opposition from him), that the judges, once appointed, should retain their seats during good behaviour, and that an address of both Houses of Parliament should be necessary for their removal.

This arrangement was beneficial in many ways. It severed the long chain of descent by which an English judge had been held in the position of a deputy appointed to do an inferior service for a warrior-chief, and established him in a post of high honour so long as he did not forfeit the confidence of the nation. But, much as the judge himself gained, the nation gained more. Suitors and persons accused no longer appeared before men who might, by acting impartially, offend the sovereign and lose their offices, but before men whose wish

and whose interest it would be to do right in order to stand well in the popular opinion. A better tone on the Bench, and a new belief among the people in judicial fairness, acted and reacted one upon the other; and though the effects did not at once become very obvious, they were very perceptible after the troubles of 1745 had been brought to an end. Anyone who studies carefully the reports of the state and other criminal trials held about the beginning of the eighteenth century, and compares them with the reports of trials held about the beginning of the nineteenth, will perceive that an extraordinary change had been effected. The old attempts to crush a prisoner by invectives from the Bench, to interpret everything to his disadvantage, and to deprive him, as far as possible, of a hearing, are succeeded by a protection invariably accorded to him, by an anxiety to ascertain everything in his favour, and even by a wish to find a doubt of which he may have the benefit.

Another measure, too, was now finally adopted, which had been one of the wholesome innovations of the Commonwealth—that the written as well as the oral pleadings, and the enrolments in courts of law, should for the future be no longer in Latin but in English. The vigorous translations of the legal forms made in Cromwell's time were still preserved, and were followed by the lawyers and officers of the time of George II. A few technicalities, such as the names of writs, could not be conveniently translated, and are still known by their ancient designations, but in other respects the vernacular was found capable of expressing all that had to be expressed, and from the year 1731 downwards takes the place of the mediæval Latin in our records. This important change was urgently demanded by popular

Act for all pleadings to be in English.

opinion, and would not have been required in the eighteenth century but for the sudden revulsion of feeling which naturally accompanied the Restoration. That which was done violently under Cromwell as dictator had to be gradually done again afterwards under kings with power more and more limited. The stream of national life thus began to run more evenly. The cause was removed through which an ordinary Englishman might have regarded the judge or the lawyer as in some sort a foreigner, such as he had been in the centuries immediately following the Conquest, such as Lilburne had called him even in the days of the Commonwealth. The various reforms in legal procedure, incomplete though they were, co-operated with the development of commerce to unite the nation into a whole, to create confidence between man and man, and to prepare Britain for the great future which was before her.

Not the least remarkable effect of the attention directed, after the Revolution, to the harshness of judges and of legal rules was an amendment in the law of treason, which presented a strange contrast to the hideous massacre of Glencoe. By the Treason Act of the reign of William III. the accused was permitted for the first time to have a copy of the indictment five days before his trial. No evidence of any 'overt act' not expressly laid in the indictment was to be admitted against him. He was permitted for the first time to have witnesses sworn in his defence, and to have counsel, not exceeding two in number, to assist him. The clause also in the statute of Edward VI., by which two witnesses were required for proof of any overt act of treason was solemnly re-enacted. But the very law by which this measure of justice was accorded in appearance

Amendment of the law of treason.

provided also that nothing contained in it should extend to any impeachment or other proceedings in Parliament.

By a curious coincidence there was, in the very year after this Act was passed, a case of treason in which the proviso with respect to parliamentary proceedings was practically made the rule of action, and all the benefit of the new regulations was lost to the person accused. Sir John Fenwick was believed to have been, like many other Englishmen of his time, implicated in a design to restore James II. He had, indeed, made a sort of confession when apprehended, and there were two witnesses, as it was supposed, who could prove his guilt sufficiently in a court of law. One of the men, however, upon whom the prosecution relied suddenly disappeared; and it then seemed impossible to convict Fenwick by any of the ordinary legal processes. It was believed that the all-important witness had been induced to withdraw by powerful arguments in the form of promises or threats. The confession in writing was valueless, according to the recent statute, unless repeated in open court, and it was certain that the man who had evidently made himself master of all the legal points which could be to his advantage would not allow his head to be lost by his tongue.

Act of Attainder against Fenwick.

It followed, therefore, either that Fenwick must be permitted to escape, or that the old-fashioned method of destruction by Act of Attainder must be employed against him. The Bill was introduced, and was, of course, the subject of violent disputes. Much was said about the eternal principles of justice; but they had unfortunately never been the principles on which prosecutions for treason had been conducted in England. There were numerous precedents for the Bill of At-

tainder; Parliament could have passed such a Bill had there been no precedent at all; and the possible expediency of this mode of action must have been foreseen by the framers of the recent statute, when they carefully excepted impeachment 'or other proceedings in Parliament' from the application of the rules respecting evidence. The Bill was passed, and Fenwick was beheaded.

Though this is not the last instance in which the Royal assent was given to a Bill of Attainder—though there is a later instance in which the assent was given after the death of the person attainted, as in the case of Mortimer—yet even the Treason Act of William's reign is, perhaps, an indication that men were beginning to awake to a higher sense of justice. The object towards which some of its clauses appeared to be directed was at that time unattainable, but as the people became more civilised and more contented, and were less disturbed by the rivalries of dynasties, the object was not only attained but surpassed.

The time, indeed, at which this remarkable Act became law was most inopportune in one sense, for it was a time when Jacobite plots were rife, and when either the policy of clemency or the policy of severity should have been pursued without flinching. Though useful to later generations, the statute continued for some time to be rather a mockery than a boon to traitors. A few days before it came into operation three conspirators, who had plotted to assassinate William (Charnock, King, and Keyes), were arraigned at the Old Bailey. They pointed out that the opening sentence of the preamble began with the words, 'Whereas nothing is more just and reasonable than that persons prosecuted for high treason should be justly and equally

Cases of Charnock, King, Keyes, Bernardi, and others.

admitted to be fair when the Act shall be passed, and what will be law a week or two hence, ought to be accepted as the rule of procedure now.' Treason is, in the latter half of the nineteenth century, not a common offence, and there would therefore be some danger in offering any opinion upon the course which would be pursued towards persons accused of it; but there can be no doubt that if a parallel case were to arise, and the charge were any other than that of treason, the trial would be mercifully deferred until the more lenient rules came into operation. To Charnock and his associates no such consideration was shown. They were tried, condemned, and executed according to the strict letter of the law as it existed when their scheme was devised.

Charnock, King, Keyes, and Fenwick were not the only sufferers who illustrated the fact that the necessity caused by treason knows no law. Implicated, or said to be implicated, in the plot of Charnock and his associates were men named Counter, Bernardi, Cassells, Meldrum, Chambers, and Blackburne. They were apprehended, and instead of being brought to trial in the ordinary course, were kept in prison, first of all for a limited time, and afterwards 'during the king's pleasure,' by virtue of special Acts passed for the purpose.

As a climax to parliamentary legislation directed against particular individuals, there was passed in the same reign an Act of Attainder against the son of James II. He is there described as 'the pretended Prince of Wales,' and his offence is stated to have been that he 'assumed the name and title of King James III. of England, Scotland, and Ireland.' For that reason he was to 'stand and be convicted and attainted of high treason, and suffer pains of death, and incur all forfeitures as a traitor.'

Attainder of the heir of the Stuarts.

This Act was but a thunderbolt without powers of destruction, and was merely an indication of the hot passions always excited when the succession to the throne is disputed. It was England's great misfortune during the first half of the eighteenth century to be the subject of continual plots and intrigues—on the one hand for the restoration, on the other for the exclusion, of the male heir of the Stuarts. It is unnecessary to examine these schemes in detail, or to recount all the impeachments or Bills of Pains and Penalties which ended without bloodshed. But it is necessary to point out that, although the occupants of the throne during this period led lives as unquiet as those of the Tudors, the executions for treason were not at all in the same proportion as in the Tudor reigns. The cause of this difference is not to be discovered in the personal characters of the sovereigns apart from the influence of the age upon them, for to compare Henry VIII. with George I. would be an insult to the memory of the accomplished Tudor. But the King of England who reigned in the eighteenth century could not have retained his crown had he acted as a popular king might have acted in the sixteenth. Imperceptible though it had been at each successive stage, there had nevertheless been a national progress which, as a whole, was considerable; and though there was still little enough of civilisation, it was sufficient to save the head of many a man who in earlier times would have perished.

Punishments for treason in the sixteenth and eighteenth centuries.

The two great Stuart risings in 1715 and 1745 stand out as the most important domestic events of the period: yet they were but the outward and visible signs of an agitation existing before and continued after those years, and never completely set at rest

Punishments after the rising in 1715.

in the interval. The treatment of the persons implicated in those rebellions and the antecedent plots may be regarded, not indeed as the chief characteristic of the age, —for the punishment of treason may be considered in one sense exceptional—but as an indication not to be misunderstood that justice and mercy were beginning in some measure to prevail over blind hatred and the vindictiveness of party spirit after the horrors of war were over.

In earlier times Bolingbroke, Oxford, and Strafford would hardly have escaped as they did in the reign of George I., though there might have been no better foundation for the charges of treason against them than the spite of an opposing party. Nor was the punishment of the men who supported the Pretender James in the rising of 1715 so uniformly severe as it would have been two centuries or even one century before. That atrocities were committed by the victors after the battles, and that prisoners were shot according to martial law, may be taken for granted. The ringleaders, Lords Carnwath, Winton, Kenmure, Widdrington, Nithisdale, Nairn, and Derwentwater were tried and condemned, but only Kenmure and Derwentwater suffered death. Rebels of lower station were taken and lodged in gaol to the number of nearly thirteen hundred, but of all these it does not appear that more than twenty-six were executed. Twenty-nine escaped the usual penalty for treason on condition of being transported for seven years; and these events seem to have suggested an Act passed soon afterwards, by which transportation became the recognised punishment for many offences. Ninety-one of the insurgents were outlawed; but in 1717 there was an Act of Grace or General Pardon, which relieved all the persons who had been implicated (with a few exceptions)

from the apprehension of further prosecution. Some of the accused broke out of gaol who might, perhaps, otherwise have lost their heads; but when the whole of these transactions are calmly reviewed and compared with similar portions of earlier history, it seems impossible to deny that the blood which was shed after the rebellion was put down, was little in proportion to the magnitude of the danger to the throne.

The rising of 1745: relapse towards mediæval cruelty.

At first sight the cruelties perpetrated after the battle of Culloden in 1746 appear altogether inconsistent with any progress in humanity, and bring back to the memory the ferocious laws of Athelstane, and the atrocities which uncivilised peoples were, in the earliest times, in the habit of inflicting on women. There was no deed too cruel or too horrible for the conquerors; children were slaughtered, fugitives dying of hunger were burnt in their dens as though they had been wasps; and the Commander-in-chief, in the midst of the massacre, was capable of putting on paper a joke, which was as feeble as it was barbarous, that blood-letting had weakened the madness but not cured it.

Bad, however, as all this may seem, it does not show that the majority of Englishmen were wholly wanting in sentiments of mercy in the middle of the eighteenth century. The Commander-in-chief, who was chiefly responsible for all these brutalities, cannot fairly be considered an Englishman. It could only be said by courtesy that he was of English extraction, though he was the son of George II.; and his own letters show that he was not English in sympathies. He pretends to be thankful that the victory had been gained by English troops, and adds that the English army was 'almost as good as a foreign

wrong in supposing that the punishment of the defenceless would have been better effected by the Hessian mercenaries after the battle had been won. Hawley, the next in command, executed, to his own disgrace, the commands of the duke far better after the fighting was over than before; and the duke showed in later life that he had no military genius, and that he had but pushed to a merciless extreme the advantage which he had gained with a well-armed English force against an inferior number of ill-armed but gallant Highlanders.

There were, however, excuses even for the Duke of Cumberland. He was a very young man. His sympathies and his impulses were caused in no small degree by his early training and associates. His grandfather could not even speak English, his father loved Hanover far better than England, and it was hardly his fault if he showed by his conduct that English civilisation was altogether foreign to his notions. It must be admitted, too, that the danger had been most formidable, as the young Pretender had reached Derby before he retreated, and that the king had almost trembled for his throne. Besides all this, the discipline of armies was not what it has since become; and, though no good commander would have permitted what was permitted by Cumberland, the men of any army would in those days have been discontented had not some licence been allowed.

When the scene of punishment was transferred to London the true English feeling asserted itself to some extent, and mercy was not entirely forgotten. Cumberland still showed himself the Sangrado of politicians, and would have let blood and always more blood. It was said that 'popularity had changed sides since 1715, and

many rebels had been pardoned.' But the very same letter-writer who gives this account tells also the anecdote of the alderman who, when there was a proposition to give the duke the freedom of some City company, said, 'Then let it be of the Butchers!' The truth seems to be that the horrors and dangers of war had recalled much of the ancient callousness and bloodthirstiness, but that civilisation had advanced so far as to be able to make a stand against the attack brought on it by this revival of barbarism. The struggle exhibited some remarkable incongruities. The Duke of Cumberland wished to give a ball to 'Peggy Banks' on the day sentence was passed on some rebel lords; but there were some gentlemen in London who had sense of decency and influence strong enough to bring about a postponement for three days. When the inevitable executions began, there was much excitement in London. 'I have been this morning,' says Horace Walpole, 'at the Tower, and passed under the *new heads* at Temple Bar, where people make a trade of letting spying-glasses at a halfpenny a look.' The inevitable result of such public spectacles as soon as 'spying-glasses' are invented! Crowds, too, it is said, flocked to see some inferior traitors hanged and disembowelled.

The punishments: Flora Macdonald compared with Alice Lisle.

In the midst even of such hideous scenes as these, and in spite of the adverse influence of Cumberland and of persons whose interest it was to execute his wishes, it is not difficult to perceive some abatement of the horrors which would have been witnessed in the middle ages. Three lords—Balmerino, Kilmarnock, and Lovat, were beheaded; but Lord Cromartie was pardoned. The tone of Lord Hardwicke as

1715 was, no doubt, open to adverse remark, but was admirable when compared with that of Judge Jeffreys in 1685. Much less than a century had elapsed since the death of Alice Lisle, and her offence was far less than that of Flora Macdonald in 1746. All the grace that Alice Lisle could obtain was to be beheaded instead of burnt; but the life of Flora Macdonald was spared, though it was by her aid, and by her aid alone, that the young Pretender had escaped. An Act of Attainder was passed, but it was only conditional, and gave the persons named in it the option of surrendering and taking their trial. It was followed, too, at no great interval of time, by a General Pardon, from which, however, some eighty persons were excepted. In the meanwhile, it must be admitted, a large number of rebels had been tried and executed or transported, or had died of hardships and overcrowding in prison, before they could be brought to trial. From a modern point of view it is impossible to deny that severity prevailed over mercy in the treatment of Charles Edward's followers; but it is equally impossible to deny that they would have fared worse in the days of Jeffreys, as in those earlier days in which Jeffreys ought, for the sake of his reputation, to have lived.

Compared with the rebellion of 1715 the rebellion of 1745 does not bring to light any increase of humanity in high places or in low; but on the other hand it gives no evidence of permanent retrogression. In 1715 a sovereign of foreign birth, who had but just come over to England, had, in the main, to trust British generals for the suppression of the rising, and British feeling for the mode of dealing with the prisoners. In 1745 the sovereign, though also a foreigner, had been seated on the throne many

persons and what measures he pleased against his enemies. Foreign sentiments were thus more intermingled with British sentiments in 1745 than they had been in 1715; and the halt in the progress of our civilisation which now becomes apparent may fairly be attributed to the influence of George II., and of his son the Duke of Cumberland, together with that military spirit which is always associated with more or less of cruelty.

Abolition of private jurisdictions in Scotland.

One of the Acts suggested by the rebellion, though no doubt regarded as very cruel by the Scottish chiefs, was consistent with the soundest principles of statesmanship. It was directed against the private jurisdictions of the Scottish lords, which, as has already been shown in the case of English lords, were opposed to all settled government and all national life. Much of the primitive organisation of the tribe had survived in Scotland, just as it had survived in one form or other in England until the strong rule of the Tudors had rendered statutes against liveries, retainers, and forcible entries of some avail.

General survey of the age: new offences: forgery.

A general survey of England in the middle of the eighteenth century shows that, in spite of political troubles—of adverse foreign influences and foreign wars—she had been growing not slowly in wealth and in knowledge. But the change of manners necessarily brought with it some changes in the law, and new conditions of life rendered new offences possible. In the reign of Anne commenced a long series of statutes relating to bankruptcy and fraudulent bankrupts. Though the South Sea scheme and its attendant bubbles were in time forgotten, the commercial progress which had rendered them possible left a permanent mark upon the Statute Book. Among

the new felonies which came into existence may be mentioned the forgery of stamps, of the common seal of the Bank of England, of bank-notes, of Exchequer bills, of the signatures of proprietors of stock or annuities, of East India bonds, of acceptances of bills of exchange, and of deeds in general. It has been shown in a previous chapter how lightly forgery was regarded in earlier times; the fraud naturally began to be considered one of the highest magnitude when the trade of the country increased; and a great number of forgers were sentenced to death before the modifications in the law of capital punishment were effected in the nineteenth century. But no one who has investigated the history of the subject would suppose that the executions for forgery indicated any increase of crime.

Englishmen, however, seem to have been little conscious of their own progress. Self-depreciation has always been one of our national characteristics; and it would not be difficult to select writings and speeches of eminent Englishmen which are full of gloom and even of despair. Either because a new alcoholic spirit had been introduced from Holland at the time of the Revolution, and afterwards manufactured in England, or because new attention was directed to an old vice, the addiction of the populace to drunkenness led, in the ninth year of the reign of George II., to the passing of the famous Gin Act. Duties so high as to be prohibitory were placed on gin at various stages from its distillation to its sale. But never was the powerlessness of a single statute to alter the whole habits of a people more clearly shown than in the results of this law. It was altogether inoperative; the people would have their gin; and yet the duties were unpaid. A few years

The Gin Act: alleged increase of drunkenness.

later the failure of the Act was practically confessed by its repeal; more moderate duties were imposed, with the hope that the dealers might find their interest in paying for licences rather than in running the risk of a prosecution, and that some check in the shape of an increased price might then be laid upon the consumers. The new Act proved more successful than its predecessor, though it failed, of course, to extirpate the breed of drunkards. The sentiments which were expressed in the debates upon these Acts are a curious monument of the time. The most intemperate language was used, and therefore the extent of the evil was probably somewhat exaggerated. Some of the speakers went even so far as to argue that unless the evil could be entirely stamped out, and without delay, the poison would in a few generations destroy the whole race of Englishmen, that there would be no gin because there would be no hands to make it, no revenue because there would be none to pay it, nothing left but the mere soil of England.

From the words used by some well-meaning, but ill-informed and impracticable, zealots, it might have been inferred that drunkenness had been unknown before the eighteenth century. But drunkenness is in fact at least as old as history, and the remedy is not to be found in statutes forbidding men to drink. The subject, however, is one which may be more conveniently discussed in a future chapter. It has been introduced here partly from the exigences of a chronological method, and partly as an illustration of the persistence with which every generation laments its own ill-fortune and sings the praises of a by-gone time.

A most conspicuous illustration of this tendency to see all virtue in the past may be found in a very remarkable

production of a very famous author, who was born in 1707 and died in 1754. Fielding was not only one of the greatest writers of the age, but was also, from his connexions, and from his occupation as a magistrate, well qualified to give an opinion upon the criminal tendencies of his own time. He dedicated to the Lord Chancellor, Lord Hardwicke, 'An Enquiry into the causes of the late Increase of Robbers, with some proposals for remedying the growing evil.' In this essay he claims the title of 'a pretty good historian,' and he shows that, so far as the materials for history were known in his day, he might without any want of modesty have claimed a higher title. It is much to be regretted that the task of writing a History of Crime has not in the nineteenth century fallen into the hands of a nineteenth-century Fielding.

Fielding's 'Increase of Robbers': its defects and its striking merits.

It may, nevertheless, be permitted to one who has at least sought out evidence with which Fielding was unacquainted, to show that, as Fielding's information was incomplete, his conclusions are not to be accepted without reservation. Fielding was a lawyer, and well acquainted with the common law and the statutes, but he was not a student of records and was not acquainted with the working of the laws in earlier ages. He knew that robbers were plentiful in his own time, and inferred, as all men are apt to infer, that the evils of his own time had never been known before. Yet, strangely enough, his own great heart and his own bright genius were leaving their mark upon the age in this very treatise, and stamping the middle of the eighteenth century as the time when the British intellect began to perceive that one of the chief causes of crime lay in the savage customs introduced by the barbarian

invaders of Britain. He understood that public executions hardened the hearts of the spectators, and that men who had enjoyed 'a holiday at Tyburn,' to see others die 'game' had advanced some steps towards a death on the gallows at the same place. It is, perhaps, Fielding's greatest glory that he recommended few and private, instead of many and public, executions more than a hundred years before his suggestions became law.

Among the other causes of crime mentioned by Fielding was the defective system of police. The old system, according to which every man was a member of a tithing, had long before degenerated, so that little was left of it but the name, and the vicarious performance of the duties of the whole body by the headborough, who had himself degenerated into a petty constable. The ancient peace-pledge had, as already shown by reference to innumerable records, been altogether powerless to preserve peace, or to give security to life and property. Theoretically it should have rendered crime impossible. Practically it had been at its strongest when England was in a state of general brigandage; and when it died out, brigandage was but feebly represented by highway robbery. That the country was in no worse condition than the condition in which it was when Fielding lived is the best possible proof that there had been an improvement in manners which was altogether independent of any system of police. Crimes of violence were rife enough without doubt, but they were on a very different scale from those of the fourteenth century, and the change had been gradually effected in the interval.

Fielding was evidently much influenced by the popular outcry against gin-drinking as the root of all evil. He mentions, it is true, such incentives to crime as the difficulty

of apprehending criminals, and of convicting them when taken, the abuse of the poor laws, and the impunity enjoyed by receivers of stolen goods. But his leading proposition is that the alleged mischief had been caused by 'the vast torrent of luxury which of late years had poured itself into this nation.' His notion was that the relaxation of the ancient feudal restraints, or restraints in existence before the time of the Conquest, had caused the vices of 'the great' to descend to the 'very dregs of the people,' by which epithet he describes 'the mechanic and the labourer.' They indulged, as he complained, in too frequent and expensive diversions; hence arose drunkenness and gambling 'among the vulgar,' and from drunkenness and gambling, theft and robbery.

Had drunkenness, gambling, theft, and robbery first made their appearance in the eighteenth century, the argument would have deserved attentive consideration. But if any proposition in history is true, it is true that theft and robbery did not mark the eighteenth as distinguished from preceding centuries, and that the further we look back the more numerous are the thefts and the robberies. It would be difficult to prove that there was any real increase of drunkenness in the eighteenth century; but, if there was, the inevitable conclusion is that the greater the increase of drunkenness at that particular time, the less must be the influence of drunkenness in general upon crime in the aggregate. Englishmen were then most certainly not addicted to brigandage as they had been previously, and it makes little difference to Fielding's argument whether they had been equally or less drunken in earlier ages, for in either case it is clear that he has not fixed upon a cause which in itself outweighs all other

Robbery and theft had diminished in the eighteenth century.

causes of crime, as both he and others have often supposed. The truth is that there is no single cause, except, perhaps, war and its consequences, the presence of which is invariably accompanied by an increase of crime, and the absence of which is invariably accompanied by a diminution of crime. Drunkenness, no doubt, bears a certain relation to some crimes, especially crimes of violence, but to many it bears the relation of effect rather than of cause.

Look at what point we may of society as it existed in the eighteenth century, we see far more of the ancient traditions than of any sudden change, both in the growing civilisation and in the causes which were retarding it. An importation of foreign barbarism gave a little new strength to the dying barbarism of Britain herself. But this had little permanent effect on the future of British life. Fielding might with quite as much justice have moralised upon the misdeeds of the 'better sort,' (with which he must necessarily have been acquainted) as upon those of the 'vulgar.' The 'better sort' were the descendants of the 'better sort' who had lived in earlier times, just as the 'vulgar' were the descendants of the 'vulgar'; and both had simply inherited, though with considerable modification, the tendencies of their ancestors. The gamesters who became crusaders were far more turbulent and ungovernable than the gamesters who caused Fielding anxiety. There was just the same difference between them as there was between the men who used to make burglary and murder a pastime in the reign of Richard I., and the roysterers who made night hideous in the eighteenth century.

The influence of past ages upon the eighteenth century.

The 'Mohocks,' the 'Nickers,' the 'Tumblers,' the

'Dancing-masters,' and the various bully-captains were not the 'dregs of the people,' but were in the habit of doing quite as much injury as thieves and robbers to their neighbours. If they met an unprotected woman, they showed they had no sense of decency; if they met a man who was unarmed or weaker than themselves, they assaulted, and, perhaps, killed him. These 'gentlemen' no doubt made themselves more or less drunk before they sallied forth for their evening's amusement; but so had their murdering, housebreaking, brigand forefathers done before them. The real cause of Fielding's outcry was his own ignorance of his own superiority. He did not perceive that he was a century in advance of his age, and the only other interpretation which he could discover of the circumstances about him was practically that his age was a century behind itself. He set up a theory which did not account for the deeds of violence committed by all ranks, but only for the deeds of one class. Had he consulted the records of past ages he would have been the first to see that one order of men had progressed relatively just as much and just as little as another, and that the chief causes of the effects which he saw about him were not any sudden changes or any hopeless degeneracy, but simply the inevitable and perhaps beneficial delay which inherited associations impose upon each new generation. That this is the true explanation of the signs of the times is most clearly proved by Fielding's own works. Squire Western is (if ever there was one) a typical character; and, for those who know how to read it, there is the history of the past social life of England written in the sketch of that fictitious yet real person. All who have studied the laws of Ethelbert and Athelstane together with later

The Mohocks and Nickers: Squire Western.

records and letters can understand, without the least difficulty, why the Squire was a brute, and why he spoke as he did in the presence of his daughter.

Beginnings of philanthropy: awakened interest in poor lodging-houses and gaols.

Though, however, Fielding was before his age in one at least of the measures which he suggested, he was in more ways than one an exponent of the best tendencies of his own time. His treatise on the increase of robbers contains an important passage which may be regarded as a connecting-link between mediæval apathy and modern philanthropy, and which is at the same time by no means dissociated from the public opinion of his own contemporaries. He deplores, very much as we might deplore now, 'the destruction of morality, decency, and modesty' in lodgings in St. Giles's, where there were 'great numbers of houses set apart for the reception of idle persons and vagabonds,' and where, as he had been informed, 'a single loaf had supplied a whole family with their provisions for a week.' He believed the remedy to be in the discouragement of idleness and in the persistent execution of the old poor law, according to which all beggars should be sent to their original habitations. In the midst of some harsh language there appears some compassion, and men were evidently at length beginning to awake to the truth taught seventeen centuries before in Jerusalem, that human misery deserves pity, though it may not appear in the shape of bodily infirmity, and even though the sufferer may not be able to repeat a particular formula of faith.

This tendency towards benevolence had not very long before shown itself in a parliamentary enquiry into the condition of prisons and the treatment of prisoners. The

as had been discovered in the reign of Edward III., but great enough to cause a shudder in a modern philanthropist. There had of course been a tradition among gaolers as among men of other occupations, and if the softening of manners was likely to be less rapid in one class than in another, it was likely to be least rapid among the warders of criminals. There had been much ill-usage in gaols, besides all the misery caused by defective accommodation. An attempt, feeble enough and by no means successful, was made to find a remedy, but it can hardly be said that a prison reform was seriously begun until it was begun more than a generation later by a private individual.

Signs of tolerance: the Toleration Act.

Nevertheless, the interest which began to be felt in the state of gaols may, in connexion with other evidence pointing in the same direction, be regarded as an indication of a more wholesome tone in public opinion. The men who had brought about the Revolution had at the same time brought about a remarkable change in the laws affecting religious worship. The Toleration Act bears its own justification in its opening sentence, that 'some ease to scrupulous consciences in the exercise of religion may be an effectual means to unite their Majesties' Protestant subjects in interest and affection.' It is true that from the point of view of the nineteenth century the Toleration Act itself appears intolerant, but it is no less true that from the point of view of Elizabeth's reign (some of the statutes of which it repeals) it would have appeared lax even to anarchy. If Romanists gained nothing by it, Protestant dissenters at least obtained recognition and such facilities as they had never before enjoyed for worship according to their own forms. This may have been, and probably was, a political man-

œuvre on the part of William's supporters, who were anxious to conciliate as great a number of Englishmen as possible, and of Englishmen averse to the Romanising tendencies of the deposed James. But the whole course of history teaches that chance sometimes checks and sometimes hurries on the march of events rendered inevitable by general causes. The Toleration Act might in an earlier age have been wholly inoperative, or the prelude to new persecutions; at the end of the seventeenth century, intolerant though it was, it was the prelude to a real though gradually acquired toleration.

With the increase and diffusion of wealth since the beginning of the seventeenth century, there had been a not less considerable intellectual progress. The period included in this and the preceding chapter was remarkable not only for the productions of authors whose names are familiar to all interested in literature, but also for discoveries which indicate a higher mental development than even successful literary effort. Physiologists had been taught the circulation of the blood by Harvey, psychologists the association of ideas by Hobbes, astronomers the theory of gravitation by Newton, and the foundations of comparative philology had been securely laid by Edward Lhuyd, who succeeded in discovering, without the aid of Sanscrit, the leading principles which were re-discovered with its aid about a century afterwards. In the middle of the eighteenth century all the signs of the times indicated the future greatness of the British Empire. Nothing was wanting but peace at home and peace abroad to concentrate the intellects of British thinkers upon those mechanical inventions which were to

Intellectual progress and scientific discoveries during the seventeenth and at the beginning of the eighteenth centuries.

CHAPTER XI.

FROM THE LAST STUART REBELLION TO THE DEATH OF GEORGE III.

AFTER the last Stuart rebellion, when one of the great causes of domestic trouble had been removed, England entered upon a phase in her history, for which past events had in some measure prepared her, for which her position and the constituents of her soil had adapted her, but in which, above all, the characteristic genius of the British people assisted her.

Beginning of a new era in arts, manufactures, and science.

Mechanical science, one of the many gifts of the Greeks to the world, had, except in the one branch of ecclesiastical architecture, been permitted to slumber in Europe since the fall of the Western Empire. Great Britain and her colonies were now about to revive the skill of the past, and to achieve triumphs of which even the Greeks had hardly dreamed. Invention of every kind was about to keep pace with the development of mechanics; and British genius was about to change the aspect of the whole civilised world in little more than a century after the battle of Culloden.

It is worthy of remark, for it is not a mere coincidence, that a change in the moral sentiments of the people began to show itself at the time when new inventions and new occupations began to affect the ordinary mode

of life, and kept pace with the development of the peaceful arts which are opposed to the war-like spirit and the cognate crimes. As early as the year 1755, when Lisbon was laid in ruins by an earthquake, England sent a contribution of 100,000*l.* for the relief of the sufferers. There was probably no precedent for such an act of humanity—of charity in the higher meaning of the term. Compassion was at last shown by Englishmen, not simply for Englishmen and Protestants, but for foreigners professing a different religion; pity, for once, triumphed over intolerance and national prejudice.

Evidence of change of moral sentiments with change of occupations.

In 1770, when British inventors were beginning to attain some success in the construction of machinery for the improvement of cotton manufactures (afterwards one of the chief sources of the national wealth), a committee of the House of Commons reported that for certain offences the penalty of death might with advantage be exchanged 'for some other reasonable punishment.' It is true that their recommendation did not immediately become law, just as it is true that England did not immediately attain the wealth which she now enjoys. But the beginning was made; the subsequent progress was steady; and the *peine forte et dure*, at least, was abolished before George III. had been twelve years on the throne.

Public attention, too, began to be attracted towards the horrors of the slave trade. The discovery of the New World had given an impulse, not only to piracy, but to a traffic in which Englishmen had had little opportunity of engaging since the Norman Conquest. They, like the Portuguese and others, found that cargoes of black men

Growth of popular feeling against the slave trade as affecting negroes.

They carried on the trade, just like any other, without any regard to the wishes of their freight. The 'good-will towards men' which the Christian shipmasters showed towards their negro captives was not quite in accordance with some modern notions respecting the teachings of the Gospel. It is fortunately needless for the purposes of this history to relate the horrors of the middle-passage, to tell again the oft-told tale of the Christian's inhumanity to the heathen. It should, however, be remembered that the South Sea Company made a contract to supply slaves as late as the year 1713, when English opinion indolently acquiesced in the practice. The national conscience was roused to a sense of the cruelties that were being perpetrated soon after the middle of the eighteenth century, chiefly by some active members of the not very numerous sect of Quakers. The efforts of Wilberforce, beginning in the year 1788, the parliamentary struggles ending with the law of 1811, by which it was made felony for any British subject to take part in the slave trade, and the emancipation of slaves in the British colonies in 1834, are too well known to require detailed description.

The fact that the cruelties of the slave trade and of slavery in general were not under the immediate observation of Englishmen in England is sufficient evidence that there may have been a real difference between the prevalent sentiments of the period before the Conquest and those not only of the eighteenth, but of the seventeenth, and even of the sixteenth century. The extinction of villenage even as a form of slavery in which the slave could not be treated as a moveable chattel, but could be sold with the land to which he was attached, had long

sight of any market for human flesh. Perhaps had no black slaves been seen in England the efforts of Wilberforce and his followers might have been deferred, or might have found less favour when made.

It happened, however, that a negro named Strong, having been ill-treated, and at length abandoned in the streets of London, was, after an interval of two years, discovered again by his master, who professed to have sold him for re-exportation to Jamaica. He was lodged in prison without a warrant. Through the intervention of Granville Sharp, his friend and patron, he was at length brought before the Lord Mayor. There was not any charge against him except, indeed, that of being a slave in the employment of a person who was not his owner. The Lord Mayor, apparently not acquainted with the ancient doctrine that a fugitive slave had stolen his own body, was of opinion that he had not stolen anything, and was not guilty of any offence, and was therefore at liberty to go away. A further attempt was made to withdraw him from the protection of the good Samaritan who had healed his wounds and found occupation for him. The case, however, perhaps through dread of popular feeling, was never brought to trial. In another better known instance—that of the negro Somerset,—in the year 1772, it was held that a slave becomes free as soon as he sets foot on English soil.

A mother country may allow its colonies to enjoy some special institutions of their own, suited to the exigences of their own particular positions. But in slavery was involved a principle of so much importance that there was some reason to doubt the sincerity of persons who deliberately con-

White slaves: transportation compared with slavery.

the seas. In the American colonies, which afterwards successfully asserted their independence, the doctrine that the slave became free by touching British soil must, before the year 1775, have been regarded as of equal value with the famous assertion that torture had always been unknown in the English judicial system. Englishmen in authority, a little after the middle of the eighteenth century, did not let their left hand know that which their right hand did, and, at the very time when they asserted the freedom of black slaves brought to England from the colonies, they exported white convicts under sentence of transportation for sale to settlers in America. The sum received was the payment to the owners and captains of the transport ships for their trouble and risk; and it is said that the white slaves and the black were set to work together on the plantations, and were equally punished by the lash for idleness or disobedience.

Transportation had thus become in fact, though perhaps not in theory, an institution very much resembling that penal slavery which had existed before the Norman Conquest. There was this difference, that the term of punishment was for a less period than life, and that the convict might regain his liberty simply by the lapse of time. It might therefore be said that he was not sold outright, but only let, so to speak, for a certain number of years; yet even in this there was the exercise of an ownership like that of a person who lets a horse by the day or the year. Complete penal slavery, it is true, has only once been distinctly recognised by law since William the Conqueror abolished the exportation of slaves from England, and then only for a very short time. But it is impossible to destroy entirely all resemblance between that deprivation of freedom which bears the name either

of transportation or of imprisonment, and that deprivation of liberty which is called slavery without disguise. To abolish or limit the power of transfer is to mitigate the lot of the unfree, to render the loss of liberty as little terrible as possible. Our modern sentences of penal servitude, and of imprisonment, either with or without hard labour, are as pure from the taint of the slave-market as it is possible for any similar system to be. Throughout the whole term the State remains the master of the convict, and no individual human being becomes the owner of another. But even now, however well treated he may be, the life of a convict is the life of a slave.

The worst features of the old system of transportation disappeared at the time of the war of American independence, which closed the market for the sale of convicts to colonists. When Australia was substituted for America as the receptacle for our criminals, they were commonly 'assigned' to free settlers who might be willing to accept their labour; but they were not sold, and the assignment was always for a limited time, after which, if well conducted, they regained their freedom. Thus Wilberforce's protest against the African slave trade followed very closely upon an important change of practice with respect to Englishmen who had been made slaves in fact if not in name.

With transportation to the American plantations ceased also a crime with which it had to some extent competed, but for which it had also served as a cloak—that of kidnapping innocent persons and exporting them for sale as slaves to America. This atrocious practice, indeed, was common long before the Act of 1718, by which transportation was permanently recognised as a mode of punishment for persons

Kidnapping in relation to slavery and transportation.

entitled to benefit of clergy. It was the natural companion of the piracy which was stimulated by the discovery of the New World. It grew with the growth of the newly-peopled settlements, and with the consequent demand for labour. Its extent cannot be measured with any certainty, because, when successfully perpetrated, it could rarely be proved except in the extremely improbable event of the return of the sufferer to England. Its existence was notorious at the end of the seventeenth century, and it appears in various criminal trials as late as the middle of the eighteenth. The Australian colonies afforded no opening for it because the settlers there would not buy a slave when they could have a labourer assigned to them without purchase; and thus it died out when the United States had become independent of the mother country.

There was between the year 1775, when the war closed the outlet for convicts to the American colonies, and the year 1787, in which the first convict ship sailed for Australia, an intermediate period during which it may be said that our present system of penal servitude was initiated and afterwards abandoned. An attempt was made to substitute the hulks and penitentiaries for transportation. The penitentiaries as then understood, and as afterwards modified by the plans of Bentham, were the precursors in theory of such prisons as Millbank and Pentonville, in which the first months of a sentence of penal servitude are passed; the hulks were the first primitive model of the establishments at Chatham, Portsmouth, Portland, and elsewhere, in which convicts undergo the longer and final stage of penal servitude, and are employed in works of more or less public utility. The hulks were the rough temporary ex-

The hulks in their relation to the modern system of penal servitude.

all the convicts who would previously have been transported. The Act for the establishment of penitentiaries was passed about three years later, and had been thought-*fully devised* by Howard, by Blackstone, and by Eden (afterwards Lord Auckland), the author of the 'State of the Poor.' Its object was to prevent the further demoralisation of convicts during the term of their sentence by separating them one from another, and by giving them suitable employment for body and mind. The attempt, however, was premature, and the Act was not immediately followed by any practical results.

The efforts of these few years, nevertheless, constitute a remarkable episode in the history of punishments—an indication of a progressive change in manners and sentiments. A direction was no doubt given to them by external circumstances which could not have been foreseen. But had the same political events occurred at an earlier time, there would have been no Howard to draw from them a lesson which might be gradually taken to heart, generation after generation, and be naturally applied to the same difficulty when it recurred in another century.

Howard's memorable labours began just before transportation to America ceased, and ended just after transportation to Australia was substituted. His attention was first directed to the hardships suffered by prisoners of war in 1756. It was not, however, until the year 1773, when he was Sheriff of Bedfordshire,—just after the time when Parliament had begun to consider seriously whether some punishment less than death might be inflicted for stealing a sheep or a horse—that he began to become acquainted with the state of the English prisons. The first grievance which he attempted to redress was that of the

Efforts of Howard for the improvement of prisons: their condition in the eighteenth century.

unfortunate inmates of gaols who had been tried and found Not Guilty, or against whom no indictment had been found by the grand jury, or against whom no prosecutor had appeared, and who were, according to all presumption, innocent. These were poor persons unable to pay the fees of the clerk and other officers of assise and the gaoler. An inspection of the gaol books still existing shows how numerous and how onerous these exactions were, and how completely an unscrupulous rascal with a little knowledge of the law might destroy an enemy who had neither wealth nor wealthy friends. While investigating this subject Howard saw, for the first time, all the horrors of English gaols, in which the gaol fever and the small-pox were raging as plagues. He modestly tells how he was examined in the House of Commons in March 1774, and had the honour of their thanks, and how in the same year Mr. Popham, member for Taunton, repeated with success 'the humane attempt which had miscarried a few years before.' Two Bills were brought in and became law, one for the relief of acquitted prisoners unable to pay fees, the other for the preservation of the health of prisoners in general, and the prevention of gaol fever.

In earlier times, when cruelty was less a subject of reprobation, the cruelties perpetrated in gaols had not passed altogether unnoticed, but the idea of care for the health of prisoners would have been doubly opposed to all mediæval notions, because a pestilence was commonly regarded as a supernatural infliction, and the more supernatural in proportion as it fell upon the unfortunate or the law-breakers. Civilisation and the calm reasoning of scientific intellects had made no slight progress when a man who was neither a physician nor a surgeon could

from his own observation, aided only by his own sympathetic disposition, ask 'What is the cause of the gaol fever?' and find an answer which the experience of a century proved to be correct. 'The want of fresh air and cleanliness,' he argued, was the chief physical condition which fostered the malady; but he was too acute an observer to neglect other considerations, and he readily detected the influence of mental depression upon bodily health. 'The sudden change of diet and lodging,' he wrote, 'so affects the spirits of new convicts, that the general causes of putrid fevers exert an immediate effect upon them. They are ironed, thrust into close, offensive dungeons, and there chained down, some of them without straw or other bedding. They continue in winter sixteen or seventeen hours out of the twenty-four in utter inactivity, and immersed in the noxious effluvia of their own bodies. Their diet is at the same time low and scanty; they are generally without firing; and the powers of life soon become incapable of resisting so many causes of sickness and despair.'

So just was Howard's appreciation of its causes, and so energetic was he in diffusing a knowledge of the remedies to be applied to it, that in 1782 the gaol fever had entirely disappeared in England. There were some relapses afterwards, as might have been expected, and it was long before the many abuses of the old prison system were brought to an end. But the seed sown by Howard did not fall on barren ground, and it has at length borne as rich a harvest as even he could have hoped to reap.

His investigations, pursued at no small risk to himself, brought to light a great diversity of practice in the different gaols of the kingdom. Cruelty or indifference was the rule, but kindness and consideration were some-

times displayed in exceptional cases. The gaol of Newcastle-upon-Tyne was managed with humanity deserving of all honour. The rooms were airy and clean; the inmates (both debtors and felons) were allowed fuel and candles in plenty by the corporation, as well as beds and bedding such as were to be found in no other prisons in England. Above all, acquitted prisoners were discharged in court, and when they were poor, the fees due from them to the gaolers were paid by the corporation, years before Howard was examined in the House of Commons.

The existence of such an honourable exception as this aided Howard in his task, and showed that the first stage towards a more healthy public opinion had already been reached. In most of the county and borough gaols the prisoners, though not subjected to any very violent acts of cruelty, had been negligently and contemptuously left to die of dirt and privation, unless they could purchase the friendship of the gaoler. But the most striking contrast to the clemency of the Newcastle burghers was found in those gaols in which the old traditions of feudal and manorial or ecclesiastical rights still lingered, and which were in fact still private property. As an instance may be mentioned the gaol owned by the Bishop of Ely, which had been rebuilt only five years before Howard's visit. It had previously been considered insecure, and the keeper had prevented escapes by chaining down his prisoners on their backs on the floor, and by fastening an iron collar with spikes about their necks, and a heavy iron bar over their legs. Even when reconstructed it had no free ward, no infirmary, and no straw; and debtors and felons were confined together. The Durham county

who owned it, for as late as 1776 Howard found there a 'great hole,' sixteen feet and a half by twelve, with one little window, in which were six prisoners chained to the floor. These men, it is true, had attempted to escape, but they were sick, they had lived in chains during many weeks, and the straw on the stones of their dungeon had been almost worn to dust.

Such miseries as Howard saw in his visits to the prisons of various countries (in which he was almost continuously occupied from the year 1773 until his death in 1790) led him to reflect deeply, not only on prison management, but on the causes by which prisons are filled, and on the subject of punishment in general. He partly, if not wholly, anticipated modern opinion on two very important points—the expediency of drawing a distinction between debtors and criminals, and the evils of public executions.

State of prisons worse in Howard's time than under the Roman Empire.

The borough and county gaols in Howard's time contained persons awaiting their trial, convicts under sentence of death or transportation, and debtors. In some places they served also as the 'Bridewells,' or houses of correction, in which the class commonly designated rogues and vagabonds were passing their terms of imprisonment. The Bridewell, however, was more commonly a separate building, and requires a word or two of special notice apart from the gaol. But want of food, want of air, want of cleanliness, and want of occupation were the faults of both alike. In both there was the same want of common decency, and the same temptation to sensuality in its coarsest form. There was not even yet in Britain as much consideration for prisoners as there had been in the reign of

the ill effects of the barbarian invasion were still only too plainly apparent. The Romans of the fourth century did not permit the imprisonment of men in the same room with women. Late in the eighteenth century Howard found in the Bridewell of St. Albans (where once stood the Roman Verulamium) a girl locked up during the whole day with two soldiers, and upon another occasion a boy and a girl together. In the gaols there was sometimes no sufficient provision for the separation of the sexes; and when there was, it was rendered useless by the admission of prisoners' mistresses, styling themselves wives, to the common ward in which the male prisoners slept.

Howard was not so blinded by his benevolence as to lose sight of the fact that the fraudulent debtor might have done more injury to his fellow-men than a highway robber or even a murderer. But as a prisoner of this class was placed under restraint simply for having failed to pay his debts, and not for having committed a fraud, there was no pretext for punishing him as a criminal, and subjecting him to a course of demoralisation from which even criminals ought to have been exempt. The more dishonest the debtor, too, the more probable it was that he would find the means of conciliating his gaolers. The honest man who had fallen upon evil days, and spent his last penny in a vain attempt to satisfy his creditors, was the greatest sufferer in gaol, where he could not purchase indulgence, and rotted away through want of such common necessaries as pure air, clean water, and sufficient bread to sustain life. When to these afflictions were added the distasteful sights and sounds forced upon him (perhaps not without malice) by

Debtors and felons in prison.

cup was full, and he could but turn his face to the foul wall of his dungeon and die. In those days the arguments against imprisonment for debt were strong indeed:

Not less strong were then and are now the arguments against all punishments in public. Howard protested strongly against the mode of execution common in his time, when a day of execution was a 'day of riot and idleness,' and the 'minds of the populace were hardened by the spectacle.' He believed a sufficient remedy might be found in the abolition of the old practice of exposing the criminals to the gaze of crowds during the time when they were carried a long distance through the streets from the gaol to the gallows—as, for instance, from Newgate to Tyburn. His suggestion that the area before Newgate should be the place of execution for condemned prisoners in that prison was adopted, and no further change was effected until our own time, when the hideous spectacle was withdrawn altogether from the public gaze, and human shambles were built within the prison walls, away from public view. This was the only effectual mode of preventing the ill effects which Howard perceived in his own time, and the previous existence of which history clearly establishes.

Howard's opinion of public punishments.

The influence of evil example, obvious enough when pain is openly inflicted in the name of the law, is still more injurious to the persons whose misfortune it may be to have the society of criminals forcibly thrust upon them in prison, though it may not there be so widely diffused. For this reason Howard and others strongly urged the expediency of allowing every prisoner a separate sleeping-cell, and after many long years his arguments have at length prevailed

Howard's anticipation of modern prison discipline and reformatories.

almost everywhere, except in our police-cells, where there may be enforced association for one night, or from Saturday to Monday, but no longer. The greatest hardship on this score was (after the grievances of the debtors) that inflicted on persons sentenced to terms of imprisonment in the Bridewells. Though nominally distinct, these houses of correction were in their internal arrangements practically gaols, even where the same building did not serve as both gaol and Bridewell. In some instances, no doubt, the rogue and vagabond, or person convicted simply of a misdemeanor, might be capable of greater mischief than the convict under sentence of transportation. But the inmates of Bridewells were commonly (except during the short interval in which we had no penal colony) some labourers or apprentices guilty of idleness or insubordination to their masters, some boys and girls who had committed a petty theft, some drunkards who had repented when sober of the acts they had done when drunk, and some offenders under the Bastardy Acts. The old notion of the Tudor times was that such misdemeanants should be 'set on work,' though the principle upon which houses of correction were originally founded was sometimes forgotten in practice. A year or two passed in enforced idleness might, perhaps, have a salutary effect upon idlers, and teach them that work is not, as they suppose, the greatest of human evils. But solitude is necessary for the full appreciation of the lesson, and instead of solitude the companionship of roysterers and idlers like themselves was thrust upon them, and in many places that of the most hardened criminals. Such a system allowed no chance of reformation, and Howard pointed out the expediency of providing reformatories for the young and work for all.

The growth of charity, which was, perhaps, most conspicuous in the efforts of Howard, displayed itself also in various other forms. The relief of the poor was a subject which now began to attract to itself no small share of the public attention. The changes in the poor-laws were (with one exception, which will be noted elsewhere,) all in the direction of greater tenderness to the applicants for aid. Since the time of Elizabeth legislation for the destitute had not gone beyond attempts to give precision to the doctrine of settlement. From the close of the sixteenth century to the middle of the eighteenth there had been both workhouses and houses of correction; but, except in the case of the aged, sick, and infirm, it is doubtful whether persons who did not earn their own livelihood commonly became inmates of the poor-house. The old maxim that want of work was but another name for reluctance to work was not to be rooted out in a generation, or even in a century. The Acts against rogues and vagabonds were so comprehensive that the justices might easily find a pretext for sending almost every healthy pauper to a Bridewell; nor could it be said that they sinned against the spirit of the Elizabethan poor-law, of which the chief object clearly was to support men and women physically incapable of labour.

Growth of charity or sympathy illustrated by changes in the poor-laws: pernicious effects of a well-intended but mistaken policy.

From the year 1748 to the year 1750, the annual expenditure on paupers was on the average less than 700,000*l.* But from the year 1767 downwards a series of Acts was passed with the avowed intention of guarding against the 'false parsimony' of parish officers. In 1775 the relief of the poor cost more than a million and a half, and the increase was both continuous and rapid, until an

expenditure of nearly eight millions was reached in 1817–18. The alternations of war and peace (as well as other conditions) may have contributed a little towards pauperism, by withdrawing men from peaceful occupations and then throwing them upon the world with no knowledge except that of military and naval drill. But the chief cause was obviously the legislation of the reign of George III., by which the principle was established (in direct contradiction to an Act of the reign of George I.) that the poor might be relieved at their own houses. The intention of the legislators was, no doubt, humane, and fully consistent with those other instances of widening sympathy which have already been mentioned in this chapter. The effects were in some respects disastrous; for, out of the doctrine that deficiencies of wages were to be made good in each parish by the parochial authorities, there arose a system which went far to demoralise the whole working population. But the mistake which was made does not in any way reflect discredit on the motives of the persons who made it, though it may lead to the conclusion that they were very deficient in political and philosophical insight.

The mistake was unfortunately the greater, as it was made at a time when the rapid multiplication of occupations might have suggested a very different policy, which would not have been inconsistent with humanity in the highest sense. It was far too much in accordance with the short-sighted anger of the machine-breakers, who supposed that every invention which accelerated production must of necessity be injurious to the industrial classes. The error was pardonable in rude and uneducated labourers, who saw the work previously done by themselves better and more rapidly done by a me-

chanism which seemed to snatch their handicraft out of their hands and their bread out of their mouths. But there might have been expected in the generation in which Adam Smith produced his 'Wealth of Nations,' some perception of the fact that increase of production would be attended, in one form or other, by increased opportunities of employment, and that the time had come not for encouraging pauperism but for checking it. In our days, as in all others, it is, no doubt, easier to be wise after the event than to foresee precisely what is about to happen. Towards the end of the eighteenth century, there was (so far as internal affairs were concerned) a change in our manners and customs, of which advantage might have been taken to educate the bulk of the population in thrift and self-reliance, instead of recklessness and dependence.

Not only were Hargraves and Arkwright preparing occupation for innumerable hands in cotton-spinning, Watt by the application of steam, Wedgwood by new industries in the potteries, Caslon by his skill in type-founding, and many other inventors in various branches of labour, but the internal communications were beginning to keep pace with the progress of commerce and manufactures. Our forefathers, or those among them, at least, who were legislators, were slow to perceive the importance of all these changes, and made no attempt to take advantage of them in any modifications of the poor-laws. When conveyance was difficult, one neighbourhood (as has been already pointed out) might be in the enjoyment of plenty, while another, at no very great distance, might be almost suffering from a famine. The removal of the cause was followed, in due course, by the removal of the effect, and prices of wares which could be carried began to be

equalised in all places to which carriage was easy. Had the labourer or workman been encouraged to follow where the trader led, and like the trader, to supply the market where there was a demand, there would not have been any need for the payment of wages by the parish. The price of labour would have found its level in agriculture as in all other industries. But class-jealousies and the prejudices of the past had still a very powerful effect upon legislation. The accumulation of wealth by the trading and manufacturing classes was regarded rather as an encroachment upon the prescriptive rights of land-owners than as a benefit to the nation at large. The transfer of labour throughout the country would, perhaps, have been opposed by all classes alike:—by the land-owners from the survival of feudal notions respecting the attachment of the peasant to the soil, by the farmers from a suspicion, not by any means ill founded, that they would have to give higher wages, by the manufacturers and traders from a fear that there would necessarily be a change in the law of settlement, and that they might have to maintain a number of unemployed paupers, and by the labourers themselves from a natural preference for certain support in one place to uncertain gain in another. But it is, nevertheless, almost as clear as any fact in history, that the policy which found favour during this period was more injurious to the prosperity of England than any other cause except foreign wars. It not only pauperised the working population of the rural districts, but it checked the progress of commerce and manufactures by limiting the number of hands which could find employment in them; it made the farmer a dependent on parochial relief, for which he was at least as much indebted as his underpaid servant who was nominally relieved; and it retarded the rise of land in value by

retarding that general growth of wealth in which land participates without any effort of its own.

Charity, however, covers a multitude of sins, and for the present we may be content to regard only the charity and forget all the ill aspects of the poor-laws which came into operation towards the end of the eighteenth century.

Improvement of internal communications (canals, roads, &c.,) in relation to crime.

If we turn our attention to the details of those improvements in internal communications which deserve to be classed amongst the most important characteristics of the times, we find a continuous progress, in some respects not exceeded in the earlier history of the world, and altogether surpassed only by the still greater achievements of our own time. The year 1755, remarkable for the Lisbon earthquake, and the British benevolence which it excited, was remarkable also for the passing of an Act which may be regarded as the starting-point of our canal system. Before the century had ended, England was intersected by canals or by navigable rivers, not indeed as she now is by railways, but so far and so widely that commerce became possible under wholly new conditions, and with commerce arose innumerable opportunities of employment for persons who might, in an earlier state of society, have become brigands or highwaymen. At the beginning of the nineteenth century, steam was practically applied to navigation; and railways, which we now generally associate with steam locomotion, were already in existence, but without steam power, in collieries. Attention was also directed to the condition of the ordinary roads. The attempts of earlier reigns were renewed during those of George II. and George III. to regulate the traffic so that injury might not be done by narrow wheels, and that

heavy burdens might pay proportionate tolls. The legislation, however, of this period indicates rather an overwhelming increase of land-carriage than sufficient road-building to meet it, and our great highways were not brought to perfection until after the death of George III. Stage-coaches and other wheeled conveyances, nevertheless, were carrying passengers and goods along roads which had in earlier times been used as mere bridle-paths; and, upon the proposition of one John Palmer, the Post, which had once been the highwayman's chief object of attack, was transferred from the saddle-bags carried by a sorry hack, or from some small unguarded cart, to a well-protected mail-coach.

That softening of manners to which the word civilisation is commonly applied was becoming apparent, also, in various other institutions. Not the least evidence that the nation, as distinguished from particular individuals, was beginning to cultivate tastes of a different character from those of the mere striver (honest or dishonest) after wealth in land or in money, is to be found in the institution of the Royal Academy of Arts in the year 1768, by King George III. About the same time it began to be perceived that there might be some justice in protecting the creations of a man's intellect, as well as his sheep or his horses or his lands, against thieves and robbers. Engravers ineffectually protected by an Act of the previous reign, obtained in 1767 an exclusive right to their own works for twenty-eight years. In the reign of Anne it had been conceded to authors that they might enjoy copyright for fourteen years; and inventors had an exclusive right to their own inventions for the same period by an Act of the reign of James I. Watt, the inventor or at least the practical adapter of

General softening of manners; laws to protect inventors and authors.

the steam-engine, was indulged with a grant of an additional twenty-five years in 1775, as a special and personal favour. A decision given on the assumption that authors were at common law entitled to the products of their own labours in perpetuity was reversed by the Lords in the previous year; but in 1813 the term of copyright was extended to twenty-eight years at least, and as many more as the author might chance to live after the publication of his work.

These changes in the law may at first sight appear trivial, and of little importance in the history of crime, yet they deserve to be classed amongst the most important illustrations of the theory of property. During the last half-century we have advanced but little in the same direction, and there are many amongst us who would deprive the inventor of all protection, and declare the products of his genius to be the property of the public, or rather of the first and other appropriators. We have here but one proof the more of the truth frequently set forth in these pages, that mankind are apt to apply their savage instincts to all new circumstances which may be presented to them. Force and fraud were the earliest titles to land; fraud was the earliest companion of commerce; and robbery at the hands of the first comer was, and even still is, the not uncommon reward of the designer of a new invention or the discoverer of a new truth.

Relations of invention, authorship, crime, and the rights of property: reasons why authors and inventors have continued to suffer injustice.

Nothing can more fairly be described as a man's own than his intellect, and that which his intellect produces; and it may reasonably be suspected that, apart from the innate love of appropriation, there is some other cause which deprives him of the power of settling his laboriously acquired rights on his posterity. The possessor of land,

which has come to him without any effort of his own, can secure to his heirs the exclusive benefits of any improvements he may effect upon it. He reclaims a fen, and his remote descendants may enjoy the profit; but a Watt or an Arkwright, a Stephenson or a Wheatstone cannot so much as enrich their own children by a bequest of any exclusive right to the creations of their own genius. Private interests, it is sometimes said, must yield to considerations of public policy. But vague and grandiloquent phrases are no encouragement to inventors with hungry families; and all experience shows that inventors are the greatest of public benefactors. The prejudice which exists, and has long existed, against a just recognition of their claims, has in part descended to us not only from the more barbarous ages when might was right, but from the times of the Tudors and Stuarts, when monopolies were granted to courtiers as a matter of favour, and when the necessaries of life were raised in price in order to increase the income of men who never invented anything but a lie which might serve their turn, and never discovered anything but an imaginary spot upon a neighbour's fame. The chief object of the Act which gave the inventor his fourteen years' privilege in the reign of James I., and which afterwards served as a model for the law of copyright, was the abolition of such monopolies as the right to sell table salt. Inventions thus protected were naturally associated in the public mind with all the old abuses which had excited the popular discontent; and the inventor and the author have had to contend not only against the savage doctrine that he should take who can, but also against the animosity excited by avaricious intriguers with whom they had nothing in common.

For these or other reasons it has never been so much

as a misdemeanor for one man to filch from another the product of life-long study and experiment, though for one man to steal another's coat has been a crime thought worthy of punishment by death. Nevertheless, the attention to new occupations which accompanies a departure from the ancient habits of lawlessness and violence caused a steady advance, not only in the arts but in science, during the whole of the period now under consideration. The effects upon crime were perceptible not only in various new developments of it which have yet to be considered, and in the diversion of a part of the criminal population into new industries, but also in various reforms or suggestions affecting the administration of the law and the system of police.

Perhaps the most remarkable coincidence is that the period specially remarkable for increasing love of science is the period during which the functions of jurors were at length distinctly separated from the functions of witnesses. The confusion between the two was a necessary consequence of the origin of juries, and retained its hold upon the minds of men until scientific methods aided in diffusing more accurate habits of thought, and made the laws of evidence more precise and more consistent with themselves. The increase of great towns, and of the population, also contributed something towards the attainment of this end, so far as juries were concerned, for it became more and more improbable that twelve men selected almost by chance should all have a knowledge of the facts of any case brought before them. But it remained for Lord Ellenborough, in the year 1816, to lay clearly down the maxim that a judge who should tell jurors to consider as evidence their own acquaintance with matters in dispute would misdirect

Effect of intellectual development upon the theory of trial by jury.

them. The true qualification for a juror has thus become exactly the reverse of that which it was when juries were first instituted. In order to give an impartial verdict, he should enter the box altogether uninformed on the issue which he will have to decide.

About the end of the eighteenth century, also, it began to be plainly perceived, by everyone who considered the subject, that the ancient institutions of headboroughs, tithing-men, or petty constables, with a high constable at their head, could hardly be regarded as an efficient system of police for a civilised country, and least of all for its metropolis. Accurate statistics of the constabulary of the whole country, as existing at this time, could hardly be obtained, but for the metropolis they are sufficiently minute. The city of London, with its various wards, the city and liberty of Westminster, the divisions of Holborn, Finsbury, the Tower Hamlets, Kensington, and Chelsea, the liberty of the Tower, and the borough of Southwark, each with its own local management and its own local jealousy of its neighbours, numbered among them less than a thousand constables who were unpaid, and about two thousand watchmen and patrols paid at the discretion of the persons in authority in each ward, parish, hamlet, liberty, or precinct. The latter class are described by an observant and thoughtful contemporary as 'aged in general, often feeble, and almost half starved from the limited allowance they received.' In addition to these there were fifty paid men divided among the nine police-courts of the metropolis (who may be regarded as the predecessors of our modern detectives) and sixty-seven 'patrols for the roads' attached to the office at Bow Street.

Police of the eighteenth century: suggestions for its improvement.

The evils of such a system, with its divided authority

and its inefficient staff, were clearly seen at the time; and suggestions were made which, though neglected at first, may be regarded as the outline of our modern scheme of police management. The days of mediæval guilds and tithings had passed away; it was necessary that the prejudices with which they had been connected, and which had survived them, should be swept away also. The necessity for some unification of authority, in the metropolis at least, if not throughout the country, was indicated in a treatise published by David Colquhoun (an acting magistrate for the metropolitan counties), as well as by others. In his work may be discovered an anticipation of the chief provisions of the Metropolitan Police Act, extending even to a police for the Thames.

The usual outcry that crime was increasing, when it was in fact diminishing.

These salutary propositions were accompanied by an outcry, repeated from generation to generation, that the increase of crime in every form was without precedent, and that the whole social fabric was in danger of crumbling to pieces. We are all apt to think that there is some special hardship in the troubles which may befall ourselves; and there is in every age a tendency to regard any existing evil as an alarming characteristic of that particular time. The truth is that the latter half of the eighteenth century was remarkable for the almost total absence of one of the strongest indications of lawlessness common to all earlier periods of which we have any records—that of forcible entry. Nor is there any reason to believe that it was marked by an unusual number of robberies and murders. The fears expressed by Colquhoun at the end of the eighteenth century, like those expressed by Fielding in the middle, are simply proofs that the security of life and

property was, generation by generation, acquiring a higher value in the eyes of a more civilised people.

With the diminution of crimes on land, there was at length a corresponding diminution of piracies at sea. The pirates now fell from their high estate to as low a level as those 'gentlemen of the road' who were the last representatives of the outlawed gentlemen and knights of the middle ages, and who took a purse with the aid of a gang, at night, instead of boldly marching with a little army to the attack of a manor-house by day. The famous sea-captains who had been the terror of all unarmed ships as late even as the beginning of the eighteenth century, were without successors at the end of it. They did not die out at once, and they even revived in the West Indies as late as 1763. After that time, piracy, considered as a profession, was almost extinct, though individual acts of piracy were committed only too frequently, when privateers' men or others found a convenient opportunity. But the adventurous spirits who would previously have been buccaneers, found occupation at first in the slave trade, and afterwards as mere smugglers.

Piracy extinguished, though the extinction was retarded by the privateer system.

The chief cause which long retarded the total extinction of piracy was the practice of granting letters of marque. This still continued to be one of the most ordinary features of maritime war, and has but recently been abolished by treaty. Its evils, however, were mitigated in the great war at the beginning of the nineteenth century by the strength of our regular navy, which overawed the privateers and checked their tendencies to become buccaneers.

Early in the latter half of the eighteenth century, too, a new effort was made to check the misdeeds of the

wreckers. Though wreck of the sea had been the right of the king or lord of the manor, and though wrecking was a practice by no means unknown among the population of the sea-coast in comparatively recent times, the growth of commerce caused many efforts to be made for the protection of crews and cargoes. It was not, however, until the twenty-sixth year of the reign of George II. that wrecking was made a capital offence. It then began to be regarded as a crime of some magnitude.

Wrecking made a capital offence.

It is, however, in the wars of this period that the greatest obstacle to the progress of civilisation is to be found. Between 1750 and 1820 there were wars with France and wars with Spain, wars in India, the war of American Independence, and that great continental struggle which began soon after the French Revolution, in 1792, and was brought to a conclusion only by the battle of Waterloo, in 1815.

Effects of the military spirit: felons, vagabonds, and paupers permitted and required to serve in the army and navy.

The close connexion between the military spirit and those actions which are now legally defined to be crimes has been pointed out, again and again, in the course of this history; and there present themselves in the eighteenth century some illustrations of this important truth which, from their nearness to our own days, are far more impressive than those of an earlier time. A pardon on condition of service in the wars may appear of little importance if granted in the reign of Edward II. or Edward III. In the eyes of some persons it may assume a different aspect if granted in the reign of George II. or George III. The moral is really the same in either case; the proof is equally abundant in both. In the great wars which England waged during

find enough soldiers by any process of enlistment, or enough sailors even by impressment. Judges and gaolers were consulted upon the fitness of convicts for military service at sea or on shore; the qualification, it is hardly necessary to add, was not moral but physical. Thus our ships of war were manned, in part at least, by felons of various kinds—by men who had committed murder, or stolen any property, from a sheep to a watch, by highwaymen and by the receivers of stolen goods, by anyone, in short, who had a vigorous heart and well-developed muscles. The army was reinforced by recruits from the same classes. Sometimes the criminal was allowed the choice of the two services, sometimes compelled to accept one, and occasionally to enlist in a particular regiment, described by its number or by the name of its colonel. Nor did the practice end here. If the man with the thews and sinews fit for a soldier's or sailor's life could thus escape the gallows when under sentence of death, it would obviously have been unjust, and certainly inconvenient, to execute the trained soldier or sailor in similar circumstances. It was ordered accordingly that should a certain soldier about to be tried for one murder, or certain officers of a sloop of war about to be tried for another, be found guilty, they were not to be executed until the king's pleasure should be known. It is unnecessary to explain the effect of such impunity upon the morals of the army and navy, and upon the general security of life and property.

The same principle may be discerned in a statute of the year 1795 in which power was given to justices of the peace to send on board ship all able-bodied, idle and disorderly men, without lawful employment or means

embezzlers of naval stores, between the ages of sixteen and sixty. This was but an extension to the house of correction and the poor-house of the recruiting system already applied to the prison. To the convicted felon, indeed, the offer of military or naval service came as a reprieve from death or transportation; to the able-bodied vagrant or pauper it came as a form of punishment for which he was not altogether prepared. In both cases, what was done was strictly constitutional, or, in other words, thoroughly in accordance with mediæval practice. And though it might not be just to assign a criminal as the comrade of an honest man, it was certainly no more than just that the idler should take his share of the hardships which the press-gang often enforced upon the industrious.

War, treachery, and spying: attempts to assassinate George II. and George III.: execution of Byng.

When once a nation has committed itself to a war which is undertaken in earnest, which is waged near home, and which is felt as a reality by the people at large, the mediæval spirit revives in proportion to the bitterness of the struggle. The progress of civilisation is impeded; and if crime does not revert towards the more ancient modes of life, at least its change in an opposite direction is checked. Thus in the latter half of the eighteenth century, and even at the beginning of the nineteenth, there were both crimes and punishments which recall forcibly enough to the recollection the manners and customs of the middle ages. In every direction, it became apparent that the greater the strain of the conflict the greater is the danger of a reaction towards violence and lawlessness. Other causes will, of course, in proportion to their strength, counteract this tendency, but it made itself sufficiently manifest in more ways than one during the reign of George III.

Among the employments to which a long war gives encouragement are those of the assassin, the traitor, and the spy; and fortunate indeed is the belligerent nation which escapes their plots. Numerous attempts, it is well known, were made to assassinate George III. It is not so well known, though equally certain, that there was a very formidable scheme devised against the life of George II., which was frustrated only by accident. There still exists a letter, dated March 9, 1756, from a person signing himself 'J. Louis Vallettan,' addressed to 'Monsieur Sheridan,' which reveals the details. From 1757 downwards there is evidence that there were discontented subjects plotting invasions of foreigners, or giving information to the enemy; and when a reverse occurred, there arose (though with less reason than at an earlier period) the usual cry of 'We are betrayed!' Thus we find one Dunster, a tailor, setting himself to bring about a hostile landing in 1757, Dr. Florence Hensey sending important particulars of Britain's strength and weakness to the French in the same year, and O'Coighly and the United Irishmen following their example in 1798. It is, of course, easy to palliate these evils by attributing them solely to Irish discontent with British rule. It is not less easy to find excuses for James Aitken who came from America, set fire to Portsmouth dockyard, and afterwards to a part of the city of Bristol, and was executed in 1777. All these acts, it may be said, do not indicate any effect upon true-born Englishmen. But when those true-born Englishmen shoot one of their admirals 'to encourage the others,' though none accused him of corruption and few of cowardice, it becomes apparent that the iron has entered deeply into their souls, and that the thirst for blood has endangered the general security. The assassination of

Perceval, the prime minister, in 1812, may perhaps be regarded as an ordinary instance of murder caused by disappointment and a desire for revenge. But the less the general respect for human life, the less are particular individuals restrained from gratifying their murderous passions.

Not the least remarkable among the features of the period included in the present chapter is a document which shows the opinion of the clergy upon the state of society just after the last Stuart rebellion. In it may be discerned what was the inheritance of crime from previous generations as crime appeared from the clerical point of view. It is a connecting-link between the remote past and our own generation, and explains in some measure the comparatively slow progress which was made in the half or even three quarters of a century after it was written.

Perjury: opinions of the bishops upon crime in 1754.

On February 20, 1754, was held a meeting of the bishops to consider what recommendations might with propriety be made by them to put 'the laws more effectually in execution against the enormous crimes of murther, robbery, perjury, forgery, lewdness, etc.' The principal suggestions were naturally founded upon religion, and it must be confessed also upon religious bigotry. Prominent among them is an enquiry into the state of prisons; but this, after an incidental laudation of sobriety, resolves itself into an enquiry concerning the 'increasing number of popish priests,' and the propriety of restraining prisoners from their 'company and influence.' The proposal that great care should be taken 'in the education of youth in the principles of religion, industry, and sobriety' is far more deserving of commendation, though perhaps some-

advice of a practical character, though they insisted strongly that 'the neglect of public worship and breach of the Sabbath' were causes of the evils to which they called attention. The most remarkable part of the document which they drew up, however, is that in which they denounced 'the crying sin of perjury.'

This offence, almost always common among uncivilised peoples, had been prevalent in England in every generation since the days of compurgation. Nor to anyone who studies our social history from the seventh century downwards is there any cause for surprise in the fact that, almost within the memory of persons yet living, professional perjurers walked Westminster Hall with straws in their shoes, to advertise the fact that they could be hired to give any evidence for a consideration. The traffic of these male prostitutes of the witness-box has now fortunately come to an end, though no one who has any acquaintance with law courts would deny that perjury is still very often committed. As no practice was more characteristic of the days before the Conquest, or asserted itself more persistently in the age of chivalry, or more effectually defied every change of religious belief, so none impressed its mark more deeply upon the eighteenth and even upon the nineteenth century.

Perjury alone had strength enough to hand down one of the most ancient of the barbarous public punishments to the beginning of the reign of Queen Victoria. The pillory had no small vitality of its own. It was applied to various offenders as late as the year 1816, and it could be applied to perjurers and suborners of perjury until the year 1837. It was even applied to women for no

Perjury and public punishments: the pillory.

greater crime than fortune-telling late in the eighteenth century.

The pillory was, in being a public exhibition and a public encouragement to cruelty, almost as demoralising to the spectators as an execution at Tyburn. It became in fact sometimes a mode of execution by the mob, and sometimes a pretext for them to show their approval of a favourite convict. In 1756, for instance, great and just indignation was excited against a gang of conspirators named Egan, Salmon, McDonald, and Berry. Rewards had about this time been somewhat freely offered for the apprehension of highwaymen. Egan and his colleagues indirectly persuaded one Peter Kelly and one John Ellis to commit a highway robbery, and so laid their plans that Salmon was the person robbed. Upon their information Kelly and Ellis were actually convicted, but their stratagem was discovered, and they were indicted at the Old Bailey for conspiracy. The jury found them guilty, and they were sentenced to the pillory. When they were exposed, a formidable riot ensued. The fury of the populace was so great that they all suffered very severely. Salmon was nearly killed, and Egan was literally stoned to death. Among the instances in which the person in the pillory enjoyed a triumph may be mentioned that of Eaton in 1812. He was an old man who had been convicted of a blasphemous libel. A number of causes may have each contributed something to the demonstration in his favour—his age, the popular desire for religious liberty, and possibly the growing conviction among some at least of the crowd, that the instrument of punishment was, in spite of its antiquity, not altogether suited to the nineteenth century.

Scenes in the pillory: Egan, Salmon, and Eaton.

offered to the public under the sanction of the law was that of women burnt at the stake for high or petty treason. Nor was this of such rare occurrence as might be supposed, for a year could rarely pass without a murder of some master by his female servant, or of a husband by his wife. On the western circuit alone there were two such cases between 1782 and 1784. In 1782 sentence to be drawn to the place of execution and there burnt was passed against Rebecca Downing for poisoning her master. In 1784 this judgment was again recorded, perhaps for the last time, in the following case.

Punishment of traitresses at the stake: illustrations down to 1784.

At Portsmouth there lived an unfortunate man named Cornelius Bayley. His wife, Mary, made the acquaintance of a labourer named John Quin. These two, in the language of the indictment, 'did feloniously and traitorously kill Cornelius Bayley, and each with both their hands and both their feet in and upon the head, belly, breast, sides, and stomach of him the said Cornelius Bayley did beat, strike, and kick,' so that he died. She was convicted, and judgment stands entered against her 'to be drawn on an hurdle to the place of execution on Monday the eighth of March, and burned with fire until she be dead.' She was executed by virtue of this sentence, and her body was burned at the stake, only sixteen years before the conclusion of the eighteenth century. It is to be hoped that, in accordance with a custom which had been gradually adopted, she was strangled by the hangman before the faggots were kindled. The punishment of hanging, as in ordinary cases of murder, was substituted for that of burning by a statute passed soon afterwards—in the thirtieth year of the reign of George III.

spirit of violence, and inflicted in public, the chief was whipping. It was commonly awarded to men guilty of petty thefts. They were flogged—sometimes for two hundred yards through the streets, sometimes for only one hundred, sometimes only in the market-place or at the gate of a town, and sometimes even in private. The rule, however, appears to have been that the men were flogged in public and the women in private; and instances in which women were whipped are by no means uncommon at the very end of the eighteenth century.

Whipping of men and women.

Individually, however, the most remarkable instance of a mediæval punishment re-appearing almost within living memory is the Act of Attainder passed in 1798 against Lord Edward Fitzgerald and others after death. There was no difficulty in finding a precedent in the fourteenth century, and no doubt that such an Act was contrary to the spirit of all recent legislation. It is true that the Parliament of Ireland was primarily responsible; but the bill could never have become law without the assent of the British sovereign. It is true that the attainder was afterwards reversed, but so were many attainders of the fourteenth and succeeding centuries. The military spirit was strong in Fitzgerald and those other United Irishmen, including O'Coighly, with whom he was associated. He had planned an insurrection very much after the fashion of mediæval knights, and if he succeeded in nothing else, he succeeded in placing upon the statute book an Act worthy of the reign of Richard II., and disgraceful to the reign of George III. In this as in many other events there is but a confirmation of the fact that civilisation may revert

Attainder after death in the mediæval fashion in 1798.

Fitzgerald's is the last case of the kind: there can hardly be another unless the recently-acquired national character is altered by some unforeseen domestic calamities, or some untoward foreign influence, or some blind religious fanaticism. But any of these causes may come into operation, and would have their full effect where, as in the most civilised country upon earth, the civilisation is but skin deep.

Only five years after Fitzgerald's attainder there was a treasonable conspiracy, showing, like his, the old mediæval recklessness, but punished, unlike his, in the ordinary course of law. One Colonel Despard, an officer not altogether undistinguished, believed, rightly or wrongly, that injustice was commonly done, as it had been done to himself, by a tyrannical government which he proposed to subvert by force. His plan was to corrupt the soldiery, to seize the Bank and the Tower, and to assassinate the king. His associates were sworn after the usual fashion of earlier conspirators. He was tried and convicted, and with six of his accomplices suffered the penalties of treason.

Despard's treason.

With occasional burnings of women, occasional treasons, and those vindictive passions which permit an Act of Attainder to be passed after the death of a person accused of treason, there survived also many prejudices, meannesses, and cruelties, which came into being before the days of chivalry, and lived through them and beyond them. If women had been burned before the Norman Conquest, they had been drowned also; and swimming a witch was long one of the cherished pastimes of country villages. As early as 1736 witchcraft ceased to be a criminal

Persistence of the belief in witchcraft. Murder at Tring.

could be punished as impostors. In the year 1751, the old Adam showed itself in a fashion which indicated a profound contempt for the repeal of the Act 'against conjuration and witchcraft.' One Osborne, and his wife Ruth, lived at Tring, in Hertfordshire. They were not popular among their neighbours, who said that one was a warlock and the other a witch. One of their enemies paid the criers of the towns and villages round about to 'give notice that on Monday next a man and woman were to be publicly ducked at Tring, in this county, for their crimes.' The witch and her husband took refuge first in the workhouse and afterward in the vestry. A great crowd assembled, walls were pulled down, and in the end the two poor wretches were dragged from their hiding-place to a sheet of water known as Marlston Mere. Each of them was then tied up in a sheet, and thrown into the pool; and the ringleader in the riot, a man named Colley, displayed his enthusiasm by wading into the water with a stick, and turning them over and over. The woman soon died. Colley was brought to trial, convicted and hanged, but not before he had signed a declaration in which he renounced his real or pretended belief in witchcraft.

The scandal of this case offered one proof the more that ignorance and prejudice cannot be abolished by the fiat of a statute. But there was something beyond prejudice and ignorance at work, when witches were flung into a pond, and traitresses strangled, if not burnt alive, at a stake; there was that cruelty to women which had been handed down through all the intermediate centuries from the days of Athelstane. To throw women to the flames was an act not less cruel in itself in the reign of George

Cruelty of women to women inherited from the days of Athelstane. Sarah Metyard and Elizabeth Brownrigg.

III. than it had been before the Conquest, though the moral effect might be less pernicious when women had ceased to be the executioners. And the spirit of the hideous old law still survived, even when the hangman lighted the faggots and even when he wrung the victim's neck before the fire was kindled. When witches were to be tortured, the women were not less eager than the men to see a woman suffer; and as long as witchcraft could be the subject of a prosecution they were the most eager witnesses in court.

To these evil lessons and evil habits inherited from past generations may, perhaps, be attributed in some measure the sufferings of another kind which women have inflicted upon women without mercy, and apparently without remorse. The years 1762 and 1767 brought forth some cases of feminine cruelty which are, indeed, not altogether without parallel in more recent times, and which recall forcibly to mind those female slaves of Athelstane's reign who piled the logs to burn female slaves like themselves, as well as those mediæval wives who could murder a husband and calmly bake the corpse in an oven. It is needless to describe in detail all the cruelties perpetrated on their apprentices by Sarah Metyard and her daughter, the milliners, or by Elizabeth Brownrigg, the midwife. They murdered girls by a process of slow torture, except when haste was made to deprive of her life one who suspected that the dead body of her companion had been hidden away.

Thus the old mediæval spirit showed itself, but more fitfully than in the old times. Where the old habits were most preserved, in the rural districts, the old violence still broke out, not in the shape of forcible entries, or in the deeds of gallant outlaws infesting every wood in gangs,

but in offences against the game laws. With instances of these the records abound; they were the natural inheritance running with the land which had once been the common property of a tribe, and in which the uneducated descendants of the tribesmen could never fully recognise the rights of property.

Offences against the game laws, and highway robberies: their relation to earlier offences.

Highway robbery was a flourishing crime during all the latter part of the eighteenth century. It was not yet perceptibly checked by the improvement in the roads and the increase in the number of travellers. But the highwaymen were continually falling lower and lower in social position. In 1796 they were for the most part, according to the description of a contemporary well able to form an opinion, 'the lower and more depraved part of the fraternity of thieves.' There might have been among them a few young men of some education, and a few tradesmen who had recourse to the highway to supply immediate wants in a career of debauchery. There was much less dignity in the real robber, as in the true knight, than has been attributed to him in fiction. William Page was, perhaps, as good a specimen of the class as any other. He was the son of a farmer at Hampton, and was sent to London to assist a relative who was a haberdasher. The boy was vain, sensual, fond of dress, and no coward. To supply his needs he robbed his employer. Having descended to be a common thief, he rose to be a highwayman, and after an adventurous but not very long career, he died the usual death upon the gallows. In this he was somewhat unfortunate, since there was no reason why he might not have made as good a dragoon as many others like him who were pardoned.

One of the most fertile spots for perpetuating the

growth of mediæval crime was that in which circumstances had always been favourrable to it—where there had once been the Marches towards Scotland. Neither war nor peace between the two countries could destroy the fraternal feeling between the outlaws of both. In spite of the Union of Crown and Parliaments there had remained a distinction of laws and jurisdictions. The law-breakers of each country continued to be, as they had always been, more united than the law-abiders of either. The Scottish felons could thus find a safe refuge in England, and the English in Scotland, until, in 1773, an Act was passed which had the same effect as a comprehensive extradition treaty with a foreign country. Thus at last the Border ceased to be a hot-bed of crime.

Persistence of the crimes of the border until 1773.

A change so great in every way as was wrought by the introduction of new manufactures and new modes of life; with the consequent disturbance of markets and prices, could not fail to excite animosities, and with them that disposition to violence to which all ignorant persons having an inheritance of mediæval manners and traditions were prone. In the new machines, in the offer of new modes of employment and the possible extinction of the old, rude workmen saw, naturally enough, indications of hostility against themselves; and they saw their natural course of action, as their forefathers would have seen it, upon less provocation, in a resort to force.

The old spirit of violence resisting industrial changes: the machine-breakers.

From the year 1756 (when the town-hall of Nottingham was destroyed in a corn riot), to the year 1769 there was chronic discontent spread throughout the whole country, and caused to all appearance quite as much by a general rise of prices following the increase of wealth as

by specific grievances affecting particular classes. Each class, of course, alleged its own particular grievance; but the Durham miners and the London weavers broke out into insurrection at nearly the same time as the common labourers of Berkshire, Gloucestershire, and Wiltshire. The sailors of the Tyne and the Thames contributed to the disorder, and all alleged, in one form or other, that they found too great a difficulty in supporting themselves. The complaint was one which was made also by Horace Walpole in 1766.

The weavers, indeed, clamoured for protection from foreign competition, but in their riots they showed their jealousy of the growing perfection of machinery by destroying the looms of their masters. Acting on a similar principle, the rustics burnt mills, and the miners the draining engines and other mechanical contrivances employed in the mines. These acts were made felony, without benefit of clergy, in 1769. But no legislation could be sufficient to repress the outbreak of passion which was inevitable when uneducated classes believed that they were losing their means of livelihood, without any prospect of finding another.

From this time forward, riots for the purpose of breaking machinery became frequent. If the beginnings of commerce were in fraud, the beginnings of the new peaceful arts were in turbulence and bloodshed. Hargraves' spinning-jenny was destroyed by an angry mob; and even as late as 1826 the Lancashire hand-weavers rose in desperate rebellion against the irresistible progress of mechanical invention. The most formidable of the intermediate tumults excited by machinery was in 1812, when the 'hands' of Cheshire, Lancashire, and Yorkshire lost all patience, broke into the houses where spoil

was to be taken, and excited a panic among those of the inhabitants who had anything to lose. Some of the offenders were hanged, but more transported, and some escaped with a comparatively short term of imprisonment. But discontent was not to be allayed either by punishment or by mercy, and lingered on until the hand-weavers accepted their fate of inevitable extinction. Prosperity, and with it constant employment in the factories, aided, perhaps, by other causes, gradually softened that spirit of violence which used formerly to show itself, upon the smallest provocation, in indiscriminate havoc; and when, in our own time, the sons and grandsons of the rioters of 1812 and 1826 were starving, they bore their misfortunes with resignation and showed gratitude for the efforts made to relieve them.

The most alarming form, however, in which the ancient habit of asserting a claim by force was displayed, during the period now under consideration, was the mutiny of the fleets at Portsmouth and the Nore. The crews at Portsmouth alleged, among a great variety of grievances, that their pay remained as it had been in the reign of Charles II., and that there had been a great reduction in the value of money. This was a fact which could not be denied; and it was a fact also that extortions and embezzlements, not unlike those of the middle ages, still intercepted some of the allowances which were the seamen's due. The Admiralty unfortunately turned a deaf ear at first to all complaints, and then showed some disposition to beguile the sailors with fair promises which were not to be fulfilled when the danger was passed. A demand which, if even mutinous in tone, was just in substance, was thus developed into actual mutiny, and into a mutiny, in the main, successful. The

The mutinies at Portsmouth and the Nore.

men refused to obey orders until they had what they considered fair treatment assured to them, and they gained their point.

The Portsmouth crews having had all or nearly all their demands satisfied, cheerfully resumed obedience; but the example of an unpunished mutiny on the one hand, and of vacillation and disingenuous management on the other, had a most pernicious effect upon naval discipline and caused a still more dangerous mutiny at the Nore. The Admiralty had behaved little better than the chivalrous knights of the middle ages. They had been oppressors, they had promised relief with no intention of performance, and they found themselves face to face with the consequences. From time immemorial there had been demagogues, some honest and some unscrupulous. To those who were unscrupulous the opportunity was now irresistible. England was engaged in a war in which she needed all her resources, and she was even threatened with invasion. Her navy was her life; to paralyse her at sea was to put her in peril of extinction; and there were Englishmen found to risk her existence for the sake of an institution which they dignified with the name of a 'floating republic.' There is no doubt that some unnecessary hardships were endured by sailors in addition to those for which redress had been extorted at Spithead. But, when mutiny had been developed into rebellion against the existing form of government, the time for concession was past, and the utmost that could be granted was pardon to those of the mutineers who were not ringleaders. Firm refusal at last took the place of ill-judged hesitation, and the difficulty melted away—partly, however, because the crews

to make of the vessels of which they had rendered themselves masters. The ships were surrendered to the lawful authorities at Sheerness, and a few only of the chief offenders were hanged after due trial. These lives were lost through duplicity on one side and a reckless spirit of lawlessness on the other. But though the causes were not unlike those which existed in the middle ages, there was far less bloodshed than would have been brought about by such causes in earlier times. The progress of civilisation had already had some effect, if not upon the warlike spirit, at least in checking slaughter in cold blood.

Religious fanaticism, however, appears to be the same whenever roused. Let it but taste blood and grow warm with fire, and no blood and no fire will satisfy it. In 1780 there lived one Lord George Gordon, whom it is most charitable to regard as a madman. Like Titus Oates he showed an absence of all scruple in advocating Protestantism against Popery; and like Titus Oates he had the misfortune to play the part of a renegade. But inasmuch as Oates never played the renegade except for an adequate consideration, and Gordon went through the serious process of conversion to Judaism without any prospect of equivalent gain, it is only just to draw a broad distinction between the two men. Lord George Gordon seems to have been one of the most foolish, though one of the most mischievous of fanatics.

Persistence of fanaticism: Lord George Gordon and the 'No Popery' riots.

The effect of individual exertion was never more clearly shown than in the formidable riots excited by this man in London. Two years earlier an oppressive Act of the time of William III., directed against the Roman Catholics of England, had been repealed. No

disturbances followed immediately, and, to all appearance, no discontent. But no sooner did the Roman Catholics of North Britain take advantage of a riot against them in Glasgow to pray for some protection and relief, than there arose a wonderful clamour in the South. Lord George Gordon, who had a seat in Parliament, assumed the leadership of a party which grouped itself into a Protestant Association with various branches. He made, at Westminster, various speeches, not remarkable for any reasoning power or any gift of statesmanship, but consistent enough in the bigotry which would punish men for holding and teaching their own religious opinions. The mob of London, which had remained tranquil when some measure of toleration was granted to Roman Catholics in England, was roused to fury by Lord George when a similar indulgence was asked for Roman Catholics in Scotland.

No one looks for reason or deliberation in any of the actions of fanatics. But they perpetrate a bitter satire upon themselves when they proclaim to the world that they expect to find their natural friends and their truest supporters in the inmates of prisons. At the beginning of the riots excited by Lord George Gordon in London, some of the rioters were taken and locked up in Newgate. It was not unnatural that their fellows should rescue them. But with them were released all the malefactors in the gaol; and the Protestant zealots found prison-breaking so congenial an occupation, that, after they had thoroughly destroyed Newgate, they directed their attention to the rest of the prisons which were, one after another, attacked and broken open. The prisoners thus set free made themselves as drunk as

thieving, with as hearty a good-will as any enthusiast could desire.

In the week during which the commotion lasted, the Houses of Parliament were surrounded, and the members intimidated and ill-treated; the residences of foreign ambassadors were attacked, and the chapels connected with them destroyed. The original pretext for the disturbance was sometimes remembered, but more often forgotten. When pillage or drink could be had at the expense of a Catholic, so much the better; when at the expense of a Protestant, it was taken without compunction. Dwelling-houses were sacked, furniture burnt, and such atrocities committed as might have been expected at the hands of convicts and fanatics. London was, for some days, almost as much at the mercy of a mob as it had been in the days of Wat Tyler. Order was not restored until many lives had been lost, for, as in the days of Wat Tyler, there was vacillation among persons in authority, and a want of vigour and promptitude in dealing with the rioters at the beginning. The king (George III.) in council at length made proclamation that the military would act, where necessary, without waiting for the intervention of the civil magistrate, or, in other words, for the 'reading of the Riot Act.' In twenty-four hours afterwards London was again tranquil, and anarchy at an end; but more than four hundred persons had been wounded, and not a few of them mortally.

Lord George Gordon was afterwards tried for treason, but acquitted; and, at this distance of time, it is easy to perceive that it would have been absurd to pronounce so crazy a fanatic a traitor. He lived to be a standing joke for such wits as Horace Walpole, to whom his conversion to Judaism was a source of endless amusement, and he

died at last in Newgate under an accusation of libel. He did more harm than many a villain completely responsible for his own actions. He roused the dormant love of violence, and the dormant spirit of fanaticism, and led many thoughtless persons to their destruction, not only during the riots but afterwards. The offences of rioting, arson, and destroying dwelling-houses, were more easily brought home to his followers than treason to himself. Twenty-one were hanged; more than three times that number were found guilty, but not executed; and still more were accused but had the good fortune to escape conviction through the leniency of grand or petty juries. We may hope, though history hardly teaches us to believe, that religious frenzy will never cause the repetition of such crimes and such trials.

Persistence of various mediæval offences: importation of base coin, adulteration of bread, false weights and measures.

The remains of mediæval habits, however, were more perceptible in the time of Lord George Gordon than they are at present. The importation of base coin, for instance, one of the most conspicuous offences of the middle ages, still gave some trouble, and was the subject of an Act of Parliament, in 1774. The old assise of bread, too, lingered on after successive modifications, until a committee of the House of Commons recommended its abolition in 1815. The original object of this institution had been to regulate the price of bread by limiting the profit of the baker upon each quarter of wheat. Of course it became necessary to alter the tariff from time to time, and the bakers, who often suffered injustice, attempted to increase their gains by various deceptions. The practice of mixing unwholesome matters with wheaten flour called forth various statutes, and new provisions for the punishment of such offences were enacted towards

the end of the reign of George II. All these Acts were ineffectual, and the committee of 1815 reported that if the trade were thrown open by the repeal of the assise laws, persons with capital might gradually be drawn into it, and the waste of labour and subdivision of profits might be diminished. A statute which was passed immediately afterwards abolished the assise of bread in London, and in effect put an end to it throughout the country. No one supposes that either this or the later laws can have ensured to everyone a loaf altogether free from adulteration. But there has been an improvement which is by no means despicable; and as we never see a baker set in the pillory for selling bad bread, so we never find a loaf, like those of the middle ages, consisting of a lump of iron surrounded by a crust.

False weights and measures continued to be employed by dishonest traders, as they had been employed in the time of Henry II., though efforts were made, again and again, to check the practice by new laws. It was remarked, at the beginning of the present century, by an author quite competent to form a correct opinion, that, notwithstanding the frequent renewal of such Acts, the crime was still very generally committed, and for the most part with impunity. The frauds of retail dealers were practised in another form by merchants and manufacturers, somewhat after the manner in which they had been practised by the same classes at the very commencement of British commerce. In other words, every new development of trade was accompanied either by a new form of fraud, or by a new adaptation of old forms. The increased consumption of coal, for instance, was accompanied by various devices for defrauding purchasers; and it was found necessary in 1767 to pass an Act for the appointment of 'coal meters,' and

to give purchasers the right of having the sacks re-measured at their own doors. With the growth of the various textile manufactures there grew up also a number of Acts against short measure, all resembling more or less the Acts of an earlier age.

One of the most remarkable men who, during this period, illustrated the vitality of old traditions in various forms was one James Bolland. He succeeded in carrying on those 'divers extortions' which had been the subject of innumerable commissions in the fourteenth century and afterwards, he was skilful in the use of false weights, and he was at last executed for forgery. He began life as a butcher at Southwark, where he sold meat to St. Thomas's Hospital, and increased his profits by using a weight made not of metal but of wood. He afterwards entered upon the not less congenial occupation of a sheriff's officer; but an error in his accounts was followed by his imprisonment in the Fleet for debt. Upon his release, he put into execution a scheme which, though somewhat different in character, was little inferior in audacity and magnitude to that of Jonathan Wild. He became, as it were, a master-swindler with a number of journeymen to do his bidding. He had found opportunities, as sheriff's officer, and as prisoner, to bring into his power many not very honest and not very strong-minded persons, whom he persuaded, partly by threats and partly by promises, to defraud tradesmen not only in London but in the country towns. His agents incurred the greater part of the risk, and he secured the greater part of the profit, as the goods which were ordered were commonly sent to his house. His enterprise, however, at last outran his discretion, and his imitation of a well-worked mediæval device brought him, after a tem-

Illustration from the career of James Bolland the forger.

porary success, to the gallows. He forged a bond, and employed some of his subordinates to enter a house as though to enforce the legal execution of a judgment which had no more reality than the bond upon which he pretended that it had followed. His experience as a sheriff's officer enabled him not only to gain possession of everything in the house, but to interpose delays until his victim was ruined in the attempt to obtain redress. Encouraged by impunity he committed forgery again; and forgery in the year 1772 was punishable by death. Bolland was at length convicted of this offence, and suffered the penalty which was certainly not disproportionate to the misery he had caused, though it was, according to modern ideas, too great for the crime for which he was tried.

Did we not frequently see misplaced sympathy in our own time, we might consider it strange that great popular sympathy was shown for a criminal so utterly without redeeming qualities as Bolland. There were numerous petitions that he might be pardoned, and articles in his favour appeared in the newspapers. In the following year, too, another offender, whose conduct had been, if possible, more contemptible and more treacherous, was fortunate enough to have, if possible, still greater exertions made for the saving of his life. This was a Doctor of Divinity named Dodd, who had been Prebendary of Brecon, one of the chaplains to the king, and tutor to the young Earl of Chesterfield. He had lost his chaplaincy through an unsuccessful attempt which he had made to obtain preferment by offering a bribe to the wife of the Lord Chancellor. He had availed himself of his relations with his pupil to make himself familiar with the earl's signature, which he afterwards forged in order to raise money to support

Public sympathy with Bolland, and with the no less unscrupulous forger Dodd: attempt to explain it.

himself in an extravagant mode of life. Detection, conviction, and sentence of death followed. But he had in previous years taken a very prominent part in advocating various charities. There was accordingly a very large portion of the public which saw in his earlier career only an extenuation of the crime which he had committed. To have used his clerical vocation as the means towards his worldly advantage, to have made the charity which he recommended to others the cloak for the covering of his own sins, to have abused a position of confidence in order to perpetrate a fraud, were not considered aggravations of his offence by the very many persons who attempted to save him. They appear to have entertained some vague idea that a man who had in any way contrived at any time to have his name associated with a good object must of necessity be good himself. Had this miserable cheat been one of the greatest, best, and wisest of mankind, he could not have evoked a greater demonstration in his favour. Men and women of high degree and of low degree begged for him; the newspapers teemed with letters and articles pleading for him; and the Sheriffs and City Remembrancer went to St. James's Palace, with a petition from the Lord Mayor and Common Council of London. Mercy was (as the law then stood) very properly denied to him, and he suffered the penalty which he had at least as well merited as any forger who ever mounted the gallows. It seems, indeed, to have been thought by the Government that a pardon or commutation of sentence in this case would practically destroy all the force of example after previous executions, and in particular after the recent execution of two wine-merchants named Perreau, whose forgeries had certainly not been of a more heinous character than that of Dr. Dodd.

Though the doctrine that charity covers a multitude of sins may have contributed something towards the sympathy for Dodd, it does not in any way explain the efforts made on behalf of Bolland, and of many rascals who lived and died afterwards. One cause may have been a growing conviction that the penalty of death was out of proportion to many of the offences for which it was exacted. But the same kind of friendly interest in criminals has been exhibited since capital punishment ceased to be inflicted for offences short of murder, and in the case of persons not capitally sentenced. There are two other causes which, if opposed in origin, may nevertheless have been both brought into operation. One is the traditional spirit of lawlessness, handed down from remote generations, conspicuously displayed in the praise given to the 'chivalrous' highwayman, and still to be observed when a distress is levied upon the goods of a poor person. The other is the more modern spirit of humanity which resists the infliction of pain in any form, and is sometimes apt to forget that to deprive an incorrigible evil-doer of the power of doing evil may be the means of sparing pain to the innocent.

The meeting of old and new ideas is to be discerned also in some frauds of the period which have not hitherto been mentioned—as, for instance, in the adulteration of new imports. As bread and beer had been adulterated from the earliest times at which the price of them had been regulated by the assise, so the growing demand for tea brought forth a variety of counterfeits; and an Act was passed in 1777 to punish all persons who sold the leaves of the sloe, the ash, and the elder, or liquorice, or tea-leaves from which

New frauds connected with new imports and exports: trade-marks.

tions had from the first days of the manufacture been practised in bales of cloth, so frauds of a similar kind were applied to new branches of industry. In 1796 an Act was passed against false stamps upon buttons, by which Englishmen had lost reputation, and which may be classed among the precursors of the modern forgeries of trade-marks.

In the middle of the eighteenth century, too, there came into prominence a crime which is impossible until some progress has been made in arts and manufactures. The rolls show numerous instances of offences 'against the form of an Act passed in the twenty-third year of the reign of George II., to prevent the inconveniences arising from the practice of seducing artificers in the manufactures of Great Britain into foreign parts.' This is one of a long series of labour laws, in which there have been continual fluctuations, and in which it is impossible, with due regard to space, to follow minutely the changing definitions of crime. It must suffice to make some reference to them in another chapter.

The crime of seducing artificers into foreign parts: the labour laws.

The most conspicuous crime in the latter half of the eighteenth century, and at the beginning of the nineteenth, was beyond all comparison that of smuggling. During this period it may indeed be said to have taken, together with some offences closely akin to it, the place formerly occupied by piracy, in addition to the place which it had long held for itself. The import laws and the export laws had been evaded as soon as they were made, and the manner of the evasion has been indicated in a previous chapter. It was only natural that an increase of commerce wholly without precedent should be accompanied by some increase of illicit importation.

Smuggling the most prominent offence of the period.

Custom-house officers were by some of the coast population regarded with an aversion which in these more tranquil times it is difficult to understand. The smuggler and his connexions, however, considered, no doubt, that he had as good a right as any other man to the exercise of his own vocation. He looked upon the persons in the employ of the Government who thwarted him as his mortal enemies, and he had often as little mercy for them as the pirates his forefathers would have had for enemies of any other kind. The murder of the custom-house officers, Daniel Chater and William Gally, in 1748, gives some indication of the extent to which the lawless spirit of the middle ages had been handed down to the smugglers of more recent times. The murderers showed themselves to be, like Wat Tyler's men, imitators of the public executioners. Chater was tied to a stake for days, and at last strangled with a rope, after the manner of female traitors before burning; and Gally was publicly whipped from place to place, as many a convict had been whipped before him, but with a degree of cruelty which had not recently been recognised by law. He was placed on horseback, with his legs tied beneath the horse's belly, and in that position whipped for a mile from Roland's Castle in Hampshire. Through pain and exhaustion he became unable to support himself, and he fell with his head downwards and his feet across the saddle. He was then placed again in the original position, and whipped for another half-mile, when his head dropped, and his feet came uppermost as before. He was then set on a horse behind another man, and whipped for two miles further, when Harting in Sussex was reached. There he was flung upon another horse, with his belly on the pommel of the saddle, and

Cruelties of the smuggler mediæval in character: illustration.

allowed to fall off upon the road. This last form of torture was repeated, and after the second fall he died. Many of the gang which committed this crime escaped, but nine of them were convicted.

Smuggling in relation to high duties: general connivance at the practice until duties were reduced: application of the excuses for smuggling to other crimes.

Smuggling was of course practised in various forms, and it was very commonly applied to the importation of wine and brandy from France. According to a state paper of the year 1755 there was at that time hardly a port in England or Ireland from which small craft did not sail for the purpose of illicit traffic. When the vessels returned, laden, to England, the casks which they had brought were sunk either near the sea-shore or at the mouth of a river, and were picked up by boats, a few at a time, as occasion offered. Larger vessels also carried over tobacco to France, with empty stone jars, which might be mistaken for ballast, but which were brought back full, and yielded a handsome profit to their owners.

The statute book grew, year by year, more bulky, through the addition of Acts which served but to show how little can be effected by legislation against a combination of adverse causes. Except, perhaps, perjury, there never was a crime which was so thoroughly national as that of smuggling. If it be true that the receiver is as guilty as the thief, the English nation was as guilty of smuggling as the smugglers themselves in the latter half of the eighteenth century. So completely were men's consciences untouched by sense of wrong in purchasing goods which they knew to be smuggled that even Adam Smith (author though he was of the 'Theory of Moral

scruple in buying wares on which the duty had not been paid would, according to him, have been regarded as hypocrisy, and would have suggested the suspicion that so much pretended honesty must of necessity have been a cloak for knavery greater than the average.

Adam Smith was, of course, not a man to deny that a breach of the criminal laws was a crime which must be punished. In his opinion, however, the existing high duties were not only impolitic, but so impolitic that 'nature never meant' them to exist; and he regarded smugglers as persons who were in many cases 'incapable of violating the laws of natural justice.' Such an expression of sentiment from such a man is evidence that the strongest intellects may be led very far astray by the passions of the time. The offences of the smugglers were everywhere extenuated, not because the smugglers were good men suffering injustice, but because almost everyone was an accomplice in their crimes. The murders of Chater and of Gally were not exceptional deeds; and, whatever the smuggler of romance may have been, the smuggler of reality was as ready to kill a human being as to sell a cask of spirits: he was a ruthless adventurer, whose courage was admired and whose cruelty was forgotten. It is, no doubt, true that high duties are incentives to the smuggler, because the more they are raised the more easily he finds a market, and the greater becomes his profit. But every thief and every swindler might find a similar justification for himself. He might with equal reason argue that 'nature never meant' others to be rich while he remained poor, and rob his neighbour from a love of the laws 'of natural justice.' The murderer might doubt whether nature ever meant the population to increase so rapidly as it increases when crimes of violence

diminish, and might shed blood in the name of 'natural' morality. Civilisation may be either good or bad for humanity—and the question whether it is good or bad is fairly open to argument—but one of the first requisites for civilisation is obedience to the laws, and the civilised remedy for bad laws is not disobedience, but a change in the laws themselves.

It may be said, and with truth, that when laws cannot be enforced, they must be changed, and therefore that disobedience is one of the agents by which the change is brought about. When persistent disobedience is encouraged by the whole population, there is in fact a popular demand for new laws. But such a demand may be made in various ways, and the least civilised fashion in which it can be made is by setting the old laws at defiance, and encouraging criminals to deeds of violence. Nor would every school of morals regard with approbation the attempt of each individual in a nation to escape his just share of the national burdens.

In this fashion, however, were set in motion the changes of the law through which, in part, smuggling gradually ceased to be one of the chief offences. Great as was the evasion of duties on wines and spirits, these were by no means the only sources of the smuggler's profit. Tea, muslin, and various imports from the East Indies, earthenware made on the continent of Europe, thread lace, and various other commodities were eagerly bought duty-free; and it was stated in the preamble to the Smuggling Act of 1795, that there were many gangs of smugglers on land who set the laws and the officers of the revenue at defiance.

By degrees the high duties which had presented themselves in the form of temptation to smugglers were

reduced, and with the duties the crime of smuggling gradually fell from the great height which it had attained. The trade (for the smuggler was but a tradesman with much enterprise and little honesty) began to be less remunerative. First of all some of the larger ships, and then some of the smaller craft, ceased to be exclusively employed in it. Afterwards members of the crews of ships employed in legitimate carrying became smugglers for themselves on a small scale, and the revenue continued to suffer by various devices, which, if ingenious, were not new. Little by little smuggling disappeared from the list of common offences, but not until considerable progress had been made towards free trade; and only in the present generation has it fallen into insignificance, even on English soil. Elsewhere it still exists in considerable force, not, perhaps, altogether without the knowledge of Englishmen.

There can hardly be a doubt that the reduction of duties has been one of the chief causes of the diminution of smuggling. But it cannot be denied that the marine police—the Preventive Service, Coast Blockade, and Coast Guard, have aided in the suppression of the evil, even though they may have done no more than hasten its gradual extinction. Had they been altogether ineffectual, the practical abolition of smuggling could not have preceded (as in fact it has) the abolition of all duties. A considerable portion of the revenue is still raised by taxes upon imports, but there is no reason to believe that there is any very serious loss to the Government through the successful operations of smugglers.

Offences allied to smuggling: plunder in port: effect of police and other causes in checking it.

An offence very closely allied to smuggling was also checked, in part, at least, by a new and efficient

police; but, unlike smuggling, it had not the opinion of a nation in its favour. This was an organised system of robbing ships when they arrived in port, and especially in the river Thames, with rich cargoes. It became prominent at the beginning of the reign of George III., though it had, no doubt, grown up by degrees. In some of its stages it needed the aid of persons on board for its execution; and as sailors were often smugglers, just as their forefathers had been pirates, they took part readily enough in the schemes of the watermen and landsmen of the ports.

It was said, at the time, that in plunder of this kind there were six stages—in the hold of the ship, in the transit from the ship to the wharves by lighters, in the process of landing upon the wharves, in the period during which the goods remained exposed on the wharves, in the transit from the wharves to warehouses, and in the warehouses themselves. Each of the six stages supported its own branch of the great profession of river depredation; but the inferior officers of customs, especially a class of supernumeraries called glutmen, who were employed when business pressed, and dismissed when they were no longer wanted, shared, as was commonly believed, the spoil of the various offenders. It was usual to place a number of these officers on board each ship, in proportion to its size, upon its arrival in port, and they were commonly maintained at the cost of the owners. The Government did not pay its servants fairly, and was not faithfully served by them. The arrangements for landing goods were defective, there was no sufficient organisation of police to deal with offenders, and there were innumerable receivers for the goods which might be stolen. There was, in short, almost every incentive to river-stealing, and

As the evil had been caused, in part, by the development of commerce beyond all previous experience, so it was checked, in part, by such improvements in wharves and docks as were suggested by the new conditions of the shipping trade. A proposition, however, made at the end of the eighteenth century, that there should be a police for the Thames, was at length adopted, and in our own generation we hear little of robberies in rivers and ports, or of the kindred offence (which throve at the same time) of robbery of stores in dockyards. It is impossible to determine how much of the gain is to be attributed to better means of prevention, and how much to an increase of honesty, but there can be little doubt that both have aided in effecting the change. It long remained a capital offence to steal to the value of forty shillings in navigable rivers; and in the protracted struggle against the principle of inflicting the punishment of death for any crime but murder, attempts were again and again made to mitigate the penalty for water thefts. The gradual abolition of executions for minor breaches of the law may be more conveniently touched upon in the next chapter. In the meantime it may be pointed out that the prospect of losing their lives had no effect in deterring the river thieves, and that their number must have been diminished by causes altogether apart from severity of punishment.

The deeds of the smugglers and of the river-thieves were, indeed, but a reproduction, though in a very degenerate form, of the deeds done by gallant knights and robbers when they lay in wait and attacked merchants on the way to fairs, or boldly sacked a town where a fair was being held. A few years before the close of the reign of King

Comparison of smugglers and river thieves with knights who robbed at fairs, and pirates.

George III., there must have been a sad reflection for any lovers of the good old times who could love them with a knowledge of what they had really been. Such brave murderers and ravishers as Ercedecne, and the many bold knights, abbots, priors, chaplains, and esquires who were his contemporaries, had been succeeded, first of all by mounted highwaymen and pirate-captains, and afterwards by mere foot-pads and water-side filchers. Crime had made an effort to adapt itself to the altered circumstances of the age, and new kinds of stealing prospered for a time. But though there were far more lives in the country than there had been in the bygone days, far less of them were taken by violence, even if those taken on the gallows should be included in the reckoning.

Though the reduction of duties may have diminished smuggling, and preventive measures may have diminished river-thefts, a change of tone in society must have had a very great influence upon both. The continued growth of commerce and manufactures, and with it the increase in the number of peaceful occupations, offered the strongest possible inducements to adopt a life of honest industry rather than one of theft and violence. At the same time attempts were made by members of the legislature to apportion punishments in accordance with the magnitude of the offence; and there began to be drawn a broader line than had ever existed before between the criminal classes and the rest of the community. Dishonesty, or, if not dishonesty in general, at least those forms of it which are known as simple theft and robbery with violence, began to be considered more disgraceful than they had been in the brave old times of forcible entry, or even of highway robbery; and thus there was discouragement to anyone for whom the paths of

Progressive changes in the tone of society, and in the criminal laws.

crime had temptations, as well as encouragement to pursue the paths of sober and laborious honesty.

England in the year 1820.

England in the beginning of the year 1820, when George III. died, was already the wealthiest, and, in many respects, the most civilised country in Europe. In spite of wars and rumours of wars, its population had increased in proportion to the increase of new trades and manufactures by which subsistence was earned. The highways had everywhere been greatly improved since the year 1770, when Arthur Young concluded those tours, extending over 4,000 miles of English and Welsh soil, from which we learn how little had been done to reclaim remote districts from their mediæval roughness, and how difficult travelling still continued to be even in more civilised districts. Stage-coaches now traversed all the main roads, which were at length beginning to deserve comparison with the great engineering works given to us by the Romans some fourteen hundred years before. Canals intersected the country and served for the conveyance of heavy goods, factories were springing up throughout the land, and the ports were becoming choked with shipping when peace was declared after the Great War. All these changes were, in the main, opposed to crime in the modern sense of the term; but they were to be succeeded by changes still greater and still more hostile to the malefactors of the mediæval school. The lighting of cities, police, and even communications were very defective, if estimated by a modern standard, but the defects were to be made good with a rapidity which could hardly have been expected even at the accession of George IV.

CHAPTER XII.

FROM THE ACCESSION OF GEORGE IV. TO THE YEAR 1874.

DURING the period included in the present chapter, England has a history which is without parallel either in ancient times or in modern. On the one hand, the wealth and resources of the empire have increased immeasurably beyond all precedent; on the other hand local misfortunes have never attained the magnitude of a grave imperial calamity. There have been famine and rebellion in Ireland, war and mutiny in India, rumours of war and even an actual war in which England was engaged in Europe, and riots upon English soil. But there has been no series of events, either domestic or foreign, which has brought to a stand, or even greatly retarded, the flow of her prosperity.

Exceptional prosperity of the period.

In half a century—from 1821 to 1871—the population of England and Wales has increased nearly a hundred per cent. From the year 1570 to the year 1801, there was also an increase of about a hundred per cent.; or, in other words, the increase in one period has been more than four times as rapid as in the other. But it should be remembered that the successive increase per cent. which is apparent when successive periods are compared one with another is a

Rapid increase of population.

whole time. There was an increase of about thirty-four per cent. between 1801 and 1821; but the total increase in the three hundred years from 1571 to 1871 has been four hundred per cent., as the population but little exceeded four millions in 1570, and in April 1871 it was nearly twenty-two millions and three-quarters.

With this great increase of population there has been a complete revolution in the habits of the people regarded as a whole. In the time of Edward II., as has been shown in the first volume of this work, the rural population was about eleven-twelfths, or more than ninety-one per cent. of the whole. In the year 1861, it had fallen to forty per cent., and in 1871 to thirty-eight per cent.

Altered distribution of the population: causes and effects.

Thus the great inventors of the last and the present centuries, in creating new and remunerative occupations, have effected a double transformation in England. They have caused the land which was but sparsely inhabited to be densely populated in proportion to its surface; and in the great bulk of the nation they have substituted town life for country life. Employments which were altogether unknown, and the existence of which could not even have been predicted a century and a half ago, support the greater part of this additional population. And yet the gain, if gain it be, has not been effected at the cost of any diminution in the productive powers of the land. On the contrary, the progress of science has rendered the soil more productive than it ever was before; and the application of machinery has diminished and is diminishing the amount of human labour which is necessary to secure the produce.

Increasing commerce and manufactures necessarily

communications, and they in turn upon commerce and manufactures. The roads in England and Wales, which had previously been impassable for wheeled conveyances during a great part of the year, in remote districts, were greatly improved after the termination of the war in 1815. Between that year and 1839, too, the total length of the turnpike roads was increased by more than a thousand miles. At the time when the highways of England had become more frequented, and the traffic on them better managed, than in any country, at any age, the application of steam to purposes of locomotion on land gave a new impulse to British civilisation, and one greater than any that had gone before.

Corresponding improvements in the means of communication, both by land and by water.

Steam navigation preceded railways by a few years, and had also its effect in stimulating travel and commerce, but the increase of shipping being independent of the increase of roads, had kept pace with the national growth better than the communications on land. When the great war had been brought to an end, the danger to society of abruptly setting ashore a number of men who had been employed in ships of the line, or privateers, was, to some extent, counteracted by the demand for sailors in the mercantile marine. The inventor, the manufacturer, and the merchant who had given England the power of wealth to withstand the strain of the long conflict, found employment for the seamen when they were no longer required to fight against an enemy. It was inevitable that there should be some commotions on land, but the fact that the seas were not infested by pirates for many a year afterwards was a marvellous triumph of civilisation. It was due, in great measure, to the foreign commerce which had been acquired through

Apart from the establishment of new occupations for the people, these mighty changes had an influence of another kind upon the crimes which are the offspring of discontent. It has already been shown that in early times, when there were fewer roads, and when the roads were even worse than they were in the eighteenth century, prices varied so much in various districts, as to admit of plenty in one when there was almost a famine in another. The evil began to be mitigated by the law of supply and demand as soon as the internal communications began to be improved. Then followed a not unnatural outcry that the price of bread might not only be made approximately the same throughout the kingdom, but reduced and rendered independent of the goodness or badness of the English harvests, by taking the full advantage of the sea as well as of the land communications. This agitation led to the abolition of the old corn laws, and to the adoption of the principle of free-trade. With the importation of corn from abroad the fluctuations in the price of bread, which had formerly been frequent and violent, became far less severe. The attendant hardships disappeared, and there was a corresponding diminution in the number of riots. The Act by which the corn laws were repealed, though passed in 1846, did not come into full operation until 1849, and there was in the interval a threat (and only a threat) of an insurrection suggested by political events abroad. From that time to the present the peace has been internally disturbed only by the excessive heat of an election contest, by the Nemesis of our past misrule in Ireland, or by some processions which ended without bloodshed. Absolute contentment is probably unattain-

Consequent removal of discontent caused by inequalities and violent fluctuations of prices.

beings can be made exactly alike, with interchangeable limbs, features, hearts, and brains. Towards the contentment which is possible, while human beings are constituted as they are at present, a great approach has certainly been made during the nineteenth century.

There is, however, one possible source of discontent which has been but little, if at all, diminished; the contrast between the excessively rich and the excessively poor is, if not greater, at least as great as it ever was before. That this is not only a possible but an actual cause of discontent is shown in many ways, and especially in various ill-considered schemes which, though nominally for the reconstruction of society on a new principle, do not really go beyond the destruction of society as it at present exists. Sometimes, no doubt, these projects are suggested by pure philanthropy; sometimes they are but another name for that envy, hatred, and malice which threatened Paris with annihilation in 1871. Both the Chartist agitation in England in the year 1848 and the more recent deeds of the Commune, are indications that, however smooth the surface may be, there are dangerous under-currents even in our modern civilisation, and that great inequalities of position may, in troubled times, bring about unforeseen disasters. Poverty and crime, indeed (or, at least, some forms of crime) are very closely associated even when a nation is prosperous; and, on all grounds, the relation of the extremely poor to the rest of the inhabitants of a country deserves attentive consideration.

Relation of the extremely rich to the extremely poor important in the History of Crime.

Though the mercantile marine gave employment to sailors after the long war, there was necessarily a great disturbance in the labour-market following the return of the troops. For many years there must have

been a number of men who had served in the army struggling with civilians for employment in the peaceful occupations. There was no hope for those who proved the weaker, except the development of manufactures and commerce to such an extent that work could be found for them as well as their rivals. According to all previous experience, too, it might have been expected that the country would not be rendered more tranquil by depriving men in whom the military spirit was strong of an outlet for their love of adventure. Thus while the peace was inevitably followed by discontent and poverty, there was a natural tendency to seek redress by violence. Sometimes riots broke out, and sometimes even an insurrection was apprehended at intervals from the conclusion of the war until the corn laws ceased to exist. But although there frequently appeared signs of the danger which lurks in the antipathy of classes, and which is most formidable when hunger is most pressing, it was always happily averted without any overwhelming calamity. There was some very necessary legislation during this period; and it was legislation which showed prudence, because it was adapted to the changed circumstances of the country. But the most effectual safeguard was probably the restoration of the balance between a rapidly increasing population and the means of subsistence which, never very perfect, had been deranged by the sudden influx of soldiers.

Causes of discontent after the Great War.

With the expansion of industry and the growth of large towns there naturally arose a desire for a corresponding change in the political constitution of the kingdom. The employers of labour were not satisfied that the House of Commons should be, to a great extent, under the control of land-owners; the em-

The demand for Reform.

ployed, and the less fortunate poor who were unemployed, saw in reform a remedy for all the inequalities of life; the demagogues found an excellent opportunity for eloquent declamation. The agitation caused some violent scenes in Parliament, and a number of riots in various parts of the country. The final result was the passing of the famous Reform Act, by which was effected a redistribution of seats more or less in accordance with the redistribution of population following on the development of new occupations. Its general tendency was to adapt the old representative system to the new abodes and new circumstances of the people. An attempt in the same direction had been made by Cromwell; but before 1832, when the town population constituted at least two-fifths of the whole, there had practically been little change in representation since the time of Edward II., when the town population had constituted not one-tenth. And even this statement of facts does not exhibit the full extent of the grievance. Towns which had been comparatively flourishing during the reign of Edward II., if they had not absolutely decreased in size, had become mere villages relatively to the new centres of industry. Many of them stood on land which was all or nearly all owned by one person, who could ensure the return of his own nominee as member. Whatever advantages there may have been in the election of a House of Commons under such conditions, it is quite clear that they were the advantages not of representative government, but of government by landed gentry. Other classes thought, and not without reason, that they had a right to be more effectually represented, or that if the right did not exist, the time had come when it should be acquired.

The persons most interested in maintaining vested interests naturally made a stubborn opposition to the proposed changes. The land-owner in England had long lost the ownership of his slaves; the loss of a vote in the House of Commons was even more serious, and was not to be endured without a struggle. But the effect of the new conditions of life upon the general conduct of the nation was most conspicuously shown in the manner in which conflicting claims were adjusted. On the one side riots never assumed the dimensions of rebellion; on the other side reluctance and even obstinacy yielded, without bloodshed, to the force of circumstances. A few centuries earlier, the landlords would have called their retainers together, and fought for their privileges, the workmen would have been eager, like Ket's men, to 'kill the gentlemen.' But the days when gentlemen had retainers were long past; and artisans were much more anxious to destroy machinery than to take human life. There was perhaps as much anger on both sides as there had ever been before; but gentlemen who have never given a military word of command, and weavers who have never handled a musket, do not so readily engage in a civil war as men who have been trained to arms in the manner in which all men were trained in the middle ages. There was thus time for reflection; and reflection ended in peace. Not even the infusion of new military spirit into the mass of the population by the disbanding of the soldiery, had been sufficient to provoke an appeal to the sword, though the appeal might have been made had there been less discretion than there was in the existing Government.

Comparison of the agitation for Reform with similar movements in earlier times.

A House of Commons representing new interests in

respect both of the places represented and of the classes qualified to vote at elections was well fitted to grapple with those social problems of which the legislature takes cognisance in criminal laws and poor-laws. In both reform was urgently needed, for both were ill suited to the times, as well in the principles on which they were founded as in the manner in which they were applied. The poor-law, established towards the end of the reign of Elizabeth, and subsequently modified in the details of 'settlement' or legal habitation of paupers, was still the law of the land. But at the close of the eighteenth century a mode of administration had become partially recognised which could not with any consistency be permitted to continue, unless it could be developed very far beyond the intentions of the persons who had first put it in practice. The law of settlement had always borne some traces of the old laws against vagabonds, which in turn were strongly suggestive of the days of villenage. The leading idea of all these institutions was that the migration of labourers should be discouraged. With this was closely associated the idea that all prices should be fixed, and that neither the labourer should demand for his labour nor the trader for his wares more than a definite sum, which should at all times be the same. The trader gradually shook off the trammels, and the manufacturing workman followed his example. But labourers employed in agriculture, when they seemed to be escaping restraint in one direction, found it presenting itself to them in another in the shape of a boon. When the price of food rose to such a height that the labourer could no longer support himself at the previous rate of wages, the ancient doctrine was applied in a new fashion. The provision-dealers

Abuses in the administration of the poor law considered by the reformed Parliament: their nature and tendency.

were not compelled to supply their goods for less money, but the parish bestowed upon the labourer a sum equivalent to the difference between the actual and that which was considered the normal value of the flour consumed by himself and his family.

In this expedient was conspicuous the old idea of a fixed value for all things that can be sold, not excepting labour. But there was also a new principle introduced, by which, had it been consistently put in practice, the whole constitution of society would have been changed. The parish officers had constituted themselves not only the relievers of the poor, but also the paymasters of men willing and able to earn their bread by daily labour. This was a step unwittingly taken towards the realisation of some extremely ideal schemes of government. The parish was rapidly becoming a little republic, with a common stock for the support of its individual members. The distinction between the pauper and the active labourer was being effaced. Both were being taught that they had a right to support out of a store contributed by employers and non-employers alike. Thus the attempt to adapt an ancient and essentially aristocratic prejudice to the wants of a growing and much altered population was, unknown to those who made it, a very close approach not only to democracy but to communism.

Character and effects of the Poor Law Amendment Act.

The new House of Commons, far less democratic in constitution than the opponents of Reform had expected, hastened to undo the evils done by a corrupt and perverted administration of the ancient poor-law. The demoralisation caused by the existing system had long been admitted, and the subject was under the consideration of a Royal Commission at the time at which the Reform Act became law. In 1834

the commission presented a report, and in the same year was passed the Poor Law Amendment Act. One of its most important provisions was that wages should no longer be paid out of poor-rates. One of its leading principles was that willingness to enter a workhouse should be made the test of real destitution. In practice, however, there was obviously a difficulty in suddenly refusing assistance to all those who were unwilling to give the required proof, and a possible difficulty in accommodating those who were willing. For this reason there was allowed to be a perpetuation of the old abuse in a new form. Though the parish could no longer pay the labourer the wages which he had earned in working for the farmer, it could still, in certain cases, contribute towards his support in his own private dwelling-place by granting what was now termed out-door relief. The change was, nevertheless, very much more than a change of name; it was a change of principle, which was seen and felt both in an appreciable rise in wages and in an appreciable diminution as well of the sum expended for the support of the poor as of the quantity of food which the sum expended would purchase. In the two years which followed the passing of the Act there was also a considerable decrease in the number of persons committed for trial, which may, indeed, have been connected with other causes—such as, for instance, the low price of wheat. It would not, however, have been surprising had the disturbance of society caused by such an alteration in the law been followed by an increase of crime. And we may, perhaps, infer that the recklessness encouraged by the misuse of the old poor-law was checked by the well-considered enactments of the new.

Though, however, there was a great and sudden fall

in the amount expended for the relief of the poor soon after the passing of the Act, and though the Act was undoubtedly the chief cause of the fall, it would be rash to assert that more was effected than the correction of a glaring abuse. As soon as the wages of labourers ceased to be a direct charge upon the poor-rates, the rates were of course lightened to the extent of the sum which had previously been misapplied. But when honest industry had been discouraged, and set on the same level with pauperism during more than a whole generation, it was not to be expected that all the demoralisation of the past could be undone by the enactment of a single statute. Independence was valued by some of the persons to whom it was offered; but many, who had been taught through life to regard the parish as their paymaster, were not able, even if they were willing, to adapt their views at once to their new position. The parish, it must be remembered, though acting upon principles which were almost communistic, had nevertheless stood towards the labourer in a relation very nearly identical with that of the lord to his villein. Extremes often meet, even in political and social institutions. The parish and the lord were so far agreed that they both regarded the labourer as dependent on them, both regarded him as having an indissoluble tie to a certain place, and both did their best to check any attempt which he might make towards self-assertion.

In the rural districts, at least, pauperism was the inherited vice of many long ages. In the sixteenth century it was too deeply ingrained for the searing iron to burn it out; in the nineteenth it is yet in need of a remedy. Between 1834 and 1837, while the payment of labourers' wages was being re-

Pauperism an inherited vice not easily eradicated.

adjusted, there was a diminution of more than two millions—more than one third of the whole—in the sum annually expended in the relief of the poor. But after 1837 it became apparent that, although a recent abuse had disappeared, its effects still lingered, together with the habits of more remote generations. There was no longer a progressive improvement: the expenditure began again to increase, and, with some fluctuations, it has continued to increase until it has now become, greater than it was before the Poor Law Amendment Act was passed. The average amount expended per head throughout the whole population was also considerably higher in the year 1874 than in the year 1837.

Notwithstanding these facts, however, the prevalence of pauperism is by no means so discouraging as it may at first sight appear. The fluctuations are very great, both in the total number of paupers, and in the relation of the able-bodied adults to the whole; and no inference can safely be drawn from the returns of a single year. The worst years were 1849, 1850, 1863, 1864, and from 1869 to 1871: in all of them the mean number of paupers in receipt of relief was very nearly the same—a little more than a million. The year 1873 was no worse than the year 1861; the year 1874 was better than the year 1873; and it would be difficult to make out an average for any ten consecutive years since 1849 which would be very different from the average of any ten other consecutive years. The sum expended in relief is not a sure guide to the number of persons relieved, because it must necessarily vary with the cost of maintaining the paupers, which cannot be inferred from the price of wheat alone. Some satisfaction may, therefore, be derived from

Its recent history not discouraging.

the fact that the population appears to be growing more rapidly and more steadily than pauperism. The mean number of paupers relieved constituted more than six per cent. of the whole population in 1849, more than five per cent. in 1851, less than five per cent. in 1871, and only three and a half per cent. in 1874.

The increase of wealth, too, has, according to estimates which appear to be trustworthy, been far more rapid than even the increase of population—so much so that on the average the inhabitants of the United Kingdom became sixty per cent. richer per head in 1870 than they were in 1841. It is, of course, always to be remembered that an estimate, however carefully made, can never be strictly accurate, but there can be no doubt that the multiplication of riches has been prodigious. It has been so great that money has lost much of its own value, because the rising demand for everything that can be bought has caused almost everything to rise in price. For this reason, indeed, it seems reasonable to make some deduction from any number of pounds sterling at which the value of British property is fixed when any comparison is made with earlier years. But whatever deduction is to be made on this score from the sum total of British capital or British incomes, the same deduction must be made in due proportion from the sum total expended in the relief of the poor. The following comparison, therefore, will hold good, whether any such deduction be made or not. In 1837 the whole population of England and Wales had to expend 5*s.* 5*d.* per head for the relief of the poor; in 1871, 6*s.* 11¼*d.* The year 1837 was one of the most favourable, the year 1871 one of the most unfavourable;

It has not kept pace with the growth of the national wealth.

while the corresponding difference in the means of payment was no less than sixty per cent.

Inferences from the distribution of pauperism throughout the country.

Though, however, there is no reason to believe that pauperism has been a growing evil since 1834, and though it has greatly decreased when considered in relation to the power of the country to bear it, there is certainly ground for some disappointment in the fact that it can hardly be said to have diminished absolutely as well as relatively. Yet there are sufficient indications that the past is to blame rather than the present for the persistent inability and reluctance of a considerable section of the population to maintain itself. Throughout the whole period, the agricultural districts have contributed more than their due share of paupers in proportion to the number of their inhabitants. The mining and manufacturing counties, on the other hand, contribute much less than the average, and the statistics for the metropolis do not attain a much higher level than the statistics for the chief mining and manufacturing districts.

These inequalities are precisely what history would have led us to expect. The agricultural labourer is the descendant of ancestors who, generation after generation, were kept in a state of dependence. The miner is commonly the descendant of miners, whose industry, unlike that of the agricultural labourer, has undergone a marked and progressive development with modern civilisation. He can find employment not only for himself but for his children without the necessity of travelling far to seek it, and he has little to dread from the invasion of unskilled rivals from a distance. There has been a constant demand for the labour which he could supply,

self in independence, but even to dictate terms. In the large towns there is a mixture of population which suggests at once a further explanation of the great preponderance of agricultural paupers, and a reason for the somewhat unsatisfactory condition of the towns themselves. In the migrations encouraged by the rise of cities a current sets in from the rural to the urban districts. The rustics who leave their native place are the most enterprising of their class—the most easily roused to a spirit of independent action. But they cannot be expected to shake off at once all the habits of ages and all the traditions of their forefathers. Knowing that they have the alternatives before them of success in a new walk of life, or support by a parish or union if they fail, they do not look with any insuperable aversion upon the prospect of entering a workhouse, and would not always make a very severe effort to avoid so small a calamity. Nor do they care much whether it befalls them as casual paupers in a strange parish, as paupers who have acquired a new settlement, or as paupers who are removed to their own union. The rustics who remain where they were born most strongly resemble in all respects the stock from which they sprang, and have the least power of adapting themselves to a new state of society. They are strong, hardy, and stolid, and yet ready enough with a blow; but they have not learnt to associate independence with industry. They fight well enough for a pheasant or a hare, but they will not struggle, and perhaps have not been sufficiently encouraged to struggle, against improvidence.

From whatever point of view pauperism may be regarded, civilisation is not to blame for it. Were the population of England distributed in the reign of Queen

Victoria as it was in the reign of King Edward II., the number of paupers in England and Wales would be far larger than it is at present. But it is simply impossible that a country in which the inhabitants are employed only in agriculture and war can be as thickly peopled as a country in which large towns and occupations are as numerous as in modern England. The evil is one which has not disappeared in civilised life, but it is one by which civilised life was infected at the very beginning. It has grown with the growth of the towns, where the conditions of its existence are involved in the vicissitudes of trade, and even in the caprices of fashion, as well as in the natural disposition of the inhabitants. But as the rural districts contribute the highest number of paupers in proportion to the total number of persons living in them, and as that total is continually diminishing relatively to the whole number of persons in England, there is good reason to hope that the percentage of paupers to the whole population of England will decrease, should the present causes and no others continue in operation.

Modern civilisation not to blame for modern pauperism.

Pauperism, it need hardly be said, is closely allied to improvidence. It is not a crime, though there are many connecting links between the pauper and the criminal. Conspicuous among these is the recklessness which leads men in time of prosperity to the gin-shop, and in time of adversity to the workhouse. Among the most remarkable curiosities of criminal statistics is the Metropolitan Police return of persons apprehended for drunkenness and disorderly conduct on the different days of the week. The day on which there are fewest apprehensions is Friday, or in other words, the day when the previous week's wages

Relations of pauperism, drunkenness, and crime.

have been exhausted, and before the new week's wages are paid. On Saturday, or, in other words, on pay-day, there is an increase of about forty-four per cent. above Friday's numbers. Sunday and Monday are on the average about nineteen per cent. each in excess of Friday, and the figures gradually dwindle through the rest of the week until the ebb-tide of drink is reached on Friday again.

The inevitable inference from these facts is that a considerable number of the working classes will, under present conditions, drink to excess as long as they have the means and the opportunity. Nor can it be denied that, as wages have risen, the number of cases of alleged drunkenness brought under the notice of the police has increased more rapidly than the population. The details are even more suggestive than the general result, for they show that over a very wide area drunkenness varies inversely with pauperism—that men are most addicted to drink where money is most easily earned. In the mining districts of Northumberland, Durham, and the North and West Ridings of Yorkshire, in Monmouth, and in Glamorganshire, where paupers are few, drunkards are many, as compared with the average of England and Wales. In some of these counties labour is so well paid that the earnings of three or four days will suffice not only for support but for debauchery until the week's end. One of the natural consequences is that where there is much temptation and no self-restraint, enjoyment is sought in its coarsest forms, and often cut short by a visit to a gaol or a police-cell. Another, though more remote consequence, is that the improvidence of youth has its Nemesis in old age, and that the patron of the gin-shop, with his wife, finds his way at last to the poor-house.

The mining population could, if they were thrifty and industrious, put aside enough to support themselves when they fell sick, or were grown past work, and could rear their children without the aid of the parish. While, therefore, it is somewhat encouraging to find that the labourers who are best paid are least pauperised, it is not less discouraging to find that there still remains an unsightly mass of pauperism where there need not, from want of employment or insufficiency of pay, be any pauperism at all.

The alleged increase of drunkenness not confirmed by the statistics of excise and imports.

In considering the very rapid increase of drunkenness as shown by recent judicial statistics for the whole country, a doubt arises whether there may not have been some greater strictness in apprehending persons who appeared to have been drinking. The most satisfactory way of arriving at a conclusion on this point is to compare the judicial statistics with the returns showing the amount of inebriating drinks consumed. The figures might reasonably be expected to tally very exactly; and it might reasonably be expected that if any discrepancy existed the consumption of the various intoxicating liquors would increase more rapidly than intoxication itself. In prosperous times very many persons, who had previously been without the means, might allow themselves a moderate indulgence, and yet not become drunk or disorderly. They would raise the figures of the import and excise lists, and would yet produce no effect upon the police lists. On the other hand, it would be impossible to raise the number of cases of drunkenness without affecting the import or excise lists, except, perhaps, by some concerted action among drunkards resolved to

drink on each occasion just so much as would make them drunk and no more.

It is consoling to discover that the excise and import statistics, so far from showing an increase in the consumption of drink more rapid than the increase of apprehended drunkards, show a very much slower rate of progress. The most alarming and sudden rise in the police statistics was in 1872–3 as compared with 1871–2. It amounted to no less than twenty-one per cent. in a single year. But if we compare the amount of spirits, British and foreign, retained for home consumption in 1873 with the amount retained in 1872, we find a rise of less than nine per cent. If we assume that the spirits on which duty was paid in 1873 were not drunk before 1874, and carry the enquiry back a stage further, we still find a rise of less than nine per cent. in 1872 as compared with 1871. Nor is it possible to discover anywhere in the past a rise in the figures relating to spirits which at all corresponds with the alleged growth of drunkenness. The consumption of wine has increased more slowly than the consumption of spirits, and the explanation, if it can be found anywhere, can be found only in beer-drinking.

There is no more certain test of the consumption of beer than the returns of the quantity of malt retained for home consumption in each year, exclusive of the quantity used in beer made in the United Kingdom but exported. The most sudden increase under this head was in 1872, when there was a rise of more than thirteen per cent. This may well be connected with the excessive number of drunkards in 1873, which, however, it still does not sufficiently explain. The increase in the purchases of malt in 1872 as compared with 1871 amounted to but two-thirds of the increase in the cases of drunkenness

and disorderly conduct brought before justices or magistrates in 1873, as compared with 1872. It is not to be supposed that in each of these cases beer alone was the exciting cause; and if beer, wine, and spirits be classed together as the joint causes of intoxication, the increase in consumption is seen to be very much less than even in the consumption of beer considered by itself.

It should not be forgotten that the judicial statistics under consideration relate to England and Wales, the statistics of imports and excise to the whole of the United Kingdom. But the possible error from this cause is very slight, and the just conclusion to be drawn from the undeniable facts appears to be that drunkenness cannot have increased to such an extent as the judicial statistics would lead us to believe. Men cannot be drunk without drinking; and it is difficult to see how they can drink enough to make themselves drunk without a corresponding effect upon the returns of the liquor traffic. If, for example, thirty-six millions and a half of gallons of spirits will suffice to produce a crop of a hundred and fifty thousand drunken and disorderly offenders, can there be a crop of a hundred and eighty-three thousand, in a population larger by the growth of one year, without a directly proportionate increase in the number of gallons? The problem is partly physiological, partly social. There may be some natural law, as yet undiscovered, in virtue of which drunkenness increases twice as fast as the consumption of intoxicating drinks; or the action of the drinks may be cumulative, producing an increase of drunkenness at first equal to the increase in their own consumption, then equal to double the increase in consumption, and afterwards varying as the square or the cube, or in any other proportion. But in order to estab-

lish the existence of any such law as this, it would be necessary to be in possession not only, as at present, of carefully prepared returns from the police, but of a complete and perfectly accurate register of every case of drunkenness occurring in private houses or elsewhere. Until this impossible perfection of statistics can be attained, we must be content with such facts as are brought before us, and accept, though with caution, the inferences which they suggest.

A suspicion that an increased activity of our police has contributed to the apparent increase of drunkenness is justified by other considerations besides the discrepancies of the returns of imports and excise. If the fact is beyond dispute that although the consumption of spirits per head of the total population has been steadily increasing during almost the whole of the period included in the present chapter, the rate of its increase has not been commensurate with the rate of increase in detected drunkenness, there is no less certainty that the force of police and constabulary has been silently growing in numbers, and in efficiency. In the very year 1873 when there was a sudden rise of twenty-one per cent. in the number of cases of drunkenness, there was an addition of two and one fifth per cent. both to the borough and to the county constabulary, and it was chiefly the constabulary which brought the additional offenders to justice. A rise of two per cent. in the number of constables is, of course, at first sight, wholly insufficient to account for the very much greater rise in the number of drunkards brought before magistrates. But each man of the constabulary and metropolitan police together had, in the year 1872,

Explanation to be sought in the increased numbers and efficiency of the police.

drunk and disorderly. Though we may be in some doubt with respect to the number of gallons of beer or spirits required to produce a definite result in drunkenness throughout a population of more than twenty-two millions, we need not hesitate to believe that one strong healthy man could, if necessary, take not only five drunkards in a year, but five in a week, or in a day, if necessary, to a police-station. It would, therefore, be mere folly to compare the actual growth of the police force with the apparent growth of drunkenness, in the hope of finding an exact agreement in the percentage. But it is obvious that different instructions might be given at different times to policemen and constables on duty, and that the men themselves might even, in process of time, learn to interpret more severely the instructions given. The total force of police and constabulary is continually increasing, not only absolutely but relatively to the population. This fact is in itself evidence of a desire to render the body vigilant and effective as a whole; and the addition to the number of drunkards taken into custody may well be the effect, to a very great extent, at least, of additional care on the part of those who take them.

The more the facts are studied in detail the more is this inference confirmed. Not only the county, but also the borough constabulary, are and have been less numerous in proportion to the population than the police of the metropolis. In the metropolis, the persons apprehended as drunk and disorderly in 1873 were equal to one in every 102 of its population, but the persons so apprehended throughout the whole of England and Wales were equal to no more than one in 124. The difference is very considerable, and might at first suggest the inference that drunkenness is

Decrease of drunkenness as compared with the population in London and Liverpool.

most prevalent and increases most rapidly in the larget towns. But our own observation and the testimony of our fathers assures us that drunken and disorderly persons are far less commonly seen in the streets than in former times, and that, apart from comparison, they are but rarely seen at all. The most remarkable fact, however, is that the number of apprehensions for drunkenness and disorderly conduct by the metropolitan police was hardly greater in 1873 than in 1850, and considerably less than in 1831, 1832, or 1833. Yet the population in 1871 had been nearly doubled since 1831; and therefore, in proportion to the population, drunkenness had been reduced in the metropolis by one-half in forty years.

Liverpool, which exceeds all other English towns but London in magnitude, has just the same tale to tell with respect to its drunkenness. The population has grown at about the same rate as that of London. In 1841 there were 17,508 persons charged with drunkenness and disorderly conduct in Liverpool, and after many fluctuations there were 18,038 in 1873. There is no doubt that, so far as reliance can be placed upon figures, the metropolis of Lancashire, as well as the metropolis of all England, shows a remarkable increase in sobriety.

Where, then, is to be sought the explanation of the apparently contradictory facts that, so far as statistics are concerned, drunkenness is on the increase throughout England, that it is most prevalent in the large cities, and yet that in both of the largest cities it is, when compared with the number of inhabitants, continually decreasing? There is every reason to believe that the superior efficiency of the police causes the apparent pre-eminence of London in drunkenness, and that a change in the

Explanation of the discrepancy between the statistics of those two towns and of the rest of England.

habits of the people has kept the drunkenness down to the level of half a century ago, while the population has doubled.

There is a point beyond which no vigilance or strictness can swell the number of persons apprehended for disorderly conduct and drunkenness. That point seems to have been reached in London about the years 1831–1833. In smaller towns than Liverpool, and still more in the rural districts, it would be vain to seek a police organisation so perfect as in London. But as the organisation is improved and the number of the constabulary is increased, there is necessarily a nearer and nearer approach to the metropolitan model. With every gain in efficiency an approach is made towards that point beyond which it cannot be carried without oppression; and in the process there is, as an inevitable consequence, a swelling of the criminal returns, especially in minor offences.

It would not, however, be altogether consistent with facts to rely upon this one cause alone for the explanation which is sought. Drunkenness is very often the vice of an uncultivated nature exposed suddenly to temptation and well supplied with the means of self-gratification. It is then but the old habit of the savage feasting after the division of the spoil. Its prominence in 1873 and some previous years is not equally marked throughout England, even if London and Liverpool be excluded from consideration. It is most conspicuous in the coal districts, and generally in the mining districts, and next to them in the towns and counties where manufacturing prosperity is of most recent development—in Durham and Lancashire among counties, in Newcastle-on-Tyne and Manchester among towns. The combination of high pay and low

culture must therefore be recognised as one of the conditions of life which tend to make men drunken and disorderly. But, on the other hand, there is the greatest encouragement to be found in the history of the metropolis, which shows that evil habits may be outgrown—or, perhaps, in other words, that the extremely low culture gradually ceases to be combined with the high pay, and that as manners are softened in one direction they are softened also in another. Nor does modern London alone give reason for hope. We have but to look back a little further—to measure our progress from the eighteenth century as a starting point—and we shall perceive at once that drunkenness in England, whatever its temporary ebbs and flows, has greatly subsided when the present day is compared with the days of the Gin Act.

Drunkenness is sometimes, no doubt, a cause of the graver crimes. It may stimulate to some deeds of violence, and send to prison a man who, had he remained sober, might have escaped reproach. When it becomes a habit, it is attended by loss of the power of application to work, and perhaps followed by poverty, which leads to temptation and theft. But the habitual drunkard is a person deficient in will and self-restraint, and the deficiency may have existed before he became what he is. The inability to resist drink, and the inability to resist other temptations, may be, and probably are, indications of a disposition which is not created by alcohol, though an excessive consumption of alcohol may increase its weaknesses. Drunkenness is, in fact, according to a familiar illustration, not the disease, but one out of many symptoms of a disease. To abolish drunkenness would not, in all probability, be to abolish crime, though if all crimes could be abolished, drunkenness

Is drunkenness a cause of crime?

might disappear also. But here is a problem as yet unsolved.

Crime and education: the education of the school-room and of circumstances.

The nineteenth century, in many ways remarkable, is not least remarkable for the revival and persistent teaching of the doctrine that education is the best preventive of crime. In the next chapter the general effects of instruction by itself, and in relation to compulsion and state aid, will be considered somewhat more in detail. It is here, however, as there, necessary to point out that the word education is susceptible of two different meanings.

There is the education which is given in the school-room in certain hours, and the education given by surrounding circumstances which never ceases. In both there has, of late years, been a very rapid growth or change—the more rapid perhaps in the latter. Both, too, have a twofold action—on the person to whom the idea of a crime suggests itself, and on the public to which he sets himself in opposition.

Illustrations of the effects of both from the history of riots against machinery, strikes, and successive modifications of the laws affecting combination.

One of the most striking illustrations of the power of education in the more extended sense—or in other words, of experience—to check crime, in a particular form, is seen in the present comparative rarity of machine-breaking. This was one of the commonest of all offences in the early days of machinery. But the working population has, by degrees, learnt that the machinery which abolishes labour in one direction gives manifold opportunities for the employment of labour in other directions. Nor is it necessary or even reasonable to suppose that this knowledge has been obtained from books. The offer of employment has come, and has been accepted; and, as the new occupation has furnished a

subsistence, there has been little temptation to destroy the source from which flowed the milk and the honey.

All experience has its effect upon human conduct, unless it happens to be completely overridden by human passion. We have, therefore, good reason to assume that it has had some influence in restraining workmen from wanton and unreasoning attacks upon machinery, and that it would have had some influence, apart even from the power to read. But although the teaching of the world around is the most effectual of all kinds of education, the action of mere rudimentary instruction is not to be altogether overlooked.

The action of education, in the ordinary sense of the term, is rather secondary than primary in its effect upon any crime. It intensifies experience by continual repetition. The man who had conceived a prejudice against machinery, and outgrown it when he discovered that he had been benefited rather than injured by machines, might yet be more thoroughly convinced that he had once been in error by reading the familiar story in a new form. There is probably a similar operation of causes in the modern conduct of strikes. The years 1812 and 1813 were remarkable not only for riots against machinery but for attacks upon mill-owners. In 1842 there were riots (somewhat less formidable, but still very serious) caused by a dispute respecting wages. Since then, the combinations of workmen have not usually been accompanied by any great violence. They have not been untainted by intimidation, and even by the destruction of property, but in the main they have been carried on with a great show of respect for the law. Lancashire, conspicuous for its turbulence in 1842, set an admirable example of patience

when its labourers lost their occupation through the cotton famine twenty years later.

There are many causes which have contributed towards the general change, not least among which are the successive modifications of the laws affecting combination—themselves the product of a new state of society. The mediæval doctrines with respect to the rate of wages and confederacies of workmen were accepted by legislators until the beginning of the present century. It was not until nearly the end of the reign of George III. that the justices nominally lost the power of fixing annually the rate of wages. Nor can it, indeed, be said that they had really lost that power even then, for by the practice of paying agricultural labourers out of poor-rates they held the command of an important branch of the labour market until 1834. In the mean time, however, there was progress, though not very rapid progress, in another direction. The workman had been subject to conspiracy laws as well as to the laws by which his wages were regulated. There was not only the general Conspiracy Act of the reign of Edward I., but also special Acts directed against confederacies of workmen in particular handicrafts, and a general Act, passed as late as 1799, by which workmen combining to obtain higher wages might be committed to prison for three months. These statutes, too, were thoroughly in accordance with the spirit of the ancient common law, and with the early royal prerogative by which the sovereign could take workmen and compel them to work for him whenever he chose. In the reign of George IV., however, two very important Acts were passed by which a mere combination for the purpose of

rendered penal by special provisions. There was a still further relaxation of the law in the twenty-second year of the present reign, when threats were again forbidden, but persuasion of a workman by a workman was declared permissible. This was followed, twelve years later, by the Criminal Law Amendment Act, which more definitely excepted trade-combinations from the operation of the law of conspiracy, and more explicitly described the acts of intimidation which were still subject to punishment.

The more temperate manner of conducting strikes which has for some years prevailed is thus to be explained in part by the changes in the law which have rendered permissible some conduct formerly known as conspiracy. As men cannot legally be punished for deeds that once were, but are no longer criminal, there is now very much less excitement than there formerly was when those deeds are done. Forbearance in some cases begets its like, and thus a riot is nipped in the bud. Men would not forbear because they could read, or because they could write, or even because they could cast accounts. A workman is quite capable of understanding, without the aid of arithmetic, that if he strikes and fails he must suffer, and that if he resorts to violence he will be punished. But the repetition of this old, old story in print insensibly affects the character of the person who reads it. It impresses upon him more thoroughly that which, indeed, he knew before, but which might not by itself have had so much influence upon his actions.

This, it may be said, is not a very exalted function to assign to education. But more cannot safely be attributed to that instruction in elementary knowledge to which the title of education is commonly given. Nor is even so small an influence as this to be altogether despised.

Everything which contributes towards forming habits of prudence contributes also towards the prevention of crime, as crime is at present defined. Much, and indeed nearly everything, depends—even for the attainment of this slight result—not upon the power to read, but upon the matter which is read. The direct and indirect influences of education will be more fully discussed elsewhere; but, inasmuch as it is impossible to deny that teaching from books has become an important factor in our modern civilisation, it is necessary to give here an outline of the stages by which our present system was reached.

Before the Black Death the knowledge of letters was almost, though not entirely, restricted to the clergy and the lawyers. The instruction of the villeins was strongly opposed by the land-owners. But some persons—monks obedient to rule, or apostate, townsmen, or, perhaps, here and there a villein—had the wit to compose, and to sing, and even to write ballads suited to the tastes of an unclerical and unlanded audience. The prospects of the villein were improved after the Black Death; but though he might escape from villenage, he did not necessarily learn to read or write. In the fifteenth century the families of land-owners were sufficiently educated to correspond when their members were separated from one another, but there is no evidence of any general diffusion of instruction following the introduction of printing and the emancipation of the serfs. After the dissolution of the monasteries there were founded many grammar-schools, which are still in existence, but which, if they have given education to the children of some persons who were not rich, have never given education to the children of the

Sketch of national education from the time of Edward III. to the present.

There is, however, no doubt that the grammar-schools, of which many were founded in the reigns of Edward VI. and Elizabeth, were intended to meet an extended demand for education—the consequence partly of the growth of towns, and partly of dissatisfaction with ancient clerical abuses. But little more was done or attempted towards a general diffusion of letters throughout the population until the first Sunday schools were established in 1781. These, like many important institutions in England, were brought into existence by private benevolence, but they may nevertheless be considered the beginning of state education as applied to the extremely poor. The efforts of one or two individuals were followed, after a short interval, by the foundation of a Society which gradually expanded itself.

The establishment of Sunday schools was followed, at the end of the eighteenth century, by the first attempts to educate the children of the poor on other days of the week. Joseph Lancaster was the author and practical exponent of a plan which was in 1808 adopted by the British and Foreign School Society. Dr. Bell, who made his 'Experiment on Education' in Madras, was practically the originator of the National School Society founded in 1811. Lancaster, who was a member of the Society of Friends, wished children to be admitted to the popular schools without regard to the religious belief of their parents. Bell, who was a clergyman of the Established Church, was anxious for the maintenance of Church principles, and regarded the Church Catechism as a necessary branch of a child's education.

The religious difficulty which thus showed itself at the very beginning of popular instruction has since been

overcome. Theological rivalry sprang up anew, but this time in a form previously unknown. An inspection of the deeds for charitable purposes enrolled in Chancery shows that the various sects began, as it were, to run a race in the educational arena. Some displayed quite as much anxiety for their own continued existence as for the promotion of education, but the general result was the establishment of a great number of elementary schools for the children of poor parents throughout the country.

The National, and the British and Foreign Societies continued to be the most flourishing, and when state aid was granted in 1833, they first became the channels through which it was distributed. It was given first in the form of a contribution towards the erection of school buildings. The demand for it rapidly increased, and the right of the Government to inspect assisted schools was made a condition of assistance from the Treasury. The object of this and other regulations was to render the instruction more efficient. The National, and the British and Foreign Schools afterwards ceased to have the privilege of grants out of public money to themselves exclusively, and the various denominations successfully asserted their claims to a share of the funds towards which they had contributed as well as their rivals. By these stages the education of the poor out of endowments established by private charity was gradually assuming the form of national education; but it was inevitable, from the mode of origin and growth, that the national education should reflect all the anomalies of individual benevolence.

In 1870 was passed an Act designed to bring education within the reach of every child in England and Wales, and investing the local boards which it created with power to compel attendance at school. There has

not as yet been time for the results of this great scheme to be seen in practice. It involves in theory some very important social and political doctrines, at which a glance may more conveniently be given elsewhere. In the mean time, however, it must be remembered that during the whole period included in the present chapter, the seeds planted by Lancaster and Bell have been bearing such fruit as they were capable of producing. He would be a bold man who should pretend to define how much and how little the present state of civilisation has been affected by the rudiments of knowledge imparted to poor children through private beneficence and government grants. The attempt is thwarted at every step, not only by the innumerable other causes in operation, but also by the fact that instruction, apart from any direct influence, must operate in combination with those other causes, which it may modify and by which it may be modified.

It would be very rash either to assert or to deny that education from books, as applied to the poorer population, has had the immediate effect of diminishing such crimes as treason, murder, highway robbery, and the various forms of offences against property with violence. When men learn from history the mischiefs of unsettled government, they may, if patriotic, hesitate before they become traitors. They may take the warning suggested to them by the fate of Turpin and Duval, and seek their fortunes in honest industry rather than on the road. They may be deterred, rather than excited to imitation, by reading the career of Jack Sheppard.

Is instruction the cause by which treason, murder, highway robbery, &c., have been diminished?

It must, however, be remembered that the chief traitors have not always, nor even usually, been the most

uneducated among men. Since the passing of the law which definitely settled the succession, and the extinction of Stuart Pretenders, many of the ancient pretexts for treason have been removed, and to this cause, in part at least, must be attributed the continual decrease in executions of traitors. Yet it cannot be denied that there has been even in the present century one instance of treason which may, for its reckless bloodthirstiness, be compared with the Rye House, or even with the Gunpowder Plot.

To the discontent which followed the Great War—to the hot passions which were excited by the loss of life in the Peterloo riots at Manchester—was added the opportunity for insurrection which is always believed to accompany the demise of the crown. The death of George III. was thus the signal for attempting the execution of a very remarkable conspiracy, by one Arthur Thistlewood and his associates. As commonly happens when a number of persons are concerned in a plot, there was a spy or a traitor among them, and thus the scheme was brought to nought. But the importance of a design is not always to be measured by its success. Had Thistlewood and his accomplices, like the Communists of Paris in 1871, set fire to the capital and seized all the artillery which could be used for its protection—had they, as was also intended, massacred all the cabinet ministers, and proclaimed a Republic, with the Mansion House as the head-quarters of the provisional government—they might to some extent have diverted the course of English history. It is not to be supposed that they would have become the rulers of England, but they would probably have caused a civil war. Their detection, and the execution of the ringleaders, rendered the subsequent attempts at insurrection contemptible. But

Illustration from the Cato Street conspiracy.

this instance of atavism, with all its strange resemblance to earlier treasons, should warn us not to be lulled into a false security, and teach us, as many foreign incidents might teach us also, that the diffusion of instruction in reading, writing, and arithmetic is not necessarily and by itself a safeguard against assassination.

The diminution in the number of highway robberies which marks the period now under consideration must, like the comparative freedom from treason, be traced, if to instruction at all, certainly also to education of a wider range. With improved communications the highways became more frequented, the chances in favour of an unexpected and successful attack less to be ensured, the chances of detection considerably greater. When railways were constructed, the longer journeys on which large sums of money were carried were usually effected in a manner completely out of the range of the ancient highwayman's art. Nor are the improvements in roads and the use of locomotives the only indirect checks upon robbery from the person. The increase of wealth has not been in all cases favourable to the thief or the robber. Jewels, and watches, and golden ornaments have, it is true, become more and more plentiful every year, but they are dangerous to the wrongful possessor. The opportunities of taking a great booty in coin have not multiplied, but rather decreased. Bank-notes and other promises to pay have for the most part taken the place of guineas and sovereigns, and the possession of them is an unanswerable proof of guilt against the person who has stolen them.

Education of surrounding circumstances: the increase of wealth not altogether favourable to the robber.

We have here an illustration of the manner in which education in the more extended sense tends to the ex-

tinction of some forms of crime, not by removing from the possible criminal the desire to transgress the law, but by placing new and formidable difficulties in his way. Progress in the commercial arts thwarted the criminal by the very same devices by which it sustained itself; and the progress of other arts, as will hereafter be shown, has had a similar effect.

The education of the law courts: reforms in the administration of the criminal law.

There is, however, every reason to believe that the general education of surrounding circumstances has had a tendency to diminish crime by a different mode of operation. When there is obvious injustice in the administration of the laws, the hearts of criminals must of necessity be hardened. There can then be but little probability of reclaiming those who have once become law-breakers; there can then be but little love for society and its restraints among those who have not yet yielded to temptation. Strange though it may seem, it was not until the reign of Queen Anne that a prisoner put upon his trial for felonies short of treason could insist as a right that the witnesses in his favour should be examined on oath. It was not until the year 1836 (when the Prisoners' Counsel Act was passed) that a person accused of felony could enjoy the full benefit of counsel's aid in matters of law as well as matters of fact, and the advantage of counsel's address to the jury. Many cases are known in which great wrong was done because the accused were unable, in the existing state of the law, to place before the court the evidence and the arguments which would have established their innocence. It is not difficult to imagine the bitterness with which the law's oppression must have been regarded, or to find excuses for those

war against a community which appeared to be bent on their destruction. Even now, perhaps, the proceedings in court are not always in accordance with strict justice, and a poor prisoner may be unable to obtain the evidence necessary to establish his innocence. Authority, too, might well be given to the judge to call and examine witnesses through whom the truth might be ascertained, but whom there might be a reluctance to call both on the side of the prosecution and on the side of the defence. On the other hand, the unrestricted power of the judge to commit anyone to prison for contempt of court, at his own pleasure, savours more of the middle ages than of the nineteenth century, and might well be commuted into the power to commit for trial, so that a jury might pronounce a verdict as in other offences. A plausible reason for cavils at the law would thus be removed. There is little else which the most captious critic could now desire to see altered in the interests of persons on their trial.

Among the branches of that education in the wider sense which is now under consideration may be mentioned also the tenderness towards brutes which came into prominence at the time at which the laws were being softened in other directions. In Bentham's 'Deontology' was expressed an earnest wish that the animal creation might be protected against cruelty; and protection was at length to some extent accorded. It would be idle to deny that the inferior animals are still often cruelly maltreated; and the maltreatment cannot, perhaps, entirely cease while they are the slaves of man, forced to aid him in his labours, to fight his battles, to contribute to his amusements, to add by their sufferings to his knowledge of physiology, to die in order that he may live. Some-

Gradual diminution of cruelty; protection to animals.

thing, however, has been gained in the recognition of the principle that no needless pain should be inflicted; and its recognition can hardly fail to have some effect upon the manners and customs of the people.

Education through punishments; abolition of cruel public punishments: the pillory.

Foremost, however, among the more wholesome general influences of modern times must be placed the abolition of cruel punishments inflicted upon human beings in public. We have seen how common was the mutilation of one individual by another when mutilation as a punishment sanctioned by the state was familiar to the mind of every Englishman. We have seen how Wat Tyler's men, when they were masters of London, put the vanquished to death in the fashion prescribed by law for traitors. We have seen how Colonel Blood attempted to execute Ormond at Tyburn. We see in our own days that crime frequently suggests its like, and that great criminals often have imitators. Every public punishment which is ferocious is neither more nor less than an example of ferocity which, in one form or another, will be followed in private life. The abolition of the pillory, therefore, towards which the first step was taken at the end of the Great War, and which was finally effected at the beginning of the present reign, is of no small importance in the history of crime and of manners. It was the abandonment of an ancient principle, the closing of an ancient school. With it died the semi-savage custom by which the mob were called in as instruments of punishment, and were incited to commit assaults in the name of the law. The change in the character of later crimes, there can be but little doubt, has been caused, in no slight degree, by the disappearance of spectacles which, if by

verted whole crowds into rioters and discouraged the sentiment of pity.

Capital punishment continued to be a public exhibition long after the pillory ceased to be used; and from the time of the Revolution until nearly the middle of the present century, there is an aspect of it which claims attention, even before its hardening effect upon the spectators. This is its indiscriminate application. With the development of new industries and the new facilities for commerce, new frauds became possible; and the ordinary mode of dealing with them by statute was to declare them felonies, either with or without benefit of clergy. It was a maxim with some lawyers that although felony implied forfeiture, it was not necessarily followed by death. As a matter of fact, however, hanging was a part of the punishment for felony. The number of offences to which capital punishment was applicable continued to increase year by year in proportion to the increase in the number of conceivable offences against property. In earlier times it was impossible to counterfeit tickets in lotteries which had no existence, to forge the seal or the notes of the Bank of England which was not established, to personate the holder of a stock and transfer it, or receive the dividends due upon it, when it was not yet created, or to make a malicious attack upon a turnpike which had not been built. It was strictly in accordance with analogy that such acts as these were made punishable to the same extent as larceny above the value of one shilling. It has been shown in a previous chapter that perpetrators of the greatest frauds enjoyed in earlier times a comparative impunity, while persons guilty of an inconsiderable theft were hanged. One reason was that trade and its

Capital punishment: successive changes in its applications.

devices for its propagation were continually outgrowing the primitive laws of an uncivilised people. The thief atoned for his crime with his life in accordance with ancient custom; the forger and the swindler eluded the law, and if they suffered at all, suffered an imprisonment of which the legality was doubtful, or were set in the pillory.

The extension of the list of felonies in the eighteenth century was thus, in one aspect, a sign of progress. It indicated an attempt to inflict punishment in proportion to the heinousness of a crime. The effect, indeed, was made in a wrong direction, and frustrated itself by the inconsistencies to which it led. Not only at the end of the eighteenth century, but during a considerable portion of the nineteenth, the criminal law was more open to reproach than, perhaps, at any period in the history of England. In times when men had barely realised to themselves the idea of property, it was natural that (apart from religion) theft and homicide should be practically the only two forms of crime, that there should be little distinction between them, and that, where a distinction was admitted, theft should be considered the greater. It was no less natural that, as the nation advanced, the punishment for all the offences against property should be made the same as that for the greater larceny. But as respect for human life, together with a general widening of human sympathy, has been a part of human progress no less than the accumulation of wealth, the changes of the law suggested at first by a sense of justice were seen to be, if logical when regarded from one point of view, both cruel and unjust when regarded from another.

When human blood was held cheap—not only figuratively but literally—when it had a fixed price in

that a murderer could buy back his life, though a thief without the means of making restitution was hanged. The extension of capital punishment to a murderer without the option of a fine was, like its extension to great and new frauds, a sign of civilisation. There may seem to be a paradox in the assertion that a regard for human life is shown in condemning a human being to death for an offence for which the payment of a sum of money had previously been considered a sufficient atonement. But if punishment be considered a deterrent, and if hanging be a greater punishment than the loss of a certain amount of property, it is clear that some attempt to give security to the person was made when the 'wer' was abolished. On the other hand, any value which the fear of the gallows may have possessed as a deterrent, was greatly diminished, so far as homicide was concerned, by the indiscriminate use of it in relation to offences of a very different character. When the criminal might be executed for stealing a sheep, as well as for murder, he had not the slightest inducement to refrain from murder if he was detected in the act of carrying off the sheep. Nor was this the worst effect of the criminal law as it existed in the eighteenth century. Not only the thief caught in the act of theft, and with the instinct of self-preservation brought strongly into action, but persons the least criminally disposed, with ample leisure for reflection, were necessarily affected by the national sentiment (as expressed in the national laws) that it was no greater crime to kill a fellow-Englishman than to pick a pocket.

The wise and just and benevolent men who set themselves to the work of devising a new scale of punish-

military spirit was so predominant as it was before the peace of 1815. The lust of conquest is inconsistent with a high regard for human life. The failure of 1770 was followed by a very small victory in 1808, when a law was passed by which pocket-picking ceased to be a capital offence. Sir Samuel Romilly, by whose efforts this change had been effected, attempted, in 1810, to carry other similar bills, but in vain. In 1811, however, his bill for withdrawing the offence of stealing from bleaching-grounds out of the list of crimes punishable with death passed both Houses, and in 1812 a bill of his relating to soldiers and sailors found begging. In 1813, 1816, and 1818 he introduced a bill to abolish capital punishment for stealing to the value of five shillings from shops. As in 1810, he found support in the House of Commons but not in the House of Lords; and when he died men could still be hanged by law for stealing goods of very small value from dwelling-houses, shops, or river-craft.

With the firm establishment of peace, however, a more merciful public opinion began to assert itself in no faltering language. Sir James Mackintosh was a worthy successor to Sir Samuel Romilly within the House of Commons, and was effectively supported by the popular voice without. Many petitions were presented, and in 1819 a committee of the Commons was appointed to report upon capital punishments. In 1820, Mackintosh succeeded in changing the law so far that it was no longer a capital offence to steal from a shop unless to the value of 15*l*. He also gained a triumph rather apparent than real in abolishing capital punishment as applied to a number of crimes which were

other efforts were also made, in the same direction, but with little real success until 1832.

Until that year horse-stealing, cattle-stealing, sheep-stealing, stealing from a dwelling-house, and forgery in general were capital offences. From that time forward none of them were capital except forgery of wills and of powers of attorney to transfer stock. House-breaking ceased to be capital in 1833, returning from transportation (before the term of sentence had expired) in 1834, sacrilege and letter-stealing in 1835. Soon afterwards Lord John Russell still further reduced the list of capital offences; and murder, though not the only crime legally punishable with death, came to be regarded as practically the only crime for which death was inflicted. Even a well-established attempt to murder, if unsuccessful, was not usually followed by the extreme penalty, so lenient did the law become in its administration as well as in its ordinances before the year 1861. According to statutes then passed, actual murder is now the only offence (except treason) for which sentence of death may be pronounced.

One of the greatest objections to capital punishments, however, was not only that they were inflicted indiscriminately, but that they were inflicted in the presence of a crowd of sight-seers. The particular form in which they have been known in England—that of hanging—was denounced by the Emperor Constantine, more than fifteen hundred years ago, as too inhuman and too barbarous to be applied even to a slave. Yet, late in the nineteenth century, men and boys, and even women and girls, repaired to the place of execution to take their pleasure in seeing a fellow human being hanged. The rich and the idle paid high prices

Its demoralising effect when made a public exhibition.

any other common spectacle. The poor, who loved the excitement as well as their betters, ate cakes and passed ribald jokes from one to another in order to make the time seem shorter until the criminal was brought forth, and the 'drop' fell, and the convict struggled and died.

Such scenes might be witnessed by anyone who had a taste for them as late as the year 1868. Yet surprise is often expressed because strong and uncultured men beat their wives a few years afterwards, and commit other savage assaults which indicate that a tender consideration for human life and suffering is not universally diffused. It often seems to be forgotten that we cannot reap what we have not sown, and that the harvest does not follow the seed-time in a day. Mutilation was common for generations after it had fallen out of general use as a punishment, and is not unknown as an offence even to the present time. Murder, therefore, cannot be expected to disappear immediately after capital punishments have been withdrawn from the public gaze. Still less is it to be supposed that other crimes of violence will cease to be committed, or will become even uncommon, during the life-time of a generation which can recollect the hideous scenes enacted on the scaffolds outside our English gaols.

The effects of brutalising scenes are not restricted to the generation which witnesses them.

There was yet another objection to sentences of death, as indiscriminately applied at the beginning of the present century, which does not hold good with respect to private executions for murder. They were so frequently commuted that they could have had but little deterrent effect, and yet they were suffered for offences other than murder sufficiently often to prove that the law which enjoined them was a reality. Thus

Uncertainty of capital punishment.

total of 350 sentenced to death; in the year 1815 there were 57 executed out of 553 sentenced; in 1825, 50 out of 1,036, and in 1831, 52 out of 1,601. In the same years the number of persons executed for murder was 10, 15, 10, and 12 respectively. This uncertainty of punishment was, without doubt, a great evil, though not of so much importance in its effects upon the general population as that of a brutal public spectacle under the sanction of the criminal law.

Changes in prison discipline associated with other changes of punishment.

The causes which led to the abolition of the pillory, of capital punishment for minor offences, and finally of all capital punishment in public, were not without their effect upon punishments of other kinds—upon prison discipline, and upon the general condition of prisons. At the beginning of the present century, Elizabeth Gurney, better known as Mrs. Fry, took up the mantle which had fallen from Howard. With more than masculine courage, she ventured among the worst criminals in some of the worst prisons. She naturally felt special interest in prisoners of her own sex. In her opinion, extreme severity of punishment rendered them callous rather than afraid to commit new crimes. It is, however, necessary to bear continually in mind the fact that human nature as a whole cannot be studied in prisons alone, and that every criminal has committed his first offence before he has become the inmate of a gaol. Prison discipline is of comparatively small importance, except in its relation to persons who have already transgressed the law, and who, after their term of imprisonment is ended, may be either obstinately resolved to persist in the career upon which they have entered, or willing to make an effort in a new direction. To the world at large

plation, and its management could hardly be the subject of careful consideration by a person tempted for the first time to commit a crime. The tenderness of a gaol chaplain, or the cruelty of a gaoler (supposing either one or the other to exist in the highest degree), are alike lost to the external public, except when some unusual circumstances bring them to notice.

The horrors of gaol—the tortures inflicted at the will of the gaoler alone—were revealed at intervals from the fourteenth century downwards. They were discovered, in exceptional circumstances, as late even as the year 1853, soon after which time the most was made of them in popular novels. The disappearance of wilful cruelty from prison discipline is, no doubt, of some importance in the history of crime; but its chief importance is as an indication of public opinion rather than as an indication that there has been discovered an infallible method of diminishing the number of criminals. The sentiment which caused the abolition of the pillory and of public executions has been strong enough to assert itself within the walls of our gaols as well as without. But the absence of exhibitions in which pain was inflicted in the name of justice, with a multitude as witnesses, must have had a far more powerful influence than any event which could occur in the limited area of a prison, upon all those crimes of violence which can be suggested by an example.

Closely connected with these changes in the treatment of criminals, was the final abolition of benefit of clergy in the reign of George IV. This most anomalous institution had, as already explained, mitigated to some extent the severity of the criminal law, but in a very imperfect and a very inconsistent manner. After more than a quarter of the existing

Benefit of clergy abolished with mediæval punishments: its later history.

century had passed, the sentiment of human sympathy and compassion was growing strong enough to assert itself in its own name, undisguised by a cloak borrowed from a mediæval monk. It was by no mere coincidence that the abolition of benefit of clergy, of capital punishment for all minor offences, and of the pillory for all offences whatever, was the work of about ten years. These monuments of cruelty and superstition, which had survived for twelve centuries, would not have perished together in a decade had they not been altogether unsuited to the age. With them fell many an evil example; and unless the teachings of history are false, or new and unforeseen causes check the national progress, murders and the greater crimes of violence ought to become fewer and fewer in proportion as each generation is further and further removed from the pernicious spectacles by which many of them were prompted.

Whenever there is an unusual outbreak of crime there is a general tendency to lose sight of all the progress we have made—to forget that modern brutality is but a fitful and feeble reproduction of past barbarism, stimulated by circumstances. Few pause to consider what England was five centuries, or even one century ago. Few reflect that society bears a totally different relation to the criminal classes from that which it has borne at any previous time. With the exception of about a dozen executed in the course of each year, we now permit all our criminals to remain in our midst. We imprison them for a longer or shorter period, but they are commonly set loose again to maintain themselves as best they may. Not only were executions more frequent, not only were the sanctuary-men permitted to abjure the realm, not only were able

Effects of the abolition of transportation: no proportionate increase of crime.

bodied malefactors drafted into the army and navy in earlier times; but, even when the ancient customs had died out, transportation was at least as effectual a device for ridding the country of the law-breakers as any that had preceded it.

Transportation, once only a commutation of capital punishment, grew more and more into favour after the risings of 1715 and 1745, until it became the ordinary sentence upon conviction of those offences which, even in the earlier part of the nineteenth century were, nominally at least, punishable by death. When the American War of Independence closed one receptacle for convicts, another was with little delay found in Australia and the neighbouring islands. The criminals who were thought worthy of the most severe punishment next to loss of life, were those who were transported, and few of them returned to trouble the repose of English society. How great a difference was thus made in the number of the criminal classes in England may be estimated from the fact that between 1787 and 1857 no less than 108,715 were transported to the Australian colonies. The same tale is told also in other language by the average age of criminals, which began to rise as transportation was discontinued, and has risen to such an extent that there are now 34 per cent. of persons above 35 years of age sentenced to penal servitude, instead of 28 per cent. in 1862. Youth is the usual period for the commission of crime, and when youthful criminals are transported they have not the opportunity of repeating their offences in the same place. But when they are set loose in their native country after the expiration of their term of imprisonment and again break the laws, they swell the number of more mature convicts. It is, therefore, a subject of no little congratulation that the total

number of criminals is now as small as it is, for none have been transported since 1867, and few since 1852.

Comparative security of life and limb caused in part by modern police organisation.

The comparative security of life, limb, and property in recent years is no doubt caused, to a very great extent, by our modern organisation of police—an organisation, however, which would be possible only in a highly civilised country. The development of the Metropolitan Police, and of the borough and county constabulary, out of the primitive system which at its best was of little use to our forefathers, is a very remarkable illustration of national progress.

Origin and development of modern police and constabulary.

The barbarous idea of exacting hostages—of threatening to punish the innocent for the guilty—was, as has been shown in the first volume of this history, at the root of our earliest system of police. The hundred was made to suffer for the offences committed within its limits, the tithing for the offences committed by one of its members. Every hundred had its president, reeve, or hundred-man; every tithing its president, reeve, headborough, or tithing-man. In the reign of Edward I. we meet with the appointment of two constables to every hundred and franchise. These two constables appear to have been the successors, in some cases of the tithing-man, in others of the hundred-man. The hundred and the tithing, no doubt, both looked to their heads, and afterwards to their constables, to guard them as far as possible against any infraction of the law by persons through whose transgressions they might incur loss. The head-man or the constable, in fact, enjoyed a delegated authority; he could call upon his constituents to aid him if necessary; they naturally expected him to dispense with their assistance

As early as the reign of Edward III., however, it is not unusual to find that there were two constables in a small village; and from that time forward it is evident that, although the ancient idea of reciprocal warranty might be retained in theory, it had, so far as the tithing was concerned, died out in practice. The ancient views of frank-pledge or peace-pledge still remained an incident of the manorial courts, and constables continued everywhere to be elected at the courts-leet; but as soon as two constables had anywhere taken the place of one tithing-man, the foundation was laid for a new system, in which the community was no longer to protect itself, but to be protected against lawlessness by persons whom it employed for the purpose.

This foundation long remained without any attempt to crown the edifice. For many generations little practical change was effected in the police, either of London or of the boroughs and counties outside. Local jealousies preserved local customs long after the general state of society had assumed a new aspect. The principle that there might be substituted a plurality of constables for one tithing-man, though admitted, was very slowly developed, and most slowly in the rural districts. The duty of a constable was onerous, brought little remuneration, where it brought any at all, and was commonly performed by deputy. There was but one step from the payment of the deputy-constable by the constable to the payment of watchmen by the parish. Both the paid substitute of the constable and the paid watchman soon began to be regarded with some of the suspicion incurred by the standing army which became the substitute for universal military service. The feeling

year 1839, when a permissive Act was passed by which justices at quarter sessions were empowered, if they thought fit, to appoint county and district constables, with the reservation that the constables so appointed were not to exceed one per thousand of the population.

This restriction was withdrawn in the following year, in an Act which gave greater facilities for the establishment of a borough and county constabulary. The new police was to differ from that which had preceded it in being paid a definite sum for its services, instead of casual fees for casual acts of constableship. The constables thus appointed were to be no longer men deriving their means of subsistence from other occupations, but devoting their whole time to the duties of their office.

Under these two Acts, and an Act passed in 1856, making that compulsory which had previously been only permissive, the county constabulary is still appointed. It was not until the Act of 1856 came fully into operation that there was any approach to uniformity in the police system throughout England and Wales, but from that time forward the principle of employing paid officials to prevent crime and to apprehend criminals has been everywhere put in practice.

This principle, however, had been developed in the boroughs, and above all, in the metropolis, some time before it was enforced throughout the country. The borough constabulary is now appointed under an Act passed in 1835, together with the Act of 1856. But the great model for the whole country has been the Metropolitan Police. One of the chief characteristics of this force, established by an Act passed in 1829, is its unity of organisation under commissioners responsible to

number of local acts relating to metropolitan parishes without the city of London were then superseded. They had all been founded more or less upon the old principle of the peace-pledge, modified by the appointment of constables and other officers, upon whom was imposed the whole or a part of the duties and responsibilities which in earlier times had fallen upon the tithing or the hundred. The new guardians of the peace in the metropolis, retaining the comparatively ancient name of constable, were called police-constables, and were in a sense a development of the tithing-man of old; but they resembled him even less than a member for a metropolitan borough resembles the burgesses who appeared before the Chief Justice at Westminster with a statement of accounts in the reign of John. Yet the stages of growth are sufficiently well marked—from the responsibility of the tithing to the responsibility of its head, from the functions of the headborough or tithing-man to the functions of the constable, from the election of a constable to the election of a plurality of constables, and finally from a plurality of constables, deputy-constables, and watchmen, under parochial or other local authority, to a plurality of constables under the central authority of a Secretary of State.

Local traditions are not yet entirely extinct, and they have retained so much vitality even in the capital that the police of the city of London is under the management of the corporation, while the police of the rest of the metropolis is under a separate control. There is a great disparity (in some cases more apparent than real) in the proportion of constables to population in various districts. In the city of London there is nominally a constable to every 95 of the population, in the rest of

every 753, and in the counties outside the boroughs 1 to every 1,294. But a very obvious source of error exists in the fact that the population is computed in accordance with the sleeping-place, and not with the place where each individual pursues his calling. The city of London, which teems with human beings by day, is a desert at night; the suburbs of London and of many other great towns, comparatively well populated by night, are almost empty by day. Railways, too, carry every evening into the districts nominally rural a considerable number of the persons who earn their livelihood in the towns. But in its police, as in some other affairs, England has had the rare felicity of uniting at last most of the advantages of local government with most of the advantages of centralisation. Towards this happy result the Norman Conquest contributed something, the development of parliamentary institutions something more, and the facility of intercommunication, which is the growth of the nineteenth century, perhaps most of all. Great diversity of police arrangements, with a marked contrast between security of life and property in one place and insecurity in another, could not long be tolerated in a country in which multitudes are travelling every day. Thus it has come to pass that there is a much nearer approach to uniformity than is positively enforced by the laws relating to police and constabulary. By a sort of tacit consent the metropolitan system is everywhere imitated, though in some boroughs the imitation may be very bad: the printing-press lends its aid to the general tendency, and every year there appears under the head of Judicial Statistics an account of the constables of all kinds throughout the whole of England and Wales.

has everywhere made rapid progress since the establishment of the metropolitan police, there has been another gradual change, which is almost imperceptible if regarded from year to year, but which is considerable when observed throughout longer periods. The force of police and constabulary has increased not only in actual numbers, but in proportion to the population. Not only did its absolute increase amount to twenty-six per cent. throughout the country from 1862 to 1872, but the ratio had risen from 1 constable for every 902 of the population in 1858, to 1 for every 887 in 1862, to 1 for every 811 in 1872, and to 1 for every 795 in 1873. The necessity of maintaining so great a force of constables, whose chief occupation in life is to prevent crime or to apprehend criminals, must, without doubt, be carefully borne in mind in making any attempt to estimate the prevailing disposition to break the laws. It is the counterpoise to the practice of retaining in England the desperate characters who in former times were transported to America or Australia. We may regret that any such counterpoise should be needed, but on the other hand we may congratulate ourselves that we live in an age when the need is fairly recognised, and when a well-organised police is an accepted institution.

Progressive increase of police force in proportion to population.

If the account given by the police authorities of themselves is to be accepted literally, they have aided in effecting a most remarkable diminution in the numbers of the criminal classes. There were in 1862 no less than 64,151 known or suspected criminals of all ages at large, including receivers of stolen goods; in 1872 there were only 45,201. During the whole period the returns were made on the same

Detective and other police most effectual in diminishing the number of habitual criminals.

honestly for one year at least subsequently to their discharge after any conviction' should not be counted. The Habitual Criminals Act of 1869 and the Prevention of Crime Act of 1871 probably contributed something towards this result, by giving the police more extended powers of supervision over convicts who had served their term of imprisonment; and the Discharged Prisoners' Aid Societies have, no doubt, been of great service in preventing many a relapse into crime. It should not, however, be forgotten that inclusion or exclusion under the head of 'suspected persons' must necessarily be somewhat arbitrary, and that many habitual criminals may possibly be at large, and yet elude the vigilance of the police.

Still, after every allowance has been made for the natural desire of the police authorities to persuade themselves that they are restricting the criminal classes to ever narrowing limits, there is good reason to believe that their estimates are in the main approximately correct. It is upon the habitual criminals that a powerful organisation of police must have the greatest effect, rather than upon the persons who yield to an unforeseen temptation or a sudden impulse of passion. To the one class an opposing army must be always present in idea, to the other, if present at all, it must necessarily appear more remote and must have a far less deterrent effect. If this is true as applied to the ordinary police-constables, it is still more true as applied to the detective police. Not only are the haunts and habits, the usual tricks and devices of the man who makes theft his profession well known in Scotland Yard, but the thief is aware that they are known. He must lose heart from year to year, with the inevitable

lesson is in his case taught by an iteration from which he cannot escape, the casual misdoer—the perpetrator of a single crime—has no practical knowledge of the system which threatens him with punishment. The sense of peril, no doubt, affects him more strongly than it would have affected him in times when life and property were less jealously guarded. But his knowledge of his danger is not practical, like that of the common law-breaker, and cannot, therefore, be with him a motive of equal strength. On the other hand, he has some advantage over the professional malefactor in baffling the pursuit of justice. His person is not familiar to his pursuers, he is not an inhabitant of a thieves' quarter, and his first attempt is not improbably made on principles which men of more experience would consider inartistic, but which, for that very reason, do not present themselves to the experienced detective.

In attaining what may be considered its primary object,—the diminution of the classes living by crime—the modern police force has, there is every reason to believe, preserved a higher tone than was to be found among its predecessors. When constables elected at courts-leet adopted the practice of serving by deputy, the result was one which cannot be better described than in the words of a Report of a Committee of the House of Commons: 'Their deputies in many instances are characters of the worst and lowest descriptions; the fine they receive from the person who appoints them varies from ten shillings to five pounds; having some expense and no salary, they live by extortion, by countenancing all species of vice, by an understanding with the keepers of brothels and disorderly ale-

The modern police contrasted with their predecessors in moral tone; perjuries.

false evidence to ensure conviction when their expenses are paid, and by all the various means by which artful and designing men can entrap the weak and prey upon the unwary.' With these ordinary deputy-constables there had existed since 1792 a small number of men who were the precursors of our modern detectives. They did not enjoy a better reputation than their less ambitious colleagues. They were living illustrations of the proverb which suggests the expediency of setting a thief to catch a thief. The qualifications most needed by them were those social gifts which commanded the largest acquaintance amongst the most lawless of mankind. One day they would be drinking and roaring out an obscene ditty amidst the applause of their boon companions in a 'flash-house,' the next they would return in their official capacity to carry those very companions off to gaol; 'they would go for their prey as gentlemen to their preserves for game.'

Such abuses as these, consistent with the history of earlier times when perjury was one of the most ineradicable of offences in England, and when the society of outlaws was hardly considered unfit for a gentleman, may well have left some traces of their effects even in our present system. It is sometimes only too evident that the testimony of a police constable is still given in the interest of himself and of the body to which he belongs rather than with a strict regard to truth. There have certainly been instances in which an accused person has been punished, not because he was guilty, but because his captors swore hard against him. Understandings with the keepers of night-houses and their frequenters have been suspected even since the time

it is still a part of the business of detectives to know where thieves are gathered together. But all these facts combined do not imply the depravity which was found to exist just before the present Metropolitan Police was established. There may now and again be false swearing against the innocent by some policemen who consider their first duty to be towards their comrades, and yet the general conduct of the whole force may be good, and serviceable to the state. There may be some policemen receiving the sum of twenty-five shillings per week who are not absolutely incorruptible, and yet criminals may be brought to justice without the aid of bribes. The detectives may all know, as in former days, where their prey is commonly to be found, and yet may not be thieves themselves, or on terms of intimate friendship with thieves. The progress of centralisation, especially in the metropolis, acts as a most powerful check upon a constable tempted to do wrong. Both he and the division to which he belongs may be removed by the central authority to some quarter of the town in which he is a stranger. If he attempts to persuade his fellows that they ought to make oath in his support, regardless of facts, he may succeed in some instances through the influence of a mistaken notion that union in such cases is strength; but in all likelihood he will oftener fail through the general knowledge that discredit brought on a number of individuals affects the special class to which they belong, that the authorities are quite aware of the fact, and that transgression will very probably be followed by dismissal and punishment.

The sense of security which, in spite of the fluctuations of crime, and in spite of temporary panics, we really

of police with which many find fault, but which few, except the habitual criminals, would wish to see abolished. But many other causes which, like the police force itself, are the products of advancing civilisation, contribute, directly as well as indirectly, towards the same result. Modern improvements in the mode of lighting towns and their suburbs, following the introduction of gas, must be reckoned among the most effectual preventives of robbery by night. Telegraphs aid not a little in the detection of offenders after a crime has been committed, and photography has often done most important service in proving the identity of a criminal.

Aid of science in detecting and preventing crime.

One of the most remarkable effects of improvement in the means of detection is a tendency to exaggerate the total amount of crime which actually exists, and to draw unfavourable comparisons with earlier times. A police force continually increasing, becoming continually larger in proportion to the population, and aided directly and indirectly by the inventions of modern science, must (unless it is altogether worthless) bring a great number of evil-doers to justice who would, in a different state of society, have remained not only unconvicted but unaccused. It is only natural that, as the efficiency of the institution is recognised, it should be regarded with more and more confidence, and that sufferers should be encouraged by it to make reports of their losses, who would generations ago have borne their troubles without public complaint. The Home Office publishes, year by year, not only the number of persons accused and convicted of various offences, but also the number of crimes reported to the

Facilities for detection sometimes cause an apparent (but not a real) increase of crime.

undetected. If we look back to earlier ages we find no authentic records which correspond, in any respect except one, with the statistics thus obtained. It should therefore be always remembered that any apparent increase under this head may be caused simply by the growth of a new system, and may have no relation whatever to any advance or relapse in law-abiding or law-breaking.

The most uniform and the least deceptive materials for a comparison of the crime of modern times with the crime of less civilised ages are to be found in the verdicts given at coroners' inquests. In the fourth chapter of this history there is a calculation by which it appears that (excluding the cases of brigandage, numerous at the period) the deaths by murder were in proportion to the population about eighteen times as frequent as in our own days. The justice of this conclusion may be shown by an examination of modern statistics from another point of view. The number of verdicts of wilful murder found at coroners' inquests in Yorkshire (for which, it will be remembered, the coroners' rolls of 1348 are more complete than for any other county) was fourteen, in the year 1873, and of manslaughter nineteen. The population of the whole county was in 1873 about two millions and a half, and the population of all England (as already shown) certainly more than five times as great as in the year before the Black Death. But in Yorkshire population has increased far more rapidly than in many other parts of England; and even as late as the year 1600 did not exceed one sixth of its present number. If even it were assumed that there were as many inhabitants of Yorkshire in 1348 as in 1600,

Diminution of homicide shown by verdicts at coroners' inquests: murder, manslaughter, infanticide, concealment of birth, self-defence.

felonious homicide returned at coroners' inquests in 1348, in order to compare the past with the existing proportion to population. The eighty-eight Yorkshire verdicts of 1348 would thus be swollen to five hundred and twenty-eight, or sixteen times as many as the number recorded of murder and manslaughter, together, in the year 1873–4, and thirty-seven times as many as the number recorded of murder alone.

In the early coroners' rolls there is no distinction between wilful murder and manslaughter. There were, according to them (excluding suicide), two classes of homicide, that which was felonious and that which was committed in self-defence. Verdicts of homicide in self-defence were not uncommon, and (in days when brawls were continually occurring) were no doubt often returned where the circumstances would, from a modern point of view, warrant a verdict of manslaughter. On the other hand it should not be forgotten that recent verdicts of murder at coroners' inquests include a great proportion of cases which are at most infanticide, and which juries in criminal courts mercifully regard as mere concealment of birth. The verdicts of 1348 all relate to grown persons killed by grown persons. It cannot be supposed that in an age in which the lives of adults were so insecure as they were in the fourteenth century the lives of infants were more secure than they are in the nineteenth. It does not appear that the growth of towns can fairly be held to be a cause of any increase in crimes against new-born babes, which became, as early as the reign of James I., the subject of a special statute by reason of their frequency. An excessively high total of verdicts of wilful murder is, it is true, returned in Middlesex at coroners' inquests

the juries which try women for their lives are commonly inclined to mercy rather than severity, the convictions for concealment of birth appear to be in every way the surest guides in this branch of the subject. More than fifty-seven per cent. of them occur among that portion of the population with which the county constabulary has to deal, though that portion of the population is little over fifty-six per cent. of the whole, and though the strictly rural population is only thirty-eight per cent. of the whole. More than the due proportion is found in the well-policed metropolis, but considerably less than the due proportion in the smaller boroughs.

It should be remembered, too, that, in modern times verdicts of manslaughter are returned in cases in which the slayer was guilty, at most, of carelessness. The railway guard, or pointsman, causes an accident through negligence, without the least desire to take human life; the cabman at the request of his hirer drives faster than he ought, and kills a child too young to be trusted alone; both may be convicted of manslaughter, as well as other persons for other similar offences which could not have occurred in the barbarous days before the Black Death.

When, therefore, we bear in mind the fact that among the verdicts of felonious homicide returned at coroners' inquests in 1348, infanticide is not included, and that some forms of manslaughter were at that time impossible, it seems reasonable to believe that these verdicts might fairly be compared with the corresponding verdicts of wilful murder alone in our own days, rather than with those of murder and manslaughter together. In that case the security of life from ordinary violence is thirty-seven times as great as it was five centuries ago; by

even if no account be taken of the ancient dangers of brigandage which were to all appearance the most formidable, but respecting which the coroners' rolls cannot afford us complete information.

One of the characteristics of the present age—a characteristic which is perhaps inseparable from the modern development of commerce—is a demand for immediate practical results from every course of action. It is often assumed that there is some sort of royal road to success in all things in which human beings can be interested, and that the success ought very soon to be measurable by figures. The tone of mind of which such opinions are the natural consequence is better adapted to speculations on the Stock Exchange than to the consideration of problems in ethics, or even to a practical appreciation of ethical facts as they are. There are many very acute men of the world who would assume that if there are fewer murders (let us say) in 1880 than in 1879 the crime of murder must have been checked by some definite legislative interference, and, on the other hand, if there are more murders, that the crime of murder must have been increasing through some definite lack of legislation. Ask them to compare period with period rather than year with year, and to travel back by successive periods as far as the fourteenth century, and they will probably answer, 'What have we to do with the fourteenth century? Give us tangible results in modern times. Show us the profit of modern civilisation and modern law-giving; show us a satisfactory balance-sheet every successive year; then, and not until then, we shall feel assured that sound principles have been adopted.' There never was, and there never probably will be, a period of twenty years during which such a demand as this could be satisfied, even

though the spirit of obedience to the laws might be rapidly gaining in strength.

It is, however, possible to show perceptible improvement, not only by comparing the nineteenth century with the fourteenth, but also by comparing short and very recent periods with other short periods immediately preceding them. Coroners' verdicts cannot unfortunately be exhibited complete from the year 1348 to the present time, but even since the year 1860 there has been a decrease in the number of homicides which, though not so striking as the decrease which is apparent when a comparison is instituted with more remote times, is nevertheless quite appreciable. The average annual number of verdicts of wilful murder in England and Wales in the ten years from 1860 to 1869 was more than 249 and not quite 250; in the five years from 1862 to 1866 it was 247; in the seven years from 1867 to 1873 it was 244; and in the four years from 1870 to 1873 it was 232. The average number of verdicts of manslaughter for the five years from 1862 to 1866 was 225, and for the seven years from 1867 to 1873 it was 189.

The greatest of all crimes of violence is homicide. When that diminishes, there is no doubt that all the allied offences diminish with it. The presence or the absence of such deeds is but an expression of national sentiment. We have amongst us wife-beaters, and other half-savage ruffians, to whom cruelty is a sport. But the very abhorrence with which we regard them is no less real evidence of the character of the age than the acts of which they are guilty. The workman of the nineteenth century who breaks his wife's head is not a whit more degraded, more brutal, more

The amount of homicide an index to the amount of crimes of violence.

the fifteenth who treated refractory women in precisely the same manner. Nor was the woman-beating squire or knight of the fifteenth century so brutal as the king and the bishops of the tenth who decreed the burning of women by women for no greater crime than a petty theft. Nor is the decrease of crimes of violence in general simply a matter of inference from the decrease of homicide, but is shown by recent statistics, both of offences against the person, and of offences against property with violence.

While, however, the decrease of crimes of violence is susceptible of demonstration, the decrease of simple crimes against property does not admit of the same irrefragable proof. In every case in which death has occurred by violence there must of necessity be a coroner's inquest, except in those excessively rare cases in which the body of a murdered person is successfully hidden away, or the body of a suicide remains undiscovered. There is no similar institution by which, when a theft has been committed, the fact is placed upon record with any certainty. The sufferer may report his loss to the police, but is not compelled to report it if he does not choose. The modern statistics of larceny are therefore necessarily incomplete, and there are no ancient statistics with which they can be compared. The records even of the earlier convictions are imperfect; they give little or no indication of the total number of offences actually committed; and they are but fragments of a state of society wholly different from our town life in the midst of the wealth and the temptation of our ever-growing cities.

Crimes against property not made known by any device like that of the coroner's inquest.

Yet, although the precision of definite numbers is not to be attained except in that branch of the subject for which we possess the verdicts of juries at coroners'

inquests, we are not without ample proof that crimes of mere dishonesty have dwindled and lost their strength as civilisation has advanced and violence become less common.

They have nevertheless diminished.

It may be said that one of the most audacious and best sustained cases of false personation has occurred in our own time; but that case, it should be remembered, owed much of its apparent importance to the excessive minuteness and care with which it was investigated. In the nineteenth century a butcher asserted himself to be a baronet, and, after a trial which lasted nearly a twelvemonth, was sentenced to fourteen years' penal servitude. In earlier ages such criminals were more ambitious. After the death of Richard II., of Edward V., of Richard III., and even of Edward VI., there were claimants who announced themselves as nothing less than kings. They found supporters, some few and some many. Some of them caused bloodshed. One of them, at least, was treated with contempt. None of them, however, were so fortunate as to have their claims considered in two courts of law, or even in one. A right to land such as was claimed by Arthur Orton would, as late as the fifteenth century, have been settled by the strong arm. The impostor could hardly have made any peaceable attempt to gain possession of the property; but if he could have deluded a sufficient number of followers, he would have made an attempt by a forcibly entry. Anyone who supposes that he could have been at any time tried in England with more patience and more impartiality than were accorded to him must be, if not somewhat ignorant of law, certainly altogether ignorant of history.

False personation in ancient and modern times.

Personation, too, on a smaller scale, was a very

common offence in the later middle ages. The citizens of London made due provision for it, and had a sufficient number of pillories for the offenders. The fraud of personating the minor officers of justice is not yet quite extinct, and appears occasionally in our police reports, but it is rapidly dying out, though it was formerly one of the most ordinary devices of the thief.

If we turn our attention to the great commercial frauds of the nineteenth century they seem to fade into insignificance when compared with the frauds of the days when the South Sea and its kindred companies were flourishing, and when the taint of corruption extended from the lowest ranks to the inmates of royal palaces. It is probably true, as often asserted, that there are in our midst many successful adventurers who have attained success by dishonesty and who have made their lack of scruples pass current with the world as the possession of skill and industry. But in all historical times such persons have lived, and we may, perhaps, console ourselves further with the reflection that, if they live now in England, many of them are not of British or Irish birth, but have come to us from less civilised lands.

Commercial frauds, ancient and modern.

Among the minor frauds there are few that have not been transmitted (perhaps with a little change, to suit altered circumstances) from an age in which the state of society was wholly different from that of modern times; and some of the greater offences with which men were then familiar have now passed almost out of recollection. Charges of witchcraft have ceased to be made, because, with advancing enlightenment, the law has declined to recognise the possibility of such a crime; charges of fore-

Total disappearance, or great change in the character of some forms of crime.

an end. Charges of forcible entry are no longer familiar to us, and if they occur at all, they are of a very different character from those which bore the same name three or four hundred years ago. Offences against the game-laws are still not unfrequent, and are often justified on the ground (perfectly unassailable from the point of view of a savage) that they are no sin; but they are altogether insignificant both in magnitude and in number when compared with similar offences committed in the fourteenth century. Intimidation of witnesses, and even of jurors, is not yet entirely extinct, and instances have occurred in recent years in which juries have given verdicts of Not Guilty in defiance of the most conclusive evidence. But such cases are of rare occurrence, and do but show (what cannot be denied) that the old spirit of partisanship still exists. Another class of offences which has almost disappeared is that of offences connected with the press, partly because the laws have been changed, and partly because some laws still in existence are not, in the present state of public opinion, brought into operation.

Of all the crimes, however, of which the practical extinction has now come to pass, that of forcible entry is, in one respect at least, the most remarkable. Not only was entry at the common law one of the essentials of legal possession, but during many generations the old custom of forcible entry, or disseisin, served as one of the most convenient fictions for the purposes of the conveyancer. The Act passed in the reign of William IV. 'for the abolition of fines and recoveries, and the substitution of more simple modes of conveyance,' suggests probably to most minds

Forcible entry the most remarkable of these, and why.

even ridiculous forms. The passing of that statute, however, was of far greater historical interest, for it destroyed the last trace of a sanction given by law to mediæval fraud and mediæval force. Both fines and recoveries were originally actions at law, in which the opposing parties acted in collusion for the purpose of effecting that which they could not legally effect by straightforward and honourable dealing. In the recovery there was an allegation of a disseisin, or forcible entry, which was purely fictitious, a fictitious warranty, and a fictitious default of the warrantor. In later times, of course, no deception was practised, and the law practically gave its countenance to that which had once been an evasion of the law. Our legislators had no thought of discouraging the almost forgotten offence of forcible entry when they abolished recoveries; but the truth was that, because the offence of forcible entry had been almost forgotten, the recovery had become an anachronism.

Creation, on the other hand, of new crimes.

It may be argued with some force that if crimes of a certain type are altogether extinguished with the growth of civilisation, civilisation itself creates new crimes by new laws which would have been impossible in a more primitive age. Among them, perhaps, may be mentioned offences relating to railways, railway trains, and telegraphs, including malicious attempts against life and property, though, so far as the malice is concerned, the form which it may happen to take can hardly be held to alter the nature of the crime. There cannot, however, be a doubt that civilisation is responsible for the institution of such crimes as neglect to vaccinate an infant, neglect or refusal to send a child to school, offences against cattle plague orders, against the Factory Acts, or against the Refreshment Houses Acts. All

these are crimes, according to the definition of crime adopted in this history, and explained in the next chapter. They are, indeed, though few persons would associate them with murder or theft, very serious crimes from the point of view of the legislators who brought them into existence. The laws by which they are created are the expression of the deliberate opinion of the legislature that the perpetrators of them are, for reasons of public policy, deserving of punishment and disgrace, as they affect injuriously the well-being of the state. This is not the place in which to raise any question with respect to the soundness of the arguments by which some of these laws are justified, though a few words may be said on that subject in the next chapter. In the meantime it may suffice to point out that the total number of convictions—and the number of summary convictions in particular—is considerably swollen by prosecutions for breaches of laws which would have been simply meaningless to our remote ancestors.

Statistics from 1805 to 1873 show an apparent but not a real increase of crime in general; explanation.

Anyone who should begin to study crime from the year 1805 downwards, without any knowledge of previous history, might be pardoned if he supposed that criminals had been increasing in number so rapidly that society must soon be overwhelmed by them. For that and subsequent years we have complete statistics of the number of persons committed for trial for all offences; and when it is stated that the total was 4,605 in the year 1805, and 29,359 in 1854, and that the increase had (apart from fluctuations caused by alternating prosperity and adversity) been steadily progressive in the interval, there appears at first sight sufficient ground for very serious alarm. In 1856 the numbers fell from 29,359 to 19,437.

The amount of crime had probably been increased in 1854 by the commercial effects of the war with Russia, but there is no reason whatever to suppose that 1856 was a year of very exceptional freedom from crime. The extraordinary decrease was caused by the very simple process of making a change in the definition of 'indictable offences' in the year 1855 (by the Criminal Justice Act), after which many cases of larceny previously tried at the Assises or Quarter Sessions were brought under summary jurisdiction. It is satisfactory to know that the average annual number of persons committed for trial in the ten years ending in 1873 was, in spite of the increase in population, no more than 17,989, or less than in 1857. The great increase in the number of persons committed for trial between 1805 and 1855, there can hardly be a doubt, was caused in the main by the progressive improvements in the police organisation of the country. Before the passing of the Metropolitan Police Act the inhabitants of towns had seen the necessity of protecting themselves, and had subscribed to hire their own watchmen. After the passing of that Act the constabulary throughout England was rendered more efficient, and criminals and petty offenders who would formerly have escaped, were brought within the arm of the law.

The same reasoning is applicable to summary convictions. The apparent increase has been truly appalling, and most appalling in the most recent years. But here again it is evident that the police have brought about this result by apprehending persons, guilty of very small offences, such as being drunk and disorderly. The greater part of them are punishable, or at least are punished, only by fine. The number of persons sentenced to

imprisonment by magistrates is little more than twenty per cent. of the whole number convicted.

When the inevitable fluctuations are disregarded, therefore, it is evident that in the advance of our modern civilisation crime has failed to keep pace with the increase of population. The apparent number of criminals can be made to appear formidable only by including in it persons guilty of offences which our hard-drinking great-grandfathers would have regarded as merits rather than as faults. It is no less true that their great-grandfathers, in turn, would have regarded very leniently some acts which they would have punished as severely as they could, and so on backwards from generation to generation. This fact, which has been prominently put forward throughout the present work, leads back to the question asked in the first page of the first volume—What is crime? and that again to some other questions, to all of which it may be hoped a practical answer has been given in the course of the history, but to which a more definite answer in words will be given in the next chapter.

Meanwhile, it may with little fear of contradiction be asserted that there never was, in any nation of which we have a history, a time in which life and property were so secure as they are at present in England. The sense of security is almost everywhere diffused, in town and country alike, and it is in marked contrast to the sense of insecurity which prevailed even at the beginning of the present century. There are, of course, in most great cities some quarters of evil repute, in which assault and robbery are now and again committed. There is, perhaps, to be found a lingering and flickering tradition of the old sanctuaries

General sense of security in spite of temporary and local exceptions.

strength may wander about on foot and alone, at any hour of the day or the night, through the greatest of all cities and its suburbs, along the high roads, and through unfrequented country lanes, and never have so much as the thought of danger thrust upon him, unless he goes out of his way to court it.

Not the least remarkable evidence of the diminution of crime, as compared with population, in modern times, is to be discerned in the legal machinery for trial and punishment. Not only has it undergone but little change of form since the time of Edward III., but the number of the judges who take the various circuits is no greater now than in his reign. It is true that the assises are held twice and sometimes three times a year, and that in the very remote past they were held only once: it may, perhaps, be true that a judge does a harder day's work in court now than he did in the fourteenth century. But, on the other hand, the vast addition to civil business which has followed the development of commerce must be more than sufficient to absorb all the additional energy which modern judges can devote to their work, either by remaining a longer time on the bench during each day, or by more frequent and longer visits. The justices of the peace, it may be said, are very numerous, and perform duties which do not attract much attention, but are of considerable efficacy. But there have been justices of the peace since the days of Edward III., and though some attempts were made to limit their number, the office has in every county always been sought as a distinction, and has by no means been conferred because the services of the person seeking it were needed or desired for the prevention or punishment of crime. The justices of the

Evidence of the diminution of crime from the legal and penal machinery: judges and justices of the peace.

peace have, no doubt, had various new functions thrust upon them by successive statutes, and may therefore do better service now than when first appointed; but, on the other hand, various other minor jurisdictions, such as the sheriff's turn, the criminal courts of lords of manors, and the smaller ecclesiastical courts which existed before the Great Rebellion, have lost their authority either directly or indirectly, and the power which they enjoyed has been wholly or in part transferred to the justices.

It might be argued with some show of reason that when the populations of rural and urban districts are compared, the country justices exist in numbers out of proportion to the inhabitants of the shires, and that in this respect we have practically an increase in the judicial staff. No one, however, will be prepared to maintain that crimes are now more frequently committed in the agricultural districts than they were in the middle ages. We must look to the towns if we would know whether advancing civilisation, in providing food for a larger number of mouths, has thrown any great strain on the ancient judicial machinery. As a matter of fact the old town jurisdictions have been modified, but not appreciably strengthened, by the Municipal Corporation Act passed in the reign of William IV. Some incorporated boroughs have quarter sessions of their own, over which a recorder presides, and justices, whose office is, like that of the country justices, to a great extent honorary. But the chief effect of the statute, so far as it affected criminal affairs, was to abolish some anomalies which had grown out of the old town charters. It provided that the recorder and the justices alike were to be appointed by the crown; and thus, although the mayor became one of the justices in virtue of his office, the practical result was the

unification of the judicial system throughout England, without any violent offence to local prejudices.

The only important innovation which in any way corresponds with the great increase of our cities is the introduction, in the metropolis and some other densely populated towns, of stipendiary magistrates, who, where they exist, transact criminal business which would elsewhere fall under the summary jurisdiction of justices. In the metropolis without the city there are but eleven police courts and twenty-three paid magistrates, and they are able to dispose (either finally or in the preliminary stage) of all the criminals apprehended in a population of more than three millions—for it rarely happens that anyone is indicted who has not previously appeared before a magistrate. Twenty-three magistrates to a population of nearly four millions, and never more than eleven sitting at the same time! Let those who are dissatisfied with the modern aspect of crime remember the days when there were twelve private jurisdictions, besides the municipal courts, in the city of Lincoln alone, and when the whole population of England was not as great as the present population of London without the walls.

Stipendiary magistrates.

The Central Criminal Court, with its twelve sessions in the year, seems at first sight to tell a sad tale of the metropolitan district, with the criminals of which it has to deal. Yet when regarded by the light of history its records are full of encouragement. It is but the successor of a court which until the reign of William IV. had a more limited jurisdiction, and which sat eight times in the year. It has in fact superseded the Old Bailey Sessions of general gaol

The Central Criminal Court and Middlesex Sessions.

for the city of London and the county of Middlesex. The constitution of the latter may be traced as far back as the charter of Henry I. permitting the citizens of London to take the county of Middlesex to farm. From that time downwards the sheriffs of London were also the sheriffs of Middlesex, and the higher municipal jurisdiction naturally extended as far as the powers of the sheriffs. Thus, as soon as the commissions of Oyer and Terminer and gaol delivery were devised, they seem to have been adapted to the peculiar privileges enjoyed by the city of London. The county of Middlesex was not exempt from the visits of the king's Justices, but the Lord Mayor was always included in its commissions of Oyer and Terminer. In the same way the Lord Mayor is still a judge, and the first judge named, of the Central Criminal Court, of which the jurisdiction extends not only throughout the county of Middlesex but over the whole metropolis, including parts of Surrey, Kent, and Essex. The sessions of the peace for the county of Middlesex, which correspond to the quarter sessions of other counties, are held twenty-four times in the course of the year—bearing the same proportion to the twelve sittings of the Central Criminal Court which the quarter sessions bear to the assises.

The machinery for the trial of the greater offenders in London (in the sense of the metropolis) and Middlesex is thus equal to that of about six non-metropolitan counties. But the machinery which is now applied to the shires was applied to them when the whole population of England and Wales was not greater than the population of modern London. In other words, the judicial force necessary for the punishment of crime is, in relation to the inhabitants of England and Wales, about one eighth of

A similar, though less certain indication of the decrease of crime, is to be found in the paucity of our prisons. Exclusive of a few 'convict prisons,' to which are sent those offenders who would, but a few years ago, have been transported, there are in England and Wales only 116 gaols, of which 103 are in England. Even before the Black Death, there appear to have been in every shire a castle or county gaol, and one or more borough gaols. In Berkshire, for instance, there were at least three gaols, one in Windsor Castle, one in Windsor New Town, and one in Reading, commissions for delivering which are still extant. At present there is but one gaol for the whole county, which is at Reading. It is impossible to ascertain the capacity of the older gaols, without a knowledge of which the comparison of numbers loses much, if not all, of its value. There seems also to have been considerable irregularity in the enrolment of the commissions of gaol delivery on the Patent Rolls, the gaols sometimes duly appearing with dates corresponding to the two deliveries in one year, and sometimes not appearing at all. But, nevertheless, it is most satisfactory to know that throughout the whole of England and Wales there are, including the borough prisons, hardly more than two gaols to each county, and yet that the accommodation for prisoners is far more than sufficient.

Number of prisons.

Reformatory and industrial schools absorb a small portion of the population which would, but for their existence, be lodged in gaol. Of the former there are fifty-three, of the latter seventy-seven, in England and Wales, the one class accommodating about 5,000 persons, the other about 8,000; the one for convicted offenders under the age of sixteen, the

Reformatory and industrial schools in relation to prisons.

other for vagrant or refractory children under the age of fourteen, or for children under the age of twelve who have actually committed an offence punishable by imprisonment. These institutions represent in some measure the Bridewells and houses of correction which existed until the distinction between them and prisons was abolished in 1865. The first Act, however, which gave authority to magistrates to send 'juvenile' offenders to reformatory schools was passed in 1854. A short term of previous imprisonment was then made, and still continues to be, a necessary part of the sentence. The industrial schools were established three years later than the reformatory schools, as places recognised by the Government for the reception chiefly of children in danger of falling into crime.

Nearly all the children who are now sent to industrial schools would, in former times, have been permitted to remain at large until they had committed some actual offence. The children who are sent to reformatories are sent there rather as an act of charity than with the object of inflicting punishment, which they have to undergo in prison before they are admitted to these schools of refuge. It follows that neither the reformatory nor the industrial schools can be regarded as gaols in the same sense as the gaols of the fourteenth and some succeeding centuries. Whatever argument, therefore, may be drawn from the number of existing as compared with earlier prisons (in the proper sense of the word), is not directly affected by the spread of these institutions for the reform of youthful offenders. Indirectly, it may be and probably is affected, because many young criminals who would otherwise in later life swell the prison population must be guided to better courses by the training which they receive. This is, however, but one out of many

ways in which modern benevolence, as a part of modern civilisation, acts in the prevention of crime. The effect of the sum of the causes at work is that England and Wales require, for the whole of their criminal population, no more than a hundred and twenty-seven prisons, which are tenanted on the average by about 28,000 persons, including those who are awaiting their trial as well as convicts under sentence of penal servitude, and some debtors.

It is only by comparison that we can estimate our position, and by comparison with periods sufficiently remote for differences to be perceptible. We ought not to be thrown into a panic by a feeble revival of brutal outrages, or lulled into a false confidence by an exceptional year in which we are not shocked by any very great crime. The manners of a nation are not the creation of a day or of a generation. The ruffian is still a ruffian, though threatened with the lash. The man of tender heart and high principle does not lose either when laws are changed and punishments relaxed. A few more or a few less acts of cruelty committed in any one year, as compared with its immediate predecessor, give no indication of the actual progress or retrogression of a rapidly growing community, already three-and-twenty millions in number. The only sure premises from which any inference can safely be drawn are the changes which are perceptible from epoch to epoch.

Necessity of comparing the present with a sufficiently remote past.

On this principle an attempt, of which the difficulty may be some excuse for faulty execution, has now been made to illustrate the history of England, or rather of the English people. In conclusion, a contrast may be drawn between

Contrast between the reign of Queen Elizabeth and the reign of Queen Victoria.

beth, and the reign of Queen Victoria. The reign of Queen Elizabeth has always been considered most glorious, and not without good reason if a previous reign be made the standard of comparison. But as Elizabeth's great sea-captains and their hardy crews were pirates, as they were ready enough to act the part of wreckers but little dreamt of manning life-boats, so the whole of her subjects were not only rough in manners but unruly in disposition. They did not, even at the end of her reign, exceed five millions in number. The whole population of England and Wales then outnumbered only by little more than a million the present population of London. Then the most serious apprehensions were entertained that any increase in the size of the metropolis, with a population of about 300,000, would render its inhabitants altogether unmanageable. No police regulations, it was thought, would preserve the peace, no human ingenuity succeed in providing a sufficiency of food and fuel, no precautions avert a desolating pestilence. Now, between three and four millions live in one vast city, their power to obtain the necessaries and luxuries of life is limited only by the money at their disposal, the death-rate among them is low, and falls continually lower, and order is maintained among them more perfectly and more easily than it was in any small town in the sixteenth century.

Against these facts there are no doubt to be set some others of less cheerful aspect when the future of our great city populations is considered from a different point of view. Some of them will be lightly touched upon in the next and concluding chapter; others it is unnecessary to introduce into a History of Crime.

CHAPTER XIII.

GENERAL RESULTS.

Part I.—*The Definition of Crime.*

TO the question 'What is crime?' with which the present work opened, the author felt that all his readers would require an answer. But to have given the answer before the conclusion of the narrative would have been alike unpractical and unphilosophical—a most illogical abandonment of the historical method. At the end of the first volume it was pointed out that the definition of crime was being gradually evolved during the slow march of the history itself. It is only when the history is concluded that the true definition can be justified by a sufficiency of facts.

The definition of crime to be sought in history.

Loose thinkers and loose writers frequently deal with crime and morals as though they were one and the same subject. One of the chief uses of history is to show not only that they are distinct, but what is the action and reaction of one upon the other. There is not, and never has been, any crime in any actions except those which a law declares to be criminal, or to which it assigns a punishment. The law may have been suggested by one school of morals or by another, by religious belief or fanaticism, by party feeling, or by considerations of general expediency. But no matter what its origin or

Crime and morals distinct subjects.

what its justice, the deeds which it renders penal are crimes when committed by the persons subject to it, so long as it remains in force. There may be, and there has been, crime in telling the truth, crime in exercising the body, and even crime in eating, except under certain restrictions. There is, in fact, no conduct which may not be criminal if the dominant power in any country enacts a law to punish it. On the other hand, the transgressor of the law who by his very transgression becomes a criminal may, according to his own ideas of morals, be a most virtuous person, and may even command the admiration of men whose ideas of morals are not in all points identical with his.

The historical definition of crime.

Crime, then,—the crime with which the historian is concerned—is that which the law declares to be crime, or for which the state recognises a punishment, at any period over which the history extends. The meaning of the term necessarily varies with the laws at various times, but can at any time be determined by reference to the laws which are in force.

Relation of the history of crime to the history of sentiments, morals, and civilisation in general.

Every historian, however, must live in one age or another, and whatever the age may be in which he lives, his contemporaries, or at any rate those among them who are in authority, will most certainly be convinced that their own definitions of crime are approximately correct. There are few persons, for instance (except the offenders), who would not in our own days maintain that cruelty to animals is more fitly punished by fine or imprisonment than the denial of some religious dogma by the stake. But it would be difficult to justify the proposition on any grounds except those of sentiment. It is because compassion has grown stronger in our natural constitutions that we now

protect defenceless brutes, and that we do not burn heretics—that we act in direct opposition to the practices of our forefathers, who delighted in the infliction of torture, and who confounded manliness with the absence of feeling. If one of those forefathers were to rise from the grave and challenge us to prove that our views of life are better than his, we should signally fail to convince him. Our laws and our habits are more or less in accord with our prevailing sentiments; the laws and the habits of his time were more or less in accord with the prevailing sentiments of his contemporaries. Any argument from considerations of expediency would resolve itself sooner or later into some kind of sentimental argument. It would be accepted if in agreement, and rejected if not in agreement, with the sentiments of the person to whom it might be addressed. The religious doctrine that men should do to others as they would have others do to them is, in its psychical foundation, identical with the utilitarian doctrine, according to which we ought to strive for the greatest happiness of the greatest number. It is assumed in both that every man ought, as far as he is able, to avert suffering from his fellow-man. But should anyone deny the inspiration of the Christian teaching or proclaim himself destitute of the emotions of pity and affection, there would be no reasoning except that of the strong arm which could induce him to respect the interests of others when in search of his own gratification.

Progressive changes of sentiment thus force upon us a double duty. We have not only to consider the amount of past crime according to the standard of the age in which it has been committed, but also to consider it in relation to the standard of our own age. If we were prepared, like some persons who assume the title of philo-

sopher, to substitute the dogma '*la propriété c'est le vol*' for the command 'thou shalt not steal,' we should further have to construct an entirely new criminal code without the aid of experience, and judge all history from a purely personal point of view.

The necessity, however, of comparing the standard of modern times with the standards of earlier ages renders a history of crime to some extent a history of human sentiments, of human ideas relating to expediency, of morals, and of civilisation. A history of civilisation being a history of the greater or less divergence from a state of barbarism in the people to which it refers, is, in fact, a history of that people in the most comprehensive sense of the words, and no history of any people can be complete unless it is a history of their civilisation. A history of morals is a history of civilisation only so far as a knowledge of the course of civilisation in general is necessary to a sufficient comprehension of the causes which determine the general opinion upon what is right and what is wrong, what is becoming and what is unbecoming. A history of crime includes, if less of the history of civilisation on one hand, perhaps more on the other than a history of morals. Where a moral doctrine finds its expression in a penal law, the history of crime and the history of morals are coincident. But an action may be declared criminal which is not even in the same age regarded as in itself immoral, and another may be considered immoral which does not involve any legal penalties.

It would, for instance, not occur to all moralists that (apart from the obligation to consider the welfare of the state before the welfare of the individual) there could be any moral wrong in selling coin to a foreigner, if the coin had been honestly obtained. Yet such a sale in the reign

of Edward IV. was felony. Most moralists, on the other hand, would admit that to seduce a maiden under promise of marriage is an act of great immorality. Yet it is not a punishable offence. In such cases as these lawyers attempt to draw a distinction between conduct which is injurious to individuals only and conduct which is supposed to be injurious to the state. In the one case, they say, justice demands only that reparation should be made to the persons injured; in the other punishment is required in the interests of the public. The seducer, according to this view, simply causes the father or other person entitled to the services of the woman during the time she is with child some inconvenience, for which compensation can be given in money, or he inflicts upon the woman a pecuniary damage in the loss of a profitable marriage. The exporter of coin committed an offence against a law enacted for the good of the nation at large. Should anyone enquire how it could ever come to pass that perfidy towards a confiding and unsuspecting girl, with infanticide as a probable consequence, should not be considered of any public importance, the answer is to be found in early history. Women were formerly regarded as chattels; the use of one without the owner's permission was a trifling matter which did not concern the king; and the spirit of the ancient institutions asserts itself in the legal doctrines of modern times.

Had one of the laws of the Commonwealth never existed, the early condition of women and the later anomalies which have grown out of it might, perhaps, have been thought to be hardly within the scope of a History of Crime. Yet such a history would not be complete without some reference to the causes which have determined the position of one class of actions without and another within the

grasp of the criminal law. And this remark applies to many matters which may at first sight appear to have been introduced into the work without necessity. There may at some future time be reasons why conduct should be made criminal which is not criminal now, and why crimes of our time should cease to be so defined. Those reasons, however, will assume importance only with the growth of sentiment, the probabilities of which can be conjectured only from similar growth in the past. Thus, although according to the precise definition, a history of crime should have been restricted to crimes and offences as understood by our forefathers and to crimes and offences as understood by ourselves, it would have been impossible to obtain sufficient breadth of view without occasional excursions over that arbitrary border-line which separates what is not and never has been crime, from what is crime now or has been crime in days gone by.

Part 2.—Crime in relation to past events: inherited tendencies.

Criminal laws originally founded on instinct or sentiment.

Lawyers and philosophers may, perhaps, be reluctant to admit that all criminal laws are founded, like all moral axioms, on instinct or sentiment. It will be said that they are founded on reason, and that, although the reasoning may have been incorrect, they are the result of an attempt on the part of their authors to enforce such discipline as was considered expedient. Very probably: but expedient for whom? Obviously either for the legislators and their friends, or

instinct of self-preservation is the motive, in the other a sentiment of goodwill or duty. Experience, it may be argued, showed men that some kind of criminal law was necessary for the existence of even very primitive communities, and that there could be no community where every man was a law unto himself. But why should not the savage have said, 'What are communities to me, provided I can gratify myself? What care I if a man dies or a woman is in sorrow, so long as I can live and snatch the pleasure that I covet?' Such reasoning as this would be perfectly good from the point of view of a man (if one could be found) who had no sentiments of any kind. It would be useless to urge upon him that it would be for his own ultimate benefit to give up an immediate enjoyment at the expense of others, in order that others might do the like for him at some future time. It could only be to the strongest to whom such an argument would be applied, and the strongest would laugh it to scorn.

But if sentiment be the real foundation of societies, whence comes the sentiment, and how is it developed? The answers to these questions are probably to be found in the elementary facts of consciousness and in the inevitable relation of the child to the parents. The primary fact of consciousness is discrimination or perception of difference. No proposition can be expressed in which difference of some kind is not predicated either directly or by implication, and if such a proposition could be expressed, it would be meaningless. If we say that snow is white, we imply that there are other objects which are not white. We assert a resemblance between snow and other white objects; but if all objects appeared white, there would be neither resemblance nor difference of colour between

Psychological aspect of instincts, preferences, and sentiments affecting crime and morals.

snow and other objects, and there would be no perception of colour because there would be no perception of difference. What is true of perceptions of colour is true of all other perceptions, and is no less true in the region of morals than in the region of sense. Objects or courses of action present themselves in a different aspect from others as being preferable or not preferable. But among the young of all animals, instinct, or as it should rather be called, inherited association, dictates the preference. Let a hen hatch half-a-dozen chickens and half-a-dozen ducklings, and when the choice is offered them the chickens will prefer the land and the ducklings will take to the water. To the ducklings and to the chickens alike the preference is as much a matter of certainty as though each had led a long life. The duckling avails himself of the opportunity to use his web-feet quite as gladly as the habitual criminal seizes the opportunity to pick a pocket. The chicken remains on dry ground quite as stubbornly and as naturally as the honest man resists temptation.

The child, like the young of inferior animals, begins life with a tendency to act after the manner of its kindred. It may be stronger or weaker, have greater or less capacity, be trained in one school or another, but commonly inherits some of the family disposition together with the family features. Before human life became so diversified as it has been rendered by modern civilisation, similarity of training and similarity of occupation, generation after generation, must have rendered the instincts of an uncivilised or half-civilised tribe far more uniform than those of any modern civilised nation. The effect upon subsequent ages has to all appearance been twofold. On the one hand certain almost ineradicable tendencies have been transmitted, which, when exhibited in action, we now

describe as criminal. But on the other hand we may trace even in some savages the rudiments of those sentiments which have softened the manners of later ages.

Parental affection is shared by man with brutes which are considered very low in the animal scale. Reliance upon a parent or parents is one of the first conditions of existence in the young of all animals which do not begin life with the power of feeding themselves. In man the period before adolescence is so long, that both the affection of the parents to the offspring and the reliance of the offspring upon the parents are greater in proportion to the length of life than in other animals. The natural consequence is that these instincts, though they exist in many other animals, are most strongly marked in man. The tie which unites parent and child is not forgotten even after the child has reached maturity.

Parentage has been variously regarded in various savage tribes, one of the chief points of difference having been the greater or less importance attached to the male parent or the female. Among all those tribes from which it is possible that Englishmen can be descended, the relation between father and child assumes the most prominent place. The father held the position not only of the child's parent but of the mother's owner.

Origin of human sympathy, and of government, in the relations of parent and offspring.

In the bond which unites parent and offspring is probably to be discerned the beginning of those sentiments out of which human society has grown and upon which laws have been founded. The parent has at once a desire for the welfare of the offspring and a control over it; the child, from its infancy upwards, is made aware of that control and of that anxiety for its welfare. Here are to be found all the elements of authority, of benevolence, and of

obedience, which attain their full development in well-ordered and civilised states. It may, of course, be further asked—whence comes the parental instinct? That is a very difficult biological question with which this is not a fitting place to deal, and which it is not necessary to consider for the purposes of the present history. All that need be known on the subject is what may without fear of contradiction be asserted—that the instinct in one parent at least must have existed as long as mankind, because without it there could never have been more than one generation of the species.

It is no mere conjecture that out of the family has sprung the tribe and the nation, with the recognition of common interests and reciprocal duties. The transition is made apparent in the earliest annals of most European nations which have reached civilisation. Greece had its γερουσία and Rome its senate,—exactly equivalent expressions, meaning a body of elders. The senators were also known as conscript fathers, the patricians expressed a claim of fatherhood in their title, the 'patronus' made his client, as it were, an adopted child. In our own country the word ealdorman or alderman expresses eldership; and many other illustrations of the universal law might be cited.

Development of the family into the tribe (with its blood feud) and finally into the nation: the idea of property.

While, however, the instincts of family life sooner or later enabled men to live together in tribes, and afterwards in nations, the instincts of another kind which man also shares with the brutes, have always been and are still a source of disturbance. The primitive tribe was probably not an association of families unconnected by blood, but of families descended from a common ancestor or a common pair of ancestors. The authority recognised in the

father of one generation might thus have been recognised in the fathers of a second, who became collectively the heads of a small tribe, just as their predecessor had been the head of the family. But as the heads of families increased in number, in successive generations, the close family tie between father and children and between children of the same father, naturally re-asserted its importance as distinguished from that looser family tie which connected all the members of the tribe. Though the tribe might hold land in common, the brutal instinct to snatch a gratification wherever it might be found naturally led to bloodshed when disputes arose upon minor matters. The killing of a father, a son, or a brother excited in the immediate kin a passion not unlike that of a wild beast when deprived of its young. A cry was raised of blood for blood; the blood of the slayer or his kin was exacted by the kindred of the slain. The recognition, however, of a more comprehensive bond than that which existed between a father and his children led in process of time to a modification of the blood-feud. If the family lost a member, so did the tribe, which was itself but a larger family. The injured kindred, in demanding the blood of the slayer, practically demanded the death of a second member of the family in the wider acceptation of the term. A quarrel, however, among members of the same tribe implies that one of them wishes to deprive another of some coveted object—a woman, an implement of husbandry, a bull, a sheep, or a horse. But here are the beginnings of the idea of property—of that which the individual claims for his own as distinguished from that which belongs to the family or tribe; and this idea suggested the means of extrication from the difficulties of the blood-feud. The kin clamoured for blood; let them accept property instead.

If the offender or his kin had property to give, a portion of it might be transferred to the immediate relatives of the slain, another portion to his more remote relatives—the tribe. The desire for vengeance would thus be satisfied; the tribe would not lose another life which might be useful in a fight with rival tribes.

In this institution, which was called the 'wer' among the Teutonic invaders of England, and by other names elsewhere, may be discerned the beginning of the distinction between private wrongs and crimes, as well as of that persistent confusion which still permits very many acts to be placed in both classes at once. The idea of compensation still finds its expression in modern actions for damages, though damages are no longer given for murder; the idea of injury done to the tribe still finds its expression in indictments which describe offences against the queen's peace.

Still the kinship which was recognised throughout the tribe did not at first suggest the idea of a sympathy among all mankind. The brutal instincts were far too strong, at first, for any such sentiment to arise. The readiness to shed blood which endangered the existence of a small tribe from within was as nothing when compared with the eagerness to destroy human life elsewhere. A tribe either had no neighbours, or, from the nature of things, looked upon a neighbour as an enemy. Even in the nomad condition it must have regarded as rivals in its hunting-fields, as destroyers of its food, the other nomads whom it might encounter. When it had a settled abode and its numbers began to increase, it must have resented, with the most uncontrolled anger, any approach to its own clearings, and have been perfectly willing to appropriate

at a somewhat later stage of development is very clearly illustrated in the history of the Jews, in their manner of taking the promised land, and in the hatred which would not even allow that Jehovah could be the God of any people but their own.

Every contact of tribe with tribe gave new strength to the growing idea of property. Women ceased to be the only slaves; and the captives who were not slain were set to do the work of their conquerors. Prisoners were not the only spoils taken. Flocks and herds, corn, and implements of war, passed from the vanquished into the hands of the victors. In the division which ensued, the conditions of existence were insensibly changed, for even if an attempt was made to preserve equality, one horse would be better than another, one slave stronger or more beautiful. Sooner or later there would arise an Achilles in every tribe who would sulk and refuse to fight, unless his superior merits were recognised in the allotment of the booty. From this time forward, not only did the right of property in things moveable become a recognised institution, but also the right of one person to possess more than another. The same notions were afterwards naturally enough transferred to land.

In the acquisition of property in slaves is to be discerned, perhaps, the beginning of a sentiment or habit of thought to which the institution of slavery appears at first sight utterly opposed. It is the first step across the barrier which divides the human beings in whom a blood-tie is recognised from those in whom the same blood-tie is supposed to be wanting. The slave became a member of the household or family. It is true that he might be regarded as little above the ox or the horse, but his position was nevertheless very little inferior to that of his

master's daughter. Both might be sold; both were expected to work; both learned to speak the language or dialect they heard spoken around them. Though the captive's life may have been spared from no desire to show mercy, but with the intention of torturing him or making him useful, yet, when he lived among his conquerors, he unwittingly extended the sphere of human sympathy; they gave and he accepted the food to which only the members of the tribe were previously allowed to have any claim. He could describe to his fellow-slaves, the women, the manners and customs of his own people. A slave who had acquired the speech of his masters must have been the first interpreter between one hostile tribe and another. As soon as one tribe allowed a member of another to live within its territory, even as a slave, the possibility of communication between the two was established, and with it the possibility of an alliance between tribe and tribe against a common enemy.

Beyond this point, history tells us how nation has conquered nation, how one people after another has been dominant in the same territory, how the blood of one has been intermingled with the blood of another. In all these changes intercommunication has been extended, and human thought has been rendered more and more familiar with the idea of a common humanity shared by all mankind. By successive stages, the sympathy which began with the parent and the children was extended to the tribe; to the aggregation of tribes, or nation; to all born within a certain area or under a certain chief; to all human beings; and finally even to brutes. In later years the teachings of Christianity have aided in effecting the transition, as they might have aided earlier, had not the incursions of barbarous tribes almost destroyed the

advancing civilisation. The relation between parent and offspring was never more effectively put forward as the basis of good feeling between man and man, than when Christ said of Jerusalem, 'I would have gathered thy children together, even as a hen gathereth her chickens under her wings.' The family bond between the whole of mankind, and the doctrine of universal sympathy, were never more concisely expressed than in the words, 'Go ye into all the world, and preach the Gospel to *every* creature.'

Though, however, the tendency of all modern civilisation is towards breadth of sympathy, and though the family instinct to which that sympathy owes its origin in the human mind appears ever narrower and narrower as we look further back into the history of every civilised nation, the process of development has not been, by any means, uniform. As neither all nations, nor all the individuals of any one nation, have diverged equally from the primitive mental constitution of mankind, there is in each nation a standard more or less well marked, of which some individuals fall short, and which others pass beyond. Some are content to obey the letter of the law; others break the law; and others again make laws for themselves which they feel bound to obey as well as the laws of the state. But all alike act in accordance with some instinct, or inherited association, or sentiment, except where they act with the deliberate intention of avoiding punishment. They gratify some animal desire after the fashion of brutes; or they do injury to a person or persons from restricted family feelings, or feelings of sympathy with a limited class or guild; or they shape their conduct to suit those more extended views in which the duty of the individual towards the rest of mankind is more distinctly recognised.

The last class, even though they may have decided upon their course of action after a long train of reasoning, have commenced the process with an instinctive sentiment, of which the dictates have been accepted without question. They may have considered very carefully what is best for the greatest number of human beings, but they have either never considered why any one individual should trouble himself about the interests of others, or they must have admitted that any reasoning which takes no cognisance of the origin of sentiment is unable to supply the answer.

The biology of modern times, for which the world is indebted to British thinkers, has set at rest the once famous dispute respecting innate ideas. Like many other controversies, it was one in which terms had been imperfectly defined; it was about words rather than about facts. The statement that human beings have ideas of right and wrong, which are independent of teaching or experience, is true or false according to the sense in which the proposition is laid down. If the meaning assigned is that right and wrong have an absolute existence—that, in all times and all places and all relations of every kind, the same right is right and the same wrong is wrong, and that the untaught child is aware of this fact and knows on which side eve y action ought to be classed—the doctrine is too absurd for serious refutation. If the meaning assigned is that every child, not being diseased, has the faculty of discrimination, and can, as it grows up, apply the faculty so as to attach a meaning of some kind to the words right and wrong, the doctrine is a mere truism which none would care to deny. But there is a third meaning in which the doctrine is also, to some extent, true, if the teachings of

Ideas of 'right and wrong.'

The instinct of the mother which prompts her to nurse the child, and the instinct of the child which prompts it to seek means of sustaining its own life, existed long before moralists reasoned or theologians taught. These instincts descend from parent to offspring, generation after generation. One of them, at least, is closely associated with theories of morals. The mother who neglects her child is commonly described not only as unnatural but as wicked. In this case inherited association, or instinct, is clearly the basis of the moral doctrine. The she-cat or the she-tiger gives suck to her first litter of young not less certainly than the human mother of a legitimate child, with a medical adviser to instruct her and public opinion to keep her in the right path. In each case there is a preference exercised. The brute or the human being could forsake her offspring if she chose, but commonly prefers to rear it. The preference, no doubt, may in some measure be continued, through the gratification which becomes a part of the parent's experience. But it could not be so determined in the first instance. No explanation is left except that associations are inherited—that in like circumstances like beings act in like manner. As the water suggests to the duckling that it should swim, so the presence of the mother suggests to the infant that it should suck, and the presence of the infant suggests to the mother that she should feed it.

Instinct, or inherited association, perceptible throughout the whole animal kingdom.

If associations of some kinds are hereditary (and the whole field of the so-called instinctive actions proves that they are) it would be rash to deny that associations of other kinds may be inherited also. It is within the experience of everyone that a series of actions, if frequently performed in any given

Its modifications in the progress of human society.

sequence, is at last performed instinctively and without any appreciable effort of mind or will after the series has been begun. The association has become so complete that the beginning of the train suggests the whole. So thoroughly is this fact recognised, by persons of all classes and of both sexes, that if the memory fails at any point —in the notes of an air, or the words of a poem—the most usual mode of attempting to supply the defect is to begin anew in the hope that the old association will re-assert itself; and the attempt is very often successful. Such associations as these, constituting but a small part of the mental life of a single individual, are of course not inherited, but they suffice to show the beginnings of that which is commonly called instinct.

Instinct is that predisposition to act in any given manner which is common to all or nearly all the members of any animal group. It is the hereditary temperament from which few or none diverge. Between it and the actions which have become, so to speak, mechanical in the individual human being, there appears to be, as it were, a border-land, which consists partly of old animal instincts weakened in the lapse of ages, and partly of newer human associations which, like the stronger instincts, have become or are becoming hereditary. The diversity of human life is so great that the inheritance of associations may vary as greatly as the inheritance of lands. One man may have descended from ancestors who have enjoyed without interruption, for many generations, wealth, power, and comparative refinement, and another from ancestors who have never risen from the lowest grade, and others again from ancestors who have been sometimes in one position, sometimes in another. Some

country associations alone, some a mixture of the two. But wherever the transmission of associations of one kind only has been uninterrupted, there the natural disposition to act in a particular way in particular circumstances will be strongest.

If these opinions be correct, the inherited tendency must be considered in estimating the motives which bring about what is now defined to be crime. It is, of course, by no means the only cause of human action, and there are instances in which it is obviously less powerful than the sum of other causes. The girl who murders her child, and the man who commits suicide, for example, act in direct opposition to two of the strongest instincts which exist, the maternal instinct, and the instinct of self-preservation. But, none the less, those two instincts are strong incentives, and prompt no small portion of the varied actions of human life.

Its manifestation in the career of the habitual criminal.

Conduct which suggests itself naturally in any given circumstances to any individual cannot at the same moment present itself to him as immoral or as criminal. He may upon reflection perceive that it is what some moralists would disapprove, or what is forbidden by law, and for that reason he may check his first impulse, and act in accordance with the teachings of the school of morals which he respects, or in obedience to the laws by which he may be punished. But if we regard the case of the majority of mankind, who, even in these times, have not studied morals as a science, the only restraint which they would feel would be caused by the legal penalties incurred, or by the idea of religious obligation, or by the possible future disapprobation of a class. In very many the idea of religious obligation does not exist, to many it has not even been taught; and they have therefore

only to consider at most whether they will run the risk of coming within the arm of justice, and whether they can retain the good opinion of their friends or associates.

Bravery and skill command approval everywhere, and not least among the classes from which the greatest number of habitual and even of casual offenders is drawn. The highwayman had sympathy far beyond the range of his own acquaintances, and lesser criminals aspired to 'die game' when they were brought to the gallows. The criminal has and always has had ideas of right and wrong, but he differs from his fellow-countrymen in the signification which he attaches to the words. He is rarely or never without associates whose ideas of right and wrong are the same as his; he has, therefore, a public opinion which not only supports him in his own views, but would cease to support him if he substituted for them the views of the non-criminal classes. Thus one of the motives which might deter a man who habitually lived within the law has precisely the opposite effect upon a man whose life is a war against society.

A criminal of this stamp, with courage and address, cannot in his own eyes be doing wrong when he gratifies the love of adventure which is a part of his nature. He is not responsible for the quick blood which flows in his veins, for his long line of ancestors, all familiar with deeds of violence and cunning, for the circumstances of his infancy and childhood which determined the course of his later life. Instinct and his fellows tell him that it is good to be brave: he is brave. They tell him it is good to outwit more honest men: he outwits as many as he can. They tell him that to obey the law through fear is to play the part of a coward: he will not play it. They tell him that he is 'good and game': he believes it. He is a

criminal—a most dangerous and incorrigible criminal—but can it be said that he is a bad man? He has acted as well as he was able, according to the lights he possesses. Can the best of us say more for ourselves? Can a man be depraved who is not depraved in his own eyes?

Of a very great number of modern habitual criminals it may be said that they have the misfortune to live in an age in which their merits are not appreciated. Had they been in the world a sufficient number of generations ago, the strongest of them might have been chiefs of a tribe. To be brave and skilful in taking spoil is, according to the ideas of a savage, not crime but virtue. The idea of the habitual criminal is precisely the same, but he fights against greater odds. In his case the battle has to be fought not by tribe against tribe, but by an individual or a few individuals against the power of a mighty state. There is a bond which unites him to his fellows in crime, but it is in no way so strong as the bond which held together the family, the clan, or the tribe in earlier times. With the disposition and the habits of uncivilised man which he has inherited from a remote past, he has to live in a country where the majority of the inhabitants have learned new lessons of life, and where he is regarded more and more as an outcast in proportion as he strives more and more to fulfil the yearnings of his nature.

The origin of crimes not only against the person but also against property is thus to be found, not in the growth of towns and development of civilisation, but in the propensities of the savage, which have been handed down from generation to generation. And the more violent the robbery, the more is the past to blame for it. Even when restrictions were first placed on the tendency to

bloodshed and rapine which was inherent in uncivilised man, they applied only to the family or tribe of which he was a member. Not only had his instincts a free outlet in other directions, but their display was both encouraged and rewarded. The man of the present generation who is so unfortunate as to possess them in their full strength, is shut in on every side, and the moment he gives them play he becomes a criminal.

Full and accurate details of the mode of life of a convict's relatives are not easily to be obtained. But in this and in other countries particulars have sometimes been ascertained which appear to indicate an immediate transmission of criminal tendencies from father or mother to child. It is at any rate certain that in some families crime has been regarded as the ordinary mode of life, and sedulously practised by every member. In such cases, no doubt, the teaching and example of the parents must have had some effect as well as the blood, and it would be rash to assign a precise value to either. But when regarded by the light of various other physiological facts, which are beyond all question associated with certain phases of crime, the hereditary disposition can hardly be excluded from consideration in estimating the causes by which criminal families have been produced.

The history of crime, taken in connexion with the history of criminal law, is a history of the ever-increasing restraint placed upon savage impulses, and the ever-increasing encouragement to the wider play of sympathy.

The history of crime illustrates the gradual restraint of the fiercer instincts, and the gradual development of the instinct of sympathy.

On the one hand, the history of the doctrine and practice of forcible entry is perhaps the best illustration of the victory which civilisation has won over savage habits of mind and savage modes of

action. We can follow the tribe in its emigration to a new home, and read of the successful struggle to gain land to which it had no claim, and of the reward given to the strongest in its robber ranks. When land fell into the possession of individuals as well as of tribes, we find one taking it from another in the same manner, though, perhaps, with some pretence of a legal right. Later on we find lawyers maintaining the doctrine of seisin, and asserting that actual entry, either with or without force, is necessary to lawful possession. Later again we find that forcible entry is nominally prohibited by statute, but commonly practised by men who have retainers enough to oust a rival claimant. At last the old instincts and the old traditions are so far weakened that obedience takes the place of violence, and the law is never or but very rarely disobeyed.

On the other hand, the modern protection of brutes against cruelty is a very remarkable illustration of the development of sympathy. Cruelty is one of the most strongly marked characteristics of the savage. To inflict torture is one of his greatest delights. As soon as he makes a little progress his previous tendencies show themselves in the horrible ferocity of his punishments for criminals. In the course of ages man becomes gradually more merciful. He ceases to mutilate, and even to torture, his fellows. As he puts off his savage nature more and more, and learns to pride himself on his civilisation, he perceives that even the inferior animals may suffer, and, as suffering has become associated in his psychical nature with compassion, he extends his sympathy to all beings that can feel.

These are two of the most striking instances of transition from the savage state to the civilised. But

innumerable changes in the definition of crime, and in the relative magnitude assigned to different crimes at different periods, also illustrate the fact that a great portion of the crimes of modern days are but our inheritance from a past state of barbarism. Naturalists of the modern school point out primitive organisms which still survive in their original form, though new species may have been developed out of them. In the same manner there are savages still living in our midst, of the same blood and origin as ourselves, and yet unlike us in all except in our common ancestry.

From another point of view, the discoveries of the naturalist have also a most important bearing upon the descent of crime. The embryo, it is well known, passes, while in the womb, through those stages of development through which there is reason to suppose its ancestors have passed in the successive modifications of species. The young human being, in the process of attaining the full maturity of its animal powers, has a strong tendency to exhibit in action the lawless and cruel instincts of its savage ancestors. A healthy boy has a pugnacity and a love of destruction which not uncommonly assume the form of cruelty. It is difficult to teach him honesty with respect to many things which he covets. Just like the savage who has advanced one stage, he makes a slave of a younger or weaker boy. In him the partisanship of family, tribe, guild, or clan is intensely strong, and, as he reaches adolescence, shows itself in such rough shapes as the apprentice riots of old in London, or the town and gown combats of modern times at the universities.

The influence of inherited tendencies upon crime (as now defined) is shown by the ages of criminals.

The working of the old Adam, however, may be still more clearly traced in the statistics of age and crime. The

tendency to commit the great majority of the acts which are now commonly described as crimes, and especially crimes of violence, is at its greatest strength just before, and at the time when the human being attains the full development of his physical power. This is a law to which there is no exception in any country or in any year, though its operation is subject to very considerable variations from various causes. It is most conspicuous in English statistics of the first half of the nineteenth century; it is, perhaps, least conspicuous in recent French statistics; but wherever statistics exist, in England. France, Germany, Belgium, or elsewhere, it may always be detected.

When criminals are put to death or banished in large numbers, the effect is to give the greatest possible prominence to this law, because the young offender has no opportunity of repeating his offence in the country of his birth. Imprisonment for life rigorously enforced brings about the same result, and excessively severe treatment in prison or elsewhere has the same tendency, by diminishing the probability that the offender will survive his term of punishment. On the other hand, the substitution of limited periods of imprisonment for perpetual imprisonment, or transportation, raises the average age of criminals in proportion as they resume their criminal career upon their release. It is probable, too, that reformatories, and the various efforts made to rescue poor children from the dangers and temptations of defective training and bad example, may act in the same direction, by checking the disposition to commit crime during the years when it is least easily resisted. To diminish absolutely the number of young offenders is to increase the percentage of the older offenders, should their number remain absolutely

the same, or be proportionately less reduced. From these causes criminals are now, on the average, somewhat older than they were before the middle of the century, and the change is visible in the statistics, not only of England but also of France. In England, indeed, the difference has recently become so well marked that in the year 1873 the percentage of criminals aged forty and upwards, was higher than the percentage of criminals aged thirty-five and upwards was in the year 1851.

No combination of causes, however, has yet been sufficiently strong to raise the average age of criminals to an equality with the average of the general adult population, or even of the least healthily occupied of the industrial classes. Nor does any such equality appear even when the comparison is made upon the principle of including children as well as adults in the calculation—as well persons below as persons above fifteen, before which age convicts hardly ever receive sentence of penal servitude, and before which few persons of either sex are sent to prison.

Of the prisoners in our borough or county prisons in 1873, there were not twenty-four per cent. who were not under forty years of age; and if all under sixteen years of age be excluded from the calculation, there were little more than twenty-five per cent. of the remainder who were of the age of forty and upwards, though of the corresponding general population there were more than thirty-nine per cent. Even in the convict prisons, where matured criminals undergo long sentences and grow older in the process of punishment, their age still presents a remarkable contrast to that of the general population. There are but thirty-four per cent. of them aged thirty-five and upwards, while in the

general population (exclusive of all under fifteen years of age) there are nearly forty-eight per cent.

It may be said, and with truth, that there is not only an age below which the child has not the strength or intelligence necessary for committing crime, but also another above which the old man is almost or quite incapable of committing it. The same remark, however, applies to every occupation by which a subsistence may be obtained. If, therefore, the mere animal instinct has no influence upon the commission of crime, if it be not true that the young human being is more prone than the old to act as his remote ancestor acted, the percentage of criminals at any given age after maturity should be the same, and bear the same relation to their percentage at any other age, as the percentages of persons actively employed in the various non-criminal callings, unless any other cause can be assigned for any difference which may exist. We might even, with good reason, expect to find the criminal age above the average, because it is more difficult to leave a dishonest for an honest calling than to make a casual lapse into a criminal act.

Upon the average, however, the industrial classes work at their occupations very much longer than the criminal. While there are but thirty-four per cent. of convicts above thirty-five years of age, there are of the same age (in the total aged fifteen and upwards) more than sixty-five per cent. of shepherds, more than fifty-seven per cent. of agricultural labourers in general, and of tailors, more than fifty-six per cent. of boot-makers, more than fifty-two per cent. of labourers (undefined), more than forty-eight per cent. of persons employed in woollen manufactures, more than forty-five per cent. of carpenters, and even more than thirty-eight per cent. of

persons employed in cotton manufactures, and more than thirty-six per cent. of persons employed in iron manufactures. In the two last occupations there are special causes which reduce the percentage of persons at the more advanced ages. Children are set to work in cotton factories very early in life, and can earn a living when they have reached the age of fifteen; and in addition to this their mode of life is not very healthy. The iron-workers are subject to particular diseases caused by the necessary conditions of their work. But neither among them nor among the cotton factory operatives does the level of age fall so low as among convicts.

The general difference is very striking, because the classes just enumerated are among the most numerous in the whole population. The class of labourers undefined, amounting as it does to nearly half a million, is, indeed, of great service in the comparison, because in it the numbers are free from one great source of error. The manufacturer or the tailor may be either an employer or a person receiving wages from an employer—a person who has the means of subsistence without work, or a person dependent on daily toil for daily bread. No such ambiguity lurks in the word labourer, and there is some satisfaction in the reflection that the older the poor man is, the greater is the probability of finding him honest.

Local statistics, also, regarded as they should be in connexion with the statistics of age, suggest the same inferences as have been drawn from the statistics of age collectively. The migrations of British subjects from one part of the United Kingdom to another have an effect upon crime which is most clearly perceptible in the annual returns. It may be laid down as a general principle that in the counties into which there

And by localities of crime and the birth-places of criminals.

is most immigration there is most crime, and in the counties into which there is least immigration there is least crime. A most striking contrast, for example, is presented by the north-western counties (Cheshire and Lancashire) on the one hand, and the south-western group (including Cornwall, Devonshire, Dorsetshire, Somersetshire, and Wiltshire) on the other. In the former there are 3,224 immigrants aged twenty years and upwards in every 10,000 of the population aged twenty years and upwards, and there are about 115 persons annually committed to prison in every 10,000 of the total population. In the latter the immigrants are in the proportion of only 1,103 in 10,000 of the same ages, and the number of persons annually committed to prison amounts to no more than 30 in 10,000 of the total population.

It would be unphilosophical to attribute this coincidence of numbers to one cause alone—to forget that a higher rate of immigration is associated with a denser population, in which the temptations to petty theft are greater, drink is, perhaps, more accessible, crowds are more readily drawn together, brawls are more easily excited, and police are near at hand to arrest the offenders. It is, indeed, quite demonstrable that causes apart from the character of the immigrants affect the number of committals, and aid in producing the marked difference which exists between the districts of greater and less attractiveness to strangers. Not only are there fewer persons committed in equal numbers of the population in the south-western than in the north-western counties—not only is the relative proportion maintained when the population under twenty years of age is disregarded, but in one section at least of the immigrant population itself the tendency to commit crime is reduced when that section

constitutes a smaller fraction of the whole. Of the Irish-born population in the north-western counties about 454 in 10,000 are annually committed to prison; of the Irish-born population in the south-western counties about 158 in 10,000. It may, therefore, be said that the Irish in the north-western counties are more than twice as criminal as the Irish in the south-western counties, and the sum of the causes independent of immigration must bring about this result.

While, however, the power of other causes must be admitted, the very figures which prove it prove also the powerful influence of migration upon crime. In the north-western counties the whole of the existing causes, including immigration, make the total number of committals for every 10,000 inhabitants almost four times as great as in the south-western counties; but the number of Irish committed in the north-western counties is (in the 10,000 Irish) considerably less than three times the number committed in the south-western. So far as the Irish immigrants are concerned, therefore, one or both of the following propositions must be true:—the incentives to crime act less powerfully upon the Irish than upon the rest of the population in the crowded north-western counties; or the conditions tending towards the diminution of crime in the south-western counties have less effect upon them. But in any case this particular section of the immigrant population must have a stronger tendency than the native population to break the existing laws—a fact very clearly established by the proportion of Irish-born persons committed to prison to the whole of the persons so committed. In the north-western counties the Irish inhabitants are 6·6 per cent. of the whole, and the com-

the south-western counties the Irish inhabitants are 0·6 per cent. of the whole, and the committals of Irish 3·6.

The Irish incomers into our towns and counties, if not the English, Scotch, and foreign incomers also, possess, therefore, a natural disposition which leads them into a prison more frequently than the native inhabitants. Nor, when the past history and present condition of Ireland are borne in mind, is there any reason to be surprised at the fact, or to cast it as a reproach against the Irish people. That reckless spirit of indignation which prompts the agrarian outrage was once as common in England as it has ever been in Ireland; and if Ireland has been longer in effecting a reconciliation with her conquerors than England, she has had fewer opportunities and more difficulties both political and religious. The number of committals to prison is, in proportion to the population, greater in Ireland than in England, just as the number of Irish committed to prison in England is proportionately greater than that of the English. The number of the crimes regarded by the law as most serious—the indictable offences—is, it is true, proportionately less in Ireland than in England. But this rule does not hold good with respect to murder, to offences against the person in general, or to malicious offences against property, towards which the Irish in their own country display a greater tendency than the English on the average in England. Though, too, the proportionate excess of Irish committals in England appears greatly reduced if attention be restricted to the indictable offences which are not determined summarily, it does not from any point of view cease to be an excess. Of these graver crimes more than eight per cent. are committed in England by the Irish. The Irish are less than two and

a half per cent. of the total population of England, and they barely exceed four per cent. of the population of our largest towns. If it be argued that most of the greater offenders are above twenty years of age, that there are few Irish immigrants who are below that age, and who do not reside in the great towns, and that no comparison is fair to the Irish which is not limited to the town population aged twenty and upwards, the argument, when admitted as correct, does not reduce Irish crime to the level of English. There is but one of our large towns in which the population above twenty years of age is not considerably more than half of the whole population. In equal numbers of Irish and English inhabitants the committals of Irish for the greater crimes are more than double the committals of the English. It follows, therefore, that even could it be conceded (and it certainly cannot) that a person under twenty years of age is incapable of a grave offence, there would be an excess of Irish criminality proportionate to the excess of inhabitants twenty years old and upwards (as compared with the number below that age) which, even in the large towns, is often more than five per cent., and rarely less than three.

With certain exceptions, of which, however, the importance is not to be forgotten, our largest and most representative towns exhibit a remarkable coincidence in the number of Irish immigrants and the number of indictable offences. Out of nine selected towns Bristol has in proportion to its population the smallest number of Irish-born residents and the smallest number of indictable offences, and Sheffield the next smallest number of both. In respect of both, Durham stands fourth on the list; and the metropolis, Birmingham, Newcastle-on-Tyne, and Wolverhampton, though they do not show a complete

number of Irish inhabitants, do not show a very great divergence. But Liverpool and Manchester, though they are the two towns in which there is the largest proportion of Irish and the largest proportion of indictable offences, present a very marked contrast one to the other. In Liverpool there are more than fifteen per cent. of Irish, and there are one hundred and twenty-eight inhabitants to every indictable offence. In Manchester there are considerably less than nine per cent of Irish; and there are to every indictable offence only eighty-four inhabitants. In Liverpool, too, the natives of England and Wales are only seventy-seven and a half per cent. of the whole population; in Manchester they are more than eighty-seven and a half per cent., while in the north-western counties, on the average, they barely exceed seventy-eight per cent.

The inference may, therefore, justly be drawn that whatever the effect of immigration in general into any town, the immigration of Irish in particular cannot be regarded as the chief cause of the most serious crime in that town. The Irish have, not only in England but in Ireland, a tendency to commit crime (including the minor offences) greater than that of the English in England. It may, therefore, reasonably be assumed that as immigrants into English towns they are punished for all offences (including those which are indictable) more frequently than the English immigrants. There is, however, no evidence that Irish immigrants are much, if at all, more guilty of indictable offences (considered separately) than English immigrants, though more guilty than Englishmen in general. It would be illogical to expect, from the comparatively small number of indictable offences committed by the Irish in Ireland, that a proportionately small number should be committed by the Irish in

people, and those among them who do not leave their homes must include a smaller proportion than is to be found among the emigrants, of persons at the criminal age, and of the enterprising disposition which, in new and difficult circumstances, sometimes leads men into crime. According to all probability, therefore, more crimes should be committed in proportion to their numbers by the Irish who leave their native place to seek their fortunes, than by their less active or less confident fellow-countrymen whom they leave behind. This, however, is an argument which is not less applicable to the English than to the Irish, and the statistics of England and Ireland afford a striking illustration of its truth.

The crimes to which the Irish in Ireland are specially prone are murder and malicious offences against property. The crimes to which the non-emigrant rural population of England is specially prone are precisely the same. The explanation of this remarkable coincidence appears to be simple, and is in the main supplied by history. The peasant who remains where his forefathers have remained for generations naturally commits (when he becomes criminal at all) crimes of the same kind as were committed by his ancestors. The inclination to kill, to burn, and to destroy, as the records of the past assure us, has been handed down by tradition and inherited association to the rustic both in England and in Ireland. In 1871 the rural population of England and Wales was about $\frac{3}{5}$ per cent. of the whole, the urban population (including, however, some towns of less than 1,000 inhabitants) about 62 per cent. The county constabulary renders the yearly accounts for the rural districts, and for a portion of the urban districts (as defined in the census returns), or, in other words, for

about 56 per cent. of the whole population. The larger towns have their own police; and a marked excess of any one crime in the returns of the county constabulary must almost necessarily be caused by the excess of that crime in the rural districts, and would probably be still more marked if the police divisions were identical with the census divisions of rural and urban. In the three years ending in 1873, the murders (as proved upon trial) in the districts under the county constabulary were, on the average, nearly 62 per cent. of the whole, the attempts to murder more than 53 per cent., and the burglaries more than 40 per cent. It may, indeed, be conceded on the other side that the cases of manslaughter were only 35 per cent., and the cases of robbery with violence little over 30 per cent. But the exceptions do not really affect the point under consideration. Culpable carelessness in driving through the overcrowded streets of a large town is regarded as manslaughter when it causes death, but it is not in any way dependent on impulse prompting the offender to kill or maim. Want of opportunity seems also the explanation of the comparatively small number of rustic robberies with violence. In a country road or lane a robber may wait long before he sees a wayfarer whose purse or watch would be worth the risk of an attack. The streets of a large city or its suburbs are good hunting-grounds at almost any hour of the day or night. In the metropolis the temptation is counteracted by the efficiency of the police. The percentage is there a little below what it might be expected to be from the number of inhabitants; but even in the less carefully watched towns the percentage of robberies from the person with violence is very much below the percentage of murders in the rural districts.

Among all the greater offences, however, that which most distinguishes the country from the towns is arson. More than 88 per cent. of the cases reported occur in the rural districts. It may be argued, of course, that it is easier and less dangerous for one man to set another man's rick on fire in the country than for one man to burn down another man's house in London; but the explanation is altogether insufficient to meet the facts of the case. The motive for setting light to another man's hay-stack is pure malice; but there is a motive which might prompt a man to burn his own house—the desire to make a profit out of an Insurance Office. Such an act of dishonesty is equally easy in town or country; but as the number of houses is greater in the towns than in the country the number of attempts to defraud Insurance Companies should be proportionately greater also. As a matter of fact, however, the number of cases of arson, from all motives combined, in the whole of the towns, is less than twelve per cent. of the total in England and Wales. The inevitable conclusion seems to be that there is some instinct in the rustic which prompts him to commit wanton and malicious destruction out of sheer vindictiveness. But this, like the desire to shed blood, is the instinct of the savage, of the uncivilised warrior, and even of some warriors who call themselves civilised. It is, in fact, one among many illustrations of the survival of barbarism in the midst of civilisation.

It has often been alleged that crime is chiefly the growth of the towns, and that rural simplicity is invariably accompanied by rural innocence. The small percentage, in the English rural districts, of most crimes except murder, arson, and the allied offences, appears at first

in some degree confirmed by the great excess of crime in Dublin as compared with the rural districts of Ireland. It is not, however, an inference which can fairly be drawn from statistics, though the recent statistics of all towns and all rural districts may seem to warrant it. It is disproved by all past history as clearly as any conclusion can be disproved by any historical facts. Our town population is now both absolutely and relatively greater than at any previous time. It is indisputable that, as we look back along preceding ages, we find the town population less and less, until, in the reign of Edward II., we see the rural population constituting the whole numerical strength of the country excepting only a small fraction. It is no less indisputable that law-breaking has, on the whole, diminished as towns have grown. The fact, therefore, that towns-people are more criminal in proportion to their numbers than country-people, cannot be explained by any trite platitudes on rustic purity and city corruption.

The truth is, that the modern temptations to commit crime in all its newest and most attractive forms, are crowded together in the towns and cities with multitudes of persons of the criminal age who have shown some energy and enterprise in leaving their homes to seek their fortunes. By the very same process, too, by which a throng of possible criminals is added every year to the inhabitants of the towns, the villages and hamlets are relieved of that portion of their population from which most danger might be apprehended. Every young rustic who leaves his native cottage, and afterwards has the misfortune to become the inmate of a borough gaol, not only adds one to the actual number of borough commitments, but possibly subtracts one from the number of

county commitments, and so causes a difference of two in the respective totals. In the whole of a population so migratory as that of modern England, the effect thus produced must obviously be very great; and the marvel is, not that the towns should exhibit in most offences some excess of crime in proportion to the number of inhabitants, but that there should be an excess of any form of crime in the rural districts. The towns make no criminals but such as were of the fitting material before they committed a crime; but the country was for ages the scene of every deed of violence perpetrated under every pretext. The towns offer a field of enterprise for all human ingenuity; the remote provinces contribute to them a supply of inhabitants among whom the instincts of violence and rapine are apt to re-appear upon the smallest provocation.

Other considerations, also, lead to the same conclusions as the consideration of the criminal age and the localities of crime. The sex which is physically weaker is less prone to all those actions which are now styled criminal than the sex which is physically stronger. There are at present, in England, nearly four males to one female apprehended for all offences, great and small, and nearly five males to two females committed to prison. In France and in Germany the disparity is at least as great, if not greater. Inherited tendencies, no doubt, have their influence upon this striking disproportion, for although women certainly aided in some of the forcible entries, were sometimes the receivers of felons and stolen goods, in the middle ages, and may even have taken some part in the wars of tribe against tribe in still earlier times, the men were always the chief actors in deeds of enterprise and danger. Thus

And by comparison of the crimes of women with the crimes of men

women are less criminal than men not only because they are physically weaker now, but because they were physically weaker generations ago. The habit of mind has descended with the habit of body, and the cumulative effect of ages is seen in modern statistics.

Nevertheless, great though the excess of male over female criminal offenders still remains, the prevalence of town-life seems to have a perceptible effect in diminishing the disproportion. If the men grow more like the women in ceasing to commit the greater crimes, the women grow more like the men in their disposition to commit the lesser crimes. More causes than one may contribute to this result. Prostitution—essentially a town custom—may afford opportunities for robbery, especially to the lowest class of prostitutes, who are probably associated by indissoluble bonds with the habitual criminals of the male sex. But prostitution is only one phase of a great social fact. The prostitute is engaged in that terrible struggle for existence from which civilisation has not freed us, however much the blows and the bloodshed may have been diminished. She has taken what appears to her the easiest path by which she may earn her own bread. But other women have taken innumerable other paths with the same object in view; and in proportion as they have rendered themselves independent of men for their subsistence, they have thrown off the protection against competition and temptation which dependence on men implies. It follows that, so far as crime is determined by external circumstances, every step made by woman towards her independence is a step towards that precipice at the bottom of which lies a prison.

A remarkable illustration of this fact is to be found in the number of female Irish criminals in England. In

Ireland, as everywhere else, the number of male criminals is greater than the number of females, though (from causes which could not be made apparent without a very close examination of Irish history) the difference is considerably smaller than in England. But while the females of Irish birth committed to prison in Ireland are but thirty-seven per cent. of the whole number of persons of Irish birth so committed, the females of Irish birth committed to prison in England are more than forty-three per cent. of the whole number of persons of Irish birth so committed. The women who are the most enterprising, who are the most capable of earning a subsistence for themselves, and who, perhaps, are the least domesticated, are the women who come from Ireland to seek their fortune in England. The same rule holds good in the case of those women who leave the rural districts to seek their fortune in the towns, or who migrate from one part of Great Britain to another. They are, like the rest of the immigrants into our cities, more active and energetic than their fellow-villagers, or they resort to the towns for prostitution because they have lost their chastity in their native place.

The progress made by women towards a life of complete independence is, however, as yet but slight. The great increase in the number of houses which necessarily accompanies a great increase in the population causes a demand for women to perform those domestic duties for which they have an instinctive aptitude. The girl who might otherwise have remained beneath her father's roof, becomes a servant in a town; but the change does not always in that case very greatly affect her habits or her future life. The work which she does for her master is not very different in kind from the work which she would have done for her father; she has, while in service,

little of the anxiety of the daily struggle for existence; and when she marries she is as little independent as she would have been had she left her father's house for her husband's without any intermediate period of servitude. The Census returns show that in 1871 the great bulk of the grown women in England and Wales were still employed in domestic occupations. But, though small in proportion to the whole female population, there is, nevertheless, a number (which, taken by itself, is by no means inconsiderable) of women earning, or attempting to earn, their daily bread by daily labour, and competing not only with their fellow-women but to some extent also with men. The more enduring they may be in body and the more masculine in mind, the greater, obviously, is their prospect of success in this unequal struggle. But while the women who survive and continue to support themselves approximate more or less closely to the male in energy and resolution, those who are too impatient to persevere, or are unsuccessful from other causes, commonly yield to the temptation to seek a readier means of subsistence by prostitution. Thus, on the one hand, there arises a class of women hardened in the school of adversity, and differing little from men in the natural tendency to commit crime, so far as the tendency is connected with self-reliance and courage—on the other hand, a class of women whose natural weakness leads them astray when they are without the protection of a home and feel themselves to be outcasts. It is probable that female criminals abound most in the latter class, but it is also only reasonable to suppose that the less women differ from men in their occupations, the less will be the difference in the number of male and female

All the facts which can be ascertained thus point to the conclusion that the love of adventure which is characteristic of youth, and courage, and a masculine disposition, is closely associated with the tendency to commit many of those acts which are now (but which were not always) defined to be crimes. So long as the legal definition of crime remains as at present, it should be the object of the state to divert that strength and enterprise which might be employed in murder, assault, and robbery into channels in which they might be useful rather than injurious. But there may, perhaps, be a doubt whether all criminal tendencies can be diminished except on condition of a corresponding diminution of that activity and vigour without which the criminal would hardly be able to pursue his career successfully.

Loss of military spirit attends the weakening of savage instincts.

With the diminution of crime, and especially of crimes of violence, there has been a perceptible subsidence of the military spirit in England. The increase of wealth, and the variety of employments which have grown up since the last participation of England in a long European struggle have not only shown how much is to be lost and how little to be gained by war, but have given a very large portion of the population a direct interest in maintaining peace. The merchant and the manufacturer are anxious to avoid any quarrel with a foreign power which would close any markets against them. The artisan and the day-labourer have similar interests, and the men who in former times would have been pleased to become soldiers are more and more drawn into peaceful occupations by the prospect of better pay than is to be earned in the army. These results appear not only in the policy

putes, but also in the difficulty with which recruits are induced to join a regiment, and the readiness which many of them show to desert from it.

Hence arises the very grave question whether British civilisation is advancing towards its own destruction, and incurs danger from a foreign military barbarism in proportion as it progresses towards its own perfection. It is, however, threatened also by other dangers, at which, as well as at this, a glance may be more conveniently cast elsewhere.

In the meantime there is sufficient evidence to show that respect for the laws which protect person and property is closely associated with peace, with abundance of occupations offering the means of subsistence by honest industry, with contentment, and with a well-settled government. Each cause, however, becomes an effect in turn, and each effect a cause. The absence of crime, no doubt, aids in rendering a government secure, a people contented, and a lucrative employment attractive. When the well-being of a state is anywhere disturbed, the injury to the part affects the whole, but its character is most affected by the greater or less development of the military spirit. A nation frequently engaged in war is compelled to choose between two alternatives—either to seek continually new quarrels in order to find an outlet for its military strength, or to derange its labour-markets by suddenly throwing into them, at intervals, a great number of men more skilled in handling a weapon than in earning a livelihood. In the one case it exhausts all its energies in destroying weaker powers; in the other it has to pass through periods of discontent among its own people,

Action and reaction of causes and effects.

Part 3.—Crime in relation to Contemporaneous Education: Induced Tendencies.

It has often been maintained, with the aid of examples from various countries as far apart as Iceland and Italy, that education is the one great panacea for crime—that when a people is educated it at once imbibes a respect for life and property.

Alleged diminution of crime by 'education.'

This opinion deserves careful consideration, because it has had, during many generations, the sanction of many writers who have undoubtedly given the subject very serious attention. Attempts have also been made to demonstrate its truth by the statistics of crime in England, and from the time of Beccaria to the present it has never altogether lost favour.

The first difficulty which is encountered in any attempt to estimate the effect of education upon crime is that education is one of the most ambiguous words in our language. In the broadest sense the education of any individual is the sum of the external circumstances which induce in him any thought or any action. The causes determining his character at any age after infancy can be exhaustively divided into two classes—inherited tendencies, and tendencies created or strengthened during his life. To such creation or strengthening of tendencies, or to the suppression of others, the term education may fairly be applied. To say that education of this kind may be made a very effectual preventive of crime is little more than a truism. It is but saying, in other words, that when crime is clearly defined, and when means are so well adapted to ends by the state that habits opposed to

Ambiguity of the word 'education.'

crime become a part of the nature of all whose nature is not incorrigible, the criminals will be reduced to the smallest possible number. This is a proposition which few would care to dispute, and it is sufficiently illustrated by the whole course of the history of crime in England. In proportion as the state in general has shown indifference to human suffering, and set a low value upon human life, the population has been prone to deeds of violence, bloodshed, mutilation, and torture. A contrary example has already had contrary effects.

Education, however, is now commonly held to mean instruction by a schoolmaster with the aid of printed books. The subjects first taught are usually reading, writing, and arithmetic; and it has been gravely and frequently maintained that a human being who can read, write, and cast accounts may be expected to show a due regard for life and property, where the uninstructed human being will rob and murder. The propounders of this doctrine commonly omit to describe the mode in which they suppose that the three accomplishments operate in preventing crime, and they appeal to the fact that few highly educated and many uneducated or ill-educated persons are convicts, as a proof that their opinion is correct. It is perfectly true that graduates of Oxford or Cambridge are not often brought to trial, and that the majority of criminals have not gone through an extensive course of reading, and are not accomplished penmen. But it is not less true that very few men who are colour-blind, very few men with hare-lips, very few men six and a half feet high, very few men measuring forty-five inches round the chest, and very few women with beards are to be found in any of our gaols. Yet no one probably

Education, in the sense of instruction, does not necessarily diminish crime as now understood: evidence from modern statistics and past history.

ever seriously attempted to convince another that colour-blindness, hare lips, great stature or girth in a man, or a hirsute face in a woman, can be regarded as preventives of crime, and are therefore all equally to be desired in a well-ordered state. The majority of the population have not been educated at universities, just as they are not either giants or cripples. This reason alone is fully sufficient to account for the paucity of highly educated criminals; and the utmost that can be shown from the most elaborately constructed tables of figures relating to crime and education, as at present existing, is that education does not cause an increase of crime. It might, indeed, far more consistently be argued that education, in the sense now under consideration, does increase crime than that it does not, because the criminals who have been imperfectly educated are more numerous than those who have not been educated at all. The true explanation of this fact, it need hardly be said, is that there are fewer persons among the whole population of England and Wales who have received no instruction than persons who have received a little.

Could it even be shown that the percentage of the uneducated among criminals is greater than the percentage of the uneducated among the whole population, there would still be other possible causes to be eliminated before it could be inferred that the want or the possession of instruction had increased or prevented crime. The commonest of all offences is petty larceny, and the temptation to commit it must be immeasurably greater to the poor who have had few or no opportunities of instruction than to the rich who have had as many as they desired.

Were the arts of reading, writing, and ac-

counts, in themselves and apart from all other influences, effectual preventives of crime, the schoolmaster would have instruments in his hands which would render the children of thievish parents honest beyond all risk from bad example, and the children of murderers proof against all provocation. But will anyone deliberately maintain that a person who has not been taught to read or write will yield to a temptation which a person who has been taught will in precisely similar circumstances resist? He who has been taught to read may, of course, have read publications which may have so formed his disposition that he will obey the law rather than break it. But it is perfectly possible that his reading may have taken a very different direction, that all his sympathies may be with criminals, and that he is only awaiting an opportunity to become a criminal himself. Nor is it at all inconceivable that a well-educated and originally well-meaning person may become discontented with a lot in which his powers may seem to be thrown away, and, as the iron enters into his soul after unsuccessful competition, may rush into crime out of sheer disappointment. It is perfectly conceivable, too, that one who is quite ignorant of letters or figures may yet have learnt a few rules of conduct, upon which he will act almost mechanically, and, perhaps, stand where his superior in knowledge will fall.

Look where we may, there is little comfort to be found in the effect of education on crime if regarded simply as the effect which the instruction of any particular individual in certain branches of knowledge may have upon his future life. In the middle ages, and even at a comparatively recent time, the judges, though not the least highly educated men in England, were yet most commonly guilty of that corruption of which they had made oath

that they would always be innocent. Even Bacon erred like his fellows and his predecessors; and in the last century Macclesfield acted in accordance with the ancient tradition. Educated monks were the chief forgers of the middle ages; and Oates, the blackest of perjurers, with his colleague Tonge, had received as much education as is necessary for the writing of books. With such facts as these before him, he would be a bold speculator who would persist in holding the opinion that the mere acquisition of information, however extended it may be, is a safeguard against temptation.

The effect of instruction is to redouble the influence of surrounding circumstances, whatever they may be.

It would, nevertheless, be rash to deny that education, even in the limited sense of instruction in reading, has had, and is still having, an important influence upon the total amount of crime in England. The greater the number of persons able to read, the greater will be the number of persons whom printed matter of various kinds will reach. In some cases (unfortunately, perhaps, in many), the literature written for the poorer classes is designed to foster if not to rouse discontent, and represents the criminal, if not as a hero, at least as a character entitled to sympathy. Such publications are lucrative, and will therefore long continue to exist. Whether they counteract all the effects of less exciting appeals to the intellect is a question which it is somewhat difficult to answer; but there cannot be a doubt that, if they have any operation at all, it is as incentives to break the law. On the other hand, there are many writings of a very different complexion which may also find their way among the masses of the people, and of which the tendency is to suggest the expediency of law-keeping rather than of law-breaking.

The chief results of extending the art of reading,

however, are probably not to be inferred either from writings which directly suggest crime or from writings which directly teach conformity to established institutions. The society in the midst of which we live has its reflection in the aggregate of the printed matter which issues from the press. None but monomaniacs would desire to be supplied with treatises on their own favourite grievances alone; and the number of such persons will be small until insanity increases very much more rapidly than it has increased hitherto. The consequence is that the fomenters of dissatisfaction have to intermingle sober narratives of fact, or fictions simulating the ordinary events of life, with their inflammatory essays. However carefully news or novels may be selected, they will bear some resemblance, distorted though it may be, to the actual events of the real world. In this way education, in the sense of mere instruction, becomes a part of that more comprehensive education in which is included everything that forms the disposition of the individual. It redoubles the strength of surrounding circumstances, whatever they may be. Whatever may be the national tendencies at any time, they are intensified by the ceaseless iteration of the printing-press. No matter what direction a country may be taking, the more it educates its population the more rapidly it progresses along the road it has chosen.

Apart from all disputes and controversies, there are always popular beliefs, popular ideals, popular cravings. In accordance with these a nation will shape its future unless it falls under the dominion of a foreigner. But these are themselves determined by a great variety of causes—in fact by the sum of the actual conditions of life. If for any reason society were tending towards disruption, intellectual development would accelerate the revolution, as in

fact it did accelerate the Great Revolution in France. If general contentment were prevalent, the diffusion of the art of reading would in the main strengthen existing institutions and increase the respect for the laws.

It might therefore reasonably be expected that the general result of giving some instruction to the masses of the population would be to diminish crime so long as a nation remained prosperous. But the diminution could hardly be the immediate effect of the education; it could only be the cumulative effect of other causes brought more thoroughly into operation by the diffusion of knowledge. In time of adversity, on the other hand, the cumulative effect of such causes would be different; and the action of education upon society in general would be reversed with the current of events. If, for instance, great suffering befel large classes of the population after some great national calamity, if a spirit of pessimism spread itself abroad, if men were becoming converted to the doctrine that, after all, there is no individual human life which is of any value, no suffering of any individual human being which is worth consideration, no good reason why any individual should have any rights of property, it is obvious that the ferment would pervade an instructed far more rapidly than an uninstructed people. Nor can it be doubted that thoughts would find expression in deeds, and that the disciples of the new faith would prove their sincerity by robbery and murder. Robbery and murder might then cease to be crimes; and it is not to be denied that instruction would still operate in the direction of public opinion, and in opposition to the newly defined crimes, whatever they might be.

Those influences have differed and will differ at different times.

Education, it may of course be argued, would lead

men to calm reflection and to sounder conclusions. But unfortunately no one can use such an argument except on the assumption that his own opinions on all social and political matters are necessarily correct, and so obviously correct that, with a little instruction, all the world must adopt them. Experience shows that anyone who entertained such a hope might be grievously disappointed. Education did not restrain mediæval bishops from inflicting torture, has never prevented any nation from waging war, and has even lent its aid to many Socialists of the stamp of Fourier. He who would venture to predict the effect of universal instruction upon the future of a state must arrogate to himself first a knowledge of all the possible circumstances in which that state can be placed, and then a knowledge of all the springs of human action. He may think it suffices to say that men will do what seems to their interest, and that education will tell them what their interest is. He forgets that interest is precisely the point on which even educated judgments may differ most widely.

Putting aside, however, the possibility of a radical change in the principles on which society is constituted, and assuming that the object of criminal legislation and police is to check fraud, theft, and violence, we have yet another point of view from which the influence of instruction has to be considered. It certainly acts as a check upon the individual who is disposed to commit some crimes, not necessarily by leading him to consider that the act is wrong, but by increasing the general probability of detection and punishment. Forgery, for instance, can be effected only by a person who knows how to write. In this case instruction renders a crime possible which would

Deterrent effect of instruction in facilitating the detection of such frauds as forgery.

otherwise be impossible. But the diffusion of instruction has had an effect directly contrary to the instruction of a few privileged individuals. When the knowledge of writing and reading was almost restricted to the clergy, the clergy could forge charters with little chance of discovery, and they did. The officers of the law courts knew how to 'rase records,' and the records were frequently rased. But when millions can read and write, deception is not so easy; and the number of eyes which can perceive a flaw is multiplied with the spread of education. The consequence has been that forgers have not increased in proportion to the population, and that forgery is a comparatively rare offence. When letters are the privilege of the few, and the masses are absolutely illiterate, a little knowledge becomes a great power, and, like all power, is apt to be abused. In the middle ages it was made an instrument of fraud by bishops, abbots, and judges. It cannot now be made to serve the same purpose to the same extent, because it is a weapon which the honest can use for defence as well as the dishonest for attack, and because when the majority are armed with it the possession of it gives the possessor less relative advantage.

At first sight we appear to have here an instance in which mere instruction in reading and writing has of itself, unaided, acted as a restraint upon the commission of crime. But even here, if we inspect the mode of operation a little closely, we shall perceive that this instruction has not been the sole agent at work. Forgery is now considered an offence of the greatest magnitude; to rase a record or to tamper with a charter was in the middle ages hardly considered disgraceful in a man of high position, and the

Instruction is, even in this, aided by other causes—by education in the wider sense.

act was rarely followed by punishment. The charge was lightly made as an instrument of political warfare; the deed was readily pardoned when the accused had a party strong enough to give him effectual support. The very name of the crime is of comparatively recent application, and the tone of public opinion with respect to it more recent still. Its newly acquired importance must certainly be, in some measure, the result of the corresponding importance attained by commerce. If the merchant or the tradesman saw in every man with whom he had dealings a probable forger, all confidence would be destroyed, and, for want of confidence, trade would languish. In proportion, therefore, as a nation increases in wealth by buying and selling, it will magnify the criminality of a fraud by which buying and selling may be checked. The change of opinion will show itself in the penal laws, and in the not less deterrent force of social reprobation.

The conclusion which suggested itself very early, in the investigation of the effects of instruction upon crime, thus again forces itself into prominence, even where instruction may fairly be supposed to have had some direct operation. Education in the broadest sense of the term—as the sum of external circumstances—has a most powerful influence upon the future of the individual—an influence which would be all-powerful were it not disturbed by the natural inherited disposition. But education in the sense of instruction in the rudiments of knowledge is only one among innumerable factors in the formation of character, and one which may act differently in different relations with its fellows. It is a very useful engine to accelerate national progress in any direction, but like those other engines with which we have all grown familiar in the nineteenth century, it may be reversed, and hurry us along

in a direction opposite to that in which we now happen to be proceeding.

Modern instruction at the public expense compared with the poor-law as administered before 1834.

The legislative attempts which have recently been made to ensure that at least rudimentary instruction shall be given to every child, constitute in themselves a precedent which may one day affect the whole organisation of society. There is a very close resemblance between the manner in which the children of working parents are now educated and the manner in which agricultural labourers were paid just before the Poor Law Amendment Act of 1834. A very large class, in which paupers are included, but of which paupers are but a fraction, is in receipt of aid from public funds. Parents may pay a small sum in school-board fees as a contribution towards the cost of educating their children; but it is certain that they do not pay an equivalent for the education given. The agricultural labourer was at one time in the habit of receiving, out of poor-rates, a sum which was believed to be necessary in addition to his wages for the support of himself and his family. The parents of children in receipt of state education also receive, if not money, the value of money, out of a common stock. In this practice there is a distinct advance towards Communism, and one which may have far more extended effects than that which was supposed to have been injurious in 1834.

Responsibility undertaken by the state: tendency towards Communism.

A grave responsibility is accepted by a state which insists on directing how the earlier years of life shall be spent by its members. Nor can this responsibility be evaded by leaving the details to local boards. Should it by any chance happen that the children now being instructed in accor-

suits them when they reach maturity, they will have a plausible if not a just ground of complaint against the very system devised for their benefit. 'You taught us,' they might say to the Government, 'when we did not wish to learn; you took us away from our parents whom we did not wish to leave, and who did not wish us to leave them; you suggested to us, from our infancy upwards, and to our parents also, that we should rely not upon them or upon ourselves but upon you; you made us all as much alike as you could by casting us all in the same educational mould; you forgot to teach us any trade or craft; and then you sent us adrift in the wide world with an admonition to be thankful for the care which had been bestowed upon us, and for an amount of knowledge which had no market value because it was possessed equally by everyone. Whether we are good or bad, useful or useless, is a question which concerns you more than ourselves. Such as we are you made us. It is now your duty to provide for us; and if the only manner in which you can provide for us is as paupers, you have done us an irreparable and unpardonable wrong.'

It would be considered reprehensible in parents after having given their children a little elementary instruction to bid them go and earn their bread as best they could, without skill in any craft, without any directions how to begin. But a portion of the responsibility incurred by the parents is transferred to the state as soon as the state interposes between them and their children. The father who of his own free will sends his children to a school of his own selection does but delegate his functions for a certain time to the schoolmaster. The father whose child is snatched away from him and compelled, without

every week in a school provided by a board, has lost no small portion of his parental control. With the loss of his power he may well forget some of his duties, and he may say with good reason to the persons who have interfered,—'You would not allow me to retain the whole management of my household, I decline to undertake a divided duty; you have deprived me of the right of bringing up my child according to my own notions; on your heads be, not a portion of the consequences but the whole.'

Such language as this may be thought ungrateful, but it is neither unnatural nor illogical. In other countries where the experiment of compulsory education has been tried, and where there is a large population, there exists either a military despotism, or a strong tendency towards socialism, or both. The future effects in England must of course be, to a great extent, a matter of conjecture. But if, as is not impossible, poor children should, one day, be instructed at the public expense not only in the general rudiments of knowledge but in particular branches of manufacturing industry, another and a still more important step will have been taken towards Communism. So long as the state draws a broad line of distinction between the elementary instruction which it declares necessary for every one of its members alike, and the instruction which may vary with the individual according to the occupation he is to follow, it may, perhaps, with some show of reason, repudiate all responsibility extending beyond the age of childhood. But there is no sophistry by which it could evade its obligations after it had once taken upon itself the whole train-

That responsibility, and that tendency would increase if the state gave instruction in the means of earning a livelihood.

from lack of judgment, or from lack of power, might fail to rear his child in such a manner that it could honestly earn its own livelihood. This would be a misfortune; but a similar failure on a large scale, on the part of the state, would be a national disgrace. It would be a gross injustice to create a supply of operatives with qualifications for which there could not be ensured, approximately at least, an equivalent demand. But there is no possibility of ensuring continuously such demand unless the state is prepared to create it whenever it may not otherwise exist.

Such a condition of society as this could, if it continued at all, continue only in the form of Communism. If there remained any classes distinct from the operative and governing classes, their property would be subject without limit to the payment of any contributions which might be necessary for the maintenance of the balance between supply and demand. It would, at best, be only a part of the capital of a gigantic industrial company conducted on a principle which has never yet been tried in practice. It would in fact cease to be property at all in the usual acceptation of the term, and become, as it were, a reserved fund out of which the wages of the trained operatives could be paid in case of need.

In a thoroughly communistic, or, as it is sometimes called, paternal government (could such a form of government be reduced from theory to practice), robbery and theft might in time, perhaps, almost, if not quite disappear. As everyone would be supported out of a common stock the distinction between rich and poor would be effaced, and the incentives to crime of the present type

State instruction might thus effect a revolution by which the criminal law would be entirely changed.

would fade away with the incentives to exertion. A crime may always be abolished by abolishing the possibility of committing it. Were there not any luxuriously furnished houses to enter, there could not be any scenes of burglary; were there no reason for carrying large sums of money on the person, they would not be carried, and could not therefore be taken away with violence; were there no property of any kind except that which belonged to the state it would be impossible for one individual to commit a theft at the expense of another. In short, all the present offences against property would either cease to exist, or where they continued they would be entirely deprived of the character of private wrongs and be crimes against the state alone.

Should there at any future time be brought about either gradually or suddenly such a revolution as has just been very briefly sketched, a great portion of the criminal law would be altered, but it is unnecessary to point out in detail the changes which would have to be effected. With the abolition of the old crimes it is quite conceivable that many new crimes might arise. Every offence, however, except such as might be committed against the person, would of necessity be a political offence, because every act which disturbed the state arrangement of goods and employment would not only be a public wrong, in the present sense of the term, but would also be directly subversive of the established form of government. In a community thus constituted there would be, in many points, a resemblance to the primitive tribe with its land in common. Whether men thus starting anew, after the manner of their remote forefathers, would, in subsequent generations, again pass through the

stages by which we have reached our present condition is a question to which only experiment could find an answer. But, whether they did or not, civilisation as we at present understand it would practically have stultified itself, for, in one case, it would have fallen to rise no more, and in the other it would be, like Ixion, tied to a wheel of which it could not check the revolutions, and would be now uppermost, now downmost, according to the force of circumstances. It would have reconciled government with individual liberty of action, only to destroy that individual liberty which according to some opinions is its noblest achievement.

As the principle of compulsory or state education, if consistently enforced, appears to have a strongly marked tendency towards Communism (upon the merits or demerits of which it is unnecessary to pass an opinion), it is of the utmost importance to draw a distinction between the effects of education and the effects of the compulsion or state aid. The truth seems to be that, as soon as government interferes, the mere fact of its interference becomes the chief influence, whether for good or for evil. If, for example, the legislature should enact that all British subjects above a certain age should, at certain hours of the day, carry a gold watch and chain, to be bestowed out of the public funds on all who could not afford to purchase them, the mere possession of the trinkets by the new holders would have little social or political significance, but the action of the lawgivers would be all-important. It is impossible to pass a law involving a redistribution of property (no matter how small may be the amount redistributed), without calling in question

Necessity of distinguishing between the effects of state instruction, and the effects of instruction considered by itself.

even the poor-law is a permanent institution for the redistribution of property when a certain limit of poverty is reached by any of the population. How readily it could lend itself to communistic arrangements was shown before the passing of the Poor Law Amendment Act. But when destitution is the qualification for the receipt of state aid, and when applications for support are discouraged by unpleasant tests, there is a sharp line of demarcation between national almsgiving and that tyrannical benevolence which forces a boon upon an unwilling recipient.

If we disregard for a time the elements of compulsion and state aid and their possible results, we may, perhaps, with the less prejudice enquire whether in the existing state of society and with the existing definitions of crime any instruction which may be given can be so directed that it will have a more immediate effect than the arts of reading, writing, and casting accounts upon criminal statistics. The earlier philosophical writers upon crime and education were not such enthusiasts as to suppose that there was any magic virtue in these three accomplishments, nor so blind as to ignore the fact that there is an emotional side to human nature. Beccaria, the first and chief of his school, distinctly recognised sentiment as one of the most important constituents of character, to neglect the cultivation of which would be a fatal mistake. When, however, we attempt to bring down the general and the abstract to serve the purposes of particular human beings in the concrete, it is impossible to deny that practical results are more difficult of attainment than magnificence of diction. Two questions immediately present themselves—can sentiments really be cultivated? and, if so, which ought

Can education be so directed as to diminish crime in the present acceptation of the term?

to be weeded out, and which ought to be carefully tended?

The first question is answered by the fact that there are perceptible differences of sentiment, not only in different nations, but at different stages in the history of the same nation. The power of discrimination exists throughout; the exertion of a moral preference is also common to humanity, but it varies as well in force as in the manner in which it displays itself. As already explained, all men have notions of right and wrong, but their notions are not identical. It, therefore, seems reasonable to infer that, were sufficiently powerful means adopted, some enduring effect might be produced upon the character of the population at large, and upon the display of character in action. The general principle is not affected by any doubt whether the change could be brought about in a long time or in a short time, in one generation or in many.

It may be so directed by the practical adaptation of means to ends: suggestions and criticisms.

To the second question—what sentiments should be cultivated?—there are many possible answers which could be given in general terms. But in practice the sentiments inculcated would always be, on the average, the average sentiments of the nation. According to our existing political and social constitution, for instance, a part of the teaching would be that it is wrong and shameful to steal, that it is wrong and barbarous to commit murder, that the person who does either not only is, but ought to be, disgraced in the eyes of his fellows, and that every man should restrain himself from doing either upon pain of being degraded in his own eyes. This would be an appeal to the sense of shame which is very widely diffused among mankind, which is susceptible of development in the individual,

but which, in a different state of society, could be applied to very different uses. If the instructors of youth were really more anxious that the children entrusted to their care should grow up honest, truthful, and forbearing, than that a particular form of belief should triumph over rivals but slightly differing from it, they might, perhaps, aid not a little in the repression of crime. The art of reading, skilfully treated, might be made a very useful ally. But when moral training is either wholly neglected, or thought to be complete as soon as a child can repeat a few texts of Scripture by rote, the marvel is not that we have criminals in our midst, but that the laws are obeyed as well as they are.

The tolerance of modern times cannot be consistent unless the education directed against crime is rendered independent of religious differences.

It is not, of course, to be supposed that a system of education specially directed towards the prevention of crime can be exhaustively treated in such a work as the present. The object of history is to show the manner in which causes operate as a whole, not to give the minute details of plans for the future. A scheme for moral instruction, in order to be successful, should have the united support of men of all creeds. Perhaps as much Christian charity might be shown in an attempt to arrive at an agreement upon the mode of rearing good and useful members of society as in the attempt to force the doctrines of a sect upon unwilling recipients, or to exclude the teaching of morals, lest it should involve the teaching of a religious dogma.

History tells us that the present differs from the past in the wide range of its sympathies. If we are of opinion that the change is salutary, it ought to be reflected in the conduct of our schools, and there ought to be some common ground of sentiment upon which all could be

made to feel at home. Children might be taught to associate not only shame with crime, but also an honest pride with just and generous conduct. They will carry away with them but a sorry recollection of a school in which they learnt nothing of the conduct of life except from their fellow-pupils, and no definite principles to guide their actions.

Where only the rudiments of ordinary knowledge are taught, the child acquires, together with those rudiments, no more than the habit of practising the memory and (to a very much less extent) the reasoning faculties, a possible desire for gain in the form of prizes, and a very close acquaintance with the emotion of fear. He becomes familiar with the idea of punishment long before he can be guilty of any greater crime than indolence or stupidity, and he learns to be either afraid or defiant long before he learns to love. It is not difficult to perceive how such a training may bring forth self-satisfied doctrinaires on the one hand and dissatisfied drones on the other, unless there have been some very powerful home influences to make good the defects. Men who have no genuine sympathies towards others are incapable of attributing to others the sentiments in which they are wanting themselves. When their intellect or their cunning enables them to attain a little success, their one-sided development leads them to wish that the world would honestly confess itself to be as one-sided as they are—that its superfluities might be lopped off until their own conformation could be accepted as the true type of beauty. When they have no success at all and no pride in intellect, they have a sullen remembrance of a childhood at war with its teachers, and a present belief that society—anyone but themselves—is to blame for all their misfortunes.

An ungenial youth is little likely to be followed by a genial maturity; and youth cannot be thoroughly genial when its schooling fails to suggest that sympathy which is the highest development of Christianity. Child-life in the nineteenth century (if the nineteenth century is to be consistent with itself) ought surely to differ from the child-life of the days when family was arrayed against family, tribe against tribe, guild against guild, town against town, and class against class. The difference, too, should be greatest in those respects in which civilisation has effected the greatest change—in the teaching of humanity, forbearance, and tolerance.

Good feeling between class and class, and between sect and sect (if sects must continue to exist), is the safeguard of that civilisation to which we have attained and which the rousing of mediæval passions would tend very rapidly to destroy. It may be open to question—it has been questioned—whether civilisation is worth having. Those, however, who wish to retain it, and to see it advance, would do well to consider how far modern education is adapted to their end—especially in the schools to which the children of the poor have access. There is a hardness and a coldness in the teaching of mere letters and figures which are not agreeably relieved by suggestions of religious animosity. It is a misfortune that secular instruction should be applied to the intellect alone, and that instruction in morals should be inseparably associated with theological doctrines upon which there is a wide difference of opinion.

We have seen in the history of the sixteenth and preceding centuries how terrible fanaticism and bigotry can render themselves. We may infer that the duty of all who do not wish for more persecutions and more burn-

ings is to calm theological anger wherever it may arise, and to take all possible precautions that it shall not arise at all. There is good reason to suppose that some progress might be made towards this end by dissociating religious instruction from moral instruction—so far at least as moral instruction is required for the training of useful members of society. Each sect would still hold and impart its own peculiar doctrines and attach as much or as little relative importance to faith and to works as might seem to its teachers consistent with the words of Scripture. Theological tenets regarding morals are of almost infinite variety; and so long as they have reference not to this world but to another, it does not appear that they, in any way, concern the state. But the state is interested in the means of enforcing its own laws, and rendering them as far as possible acceptable to all the individuals of which it is composed.

Many would, no doubt, maintain that, where faith is made secure, good works will follow, and others that good works are directly encouraged by their creed. But neither of these assurances can be accepted as sufficient by the state, when they are given by persons over whose religious discipline it exercises no control. The word 'good' is susceptible of a great variety of interpretations; the object of the state is that the actions of its members shall be good in the sense attached to the word by itself. When it is unable to reach a great portion of the population through the machinery of its own church, is it not culpably negligent if it makes no effort to substitute machinery of another kind? The sects are averse to its catechism as a whole; could there not be devised a scheme of moral instruction superior to the catechism,

The state may fairly demand that obedience to its laws shall be taught in every school within its boundaries.

not restricted to a mere cultivation of the memory, not tested by the repetition of words which children are incapable of understanding, not encumbered with fragments of theological doctrine, and yet acceptable in itself to a majority among all parties? If there could not, it is obvious that the desire to make education an engine for the prevention of crime, as at present defined, is not so strong as the antipathy of sect towards sect. In the attempt to effect a compromise, either principle after principle would be rejected until none were left, or some common principle would be acknowledged by all. Would the people of England decide that there should be some definite and united action for the purpose of teaching children to be honest and kindly, or would they prefer that the children should incur any risk of being dishonest and cruel unless kindness and honesty could be imparted to each through the medium of some particular branch of one particular religion? In the latter case would they dare to call that religion Christianity?

The position of the state with respect to instruction is very different in modern from its position in mediæval times.

During the middle ages the clergy had almost a monopoly of education, and were almost the only persons who could teach even reading and writing. They naturally maintained that the church was the only foundation of morals. So long as any difference from their opinions was punished as heresy by the secular arm, they were at one with the state which trusted them and supported their authority, and the state-morals were the foundations of the criminal law. After dissent was tolerated, and the knowledge of letters became more extended, instruction continued to run in its old religious groove, though the groove had many branches. The power which once belonged to the clergy was divided among the ministers

of many denominations. But in this division the state lost all the moral control which it had previously exercised. The result was the same whether the state accepted its morals from the church and then dictated them to the people, or dictated its own morals to the church first and the people afterwards. In either case education must, as far as it went, have been in harmony with the state-laws. But with toleration all security for such harmony disappeared.

The natural correlative of religious tolerance appears, therefore, to be a greater stringency in requiring that there shall in all schools be some moral training adapted to the state's definition of crimes. It is not easy to see what valid objection could be raised in the true interests of religion—though, no doubt, many might be raised in order to retain power. The state would direct that certain means should be adopted for the purpose of rearing good and useful citizens according to the legal signification, whatever it might be, of goodness and usefulness. If the end to be attained had the approbation of theologians, they would not present themselves in a very favourable aspect when throwing obstructions in the way. If the end itself were distasteful to them and they preached disobedience to the laws, they would be making a direct attack upon the government; and, though they might be doing right in their own eyes, they would in the eyes of the state be guilty of sedition.

It may appear at first sight that such an interference of the state as is here indicated would reproduce, under another name, some of the mediæval abuses, and would establish a tyranny in morals very like the earlier tyranny in religion. There is, however, no reason to apprehend

public opinion would be reflected in any system of moral instruction which the state might adopt. Sects may rise and fall, and become extinct; government, in some form or other, can cease only with the extinction of human society. Rulers cannot claim to be permanently infallible or declare their laws to be immutable; but when they take no heed that children shall be taught to obey the laws which may be in existence, their exercise of authority in punishing the men who are disobedient is not only capricious but cruel. A legal maxim universally accepted is, that ignorance of the law is no excuse for law-breaking. In other words, the state assumes that all its members are acquainted with its laws. But does it not in making the assumption incur a responsibility? Is it not bound to take care that, whenever instruction is given, there shall be some attempt to mould the disposition in conformity with the principles on which it regulates the conduct of man to man?

Check upon the abuse of the civil power when moral teaching is dissociated from religious teaching.

Justice seems to demand thus much, though the admission brings us again face to face with the difficulty of compulsion as applied to education. Would it be just to decree that, wherever education is given, instruction of a particular kind shall be included, without decreeing also that this particular kind of instruction shall be given to every individual in the community? Obviously not, so long as the legal maxim of universal acquaintance with the law remains in force. We thus arrive at the alternative of compulsory state education, or of a new distinction to be drawn between criminals who have had the advantage of early instruction, and criminals who have been neglected in

Probable decrease of crime if there were substituted for a system of compulsory education a distinction between criminals transgressing after instruction and paupers transgressing in ignorance.

youth and driven out to gain a subsistence in a civilised country by such means as their own mother-wit might suggest to them.

There are many arguments in favour of drawing such a distinction which may recommend themselves to persons who are not of communistic tendencies, though communists will of course incline to compulsory education. In the first place, there is every reason to believe that parents who might otherwise be careless and apathetic would be stimulated to make some effort, when the want of instruction would, in a new sense, render their children outlaws. It would of course be necessary to pursue a wholly different course of treatment in regard to the two classes of instructed and uninstructed criminals. The instructed might be punished, as responsible agents, according to the laws which might be in existence. The uninstructed (who it must be remembered would be equally uninstructed in all branches of knowledge) could only be considered paupers, the children of paupers, and not truly responsible for their own misdeeds. The mode of dealing with them would become a branch of the poor-law, and would have to be considered in relation to the treatment of other paupers. The class of instructed criminals would probably decrease very rapidly, not only because they would have begun life with definite principles of action in harmony with the world about them, but also because they would be capable of understanding disgrace, and the disgrace again would be progressively greater in proportion to the fewness of the persons disgraced.

A comprehensive scheme of the nature now faintly sketched in outline, with the means deliberately adapted to the end, would, there is good reason to hope, by

real and permanent effect in reducing crime by education. Without any such adaptation of means to ends, it is mere word-worship to speak of education as a preventive. There is no more real charm in the nine letters, or, in that combination of them which spells Education, than in the mystic Abracadabra of old. In order to be certain that any cause operates at all, it is necessary to have some knowledge of the mode of operation. An attempt has now been made to show how instruction actually does act, and how it may be brought to act more directly towards the abolition of crime. It acts, when it does not extend beyond reading and writing, simply as a means of adding force to surrounding influences. It may act immediately and beneficially upon the moral character, if skilfully applied to the purpose, and if in harmony with the laws of the country. By the very definition of crime—disobedience to the criminal law—the teaching of obedience is suggested as the most ready method of diminishing offences. From the fact that laws are the accepted institutions of the age in which they are permitted to exist it follows that the instruction which has a distinct reference to their due observance will be in harmony with the tone of society and a wholesome training for that wider education which is forced upon all of us, in spite of ourselves, by the world in which we live.

Recapitulation of the effects of instruction upon crime.

Part 4.—*Crime and Pauperism in immediate relation to the Laws—to Preventives, Punishments, Incentives, and the Administration of Justice.*

Closely connected (from any point of view) with the subject of national education, and not less important in its bearing upon crime, is the national method of dealing with paupers. The operation of the poor-laws upon the whole population is not by any means simple, and may be regarded in many different aspects. It must be considered in relation to its effects upon the receivers of aid, upon the persons who are taxed for the benefit of those receivers, and upon the state as a whole.

Importance of the treatment of paupers in relation to crime and education.

To support the aged is not to encourage thrift in youth; to support the young and able-bodied is not to encourage self-reliance. It follows that the thriftless and the feeble of purpose must, generation after generation, live their objectless lives without any sense of degradation, and leave a thriftless progeny behind them to follow their example. There is no reasonable ground for hope, so long as poor-laws continue to exist, that they will relieve only the sufferers from inevitable misfortune, or even those others only who have brought misfortune on themselves. Nor, indeed, is it possible to draw a satisfactory distinction between unmerited calamity and the effects of recklessness and indolence. An industrious workman falls from a scaffold, becomes a cripple for life, and loses the power to support himself and his family. Few would care to deny that this is a case for aid and compassion. Another workman

The poor-laws in their relation to individual responsibility.

little money he has earned, has never maintained his family, and ends his days in the workhouse infirmary or the pauper lunatic asylum. His wife and his children can hardly be less deserving of pity than those of his more energetic and more independent fellow-workman. But is he less deserving of pity himself?

It is usual to regard the idle drunkard as an object, if of compassion at all, certainly more of blame than of compassion. But there seems here to be some injustice. Neither the drunkard nor the man who is sober and industrious made himself. He has had no voice in the formation of the natural disposition with which he came into the world—he has had no hand in the formation of that external world which, by acting upon the character irrevocably given to him at birth, has made him what he is.

The doctrine of responsibility in human actions.

This doctrine, it may be said, amounts to a denial of responsibility in all human actions. The inference, too, would be just, were not responsibility one of the very ideas arising out of the effects of the external world upon the natural disposition. Responsibility exists for each individual just so far as he acknowledges it, and no further; its acceptance as a motive and its relative strength when accepted can be judged by his conduct alone. If, when he is tempted to act in any particular manner, he refrains or acts differently, because he has been taught that it would be wrong to yield to temptation, or because he will not do a possible injury to the state, or to some other individual, or (according to one code of morals) even to himself, he is displaying a strong sense of duty. If he does not refrain, but seeks the apparent gratification of the moment, regardless of all consequences, he shows either that the

at all, or that the impression is not sufficiently strong to affect his conduct.

There is, no doubt, for all men a point at which responsibility ceases. The individual cannot be responsible for the presence or absence of the sense of responsibility within him. Its existence or non-existence, its strength or its weakness, must have been determined either by events which happened before his birth, or by the education (in the widest sense of the term) which he has received after birth, or by both. Here, however, a new element comes in. Responsibility, if it exist at all, and if it extend beyond the responsibility of the individual to himself, must be reciprocal. If he has duties towards others and towards the state, those others and the state must have duties towards him.

Reciprocal responsibilities of the individual and the state.

Neither his fellow human beings individually nor the state collectively, of which he happens to be a member, can so far undo what has been done in previous generations as to take away the disposition possessed by a child at birth. For that there cannot be any responsibility, except so far as those previous generations themselves may be held responsible. But from the moment when the child comes into the world the natural disposition which it must carry with it through life begins to be modified by surrounding circumstances. Among those circumstances must be reckoned the practical experience of everyday life. The poor-house, with its offer of food and shelter in case of need,—the doles distributed by the relieving officer,—may be trusted to make as deep an impression on the children of the poor as any fine phrases in a copy-book or any repetition of a formula by rote.

We thus arrive at the very difficult question—How far is a state which offers subsistence to those who do not

support themselves justified in expecting that self-support will be recognised as a duty by its members? The answer cannot be given without due consideration of the relative position which state support occupies in the social commonwealth. It may be associated with hardship and disgrace, or regarded as the right of every citizen, the invariable condition of well-ordered government. There may, of course, be many stages between these two extremes; but in proportion as a government tends towards Communism, independence ceases to be meritorious; and in proportion as government approaches the other end of the scale, pauperism assumes more and more the character of a crime. It seems, therefore, to follow that the governing body in any country cannot legislate on this subject with any hope of permanent success, unless it legislates in harmony with existing political institutions, and in the direction of political progress. The higher the civilisation, or, in other words, the more intricate the relations of the groups of individuals constituting the state, the more difficult the problem becomes.

In modern England there are so many centres of organisation that the supreme authority of the state is in many important matters hardly to be recognised. The state, however, must be held responsible for that which it merely permits, as well as for that which it positively enjoins. Trade unions, friendly societies, endowments for the benefit and encouragement of various and even hostile religious sects, are as much parts of our social constitution as the poor-laws themselves, and are not only allowed, but even regulated by law. There are many communities within the great imperial community, and some of them

When, however, the minor details are omitted from consideration, and the laws of England are regarded as a great whole, apart from the education and poor-laws, they appear to be as little communistic in their general tenour as the institutions of any country known to history. The whole tendency of modern civilisation has been, so far as property is concerned, to strengthen the rights of individuals at the expense of the state. The change has been progressive from the time when land was held in common by a tribe. The conditions of allodial tenure bore the marks of the ancient custom in the services exacted from the individual owner by the state. Nor were the conditions of feudal tenure fundamentally different, though differently expressed, and though involving a more perfect organisation. Until the feudal constitution crumbled away the landholder was but a more or less considerable unit in the state, which suffered him to be a landholder only so long as he could fulfil in one way or other the duties which he was bound to undertake when he entered upon his land. Since the time of the Commonwealth the old feudal theory has been altogether put out of sight, and the burdens upon land have been burdens which the government has imposed on private property, and have not differed in principle from the burdens imposed on incomes from other sources. Under the Conqueror and some of his successors nearly the whole of the land held by laymen was the king's, and the holders were his undertenants in possession, theoretically at least, upon sufferance, and capable of being dispossessed if they failed in the military service due from them.

The tendencies of modern civilisation as affecting the relations of the individual to the state.

The growth of commerce, and with it the increase of

with the idea of absolute ownership. If a man could be the absolute proprietor of five hundred pounds in coin, why not, it was naturally asked, of land to the value of five hundred pounds? The question is often repeated in another form in our own time, —Why should it not be as easy to convey land as to sell goods or to transfer stocks? Lawyers, of course, know that the answer is to be found in the history of conveyancing, in its descent from the feudal age, and its subsequent modifications. But, none the less, the question shows how great has been the change in the ideas of property, and how strong is now the first impression of everyone with respect to an object of value that it belongs absolutely to some particular individual. The doctrines of political economy upon the subject of supply and demand involve the same notion—and the notion, too, of individual competition, as well as of individual proprietorship.

Objections to the poor-law from the point of view of modern civilisation.

If therefore the poor-laws are to be considered from the point of view of national growth and national tendencies, it seems only consistent that, whenever they are in any way modified, the effect of the change should be to discourage pauperism as much as possible. State aid or state support is, in fact, state interference with individual effort, and cannot be given without disturbance to the natural balance of supply and demand in the labour-market. When the state either employs, or maintains, without exacting work, any of its members, except those who are required to keep the state machinery in motion and in order—its military, naval, and civil servants—it becomes, in fact, either a trading or manufacturing company, free from many of the restraints and difficulties

institution for raising the price of labour by withdrawing a number of labourers altogether from the market. When the independent and industrious workman perceives that his idle comrade who turns beggar or pauper is as well or nearly as well kept as himself, he may naturally begin to doubt the value of his own industry and his own spirit of independence.

Poor-laws, in the sense of laws for the support of the poor must, however carefully enacted, and however skilfully administered, have a very strong tendency to destroy individual energy. It is, therefore, necessary to consider how the evil (evil, that is, from a non-socialistic point of view) may be counteracted. The mode which first suggests itself is, of course, the total abolition of the poor-laws: but it is more than doubtful whether private charity, stimulated anew, and indiscreetly and fitfully applied, would not be the cause of greater mischief than even the poor-laws themselves. As has been already shown in this history, 'valiant beggars' and persons able but unwilling to work appeared with the very first signs of feudal disorganisation, were the subject of most severe legislation before the dissolution of monasteries, and, if they have at times been encouraged, have certainly not been created, as a class, by the laws for the maintenance of the poor. The beginning, indeed, of the poor-laws was as an institution of which one of the principal objects was to regulate the distribution of charitable gifts—to guard against excessive alms-giving on the one hand, and total neglect of the practice on the other. But though it must be admitted that they have not been fully successful from any point of view, it by no means follows that they are the

Greater evils (from the same point of view) to be apprehended from the total abolition of poor-laws.

to choose. The condition of England has not changed for the worse since they came into existence, and the condition of other countries, where they are not to be found, is hardly preferable to that of England. Very many other causes, without doubt, contribute towards the differences which may be perceived in different nations. But when there is no public fund for relief, and the persons who ask for alms must ask of individuals, the demand is apt to be made as though for a debt which is due, and enforced by the means known to the robber and the brigand. This state of society is well exemplified in Spain, in Sicily, in Naples, and even in other parts of the Italian dominions in which mediæval customs are not yet extinct.

If, then, we cannot altogether abolish the poor-laws without increasing the evils of private charity, and if we recognise the fact that charity, public and private alike, is, even when injurious to the receiver, at least wholesome to the giver, we seem forced to the conclusion that in some form or other poor-laws, as now understood, must continue to exist. The only other alternative, the total abolition of all alms-giving by means of laws subjecting donor and recipient alike to punishment, would be revolting to all the sentiments of modern times. It would be an abrupt revulsion in social progress, and would indicate a wilful blindness to all the facts of history. The effect might be to encourage self-reliance, but at the expense of almost every other quality which we now regard as virtue. That breadth of sympathy in which we differ from savage tribes, and from our own remote ancestors, would soon be deadened and lost; the hard struggle for existence would be unrelieved by one of the softer emotions. The units of the social organisation would

A modification of the poor-laws practically better than their abolition in accordance with any philosophical theory.

become, perhaps, more like the parts of a complicated piece of machinery never failing through defective hardness of the metal. But they would be parts of a machine without power to repair itself when any accident happened, and subject to such frictions and jars as might, perhaps, make the last state of the human race far worse than the first.

The highest form of political philosophy is, perhaps, that which asserts itself the least in the form of philosophy. The British nation, though at least as prolific as any other in theoretical politicians, has always shown a marked aversion to those plans of government which are perfect only upon paper. It has, perhaps, leaned too much towards the other extreme, and been too ready to content itself with temporary expedients which appeared sufficient to meet temporary difficulties. But its distrust of teachers who would force everyone into conformity with a scheme which is the product of one man's brain, or at most the rallying point of a faction, is wholesome, and, if partly instinctive, is at least consistent with reason.

'*Nihil est ab omni parte beatum*;' no system can be so perfect as to defy criticism at every point. This fact the British people has honestly recognised, and has quietly set itself to do the best it could with the means at its disposal. There is, no doubt, much in our present mode of dealing with pauperism which seems extremely illogical; but, as human beings are not made of intellect alone, it is possible that there may be a higher wisdom in some of our apparent inconsistencies than in all the dogmas of all the logicians who ever bickered over the nature of a syllogism.

If, however, we admit, on the one hand, that when we abolish relief to the poor we incur the danger of making

the nation hard-hearted, and, on the other hand, that when we retain it we incur the danger of Communism, it does not follow that we may not make better use of our poor-laws than in former times. There seems to be a radical mistake pervading the whole of our social system in the common habit of regarding work as a hardship which it is a pleasure to escape. This idea is most prevalent in habitual paupers and habitual criminals; and unfortunately the whole tendency of our laws is to foster it. Could it be destroyed, surely some good would be effected; and while, perhaps, means might be devised for destroying it in the case of the pauper, it might still more easily be destroyed in the case of the criminal who is properly subject to more stringent regulations, and who is not unlikely to become a pauper after the term of his sentence has expired.

Labour should be presented to able-bodied paupers and criminals as a privilege rather than a hardship.

If it be true, as physiology appears to show, and as most men who have made experiments upon the subject have discovered from experience, that to be deprived of all occupation is misery, and that health and enjoyment are closely associated with sufficient occupation for body and mind, it follows that work should be presented not as a hardship but as a privilege to the criminal, and to the pauper who is not rendered incapable of labour by age, sickness, or infirmity. In order to make the criminal appreciate the benefits of employment, however, it would be necessary to take care that he should not be able to create for himself any more agreeable occupation than that which is provided for his fellow criminals. He should be allowed a cell or room to himself with the option of work or idleness, and without any attempt to persuade or force him to undertake any kind of labour. But there should be no half-measures in carrying out such a policy

as this. The person who says he wishes to do nothing of any kind whatever for a livelihood should be taken at his word. He should be supplied with the necessaries of life and no more. He should have no companionship, no books, and no writing materials. A poet or a philosopher of the highest order might, perhaps, even in such circumstances as these, give play to thought or fancy and train his memory so well as to make himself independent of pen and paper. Such a success, if attained, would be deserved. But high intellect is not the stuff of which criminals are ordinarily made. Thrown back upon themselves they would very soon learn to regard any kind of toil, especially if companionship were added, as a great relief to the monotony of their lives, and would ask as a favour for that upon which they now commonly look as simply a punishment.

This theory has been found to hold true in practice under great disadvantages. Prisoners in Newgate, and probably also elsewhere, who are awaiting their trial and presumed to be innocent, are permitted, but not compelled, to do the rough work of cleaning the floors and walls of the corridors. They have the use of books in their cells, but it is found, nevertheless, that the offer of occupation is readily accepted, and taken not as a degradation but as a privilege. In this case, it is true, the employment is not, like that of penal servitude, protracted through many long hours, day after day; but the fact that it is sought at all, when the prisoner might escape it and even amuse himself if he chose, is a very sure indication that labour need not always be presented to men as the great hardship.

The lesson that labour is not the greatest of evils may be taught without difficulty.

If able-bodied paupers in workhouses or convicts in

prisons were allowed to accept work or reject it, they could be allowed, of course, only on certain conditions. They could not be permitted to do as much work as they pleased and no more in any one day, nor to alternate, at their own discretion, days of toil with days of idleness. They would have to choose between idleness as a habit, and industry as a habit, after a sufficient experience of both, should they desire it. There cannot be a doubt that men of sound minds and sound bodies would greatly prefer any occupation, even though excessively laborious, to the prostration of mind and body which would befal them when brain and muscle alike were deprived of exercise.

Could a system of voluntary labour be applied to prisoners under sentence, and to the inmates of poor-houses, it might possibly in time have a perceptible effect in diminishing pauperism and crime. While the whole tendency of our penal system is to associate the ideas of punishment and hardship with the idea of labour, the effect must necessarily be that any prejudice against steady and continuous work will be confirmed by the experience of prison life. If psychology has established anything, it has established the existence of certain laws of association; through those laws, if it is ever to be of any practical utility, it will successfully assert its claims. But if the lessons which it teaches are disregarded, one possible opportunity of effecting a change in the habits of thought which belong to criminals and paupers will have been lost.

Advantages of a system of voluntary labour in prisons.

If prison labour ceased to be compulsory, the greatest objections to the existing system of punishment would disappear. Prison manufactures would not be so unfairly

brought into competition with the products of free industry as at present. As there would be no enforced labour in prisons, entrance into them would practically, in all but very exceptional cases, resolve itself into a choice of that kind of occupation which might be permitted in them. The criminal would have to make the choice on the disadvantageous conditions of not being his own master when his day's toil was ended, and of not having any control over his own earnings. But he would be a workman who had of his own free will undertaken to do certain work on certain terms: and the principles of political economy appear then to be a sufficient answer to any possible complaint that the free labourer had been undersold. Everyone could, if he pleased, obtain work on the same terms as the prisoner, by becoming a prisoner himself; and if he preferred life in a gaol to free life with all its advantages or disadvantages, he would find no difficulty in exercising his preference. Crime is but a breach of the criminal law, and should the state offer a reward for the breach, there would be no reason (except in the region of morals, with which we are not now concerned) why the reward should not be accepted even though it might be called a punishment.

Reformatory effect of such a system.

Under the voluntary system now suggested, the prisoner would have the opportunity of considering three possible phases of existence. He could compare at his leisure the advantage of solitary life in prison without occupation, of life in prison with occupation both in solitude and in association, and of life in freedom with the high wages now given to workmen of almost every class. There can hardly be a doubt to which of the three he would incline if of sound mind.

There are, however, two disturbing causes which

might come into operation upon his release; one is the difficulty of finding honest employment, the other a natural or instinctive desire for a mode of existence different from any of those three which have been suggested as the possible subjects of a criminal's reflections.

It is not easy to deal with either one or the other in a thoroughly satisfactory manner. But among the most benevolent institutions of modern times are the 'Discharged Prisoners' Aid Societies,' of which the object is to give every convict who has undergone his sentence an opportunity of earning his livelihood by honest industry, and to guard him against all unnecessary danger of becoming a convict again. One of their leading principles is that the first employer of the criminal after his release should be made acquainted with his antecedents. They thus attain their end (and they have no difficulty in attaining it) by means not less honourable than kindly. It might, of course, be objected, as an argument from political economy, that every discharged prisoner thus provided with employment might displace a more honest man and cause him to starve, or perhaps become a criminal in turn. This argument is probably sound from a strictly logical point of view, but it is only one illustration the more of the fact that in the political and social world, as it actually exists, there is no possibility of attaining perfect consistency. The law regards the ordinary criminal who has undergone his punishment, and the habitual criminal whose term of supervision has expired, as being purged from their guilt, and on an equality with other British subjects. The 'Discharged Prisoners' Aid Societies' do but attempt to convert that theoretical into a real equality.

With respect to those persons who may be described

as incorrigible criminals both by nature and by education, whose love of law-breaking or of adventure is beyond control, all that can be said is :—

τὸ γὰρ
φανθὲν τίς ἂν δύναιτ' ἀγέννητον ποιεῖν ;

Future ages may, perhaps, eradicate tendencies inherited through the long course of many generations. But there is no power as yet discovered which can deprive the strong will of its strength without destruction to the strong-willed man himself.

Ill effects of all cruel public punishments.

In the course of historical periods great changes have been effected, if not in human nature, at least in human manners and customs ; and it is possible that still greater changes may be effected in the future. On this point one of the chief lessons to be learned from the past is that the effect of punishments on the witnesses is of more importance to society than even their effect on the person punished. History does not afford evidence that fear can without difficulty be excited in persons about to commit a crime, so that they shall be diverted from their purpose, without evil consequences elsewhere.

A stern military rule, such as there was in the reign of William the Conqueror, may check some deeds of rapine and violence by showing them to be impossible except at the risk of instant death. But this is no more than the successful warfare of the well-armed against the ill-armed or the unarmed. When the law is the sole guardian of peace and property, it does little good by any threats or penalties which make a coarse appeal to the senses or to the emotions. To render the people familiar with scenes in which pain is legally inflicted, and

human life is legally taken away, is to render them callous, and to suggest forms of cruelty which might not otherwise have occurred to them. Where flogging and capital punishment are held to be necessary, they should, at any rate, be, as in fact they now are, inflicted in the presence of the smallest possible number of persons. When mutilation was a common form of punishment—when the sufferers were to be seen everywhere maimed in accordance with the law—mutilation was also one of the commonest offences. When men were in the habit of seeing the heads and quarters of traitors as a common exhibition, they imitated, upon occasion, the form of execution which they had been accustomed to witness. When they were in the habit of pelting offenders in the pillory and the stocks with a legal sanction, or at any rate without any legal prohibition, they found other opportunities for the same pastime, and political arguments at elections took the form of eggs or stones or other more formidable missiles.

The lash.

There was in 1874 a clamour for an extension of the punishment of flogging (then restricted to robbery with violence) to persons guilty of offences designated 'brutal assaults.' The judges, chairmen of quarter sessions, and stipendiary magistrates were invited by the Home Secretary to give their opinions on the subject. The majority of them were in favour of that extension which the popular outcry had demanded. Many of them referred to the cessation of garotting as evidence of the efficacy of the lash, and a commissioner of metropolitan police gave a hesitating support to this reasoning. It may therefore be supposed that anyone who has come to a different conclusion upon historical grounds is the slave of a theory which cannot be successfully

applied in practice. But a wide induction from the facts of history is, perhaps, not altogether unworthy of consideration, even though the operation of a recent statute may at first sight appear opposed to it. The past and the present, however, are not so much at variance as our indignation against wife-beaters might prepare us to believe. The offence of garotting was committed chiefly in the metropolis; and the commissioner of police was informed that but very few persons were concerned in it. The crime naturally disappeared when the gang of criminals was captured, and it is possible, if not probable, that flogging had no effect, and that the same consequences would have followed the mere imprisonment of the offenders. In any case the limited application of one particular statute of recent date can give but a very insufficient warrant for abandoning the modern policy towards criminals and returning to that of the middle ages. It may, indeed, be doubted whether the very increase of brutal offences (if, indeed, a real increase can be inferred from the statistics of a year or two) may not have been caused in part by the knowledge that a brutal form of punishment can be legally inflicted. Be that as it may, however, the whole of the argument for flogging more of our criminals rests upon the unproved supposition that flogging alone has destroyed the vocation of the garotter. It should be added, too, that some of our most distinguished judges could not see any reason for making a change in our mode of punishment; so great, indeed, was the difference of opinion, that the Lord Chief Justice of the Common Pleas gave a reply to the Home Secretary which was quite at variance with that of the Lord Chief Justice of England.

As now inflicted, the punishment of flogging can

have but little moral effect save upon the person who endures it and the person who actually administers it. Few or none are present except the officials of the gaol or visiting justices; spectators are not admitted within the prison walls to see a fellow human being beaten when they have no better motive than mere curiosity. The prisoner is fastened to a 'triangle,' or to an apparatus somewhat resembling the stocks, so that he can move neither hand nor foot. His back is bare. The man who wields the cat shakes out its nine thongs, raises it aloft with both hands, and deals the criminal the first blow across the shoulders. A red streak appears on the white skin. Again the thongs are shaken out, again the hands rise, again the whips are brought down with full force, and the streak on the skin grows redder and broader. A turnkey gives out the number as each stroke falls; and the silence is broken only by his by the descent of each successive blow, and by the cries or groans of the sufferer. But though there are instances in which the ruffian proves himself a coward, and yells with the very anticipation of pain before he has even been struck, there seems for the most part to be the same spirit in the flogging-room which the highwayman formerly displayed upon the gallows. The man who has been guilty of the most atrocious cruelty will do his best to conceal the smart which he is made to feel himself, and if any sound is heard from him at all, it proceeds from an involuntary action of his vocal organs which he strives his utmost to check. After twenty lashes he will retain a look of defiance, though almost fainting, and barely able to walk to his cell.

Description of the present mode of flogging: the objections to it.

Anyone who has witnessed such a scene as this may be permitted to ask to what good end it is enacted; any-

one who has not witnessed it can hardly be competent to judge of its good or ill effects. There is, no doubt, a dramatic fitness in punishing the deliberate infliction of bodily pain by the deliberate infliction of bodily pain in return. And if the maxim 'an eye for an eye and a tooth for a tooth' is a proper guide for lawgivers in a Christian country in the nineteenth century, there remains nothing more to be said except that the 'cat' is, in many cases, too merciful an instrument. If, however, the object of punishment is not vengeance but the prevention of breaches of the law, it seems useless, so far as example is concerned, to flog a prisoner within the prison walls. The whole power of such a deterrent as flogging (if it is to be regarded as a general deterrent), must lie in the vividness with which it can be presented to the imagination of persons who have a tendency to commit, but who have not yet committed, the offences for which flogging may be legally inflicted. But the most ready manner of bringing it home to the mind of the populace is by exhibiting it in public, which, as has already been shown, has the very opposite effect from that which is desired. The fact that the lash has been administered to a convict is now and again brought to the knowledge of the public by the press, and sometimes with the aid of illustrations. But the impression made, so to speak, by such exhibition at second-hand, cannot be so forcible as that made by the old form of exhibition at first-hand; and in proportion as it becomes effectual at all, it must be attended by the effects which are produced by all brutal punishments inflicted *coram populo*.

It is far from an agreeable task to watch the face and figure of the flogger as he executes the sentence; and few would deny that the moral effect upon him must be as

great as upon the criminal whom it is his duty to whip. The state, when it sanctions the use of the lash, causes a human being to do just such an act of violence as it desires to check; it must either recognise the use of the 'cat' as an art of which it is prepared to employ the professors, or it must, on each particular occasion, offer a reward to some one to come into prison and commit a violent assault. It follows, therefore, that, even if every criminal who is flogged is deterred from repeating his offence, the gain, small as it is, has been purchased at a very high price—indeed at the expense of consistency.

Similar arguments, it may no doubt be said, are applicable to capital punishments even when inflicted in private; and it may fairly be questioned whether even murderers might not more consistently, and with a better effect, be punished by imprisonment, lifelong not only in name but in fact. There is, however, a distinction between the two cases. It is not demonstrable that a person who has been flogged will never afterwards commit the offence for which he has been sentenced, or that society is in any way the gainer. But it is certain that the community is protected against the murderous tendencies of any particular individual who suffers the penalty of death. For that reason, and that alone, there appears to be more justification for hanging than for flogging; in all other respects the objections against the one are objections also against the other; and consistency seems to require that the laws which prohibit the taking of human life should not at the same time enforce it in order to uphold their own authority. The recognised legal mode of killing, too, is open to grave objections; it was employed by savage tribes before the

garded by the early Roman Christians as unbecoming in a civilised state. In England, however, no doubt, whenever hanging is abolished, capital punishment will be abolished also.

If it be true that the force of example is one of the strongest influences in human actions, it follows that the example set by the criminal may be injurious no less than the example set by the executioner. The incorrigible offender when at large can preach as well as practise, and he has had his admirers from the earliest time at which theft and murder began to be included among crimes. He is, therefore, dangerous to society as at present constituted, not only because he may do mischief by his own hands, but because he has opportunities of making others like unto himself.

The habitual or brutal criminal might be restrained by other means.

Society, of course, assumes that it has right on its side in its war with such a person. Upon this assumption it ought to protect itself and its weaker members against his actions, his plots, and all his influence. Mercy to him may be injustice not only to those whom he may at some future time rob or kill, but also to others who may enter upon a career of crime with him for their guide. His nature, an unhappy inheritance for him, is at variance with the modern conditions of life. He is incapable of appreciating, and cannot therefore be changed or softened by sympathy. He may be no more responsible than a madman is responsible for his delusions, but it may nevertheless be expedient to restrain both the one and the other. Neither should have the opportunity of leaving offspring behind him.

Perpetual imprisonment of the irreclaimable—imprisonment not only nominally but really for life—would

be one among many causes of that change in the general tone of society which is shown by history to be the greatest preventive of crime as now understood. Like persons having the scarlet fever or other infectious malady, the propagandist criminal should be confined in his proper hospital—a prison,—and if incurable, should be detained until his death. Like consumption or other hereditary disease, the criminal disposition would in the end cease to be inherited if all who were tainted with it were compelled to live and die childless. The remedy may be painful, and even cruel, but perhaps greater cruelty and greater pain may be inflicted by the neglect which leaves physical and social ills to spread themselves unchecked.

Advantages of subjecting the irreclaimable to an imprisonment perpetual not only in name but in fact.

There is one kind of law-breaking in relation to which legal maxims have not greatly varied in principle for many generations, but to which modern humanity and modern theories of pathology have given an entirely new aspect. Our forefathers, like ourselves, held that a madman could not be a criminal in the same sense as a person in full possession of his reason; but they knew none of those psychological doctrines by which a kleptomaniac may be distinguished from a thief, and the gratification of 'morbid' homicidal desires shown to be no murder. The frenzied and the 'natural fools' were plainly enough marked to be recognised by every boor when the only mad-house was a prison, and the idiot chattered on the village green or at the cottage door. In the time of the Commonwealth there was not the faintest indication of that modern fashion which makes every suicide a lunatic, and which

Insanity and crime: recent development of the doctrine of insanity.

seems better adapted to Utopia than to Utica. The origin is, no doubt, a kindly feeling towards bereaved relatives, which finds an excuse in medical speculations to avoid the absurd and cruel old verdict of *felo de se.* But such subterfuges are weak and unmanly, and a law which is discreditable to civilisation and obsolete in practice should cease to exist.

The verdict of 'suicide while in a state of temporary insanity' gives a vitality to extravagant medical theories which they would not otherwise possess, for it renders the public familiar with the idea that whenever a crime is committed the criminal is probably not in any sense responsible for his actions. The diffusion of such a notion as this is, perhaps, as demoralising as any kind of education can be. It is the education which not only fosters crime as defined at the particular period when it is applied, but is so elastic that it will always have the same effect, whatever may be the changes in the law. To feel compassion for the quick-blooded young criminal having the love of adventure strong in his natural constitution is one thing, to excuse him on the ground of insanity attended with 'uncontrollable impulses' is another. He is no more mad than the dog which worries sheep is mad; and if the dog can be taught to control impulses unsuited to civilised life, so also, as a rule, can the man, if once he can be convinced of the advantage of controlling them. But, like the dog, he must be trained when young, not only by direct instruction, but also by the circumstances around him. The stronger the natural instincts, the greater will be the training required, and the greater the difficulty of applying it. In many cases, too, they may be so strong that the most prudent course may be to give them vent in action—to employ them in the military or

naval service, or (in time of peace) in the rough life of an emigrant to new countries. But after they have once broken out into crime, they may be quite as fitly treated by prison fare and prison discipline as by preparations of morphia administered in a lunatic asylum.

In only one class of crimes could the doctrine of insanity be generally applied consistently with itself, and that is precisely the class from which hitherto the doctrine of insanity appears to have been excluded. Those breaches of the law to which the name of sexual offences may be given are fairly within the scope of the physiologist. And they might, perhaps, be made the subject of a statute conducive to public decency without increasing the number of those lamentable cases in which physicians and surgeons appear in the witness-box, and directly contradict one another upon oath.

Class of offences to which the doctrine might with advantage be applied.

The Church from a very early period had its punishments for every form of sexual gratification except matrimonial life, to which it gave its own sanction, and of which it arrogated to itself the supervision. It might recognise degrees of guilt, but, except in the amount of penance, it did not distinguish between mere incontinence and acts of a very different character. The law has wisely drawn a distinction which physiologists would approve, and has (since the time of the Commonwealth) abstained from treating as crimes those acts of incontinence in which public decency is not outraged, and in which two adults of different sexes are consenting parties. Rape it punishes with severity as a crime, nor could it easily punish with too great severity those undoubted cases of rape in which there are more than two persons engaged.

Some other offences of the sexual class which it is unnecessary to mention in detail seem, however, to fall within the domain of the pathologist rather than of the criminal legislator. The man who seduces a full-grown girl under promise of marriage may fairly be punished for the fraud, and the ravisher for the rape, but neither of them does more than gratify a natural passion in a cruel manner. There are other men for whom there is not even this excuse to be made—who, so far from yielding to the common teachings of instinct, have put it aside for strange devices of their own. There is good evidence that such persons commonly show mental weakness in other forms. They might surely be with justice regarded as madmen. They must either have been born, like idiots, without those instincts common to men with animals, or they must, by a morbid habit of concentrating their attention upon one particular subject, have lost the balance of their minds, like those poor maniacs who have forgotten their own identity in the belief that they are kings or prophets. An Act that any person proved to have committed such offences as those to which reference has now been made should be treated thenceforth as a lunatic would probably be quite as efficient a preventive as the present law, and have quite as wholesome an effect upon the public morals. Classical scholars of prurient industry might, perhaps, find arguments in their favourite authors against such legislation. The proper reply to them appears to be that the definition of insanity may possibly vary at different times (like the definition of crime), and that conduct which is an indication of madness in one age is not necessarily an indication of madness in another. A knight-errant in the middle ages went about the world tilting at everyone who denied the superiority of his

mistress to all other women. He was as much in his senses as any of his contemporaries; but a modern imitator of such a character would very soon be placed in a lunatic asylum.

The case is still stronger when men take to some illegal practices which are closely allied with weakness of the physical system. Such practices are proved against very old men far more frequently than against men of other ages, and are very rarely proved against men in the prime of life. There can be but little doubt that loss of bodily strength is attended by loss of mental power and of self-control, and that many senile offenders ought to be regarded as imbeciles.

Drunkenness and crime: objections to legislative interference in matters of diet.

If it is true that the general tone of society must be affected before there can be any perceptible diminution in the greater crimes, it is not less true that the minor offences vary with the surrounding conditions. Drunkenness and disorderly conduct give rise to the greatest number of charges brought under summary jurisdiction. But, as has already been shown, drunkenness itself varies inversely with pauperism, and any given day of the week produces fewer cases of drunkenness in proportion as it is more distant from the day on which workmen receive their wages. For similar reasons there is commonly an increase in the number of summary convictions for minor offences, with a corresponding decrease of commitments for theft and still graver offences, during times of prosperity, and a decrease in the number of summary convictions, with a corresponding increase of commitments for theft and graver offences, during times of adversity. A man to whom there are offered few opportunities of physical recreation, and who would find some difficulty

in gratifying a taste for art of any kind or for literature, even if he possessed it, is sorely tempted to spend his superfluous earnings in drinking to excess. There cannot be a doubt that all those persons who are striving their utmost to save their weaker brethren from this temptation are true philanthropists. But it may, perhaps, be doubted whether the manner in which they attempt to gain their end is always to be commended.

No one who has any knowledge of human nature—no one, certainly, who has studied the history of the past—will suppose that men can be made sober by repressive measures alone. In Scotland the houses in which drink is sold are closed throughout one day in seven; but, nevertheless, the cases of drunkenness brought under the notice of the police are, in proportion to the population, far greater than in England, where such houses are, at stated hours, open every day in the week. Forbid men to buy drink openly, and they will buy it secretly; forbid native manufacture of drink, and importation will become the substitute; forbid importation, and the smuggler will regain his popularity; destroy the smuggler, and each household will supply its own wants by its own brew-house or its own still. The maxim that the law has no concern with trifles may well be extended; the law becomes tyrannous when it prescribes what shall be eaten and what shall be drunk; all such interference is a relapse towards the barbarism of the middle ages, when our forefathers were punished for selling their wares at their own price, and for eating meat in Lent.

Though, however, it is but human to resent any legislative dictation with respect to meat and drink, and though mankind has everywhere been habituated to some kind of intoxicating liquor since the time when Bacchus was wor-

shipped in Greece and Italy, or wine was known to make glad the heart of man in ancient Judæa, it would be a contradiction of all experience to deny that there is a very close connexion between drunkenness and some forms of crime. Violence so often follows excessive drinking, the wife beaten by her husband when he is drunk so often testifies to his good conduct when he is sober, that there appear at first sight to be good reasons for withholding the cup from the hand which it may cause to shed blood. But to prohibit or to restrict the sale of spirits, wine, and beer because they have a maddening effect upon some particular persons, would be no more rational than to clothe the British army in uniform of a different colour because scarlet has an irritating effect upon bulls. Criminals are but a small portion of the whole population, and they have not all fallen into crime through drink. It would be unjust, if not absurd, to pass a sumptuary law affecting more than twenty millions of human beings, in order that a few thousands might have temptation removed out of their way. Nor, although assaults and even murder are committed in moments of drunkenness, does it by any means follow that such offences would be greatly diminished in number, could even total abstinence from all fermented liquors be enforced. The drunkard is wanting in self-control; and his drunkenness is at least as much a result of his natural disposition as a cause of his lawless actions. He cannot, more than once in his life, plead ignorance of the effects of alcohol in extenuation of his misdeeds. If he is not sufficiently master of himself to refrain from destroying his own senses when opportunity offers, it may be doubted whether he is sufficiently master of himself to refrain from inflicting blows when he has received but slight provocation or no provocation at

all. The recklessness with which he betakes himself to the alehouse or the gin-shop necessarily precedes the misconduct of which he is guilty a few hours afterwards. To assume that his nature could be changed by depriving him of one particular mode of gratification is to assume that which could be proved only by a long series of experiments.

The teaching of history is, on the contrary, opposed to all interference by the state with the liberty of the individual, except where his conduct may injure his neighbours. It also tells us very plainly that drunkenness is in no way necessarily associated with free access to drink. A few generations ago, when there were no clubs in the modern sense of the term, men in the position of gentlemen were in the habit of making themselves drunk, and congratulated each other upon the number of bottles emptied. In our time, when men of the same and of far lower positions have every temptation offered to them in the form of wine from every country, drunkenness is almost unknown in any except the lowest classes, and would be followed by expulsion from any respectable club.

Drink and temptation: want of self-control a cause no less than an effect of drunkenness.

It may, therefore, safely be inferred not only that direct legislation against the sale of intoxicating drinks on any day of the week is unnecessary, but that it would not be the most effectual means of attaining the desired end. There are two ways of diminishing temptation, the one by removing the thing which tempts, the other by training the persons who might be tempted. It is by the latter process rather than the former that the greatest social changes have been effected. It might have been argued at the dawn of modern civilisation that all private

property was a temptation to theft, and ought therefore to be abolished. It might also have been argued that the existence of other human beings was a temptation to each particular human being to commit murder, and therefore that the sooner the whole human race was destroyed the better. In this form the absurdity of the argument is sufficiently apparent: but the argument is precisely the same whether it be applied to the desire to drink, the desire to take that which belongs to another, or the desire to destroy human life. If the means of gratification are taken away, it is, no doubt, true that the desire cannot be gratified. But the history of the past shows that there is no need to punish all mankind in order that the minority which is wanting in self-restraint may be well behaved. Population has been multiplied manyfold, and yet murder has become less frequent. Property has increased beyond all calculation, and it has become more secure as it has grown. Drunkenness and drunken brawls, once common to every class, are now almost restricted to the class in which the tastes are most coarse and which enjoys the least variety in the choice of alcoholic drinks offered to it.

Better effects to be expected from education in the widest sense, and punishment for offences committed by drunkards, than from restrictive measures.

The arts, the sciences, literature, opportunities for innocent recreation have contributed not a little to soften manners in some ranks of life; they may safely be trusted to do their own work in a lower grade, if only they can reach it. But that kind of legislation which is merely prohibitory, and which must necessarily be felt as a hardship, can never be effectual against drunkenness. To shut the alehouse door abruptly in the workman's face is not to make him love the laws under which he lives—especially if he finds that his

search for harmless occupation or amusement elsewhere, in his leisure moments, is equally discouraged. When there is no interference with the natural course of events, variety in the modes of spending time—both in earning a livelihood, and in the pursuit of pleasure—will keep pace with the diffusion of culture. But there may be some danger from the fanaticism of enthusiasts who are not aware that the most lawless period in the history of England was in the days before spirituous liquors had been introduced. The injury inflicted by a drunken person is neither greater nor less than the same injury inflicted by one who is sober. The punishment or mode of prevention ought to be the same in either case; and the particular individual who has a tendency to drunkenness could be taught some of its disadvantages by suffering for a more specific and tangible offence. But if the mere fact of drinking to excess, without the infliction of any injury upon other persons, is such a very heinous offence as it is sometimes represented to be, it might, perhaps, be checked by a higher fine than is now commonly imposed and by exacting bail for the future good behaviour of all who are convicted.

The dangers threatening modern civilisation from within and from without.

It has been pointed out again and again in the course of this history that there is in human affairs some tendency towards atavism, that all civilisation is apt to revert to the primitive barbarism. In the sixth chapter were shown at some length the evils of religious persecution, of punishing by authority of the state, or allowing ecclesiastics to punish, all who might happen to hold religious opinions with which the ecclesiastics might not happen to agree. We do not now burn heretics, but there may

fairly be asked the question whether we do not in the name of civilisation or public policy enforce laws which savour a little of mediæval and theological intolerance. We force parents to vaccinate their children, though the parents truly and conscientiously hold the belief that vaccination is injurious. We convict certain Peculiar People of manslaughter because they prefer the teachings of Scripture to the doctrines of modern medical science in the treatment of disease. We summon before a magistrate poor widows who think their sons or daughters may be more profitably employed in domestic duties than in receiving the diversified instruction which the School Board authorities are anxious to impart. We justify ourselves on the ground that all this is done for the benefit not only of the public in general but also of the particular persons on whose behalf the laws have been set at defiance. But this is an argument by no means unknown to earlier ages, though 'public policy' may be a phrase of modern invention. Our forefathers thought they burned heretics for the good of the commonwealth and for the good of the heretics themselves, just as we think we vaccinate infants, send Peculiar People to prison, and fine widows who permit their children to be absent from school, for the good of the children and of the state in general. We believe we know what is expedient better than a small minority who look upon the same matters from a different point of view. Our belief may be, and probably is, correct; but surely it is intolerant to force that belief upon other persons unless we can show that their opposition to it is directly injurious to some individual or to the state—injurious in the sense in which theft and murder are injurious.

The opponents of vaccination, and the enthusiasts who

sion in nearly the same relation in which the heretics of old stood to the Church. In one respect indeed the opponents of vaccination hold a stronger position. The reason for enforcing vaccination is that it entirely prevents infection from small-pox, or greatly mitigates where it does not prevent. The unvaccinated therefore can do but little injury to those who are vaccinated, and are dangerous only to themselves and to one another. The heretic, on the contrary, was supposed to be stricken with a religious leprosy which was most infectious, and which he would communicate to his offspring and to everyone who came within reach of him. The interests of the public therefore, do not seem to be so deeply concerned in the case of the unvaccinated as in the case of the unorthodox. The state, however, it may be said, ought to interfere for the protection of the young—of those who are unable to protect themselves or to judge for themselves. This doctrine appears at first sight to be in accordance with humanity and sound sense, and it is applicable alike to medical theories and to educational theories. But, as already shown, when the policy of state interference begins by enforcing state education, or by other dictation in domestic affairs, it must go farther in the direction of Communism or be inconsistent. When previously adopted in England it has usually been inconsistent with itself, and has simply been one form of intolerance. There may be, at present, but little probability that it will develope into Communism, but the reproach of intolerance is one which it can hardly escape. Any interruption in our prosperity—in the progress of enlightenment—might easily rouse that bigotry which exhibits itself every day in a variety of forms, of which re-

Christianity, or some particular form of faith, might again be made the pretext for inflicting injury and torture upon the individual.

Our modern British civilisation is also in many other respects insecure. It is not only threatened from within by danger from the dregs of the old state of society which still remain, and from enthusiasts eager to destroy that form of government which at present exists, but without any practical ability to reconstruct a better; it is also threatened from without by that warlike spirit in the North of Europe which is a menace to all peaceful and order-loving states. With time and good fortune we may escape the perils from within. The half-believers in witchcraft who are still amongst us may dwindle in numbers generation after generation, the wife-beater may find other occupations, honesty may be more and more regarded as the best policy, the preachers of the doctrine that everything which is is wrong may fail to attract an audience, and even bigotry and intolerance may lose their vitality. But there are sufficient indications that a violent revolution or foreign invasion would throw us far back towards the barbarism into which the country was thrown when the Roman Empire was broken.

There is also yet another danger, which we are all too apt to forget, and which may, perhaps, be in some measure averted by the very means which would strengthen us against foreign enemies, and greatly diminish our criminal population. Whatever the evils of the military spirit may be, it is at least opposed to effeminacy; and the process of making soldiers strengthens the men who are already strong in muscle, and, perhaps, kills off those who are weak. The effects are progressive, generation after

Possible use of the established connexion between the military spirit and the law-breaking spirit.

generation, and the opposite effects of life in great cities under very unfavourable conditions are progressive also. The saying of the poet, that men decay where wealth accumulates, is not in all cases true, and might, with due precautions, be made the very reverse of true. But there is no doubt that the softening of manners is frequently accompanied by physical degeneracy, of which, indeed, it may be no more than a sign. Among our higher classes physical education is rarely neglected, and all the blessings that war can give are found in more harmless sports; those crafts, too, in which severe muscular labour is exacted from the workman, aid in the preservation of our British prowess. But, on the other hand, there are great numbers of human beings of both sexes and of all ages crowded together in unwholesome alleys far from the reach of fresh air, and daily losing the energy to go in quest of it.

From this class comes no small portion of our gin-drinkers, town-paupers, minor criminals, 'juvenile offenders,' and above all, of children educated at the public expense. At the same time we are in possession of these indisputable facts: that we now have a difficulty in finding sufficient men for our army and navy; that the criminal age and the military age are very nearly the same; that the military spirit is very closely associated with various actions which we now describe as crimes; that military training developes the physical powers; that military discipline checks the licence of the criminal disposition; and that the state which supports or educates some of its members may fairly require an equivalent service from them.

There are already certain training ships which are used as reformatory schools, and if the principle upon which they are conducted were extended, the nation might

gain in many ways, while no one could be a loser. All the boys who are now sent to industrial schools or reformatories might, if of sound constitution, be converted into soldiers or sailors with great advantage to themselves, and without injustice to their parents, who would already have lost control over them. The difficulty of finding occupation for them upon discharge would cease; the army and navy would acquire a not inconsiderable source of supply; the young men would, with proper care, become strong and healthy, and their children after them would be like themselves. The Government would incur some expense in maintaining them until they attained the military age, but on the other hand it might exact a longer term of service than is required of voluntary recruits.

Crime might be diminished, the army and navy strengthened, and physical decay checked by modifications of the Education and Poor Laws.

Inmates of reformatory and industrial schools have either committed, or been considered in danger of committing, some kind of offence. But they are of an age at which they can hardly be regarded as depraved criminals, and it is not probable that their presence as comrades would give offence to the soldiers with whom they might in after years be associated, or would tend in any way to impair the military discipline. Still less could a system of recruiting from among the children of parents unable or unwilling to support or educate them be injurious to the tone of the army. Those only would, of course, be selected who had the physical power and activity required in a soldier; but among them there would be many who would otherwise be led astray, and would make war against society instead of defending their country. Persons who are willing to accept everything from the state,

haps, clamour against a scheme which forced their offspring to serve in a regiment or on board ship. But they would not have reason on their side. It might be their misfortune, rather than their fault, that they received assistance out of the public purse, but they would have received it on the conditions laid down beforehand for the benefit of the nation to which they belonged. Their protest would then be directed, in fact, against our poor-laws and our education-laws, the former of which, at least, they would not wish to see abolished.

The argument which applies to pauper-children who might be reared for the life of a soldier applies also to adult paupers of the age and strength suited to the military life. They show themselves unable or unwilling to earn a livelihood in civil occupations, and ask the state for aid. Nothing can be more reasonable than that the state should exact from them the service which it most requires. Were it understood that every able-bodied man presenting himself for relief under the poor-laws might be drafted into the army, if fit for its duties, no violence would be done to the principle of voluntary labour already suggested. There can be little doubt that our regiments would gain some good recruits, and that many young men of thoughtless and indolent habits would, if they preferred the life of an artisan to life in barracks, be stimulated to industry sufficient, at least, to keep them out of the workhouse.

By such simple devices as these, it seems almost certain that the number of criminals and paupers might be greatly reduced. A further question, however, naturally arises—whether convicts themselves might not be employed in some military service with more advantage to the state than in some of the labours upon which they

are at present employed in prisons. As has been shown in the earlier pages of this work, pardon for crimes of all kinds, upon condition of service in the wars, has been from time immemorial one of our national resources for filling up the gaps in our army. It has, from the modern point of view, the disadvantage that it suggests the idea of degradation to the honest soldier. There certainly appears to be an injustice in thrusting the companionship of a thief upon men who have not been guilty of any misconduct; and, on the other hand, a regiment with its rank and file composed solely of convicts would probably be beyond the control of the most strong-willed and skilful officers.

The fact, however, that we cannot in the present generation regard our criminals as being worthy of admission into our army is in itself a most striking proof of the change which has been effected in our national sentiments. It shows, beyond all doubt, that we regard with greater abhorrence than was felt by our forefathers those infractions of the law for which men are sent to prison. This is the more remarkable because we punish the offenders far more lightly than they were punished in bygone generations. Our great-grandfathers had no scruple in hanging a man for stealing a sheep, or in passing a man convicted of murder into the army. We have some hesitation in hanging a man for any offence whatever, and military men would resent as an insult the suggestion that recruits should be sought among the class of prisoners convicted of even the smallest misdemeanors. A long war, there is every reason to believe, would bring back the national sentiment on this matter to its former level. Even the precautions rendered necessary by the mere danger of invasion may have a similar tendency;

and it is to be hoped that there are few British subjects who would not accept any minor risk rather than that of another foreign conquest by any nation so mediæval in its ideas as to consider violent appropriation one of the chief objects of existence.

Is the further development of civilisation possible and desirable?

Among many opinions respecting civilisation which may, perhaps, appear tenable from one point of view, is that which regards an unlimited advance as a physical impossibility. The development of town life at the expense of country life, of thought at the expense of action, of the intellectual at the expense of the more purely animal faculties, may possibly, after a certain number of generations, cause so great a loss of vitality that, even if not conquered by a stronger and more barbarous people, the civilised people itself may cease to progress from want of sufficient energy. But, on the other hand, modern civilisation appears to have increased the average duration of life; and it would be rash to assume that any change is impossible, or that there is no kind of physical well-being compatible with a higher mental cultivation than the world has hitherto seen.

Yet another question, of still more practical importance, could it be answered, is whether the civilised man enjoys greater happiness than the savage—or rather whether there is a greater amount of happiness, in proportion to the number of individuals, in a civilised community than in one which is uncivilised? Civilisation gives those new pleasures which emperors have coveted—some intellectual and some not intellectual; but it gives also the corresponding pains which consist in the ungratified desire for those new pleasures themselves. If the half-civilised or uncivilised warrior always carries his life in his hand, and if his wife and children

are in constant danger of being either killed or enslaved, he at least possesses physical power which is in itself a source of enjoyment, and he is free from all those anxieties which beset some of the hypochondriacs of our modern cities.

Happiness is a somewhat ambiguous word. But if it be regarded as that which results from the exercise of the corporeal and mental faculties in such order that health shall be maintained at its highest, and that pain shall be suffered in the least possible degree, the relative advantages of civilised and uncivilised life can be appreciated at their true value. The savage can more readily accomplish his own particular fulness of perfection, because it is neither so deep nor so wide as that of the civilised man; but in proportion to its depth and its width is the civilised man's fulness of perfection more precious when he has accomplished it. What may be the proportion of complete or partial success to failure, no human research can discover.

Civilisation, however, is by the great majority of civilised persons thought worthy of preservation. There may be among us a few of the froward sort who, like Tacitus of old, affect to prefer the imaginary virtues and intellectual capabilities of semi-civilised and military peoples to our own culture, our own inventive genius, and all those hereditary and acquired habits of life which distinguish us from some of the Continental nations. But it is hardly to be supposed that Tacitus would have desired to see Italy invaded by the barbarians whom he praised; and had he risen from the dead to be a witness of the sufferings which befel his country at their hands, he would, perhaps, have had a less kindly feeling to those

Our present civilisation seems to many persons, at any rate, worth preserving.

warriors with 'ruthless eyes and giants' frames' who once appeared to him to be human beings at their best. Nor, perhaps, would our own Tacitules be very anxious to substitute a semi-feudal military depotism for our hardly won British freedom of government and our British love of progress and experiment in the arts and sciences. There are instances in which the most civilised nations have lost their liberty, and have afterwards reverted in no small degree towards barbarism; but there is not one to which the most enthusiastic depreciator of his own country would deliberately point as a model for imitation.

Both in nations and in individuals, some sort of confidence that they are advancing on the right path is necessary for the maintenance of health and vigour. The fatal panics of armies which begin to doubt their leaders, the insanity which sometimes follows a violent domestic shock, are but illustrations of the fact that any great disturbance of acquired habits and beliefs is most dangerous to mankind. Were a civilised people to check itself wilfully in the course of its civilisation, and retrace its steps towards the state of existence in which might is right, and the exercise of force a virtue, there would be a marvel such as the world has never seen, a confession of failure which could be prompted only by despair.

The appointment of public prosecutors would be a safeguard against a relapse towards barbarism.

If, in matters affecting crime, we are to make further progress in the same direction as hitherto, we must take to heart the lessons of experience. One of them has a very close connexion with a subject which has of late years been mentioned again and again in Parliament—the substitution of prosecutions by the state for prosecutions by private individuals. Prosecution by the

individual is associated with that period in our history when ignorance was at its deepest—with the blood-feud according to which the relatives of the slain exacted life or money from the slayer or his kin—with the ordeal, in which the friends of the person accused of an offence ranged themselves on one side of a church and the accusers on the other, in token of good-will or enmity—with the 'appeal' by which murder, rape, maihem, and theft could be treated as private instead of public wrongs. It is the inheritance handed down from a time when men recognised no tie beyond the family, or at most beyond the petty tribe, and when the idea of a great nation with common interests among its members was inconceivable.

The state, which draws a distinction between an offence committed against itself, or dangerous to its own well-being, and a private wrong committed by one person against another, seems bound to maintain its own honour and its own safety by becoming the prosecutor when its criminal laws are transgressed. The difference asserted in theory is to a great extent effaced in practice when the individual who happens to have suffered a theft has to prosecute the thief in a manner not very unlike that in which he would sue a neighbour for intercepting his light, or a railway company for unintentionally breaking his limbs. It is true that in the former case there may be some pretence of paying his expenses out of the public purse; but were even this pretence a reality the prosecutor would, according to the principle of the criminal law, be placed in a false position. The dispute lies not between him and the thief, but between the thief and society. If there really is something

ment, it is unjust to place him in the invidious light of a man following out a personal quarrel against his enemy. If the prosecution of a criminal is a public duty, it should be performed by a public officer.

The institution of public prosecutors would place one form of justice equally within the reach of the poor and of the rich. It might be abused in many ways, which will readily suggest themselves to anyone who considers the subject, but so, also, may our present system, and so probably might be every system that human ingenuity could devise. Nevertheless, if the principle is sound which distinguishes public from private wrongs, it is as clear that the prosecutor ought to be the nominee of the state, as that the plaintiff in a civil action ought to be the person who alleges that he is aggrieved. It is, however, not impossible that a change in the mode of prosecution might render necessary a change in the definition of crimes and offences, as distinguished from injuries in which the individual is supposed to be the only sufferer.

In the existing machinery of the Home Office there may clearly be discerned the beginnings of a great criminal department. Police, prisons, reformatories, and judicial proceedings are included under the one head of 'Judicial Statistics,' and are the subjects of one comprehensive annual report. The work of the public prosecutors would of course fall under the same supervision, and be reported in the same manner. It would necessarily reveal many facts upon which information is now sought in vain. Though false charges might become, as they probably would, more frequent than they are at present, they would hardly reach a court of law; and the greater part of the minor offences which now escape

notice altogether, would be brought to light when the sufferers knew that they had not to incur the odium and expense of prosecuting in their own persons. The public prosecutor would thus, for the purpose of registration, stand towards all offences in a position resembling that of the coroner towards homicide, and we should ascertain far more accurately than it is possible to ascertain at present, the real total of the crimes which are committed year by year.

APPENDIX.

REFERENCES AND NOTES.

CHAPTER VI.

Pp. 1–3. Touching the Welsh Marches.

THE remarks upon Wales and the Marches during the fifteenth century are founded upon the statutes 2 Henry IV., cc. 18, 19, and 4 Henry IV. cc. 27, 28, 30, 33, 34 (Statutes of the Realm, vol. ii., pp. 129, 140, 141). The Welsh border only '*began*' to lose the character of a march at the accession of Henry VII., for the statute 26 Henry VIII., cc. 6 and 11 is directed against the crimes of Welshmen on the Marches, and matters relating to offences on the Welsh as well as the Scottish Marches occur in the Council Books of the reign of Philip and Mary.

Pp. 3–6. Touching false personations &c. during the Tudor period.

The account of Lambert Simnel is from Polydore Virgil, pp. 723–729 (Leyden edition). The account of Perkin Warbeck in the Tower, the indictment of the Earl of Warwick, and his sentence after pleading guilty, are from the records preserved in the 'Baga de Secretis,' Pouch ii., a calendar of which is printed in the Third Report of the Deputy Keeper of the Public Records, App. ii., pp. 216–218. Some particulars of a false personation of Edward VI. after his death appear in the Proceedings of the Privy Council—especially under date May 11, 1555.

Pp. 7–13. Touching liveries, tokens, forcible entries, the Star Chamber, &c.

The statutes against giving liveries begin, like those against forcible entries, in the reign of Richard II. Others appear at intervals in the reigns of Henry IV., Henry VI., and Edward IV. The statutes 3 Henry VII., c. 1 and c. 12, 11 Henry VII., c. 3, and 19 Henry VII., c. 14, refer to the same subject. The magnitude of the evil and the attempts to suppress it can be appreciated only by reference to the records. A Controlment Roll (King's Bench) of any year during the reign of Henry VII. will show how great a portion of the business of the court related to cases of

illegal giving of liveries and the closely connected offence of forcible entry. For this work the Controlment Roll of 15 Henry VII., the closing year of the fifteenth century, has been studied throughout, and the statements made in the text are in a great measure founded upon it. The 'Baga de Secretis' also illustrates the same point, though, of course, not so fully, as it does not extend over the whole range of the proceedings of the court. In it, however, will be found a curious instance of giving as tokens 'the Eagle's Foot' and 'the Buck's Head,' Pouch iii. bundle 1 (calendared 3rd Deputy-Keeper's Report, p. 219).

The establishment or re-establishment by Henry VII. of the Court afterwards known as the Star Chamber was effected by the statute 3 Henry VII., c. 1. *See* also 'Rotuli Parliamentorum,' 3 Henry VII., No. 17, for the special objects of the statute. In the latter document the court is distinctly described as the Star Chamber by the heading. The remarks upon the actual business transacted in the Star Chamber in the reign of Henry VIII. are founded upon a minute inspection of a very complete calendar of the proceedings, which may be consulted in MS. in the Public Record Office. For the case of Lord Stourton *see* the Proceedings of the Privy Council, January 14 and March 1 and 14, 1556–7, and the 'Baga de Secretis.' The robbery of the waggons of Henry VIII. is mentioned in the 'Letters of Peter Martyr,' No. 521.

The remarks concerning sureties of the peace are founded on the Controlment Rolls; *e.g.*, at the end of the Roll of 15 Henry VII. are three whole membranes relating to this subject. In the case of powerful men with retainers these sureties were sometimes taken by virtue of a writ 'dissensionis et litis,' an instance of which occurs on the Durham Cursitor's Roll, No. 71, m. 12.

Among the game laws to which reference has been made in the text, may be mentioned 11 Henry VII., c. 17, and 19 Henry VII., c. 4 (against the use of cross-bows), as well as proclamations in subsequent reigns.

The illustrative case of Lord Dacre of the South is from the 'Baga de Secretis,' Pouch xii. (calendared 3rd Report of the Deputy-Keeper of Public Records, App. ii., pp. 259, 260). The execution is described by Hall, 33 Henry VIII., p. 842.

For the particulars of the case of Lord Seymour of Sudley, *see* the Act of Attainder against him, 2 and 3 Ed. VI., c. 18, and the confirmation of the Attainder of Sir Wm. Sharington, 2 and 3 Ed. VI., c. 17 (Stat. of Realm, vol. iv., pp. 60, 61). Various other documents relating to this matter are also printed in the 'State Trials,' vol. i., col. 483–558. Sir Robert Wingfield's conduct is described from his letters dated April 16 and April 22, 1516, Cotton. Vitell. b. xix. 59 [55] and 56 [62 b.].

Pp. 14–16. Touching knightly frauds, perjuries, barretry, &c.

The remarks concerning perjury during this period are founded on the preamble to the statute 11 Hen. VII., c. 21; on the statutes 11 Hen. VII., cc. 24 and 25; 23 Hen. VIII., c. 3; 32 Hen. VIII., c. 9; 5 Eliz., c. 9; and 43 Eliz., c. 5; and on the Chronicle of Grafton (8 Hen. VIII.), p. 288.

The prevalence of barretry and the allied offences has been ascertained by inspection of the Controlment Roll 42 Eliz., in which instances may readily be found. The early statutes against barretry are Westminster the First (3 Ed. I.), c. 33, and the 'Rageman,' 4 Ed. I. Maintenance and champerty are also prohibited by the Statute of Westminster the First and subsequent statutes, especially 11 Hen. VII., c. 25.

Lord Herbert's 'Henry VIII.' (Kennett, vol. ii., p. 3) contains an account of the popular complaints against Empson and Dudley, heard, as he alleges, by the Privy Council. He was not a contemporary, and the official records of the Proceedings of the Privy Council at this time have not been preserved. (*See* 'Proceedings of the Privy Council,' Ed. Sir Harris Nicolas, vol. vii., Preface). But the charges are so thoroughly in accordance with those made against the collectors of the revenue in previous reigns, that there is reason to believe Lord Herbert may have had access to documents now lost. Should it, however, be thought unsafe to draw this inference, the account of Lord Herbert is still of some value as showing the prevalent feeling in his time against the feudal exactions attributed to the two chief agents of Henry VII.

Pp. 16–19. Empson and Dudley.

The particulars of the trial of Empson and Dudley for high treason are from a very different source—the records preserved in the 'Baga de Secretis' of the King's Bench, Pouch iv. (calendared in the 3rd Report of the Deputy Keeper of the Public Records, App. ii., pp. 226–228).

The statute concerning 'Physicians and Surgeons' and the artisans and women who undertook the cure of diseases by means of sorcery etc. is 3 Hen. VIII., c. 11.

Pp. 20–24. Charges of witchcraft during the Tudor period.

Buckingham's belief in the pretended revelations of the Monk of Henton and the proceedings upon his trial are very fully described in the 'Baga de Secretis,' bundle 5 (calendared D. K. Rep., iii., App. ii., pp. 230–234). For the particulars of the Attainder of Lord Hungerford, *see* the Parliament Roll (Chancery) 31 and 32 H. VIII., No. 59 (in the Public Record Office).

Statutes against witchcraft during this period are 33 Hen. VIII., c. 8, and 5 Eliz., c. 16. The illustrative cases given in the text are from the State Papers (Domestic), Elizabeth, as bound and preserved in the Public Record Office, vol. vii., No. 42, vol. xvi., Nos. 49 *et seq.* (containing the letter of the Bishop of London), and vol. clxxv., No. 90.

A specimen of commissions to make enquiry concerning Lollardy etc. in the reign of Henry VII. appears on the Durham Cursitor's Roll, No. 61, m. 4.

P. 24. Lollardy in the reign of Henry VII.

The two cases mentioned in illustration of the tone of opinion with respect to heresy and the attempts of the clergy a little before the reign of Henry VIII. are known to lawyers as 'Keyser's case and Warner's case. They are cited in Hale's Pleas of the Crown (Ed. Emlyn), vol. i., p. 400, from the Coram Rege Rolls, 5 Ed. IV., Mich. Ro. 143, and 11 Henry VII., Mich. Ro. 327.

The passage in the text which relates to the character of Henry VIII. is from the sources which are now well known, so far as the mere facts of the time are concerned; but the truth of the sketch to nature depends on the truth of the preceding narrative. There is no period of which the history can be thoroughly understood unless the history of preceding periods is understood also.

Pp. 24–32. Touching the character and domestic relations of Henry VIII.

Particulars of the trial of Anne Boleyn and of her brother Lord Rochford (certainly the best which can be found) are given in the 'Baga de Secretis,' Pouch ix. (calendared in the Deputy Keeper's Third Report, App. ii., pp. 243–245). The trial of Smeaton, Noreys, Bryerton, and Weston is also among the same records, Pouch viii. (cal. p. 242).

The trials of Culpeper, Dereham, Lord W. Howard and his wife Margaret, Catharine and Malena Tylney, Damporte, Anna Howard, Benet, Waldegrave, Asheby, etc., are recorded also in the 'Baga de Secretis,' Pouch xiii. (cal. pp. 261–266). The attainder of Catharine Howard is stat. 33 Henry VIII., c. 21, in which also appear some further particulars. For the executions *see* Hall, 33 Henry VIII., pp. 842, 843.

The Act 'for the Punishment of Heresy,' to which reference is made in the text, is 25 Hen. VIII., c. 14. The Act declaring the king supreme head of the Church of England is 26 Hen. VIII., c. 3. The 'Six Articles' appear among the statutes as 31 Hen. VIII., c. 14. The 'Act for the Advancement of True Religion and for the Abolishment of the contrary' is 34 and 35 Henry VIII., c. 1.

Pp. 33, 34. Statutes concerning religious offences.

The trial of Fisher and of the monks of the Charter House is in the 'Baga de Secretis,' Pouch vii., bundle 2 (calendared in the Third Report of the Deputy Keeper of Public Records, App. ii., pp. 239, 240). It is mentioned in the statute 25 Hen. VIII., c. 12, that Fisher was implicated in the treasonable prophecies of Elizabeth Barton, the Maid of Kent.

P. 35. Records, &c., concerning treasons connected with religion in the reign of Henry VIII.

The account of More's trial is in the same pouch of

For the execution of the monks, of Fisher, and of More, *see* Hall, 26 Hen. VIII., p. 817.

The trials of the Lincolnshire and Yorkshire insurgents will also be found in the 'Baga de Secretis,' Pouch x. (Calend. pp. 245–251). The sentence passed on Margaret Cheyne appears in bundle 3 (Cal. p. 251); for the execution *see* Hall, pp. 822–825. The trials of Neville, Geoffrey Pole, Crofts, Holland, and Collins are in Pouch xi., bundle 1 (Calendar, pp. 251–254). Sir Francis Palgrave has, in his Calendar, directed attention to the fact that the name of Crofts is throughout the indictment written upon an erasure; but after a very careful inspection of the document I have satisfied myself that no fraud was intended. It is true that there is an erasure wherever the name occurs, but it is only the Christian name George which has undergone any alteration, and it is perfectly clear that 'Crofts' was written before the knife was applied. It would be well if the indictment of Oldcastle were as free from suspicion as that of Crofts (see vol. i., pp. 348, 490–493 of the present work). The trials of Mountacute and Exeter are the subjects of Pouch xi., bundle 1 of the 'Baga' (Cal. pp. 255–257), that of Carewe of bundle 3 (Cal. p. 258). For Acts of Attainder (without trial) against various persons implicated in this rebellion *see* the Parl. Roll (Chancery), P. R. O., 31 and 32 Hen. VIII., Nos. 56, 57, 59. The pardon of Geoffrey Pole and the executions of the other rebels are mentioned in Hall, 30 Henry VIII., p. 827.

An Act of Attainder, including Exeter and Mountacute, and a number of those who had been tried and convicted, and including also 'Margaret Poole,' Countess of Salisbury, who had not had the advantage of a trial, but was said to have aided and abetted her sons Henry and Reginald, appears on the Parliament Roll in the Public Record Office (Chancery), No. 15.

A record is preserved in the 'Baga de Secretis,' Pouch xvii., bundle 1 (calend. 4 D. K. Rep., App. ii., p. 221), of the indictment of Robert Ket, the tanner, together with William Ket and others, for high treason, committed in the counties of Cornwall, Devon, Norfolk, Suffolk, Sussex, Essex, Surrey, Southampton, Kent, Somerset, and Middlesex. In this some of the sayings of the rebels are preserved. All pleaded Guilty. The Rebellion broke out just after the Book of Common Prayer had received the sanction of Parliament by the stat. 2 and 3 Ed. VI., c. 1. Complaints respecting the enclosure of commons and the preference given by landholders to pasture land rather than arable appear in the preambles to the statutes 11 Hen. VII., c. 19, 6 Hen. VIII., c. 5, 7 Hen. VIII., c. 1, 25 Hen. VIII., c. 13, etc. Evidence has been given in vol. i., pp. 178–179, 241, 462, of the present work to show that, as a matter of fact, sheep-farming

P. 35. In the reign of Edward VI.

sufficient corn grown on the average to support a small population. The complaints had, therefore, little or no foundation in fact. The statute in which the dearness of mutton is alleged as a proof that pasture lands were in excess is 25 Hen. VIII., c. 13. For the doings of the rioters and the execution of the ringleaders *see* Grafton, 3 Ed. VI. (vol. ii., p. 514 *et seq.*), and Holinshed, vol iii., p. 938 *et seq.*, and p. 964 *et seq.*

The documents relating to Jane's claim to the throne are the statutes 25 Hen. VIII., c. 22, declaring Henry's marriage with Catharine of Arragon to be invalid; 28 Hen. VIII., c. 7, declaring Elizabeth, his issue by Anne Boleyn, to be illegitimate; 35 Hen. VIII., c. 1, giving the succession to Mary and Elizabeth after failure of his male issue, and conferring on him the power to will or grant the crown after failure of all his issue; Henry's will, printed (*ex autogr.*) in Rymer, vol. xv., p. 110 *et seq.* (for the dispute whether this was stamped or signed is practically of no importance, as Henry's wishes are without doubt correctly expressed); the statute 5 and 6 Ed. VI., c. 11, declaring it treason to affirm that anyone was an usurper who was in possession of the crown in accordance with the order of succession as already fixed; and lastly the disposition of the crown by Edward's devise and letters patent, which documents are printed in 'Queen Jane and Queen Mary' (published by the Camden Society), pp. 89–100.

Pp. 35–37. In the reign of Mary.

The trial of Somerset for treason and felony, his acquittal on the charge of treason, his conviction on the charge of felony, and the names of the Peers who sat in the Court of the Lord High Steward to try him (among them that of Northumberland and those of many of Northumberland's connexions) are to be seen in the 'Baga de Secretis,' Pouch xix. (calend. 4th Rept. of Dep. K. of Pub. Rec., App. ii., pp. 228–230).

The trial of the Duke of Northumberland, the Marquis of Northampton, and the Earl of Warwick before the Lord High Steward and Peers for treason in proclaiming Lady Jane Dudley is also in the 'Baga de Secretis,' Pouch xxi. (Cal. p. 232). It is followed by that of Sir Andrew Dudley, Sir John Gate, Sir Henry Gate, and Sir Thomas Palmer, in accordance with a special commission of Oyer and Terminer, Pouch xxii. (Cal. p. 235). Both these trials were held in August 1553. In November of the same year, as shown by the 'Baga de Secretis,' Pouch xxiii. (Cal. pp. 237, 238), Lady Jane and Lord Guildford Dudley, Archbishop Cranmer, Sir Ambrose Dudley, and Henry Dudley were arraigned by virtue of a special commission of Oyer and Terminer, and pleaded guilty, and sentence was recorded. The execution of Northumberland, Palmer, and Sir John Gate is related by Stowe, 'Annals,' pp. 614, 615, and that of Northumberland by Noailles, iii. 117.

'Baga de Secretis,' Pouches xxvii. and xxviii. (Cal. pp. 244–246). So also are the indictments and sentences of large numbers of their accomplices, Pouches xxvi. and xxxii. Connected with the same rebellion were the trials of Sir N. Throckmorton (of whom more elsewhere) and Sir James Crofts (Pouch xxix.), and of Sir Thomas Gray (Pouch xxxi.). For the execution of Lady Jane and her husband *see* M. de Noailles à M. le Connestable, printed in the 'Ambassades de Messieurs de Noailles,' vol. iii., pp. 123–127. De Noailles (same letter, p. 124) is also the authority for the statement that 400 persons suffered death for the rebellion. *See* further the same volume, pp. 173, 183, etc.

For particulars of Henry Dudley's plot see the 'Baga de Secretis,' Pouch xxxiii. (Trial of John Throckmorton and Uvedale), Pouch xxxiv. (Trial of Peckham), Pouch xxxv. (Trial of Dethick). The use made of Elizabeth's name by the conspirators is mentioned by Noailles more than once. Wyatt exonerated her before his death (Noailles, iii., 154).

Particulars relating to the conspiracy of Arthur Pole are to be found in the 'Baga de Secretis,' Pouch xl. (cal. 4 Rep. D. K. Pub. Records, pp. 263, 264), where the trial and conviction are recorded, in Camden's 'Elizabeth,' vol. i., p. 73, etc.

Pp. 38–49. In the reign of Elizabeth.

The particulars of the conspiracy for which Norfolk was tried and suffered are also in the 'Baga de Secretis,' Pouch xlii. (cal. 4 Rep. D. K., pp. 267–269). The most complete account of the trial from various authentic sources is in Jardine's 'Criminal Trials' (Library of Entertaining Knowledge), vol. i. It contains many documents not given in the 'State Trials.' For the execution of Norfolk see Camden, vol. i., p. 217. *See* also the trial and conviction of John Hall and Francis Rolston ('B. de S.' xliii.), and the account of the execution of the Nortons and of Story, reprinted from contemporary pamphlets in 'State Trials,' vol. i., col. 1083 *et seq.*

Felton's trial and sentence are in the 'Baga de Secretis,' Pouch xli. (cal. 4 Rep. D. K., App. ii., pp. 265–267). *See* also Partridge's contemporary 'End and Confession' of Felton, reprinted in the 'State Trials,' vol. i., col. 1086.

On the Coram Rege Roll, Queen's Bench, Crown Side, Michaelmas, 23 and 24 Elizabeth, Nos. 2 and 3, is enrolled the indictment of Campyon and the nineteen persons said to have been implicated with him, as well as the sentences. Against the names of each of the fourteen persons condemned is the marginal note 'tractus et suspensus.' There is an account of this affair also in the 'State Trials' from a contemporary source, with alleged confessions of some of the criminals, but it does not agree very well with the real indictment; it gives fewer names, and it substitutes for the name of Rushworth that of Bristow, which is not even

mentioned in the original record. The executions are probably related truly; the confessions are open to grave suspicion.

Somervyle's trial is recorded in the 'Baga de Secretis,' Pouch xlv. (cal. 4 Rep. D. K., App. ii., pp. 272, 273). For his death, *see* Camden, vol. i., p. 347. ('Somervillus se strangulat' in margin; 'in carcere strangulatus reperitur' in text.)

For the particulars of Dr. Parry's case, *see* the 'Baga de Secretis,' Pouch xlvi. (cal. 4 Rep. D. K., App. ii., pp. 273, 274).

The outline of the plot of Babington, Savage, and others, is given in the indictment in the 'Baga de Secretis' Pouch xlviii. (cal. 4 D. K. Rep., pp. 276–278), where the complicity of Mary is distinctly alleged.

For the Association formed in consequence of the numerous plots and attempts against Elizabeth's life, and subsequent events, *see* Camden, 'Elizabeth,' vol. i., p. 360 *et seq.*; the statute by which it was sanctioned, and in which power was given to name commissioners for the trial of pretenders to the crown, is 27 Eliz. c. 1.

The commission for Mary's examination, and other official documents, are reprinted in the 'State Trials,' i., 1166 *et seq.*, together with an account of the proceedings, from Camden and other sources. More recent investigations among the State Papers have brought new materials to light, but do not affect the proposition in the text, that to remove blame from one queen and her party is but to blacken the other. For the first petition of Parliament for the execution of Mary, and the queen's answer, *see* the Journals of the Lords, November 9 and 22, 1586 (vol. ii., pp. 120, 122, and D'Ewes, p. 379). The second also is on the Journals of the Lords, November 25, 1586 (vol. ii., pp. 123–125). and in the Report, printed as a pamphlet, by the Queen's printer in 1586.

There is a full report of Davison's trial for misprision and contempt in despatching the warrant without authority, in the 'State Trials,' vol. i., col. 1229 *et seq.*, printed from the MS. report of William Nutt, an eye-witness. Elizabeth's letter to James, in which she denies having so much as thought of Mary's death, is also reprinted in the 'State Trials,' i., 1211.

The passage in the Bull of Sixtus V., in which the succession to the English crown is remitted to the decision of 'Christian equity,' appears in the indictment of Philip, Earl of Arundel, in the 'Baga de Secretis,' Pouch xlix. (cal. 4 D. K. Rep., App. ii., p. 280). *See* this document for the charges against Arundel, and Camden's 'Elizabeth,' vol. ii., p. 102, for his death in the Tower.

Patrick Cullen's trial is in the 'Baga de Secretis,' Pouch li. (cal. 4 Rep. D. K., App. ii., pp. 283–284), as well as that of Lopez, Pouch lii.

The details of Squyer's plot, like those of many others, are given in the 'Baga de Secretis,' Pouch lv. (cal. 4 D. K. Rep., App. ii., pp. 291, 292). The indictment, wherever it may be found, is always the most authentic account of the alleged offences for which any criminal suffered. If allowance be made for the harshness of our earlier procedure, and the probability that torture was employed to extort a confession on which the indictments were founded, the Records of the King's Bench are more trustworthy than the accounts to be found in any chronicle. In the chronicles there is frequently only a garbled statement of the accusations as appearing in the indictment, and sometimes the contradictory gossip of the day on one side or the other, the truth of which it is almost impossible to estimate. It may be that it was impossible to destroy human life in the manner described in the accusation against Squyer; but Squyer may nevertheless have been guilty of the attempt imputed to him.

The Declaration distinguishing between execution for treason and execution for religious opinion bears date 1583. It has been printed in the Somers' Tracts (Ed. Scott), vol. i., p. 209.

Pp. 49–56. Records, statutes, &c., concerning heresy in the reign of Henry VIII.

There were commissions to make enquiry concerning cases of Lollardy, and to hear and determine them, in the reign of Henry VII. A specimen (to which reference has already been made) occurs on the Durham Cursitor's Roll, No. 61, m. 4. Lollardy is also mentioned in the re-enacting statute 1 & 2 Philip and Mary, c. 6. The omission of the words 'to destroy Lollardy' from the sheriff's oath in 1625 is related by Whitelocke ('Memorials,' p. 2).

The burning of Tracy's corpse is described by Hall, 25 Hen. VIII., p. 796; the execution of Bainham and Bilney by Wriothesley (Pub. Camden Soc.), pp. 16–17; of Frith and Hewet by Hall, 26 Hen. VIII., p. 816; of various foreign heretics by Stowe, 27 Hen. VIII., p. 571, 30 Hen. VIII., p. 576, and 32 Hen. VIII., p. 579; and of Forest by Hall, 30 Hen. VIII., p. 825. The order respecting certain images, of which Cromwell was the author, is mentioned in the same page; and the statute against images is 3 & 4 Ed. VI., c. 10.

Particulars of Lambert's trial and conviction for heresy are given in Hall, 30 Hen. VIII., pp. 826, 827, and in a letter from Cromwell to Wyatt, the English ambassador in Germany (Harl. MSS. 282, fol. 218).

For the events immediately following the statute of Six Articles (31 Hen. VIII., c. 14), *see* Hall, 31 Hen. VIII. p. 428, where is described the influence of private vengeance upon the executions.

In the Parliament Roll 31 Hen. VIII. in the Public Record Office (Enrolments of Acts certified into Chancery) with the

margin, is 'Thattaynder of Butolph, Damplipp, Brindholme, Philpot Gynnyng, Barnes, Geratt, Jerome, and Carewe,' from which the following is an extract :—

'And whereas Robert Barnes, late of London, clerke, Thomas Garrard late of London, clerke, and Willm. Jerome late of Stebynhith in the county of Midd. clerke being detestable and abhominable hereticks, and amongst themselves agreed and confederated to sett and sow comon sedition and variaunce amongest your true and loving subjectis within this your Realme not fearing their moste bounden duety to God nor yet theire allegeaunce towarde your Majestie have opynly preached teached set fourth and declared in divers and sondry places of this your Realme a greate nombre of heresies false erroniouse opinions doctrines and larning And thincking them selfes to be men of larning have taken uppon them most sedicyously and heretically to open and declare unto your saide subjectis within this your saide Realme divers and many textis of Scripture expounding and applying the same to many perverse and hereticall senses understandings and purposes to thintent to induce and leade your saide subjectis to diffidence and refusall of the true syncere faith and beleve which Christen men ought to have in Christen religion the nombre wherof were to longe here to be rehersed And the which Robert Barnes and Thomas Garrard, for their heresies and false erroniouse opinions have ben before this tyme abjured Be it therefore enacted by thauctoritie abovesaid [of Parliament] that the saide Robert Barnes, Thomas Garratt, and William Jerome and every of them by thauctoritie aforesaide shal be demed and adjuged abhomynable and destable hereticks and shal have and suffre paynes of death by burnyng or otherwise as it shall please the Kinges Majestye.' The five men named before Barnes were attainted of treason, as defined at the period, but Carewe simply of felony, in having committed a robbery.

'Thattainder of T. Crumwell' is upon the same roll (No. 60). He was attainted both of treason and of heresy, and to suffer the punishment of both or either at the king's pleasure.

For the executions *see* Hall, 32 Hen. VIII., p. 840. See also, with respect to false testimony, Hall, p. 858.

Mekins's execution is narrated in Hall, 32 Hen. VIII., p. 841. The death of Anne Askew is related in Hall, 38 Hen. VIII., p. 867. She may also, perhaps, have been tortured, according to the account given by Foxe. *See* Wriothesley's Chronicle, p. 168.

P. 57. In the reign of Edward VI.

The Act of Uniformity passed under Edward VI. is 2 & 3 Ed. VI., c. 1. Commissions for enforcing it are printed in the Fœdera, vol. xv., pp. 181. 250, from the

respect to heretics apprehended or put to death in Edward's reign, see Wilkins' 'Concilia,' vol. iv., pp. 39–45 ; the 'Journal of King Edward' (Roxburghe Club), ii., 264, 312, and Stowe, 605.

The statute by which earlier Heresy Acts were re-enacted (and, in particular, the Act 2 Hen. IV., c. 15, dispensing with the writ *de heretico comburendo*) is 1 & 2 Philip and Mary, c. 6. See also Dalton's 'Office of Sheriffs' (1623), p. 147. I may add that I have looked through the whole of the Close Rolls for one of the years of the Marian persecution without discovering a single writ. In earlier times the writ *de heretico comburendo* was, as in the case of Badby's, enrolled on the Close Rolls. The mode of enrolment, however, is not the same in every reign, and for that reason I searched in various records of other classes, but without any success beyond the cases mentioned below. The natural inference is that heretics were commonly burned without the issue of a writ ; and this inference is fully confirmed by the entries in the Council Books. A complete list of the persons burned while Mary was on the throne cannot, therefore, be made, though the task has been attempted by Foxe, Burnet, and Strype.

Pp. 57–60. In the reign of Mary.

The warrant to the Chancellor to cause a writ for the burning of Cranmer to be directed to the mayor and bailiffs of Oxford is enrolled on the Patent Roll, 2 & 3 Philip and Mary, pt. 2, m. 18, and printed in Rymer, xv. 431. Directions to the Lord Treasurer to 'cause writs to be made forth to the Sheriff of Sussex for the execution of three condemned persons for heresies, being ordered to suffer in three several places of the shire,' are to be found in the Privy Council Proceedings, June 12, 1555, of which I have had the privilege of consulting Maynard's Transcripts in Lincoln's Inn Library. An account of the despatch of the writ for the burning of Braunch—to be preceded by the cutting off of his hand—is given in the same Proceedings, April 22, 1555. (*See* also April 15, 1555.) The entries relating to the neglect of sheriffs to burn heretics delivered to them for that purpose, occur under the dates given in the text. Letters to noblemen and gentlemen desiring them to attend, upon warning given by the sheriff, at the place of execution of heretics, and to assist him, occur in the same Proceedings, March 1554–55, June 3, 1555, and June 30, 1555.

The burning of the two Anabaptists was in the seventeenth year of Elizabeth's reign, and the warrant for the issue of the writ to burn them is enrolled on the Patent Roll 17 Eliz., pt. 5, m. 9, and printed in the Fœdera, xv., 740. The statute 1 Eliz., c. 1, is 'An Act to restore to the Crown the ancient jurisdiction over the Estate Ecclesiastical and Spiritual,' and by the 18th section of it, the Court of High

Pp. 60–66. Concerning heresy and other offences against religion in the reign of Elizabeth.

Commission was established. The statute 1 Eliz., c. 2, is 'An Act for the Uniformity of Common Prayer,' &c. The Act by which it became treason to withdraw any one, or be reconciled, to the Romish religion is 23 Eliz., c. 1, and the 'Act for restraining Popish Recusants to some certain places of abode,' 35 Eliz., c. 2. The Act in which the penalty is prescribed for attendance at unlawful conventicles is 35 Eliz., c. 1.

For offences against the statute 'pro uniformitate precacionis,' *see* the Controlment Rolls of the period generally, and—to give a particular reference—that of 42 Eliz., Mich. Term, 'Baga de Secretis.' It should be observed that some of the actual records of the 'Baga de Secretis' of this year, as of others, have disappeared. The Controlment Rolls contain an abstract of them, as of other proceedings of the Court of Queen's Bench, year by year. There are numerous lists of recusants among the State Papers.

The case of Knightley and others, and their Puritan writings, is printed in the 'State Trials,' vol. i., col. 1263 *et seq.*, from a MS. in Caius College.

For the relations of the poor to the Church, and the Crown or the public in earlier times, *see* vol. i. of this History, pp. 151–153, and for the events following the Black Death, pp. 341, 342, &c.

Pp. 67–77. Touching the poor, vagrants, gipsies, work-houses, houses of correction, &c.

The statutes of the reigns of Henry VII. and Henry VIII. concerning the poor, vagabondage, mendicancy, &c., to which reference is made in the text, are 4 Hen. VII., c. 19, for the encouragement of husbandry as a remedy against the 'idleness of the people;' 11 Hen. VII., c. 2, 'An Act against Vagabonds and Beggars;' 19 Hen. VII., c. 12, 'De validis mendicantibus repellendis;' 22 Hen. VIII., c. 12, 'An Act concerning Punishment of Beggars and Vagabonds;' 27 Hen. VIII., c. 25, 'An Act for Punishment of sturdy Vagabonds and Beggars' (in the year of the suppression of the lesser monasteries). The Act for the Suppression of the lesser Monasteries is 27 Hen. VIII., c. 28; the 'Act for Dissolution of Abbeys,' 31 Hen. VIII., c. 13, and the (so-called) Petition of Beggars against monasteries is printed in the Somers' Tracts (Ed. Walter Scott), vol. i., p. 41, and elsewhere.

Slavery was re-established as a punishment for vagabonds by the statute 1 Ed. VI., c. 3, 'An Act for the Punishment of Vagabonds, and for the Relief of the Poor and Impotent Persons,' which was repealed, in part, by 5 & 6 Ed. VI., c. 2.

The statutes of the reign of Elizabeth which were for the relief of the poor &c., and are mentioned in the text, are 5 Eliz., c. 3, 'An Act for the Relief of the Poor;' 14 Eliz., c. 3, 'An Act for the Punishment of Vagabonds, and for the Relief of the Poor and Impotent;' 18 Eliz., c. 3, 'An Act for the Setting of the Poor on Work, and for the Avoiding of

Idleness;' 35 Eliz., c. 7, s. 24 (repealing the 'Boring' Statute of 14 Eliz., c. 5); 39 Eliz., c. 5, 'An Act for the Erecting of Hospitals, or Abiding and Working Houses for the Poor;' and 43 Eliz., c. 2, 'An Act for the Relief of the Poor.'

A MS. in the British Museum, Harl. No. 364 (printed in Eden's 'State of the Poor,' vol. iii., App. pp. cxxxvi–cxlvi), contains the 'Orders, Rules, and Regulations agreed upon by the Justices of the Peace within the County of Suffolk, April 22, 31 Eliz., for the Punishing and Suppressing of Rogues,' &c., from which the persons to be found in a House of Correction, about the year 1588, have been described.

The statutes relating to 'the Egyptians' are 22 Hen. VIII., c. 10, 2 Philip and Mary, c. 4, and 5 Eliz., c. 20. The conviction for keeping company with the Egyptians is from the 'Baga de Secretis,' Pouch xliv., 19 Eliz. (Palgrave, Calendar, D. K. 4 Rep., App. ii., p. 271).

The statute relating to cottages and 'inmates' is 31 Eliz., c. 7; the illustrations of the manner in which its principles were applied, both before and after it was passed, are from the archives of the borough of Lyme Regis, printed in part in Roberts's 'Social History of the Southern Counties.' The very important statute, which long afterwards continued to define the relations of master and servant, is 5 Eliz., c. 4, 'An Act containing divers Orders for Artificers, Labourers, Servants of Husbandry, and Apprentices.' *See* also Proceedings of Privy Council, October 12, 1556, for duties of husbandmen to their servants. The instrument authorising the manumission of the Queen's bondsmen and bondswomen is printed in the Fœdera, vol. xv., p. 731, from the *Pat. de diversis annis*, mm. 31, 32 d, and dated the sixteenth year of Elizabeth's reign.

Pp. 77–79. Touching master and servant.

Proclamations against increasing the size and population of London having proved ineffectual, there was enacted a statute on the same subject, viz. 35 Eliz., c. 6.

P. 80. Growth of London.

The Boiling Statute or 'Act for Poisoning' is 22 Hen. VIII., c. 9, from which the particulars relating to Rose have been taken. The execution by boiling in Smithfield is narrated by Hall, p. 781.

Pp. 81–86. Touching punishments in the Tudor period.

The statute in which is described the punishment of amputation for striking in the king's court or house is 33 Hen. VIII., c. 12. The story of Sir Edmund Knevet is told in Stowe's Annals, 33 Hen. VIII. (1541), p. 581.

Wolsey's experience of the stocks, and his revenge on Pawlet, are related in Cavendish, vol. i., p. 6 (edition of 1825).

There were, and perhaps are still, some branks or scolds' bridles preserved in the Guildhall of Worcester, Warrington Museum, and the church of Walton on Thames.

The offence and punishment of Timothy Penredd are recorded in the 'Baga de Secretis,' Pouch xli., 13 Eliz. (Calendar in D. K. 4 Rep., App. ii., pp. 266, 267). The extract relating to the execution of the Nortons is from Morgan's 'Phœnix Britannicus,' reprinted in the 'State Trials,' vol. i., col. 1085–1086.

For the law respecting the use of torture in the reign of Henry II., *see* vol. i. of the present work, p. 427, and for Fortescue's remarks upon it, p. 498. There is a reference to the subject in the statute 27 Hen. VIII., c. 4. The legal tradition that the rack was introduced in the reign of Henry VIII. appears in Coke, 3 Inst., p. 35. The Scavenger's Daughter is still to be seen in the Tower of London. The description of the manner in which they were used (the one on Campyon, the other on Cottam), is from Tanner's 'Societas Europœa,' p. 12 and p. 18. In the Commons' Journals, 14 May, 1604, there is a mention of the place called 'Little Ease' in the Tower, and of 'Skevington's Daughter,' also known as 'Little Ease' (vol. i., p. 209). An order to throw a prisoner into the 'Dungeon among Rats,' occurs in the Council Book under the date November 15, 1577. Numerous other entries with respect to torture in general appear in the Council Books in the Harl. MS. 168, 169, 643, etc., of which some transcripts are preserved in the Public Record Office. For nearly all these later references on the subject of torture I am much indebted to Mr. Jardine's 'Reading on the use of Torture in the Criminal Law of England,' at the end of which the warrants are printed. As a specimen of their tone, the following extract may be quoted from a letter to the Lieutenant of the Tower:—'If they [persons accused of robbery] shall obstinately persist in the denial of their fact, he is willed to cause them to be brought to the rack, and to feel the smart thereof, as they by their discretion shall think good for the better bolting out of the truth of this matter.'—15 March, 1558–9, Harl. 169, Rymer Transcripts $\frac{2}{5}\frac{7}{7}$ fo. 95. Mr. Jardine's inference from his own materials that the king must have given warrants to torture at a time before they appear on the Council Books is fully borne out by the passage upon a Pipe Roll of the reign of Henry II., discovered by myself, to which reference has already been made.

Pp. 86–89. Evidence of the use of torture.

The details of Sir Nicholas Throckmorton's trial, which well illustrate the tone of the Bench at the period, are given by Holinshed, vol. iv., p. 31 *et seq.*, whence they are reprinted in the 'State Trials.' His account is in many points confirmed by the official record preserved in the 'Baga de Secretis,' Pouch xxix. (Calendar, D. K. 4 Rep., App. II., pp. 246–248). A comparison with the record of the trial of Wyatt's other accomplices shows clearly by the dates that one witness, Cuthbert Vaughan, was under

Pp. 89–92. Trial of Throckmorton, &c.

sentence of death for treason, and therefore attainted at the time when his deposition was brought in evidence. The statement that it was not unusual to send an acquitted person back to prison is founded on various examples. *See* one on the Controlment Roll 15 Hen. VII., Michaelmas term, ad fin.

The sentence upon Andrew Harcla and the authority on which it is given will be found in vol. i. of the present work, pp. 226, 470. The details of the trial of the Duke of Norfolk in the Court of the Lord High Steward, are recorded in the Sloane MS. 1427, which has been printed in the 'State Trials,' vol. i., col. 957 *et seq.* The Act by which trials for treason had been relegated to the old process of the common law, and by which the Treason Act of Ed. VI. had been virtually repealed before 1571, is 1 & 2 Philip and Mary, c. 10, s. 7. The reason for the change was stated, as in the text, by the queen's serjeant at the trial, col. 992. For the illustration of the practice with respect to witnesses from Buckingham's trial, *see* Hall's Chron., p. 623. The Year Book of 13 Henry VIII. contains a short report of this trial (pp. 11, 12), but there is nothing in it to show that witnesses were examined *vivâ voce*.

Pp. 92–96. Tone of judges: Court of High Steward: trial of Norfolk, &c.

The constitution of the Court of the Lord High Steward is fully shown both by the Year Book to which reference has just been made, and by the records of the cases tried before it in the 'Baga de Secretis.' For the early precedent in the case of William of Wykeham, of a committee similar to that under the Lord High Steward, *see* vol. i., pp. 339, 448.

A comparison of the duke's remarks with the judge's during the trial of the Duke of Norfolk, appears to show that the passage of Bracton to which reference was made must have been the following (lib. iii. fo. 118b, and fo. 119).

'Ad accusationem vero hujus criminis (i.e. Lese Majesté) admittitur quilibet de populo, liber homo et servus et minor infra ætatem. . . . dum tamen sit ille qui accuset integræ famæ et non criminosus, quia criminosi ab omni accusatione repelluntur, ut si accusans fuerit latro cognitus, vel utlagatus, vel aliquo genere feloniæ convictus vel convincendus. . . . Accusato autem e contra per ordinem negante, solet *appellum* istud per duellum terminari.'

Bracton seems puzzled to know how the matter was to be settled if it went to 'judicium;' he mentions the 'pares' but says nothing of witnesses in the more modern sense of the term.

The judges were very disingenuous in saying a bondman might be 'a witness,' and nothing about a criminal.

An instance of the abuse of the writ *de excommunicato capiendo*, by the Court of High Commission is mentioned in the Reports of Sir

George Croke, pp. 741, 742 (Leach's Edition), Hil., 42 Eliz., and instances of 'contumacy' or neglect to appear when summoned before Ecclesiastical Courts, are not uncommon in the Controlment Roll of the same year. *See* especially Hilary Term.

P. 97. High Commission Court.

The statute 'against Quarrelling and Fighting in Churches and Church-yards,' is 5 & 6 Ed. VI., c. 4. Instances in which there were prosecutions under this Act appear upon the Controlment Rolls. *See* Cont. R. 42 Eliz. *passim.*

Pp. 97–99. Touching want of respect for churches, &c.

The custom of allowing interludes or plays to be performed in churches appears in the archives of the borough of Lyme Regis, as quoted in Roberts's 'Social History of the Southern Counties,' p. 37, and in Thomas Cartwright's 'First Admonition to Parliament' (A.D. 1572), par. 13.

The increase of foreign trade during the Tudor period is shown in various ways. *See* the 'Intercursus Magnus,' a treaty with the Archduke of Austria, in 1496, printed (*ex autogr.*) in Rymer, vol. xii., p. 578, and innumerable other commercial treaties. The general increase of commerce is also shown by the first Bankrupt Act, 34 & 35 Hen. VIII., c. 4, which was explained and confirmed by 13 Eliz., c. 7.

Pp. 99–104. Trade: breaches of Trade Acts: monopolies, &c.

The statute by which the export of coin was prohibited is 3 Hen. VIII., c. 1, which had, however, been preceded by a number of earlier statutes of similar purport; and the manner in which Erasmus was affected by it is told in his works (Basle Edition), vol. i., in 'Catalogo Lucubrationum.'

For the prosecutions under various statutes restricting trade, *see* the Controlment Roll, 42 Eliz. *passim.* Among such statutes are 6 Hen. VIII., c. 3; 2 & 3 Ed. VI., c. 15, forbidding combinations to raise prices by retailers or workmen; a number relating to the tanning and currying of leather from 2 & 3 Ed. VI., c. 9, to 5 Eliz., c. 8; the Acts concerning apparel, 6 Hen. VIII., c. 1, and 24 Hen. VIII., c. 3, and the Usury Acts, especially 13 Eliz., c. 8.

The Acts relating to the observance of Fasts and the saving of meat are 2 & 3 Ed. VI., c. 19, 5 Eliz., c. 5, 35 Eliz., c. 7, &c.

Among the earlier statutes against forestalling, regrating, and engrossing are the Stat. de Pistoribus (Statutes of the Realm, vol. i., p. 203), 25 Ed. III., st. 3, c. 3, 28 Ed. III., c. 13, 2 Ric. II., st. 1, c. 2, and 14 Ric. II., c. 4, but none of them are so important or so explicit as 5 & 6 Ed. VI., c. 14, which was made perpetual in Elizabeth's reign, and was long afterwards in force.

The documents chiefly consulted for the estimate of the prevalent crimes and the general state of society at the end of the fifteenth and

at the end of the sixteenth centuries, are the Controlment Roll 15 Hen. VII., and the Controlment Roll 42 Eliz.—the date of the one being exactly a century later than that of the other. The Controlment Rolls generally are an excellent index to the whole of the business transacted by the Court of King's Bench.

A list of the monopolies actually in existence in the 43rd year of Elizabeth's reign (and granted since the preceding Parliament of three years before), appears in D'Ewes, 'Journal of the House of Commons,' pp. 648–652, where the dissatisfaction with them is shown by the remarks made upon them in the House.

The commission to John Cabot and his sons is printed in Rymer, vol. xii., p. 595, from the French Roll, 11 Hen. VII., m. 23; and to Hugh Elyot and Thomas Ashehurst, in vol. xiii., p. 37, from the Patent Roll, 18 Hen. VII. pt. 2, m. 2.

Pp. 104–108. Touching maritime adventure and piracy, &c.

The statute of Henry V. respecting Letters of Marque &c. is 4 Hen. V., c. 7.

In the Fœdera, xiii., 649, 650, will be found (printed *ex autogr.*) the 'Tractatus depredationis,' for the suppression of pirates.

The trial of pirates on land, by virtue of the Royal Commission, is required by the statutes 27 Hen. VIII., c. 4, and 28 Hen. VIII., c. 15.

The references to cases of piracy are so numerous in the State Papers that a bare catalogue of them would occupy space out of all proportion to the paragraph in the text. The 'Book touching Pirates' is known as State Papers (Domestic), Elizabeth, vol. 135. Vol. 115, No. 32, and vol. 118, Nos. 11 and 14, may be cited as specimens of commissions to enquire concerning the abettors of pirates, and vol. 120, Nos. 79, 80, and vol. 124, No. 16, for lists of the names of such abettors.

M. de Ségur, in a letter dated December 15, 1584, and addressed to Walsingham, gives a lamentable account of the pirates from Poole to Southampton Water (State Papers, France, vol. 81.) By another letter of his in the same volume it appears that he had to embark at Plymouth. (Dated December 21, 1584.)

The statute of Elizabeth's reign according to which rogues might be banished or sent to the galleys is 39 & 40 Eliz., c. 4. A commission of the same reign for carrying out the punishment of the galleys as a substitute for death is printed in Rymer, vol. xvi., p. 446, from the Patent Roll, 44 Eliz., pt. 12, m. 37 d.

Pp. 109, 110. Touching new punishments, and executions.

In one of the descriptions prefixed to Holinshed's Chronicle it is stated (on hearsay evidence) that 72,000 thieves and vagabonds were executed in the reign of Henry VIII., the duration of which was not

quite thirty-eight years, and an estimate is made of the annual number of executions in the writer's own time. Some more trustworthy evidence is to be found in a letter from Edward Hext, a Justice of the Peace of Somersetshire to the Lord Treasurer, with a Calendar of the Assises of that County for the year 1596. It shows that much of the mediæval lawlessness continued to exist, and that vagabonds were very troublesome; but as it makes much of one particular case in which sixty thieves assembled to rob a cheese-cart on the way to a fair, the inference is that brigandage as a common pursuit had nearly if not quite died out. (Strype, Annals, vol. vii., p. 404, new edition.)

The first Acts relating to particular highways are 14 and 15 Hen. VIII., c. 6, and 26 Hen. VIII., c. 7. The first Act for the repair of highways in general is 2 & 3 Philip and Mary, c. 8. In these carriages are mentioned; but on the Controlment Roll 15 Hen. VII., there is a characteristic complaint against a person who had made an obstruction in a high road in Middlesex, to the effect that the King's lieges, '*tam pedestres quam equestres*,' fell into the dung-heap which he had erected. Similar expressions showing that the usual modes of travelling were either on horseback or on foot during the reign of Henry VII. occur elsewhere.

Pp. 111, 112. Acts, Records, &c., concerning the state of the roads.

By the statute 23 Hen. VIII., c. 1, benefit of clergy was taken away from highway robbers, a convincing proof that a proclamation of 14 Hen. VIII. (for which *see* Durham Cursitor's Roll, No. 71, m. 36) had been altogether ineffectual, though it enjoined 'all and singular the king's subjects to keep good and substantial watches by day and by night, by all highways.' For the time required to carry a letter from London to Edinburgh, see 'State Papers and Letters of Sir Ralph Sadler,' vol. ii., p. 146.

CHAPTER VII.

For the character of the 'Marches towards Scotland' in earlier times, *see* vol. i. of the present work, pp. 246, 475. The instances of outrages there which occur in State Papers of the reigns of Henry VIII. and Elizabeth are too numerous for special reference. They abound alike in the Domestic Series and in the papers relating to Scotland. No one who studies those papers can fail to discover them.

Pp. 113–115. Touching crime on the Scottish Marches.

For the letters of Lord Scrope and the Bishop of Carlisle to Lord Burleigh on the expediency of 'letting slip' Fergus Greame against Irvine of the Boneshaw, see State Papers, Elizabeth, Foreign, 1572, Nos. 248 and 249. *See* also Proclamation touching the Northern Marches, Pat. R., 1 James I., p. 3, m. 11 (Rymer, xvi., 504) and others subsequent to it.

The plot or plots to seize the person of James I. and of his son Henry, and to place Arabella Stuart on the throne, are the subjects of the documents in the 'Baga de Secretis,' Pouch lviii. (calendared in D. K. 5 Rep., App. ii., pp. 135–139). *See* also the materials collected in the 'State Trials,' vol. ii., col. 1 *et seq.*

Pp. 115–117. Arabella Stuart and Raleigh.

For the subsequent commission to Raleigh, *see* Rymer, xvi., 789, from the Patent Roll 14 James I., pt. i. dors.; and for his execution in 1618 upon a sentence passed fifteen years previously, *see* also Rymer, vol. xvii., p. 92 and p. 115, from Patent Roll, 16 James I., pt. 26 (Proclamation), and Pat. Roll, 16 James I., part 2, No. 4 (Order for beheading).

For the official account of the discovery of the Gunpowder Plot, *see* the 'Gunpowder Treason' papers, in the Public Record Office, No. 129 (in the writing of Muncke, and corrected throughout by the Earl of Salisbury). No. 37 of the same series contains the result of the first examination of Fawkes (then calling himself Johnson) on November 7, No. 49 the result of his examination on the following day, No. 54 the result of his examination under torture on November 9, with his signature made on the 10th. The king's warrant to torture him is in the same volume. Cf. also the proceedings

Pp. 117–124. Records &c. concerning the Gunpowder Plot.

in the 'Baga de Secretis,' Pouch lix. (calendared in 5 D. K. Rep., App. ii., pp. 139–142.

The account of Legatt and Wightman is from the State Papers (Domestic), 1612, March 9 (copy of writ *de heretico comburendo*), from Stow, Annals, 1002, from the Diary of Walter Younge, Esquire, February 21 and March 14, 1611–1612, and from the State Papers (in the Public Record Office) relating to the case of Trendall, viz., Domestic, 1639, Archbishop Neile to Sir Dudley Carlton, August 9 (in an enclosure of November of the same year bundle 432), and the same to Archbishop Laud, August 23, among the papers of that month.

Pp. 124–126. Heresy.

Among the High Commission Court cases, that of Lane occurs October 27, that of Viccars November 3, 1631, that of Harrison and that of Lane's wife April 13, 1632, (Bodl. Rawlinson, A. 128). I am much indebted to Mr. S. R. Gardiner for the loan of transcripts of proceedings in the Courts of High Commission and Star Chamber from the Bodleian and Harleian MSS.

Pp. 126–131. High Commission: Laud: Tone of judges: compurgation.

For the tone of the judges at Prynne's trial in the Star Chamber, *see* the account in Rushworth's Collection, vol. ii., p. 220 ('State Trials,' iii., 561 *et seq.*). *See* also other State trials of the period generally for the language of the Courts.

Dr. Hooke's compurgation in the Court of High Commission is related in the proceedings of November 24, 1631, and of April 19, 1632 (Bodl., Rawlinson, A. 128, p. 27). Other instances showing the practice to be common occur June 8 and 14, 1632, etc.

Reginald Scot's 'Discovery of Witchcraft,' originally published in 1584, was reprinted in 1651, and is still accessible and well worthy of study in the edition of the latter date. James's 'Demonologie,' from the preface to which there is an extract in the text, bears date 1597.

Pp. 131–139. Witchcraft.

Bigamy was made felony by 1 James I., c. 11. The statute of this period relating to witchcraft is 1 James I., c. 12. Previous Acts on the subject are 33 Hen. VIII., c. 8, and 5 Eliz., c. 16. The 72nd canon of the Convocation of the Province of Canterbury, 1604, prohibited attempts to cast out devils by ministers without *special licence from the bishop* of their diocese.

Passages relating to Essex and Suffolk witches in contemporary letters are printed in the 'State Trials,' vol. iv., col. 819 *et seq.*

The account of Mary Smith, the witch, by A. Roberts, B.D., 1616, is reprinted in the 'State Trials,' vol. ii., col. 1049 *et seq.*, and some of the proceedings against the Essex witches, in 1645, in vol. iv., col. 817 *et seq.*, also from a contemporary pamphlet.

The case of the woman who deliberately made a false confession of witchcraft at Lauder rests upon authority no less than that of George Sinclair, whose name is inseparably associated with the history of the barometer. It is related in his 'Satan's Invisible World Displayed,' pp. 53–55 (Reprint, Edinburgh, 1871). The frequency of confessions of witchcraft, made for the purpose of escaping from a life of persecution, is mentioned by Reginald Scot, p. 16 (Reprint of 1651).

The 'Stabbing Act' is 1 James I., c. 8.

Pp. 139–145. Stabbing, brawling, duelling, drunkenness, &c.

That brawls were still very prevalent in churches is established by proceedings of May 8, 1652, of which an account has been preserved in Bodl., Rawlinson, A. 128.

An illustrative case of an offence against a Proclamation of James I. to forbid duelling occurs in the Proceedings of the Star Chamber, May 11, 1632 (Bodl., Rawlinson, A., 128), in which precedents are cited.

An instance of the appeal of murder occurred in 1628, when one Arthur Norcott was tried with others for the murder of his wife. A few years later (1631) there were proceedings upon a wager of battle, when Donald, Lord Rea, appealed David Ramsay of high treason (Rushworth's Collection, vol. ii., pp. 112–128), and when, after preliminaries in the Painted Chamber at Westminster, the final decision was left to the king. A later case (that of Ralph Claxton and Lilburne) occurred in the reign of Charles I. (Rushworth, vol. ii., p. 788), but no actual combat ensued. The wager of battle and the appeal were abolished by 59 Geo. III., c. 46.

Ale or tippling houses and drunkenness are the subjects of statutes 5 and 6 Ed. VI., c. 25; 1 James I., c. 9; 4 James I., c. 5; 7 James I., c. 10; 21 James I., c. 7; 1 Charles I., c. 4, etc. Numerous instances of offences against the form of the 'statute concerning the keeping of tippling houses' appear in the Controlment Rolls.

The 'Act for punishing divers Abuses committed on the Lord's Day,' and reciting the frequency of bloodshed, is 1 Charles I., c. 1, and the republication of James's Book on Sports by Charles in the sixth year of his reign is mentioned in Whitelocke's Memorials, p. 17.

Proclamations during this period against eating flesh in Lent are too numerous to need special reference; that against the exchange of monies and the excessive use of gold and silver foil is printed in Rymer, xvii., 133, from Patent R., 16 Ja. I., pt. 3 d. The statute of 1624, limiting the rates of interest, is 21 James I., c. 17.

The statute by which it became a felony to go abroad with a plague-sore is 1 James I., c. 31, continued by 3 Charles I., c. 4, and again by 16 Charles I., c. 4.

The particulars of Overbury's murder, of the events which caused it, and of the subsequent trials, have been gathered from the State Papers, Domestic, 1616, vol. 87, (Conway Papers), Nos. 32, 33, 28, 134, 34,

and 144 (indicating some secret between Somerset and the king); from Weldon's account (printed in 'The Secret History of the Court of James I.,' vol. i., p. 378 *et seq.*); and from the 'Baga de Secretis,' Pouch lxii. (D. K. 5 Rep., App. ii., p. 145 etc.).

Pp. 145–148. Records &c. concerning the murder of Overbury.

Bacon's remark upon the 'barber surgeons' of his time occurs in his speech in the proceedings against Priest for sending a challenge in 1615; reprinted from contemporaneous account in Bacon's Works, ed. Spedding, vol. iv. (Life and Letters), p. 399, as well as in the 'State Trials.'

The proceedings against Wraynham in the Star Chamber for slandering Bacon are printed in the 'State Trials,' vol. ii., col. 1059; *see* Har. 304. The proceedings against Bacon himself appear in the Journals of the Commons, beginning March 15, 18 James I. (1620), vol. i., p. 554, and of the Lords, vol. iii., pp. 53; 84, where occurs his plaintive confession, and p. 100, where judgment is recorded.

Pp. 148–154. Bacon and his contemporaries.

For the proceedings against Sir Giles Momperson (or Mompesson) and his Patent for Inns *see* Commons' Journals, beginning February 27, 18 James I. (1620), and for his case and that of Sir Francis Michel in the matter of patents for gold and silver thread, *see* the same journals, beginning March 3, 18 James I. (vol. i., p. 536). *See* also Rushworth's Collection, vol. i., p. 24 *et seq.*

The Act respecting Monopolies and Patents is 21 James I., c. 3. The proceedings in Parliament against Yelverton are fully related in Rushworth's Collection, vol. i., p. 31 *et seq.* For the proceedings against Bennet, *see* the Journals of the Commons, April 18, 19 James I. (vol. i., p. 580, etc.).

The case of Lord Treasurer Middlesex in 1624 appears in the Journals beginning April 5, 1624 (22 James I.), vol. i., p. 755.

For matters relating to the commerce with the East Indies, *see* the documents printed in the Fœdera, vol. xvii., pp. 56–57, 450, and others from the Patent Roll, 15 James I., part 4 dors., the Patent Roll 20 James I., part 9, m. 8, etc.

Pp. 154–158. Touching roads, commerce, growth of population, &c.

For documents relating to corn and internal communications, *see* vol. xvii., p. 526, from the Patent Roll 21 James I., part 10 dors., and vol. xix., pp. 130, 131 (Proclamation concerning carts etc. on roads, 5 Charles I.). For the establishment of a postal system between Scotland and England, *see* vol. xix., p. 649, from the Patent Roll 11 Charles I., pt. 30, m. 11 d.

The offence of robbing the mail soon afterwards becomes common. The statute 23 Hen. VIII., c. 1, made perpetual by 32 Hen. VIII., c. 9, takes away benefit of clergy from persons committing robberies in or near highways (such as were the earlier brigands), but the term 'high

wayman' does not appear to have been in use much before the time of the Commonwealth. *See* Scobell, pp. 186, 508.

The increase of the population between 1570 and 1670 has been calculated from the Registers of Baptisms and Burials by Mr. Rickman, and his tables are published in the Population Abstract of 1841, p. 36.

Renewals of proclamations against building new houses within three miles of the gates of London are printed in the Fœdera, vol. xvii., pp. 107, 540, 608, etc., vol. xix., p. 177, etc., from the Patent Rolls 16 James I., part 1 dors., 21 James I., part 18, m. 5 d., 22 James I., part 1, m. 2 d., 16 Charles I., part 11, m. 10, etc. Proclamations that land-owners are to live in the country occur in 1617 (Rymer, vol. xvii., p. 7, from the Patent Roll 15 James I., part 11 dors.), in 1622 (Rymer, vol. xvii., p. 417, from the Patent Roll 20 James I., part 16, m. 19), and in 1623 (vol. xvii., p. 465, from the Patent Roll 21 James I., part 10, m. 2 d.). *See* also Report of Star Chamber Proceedings, June 21, 1632, respecting these proclamations and London amusements, Bodl., Rawlinson, A. 128. It appears by Scobell, part 2, p. 484, that there was similar legislation against the growth of London in 1656.

For the beginning of the representation of townsmen in the assessment of taxation, *see* vol. i. of the present work, pp. 177, 462. It is provided by the stat. 25 Ed. I., c. 6, that there shall be no tallage or aid without assent of Parliament. The dispute respecting tonnage and poundage in the reign of Charles I. is related in Whitelocke's Memorials, pp. 7, 11, 12, 46, and in Clarendon's 'Rebellion,' book iii., pp. 215–217. *See* also Commons' Journals, July 5, 1625 (vol. i., p. 803), etc. The Petition of Right, 3 Charles I., c. 1, is printed in the Statutes of the Realm, v. 23.

Pp. 158-167. Touching the quarrel of King and Parliament, and the trial and execution of Charles I.

The impeachment of Strafford (with the abortive trial upon it) is related at length in Rushworth's Collection, vol. viii. *See* also Clarendon, iii., pp. 105–203.

For the trial of Laud, *see* his own account, reprinted in the 'State Trials,' vol. iv., col. 315, etc., and other materials there. For some illustrations of his character, *see* p. 127 of the present volume, and Clarendon, i., 178, 196, 206, 207.

The Acts abolishing the Courts of High Commission and Star Chamber are 16 Charles I., cc. 10 and 11.

The sentence against Leighton in the Star Chamber, and the manner of its execution, are given (from the Diary of the Bishop of London) in 'State Trials,' vol. iii., col. 383 *et seq.*

The narrative of the proceedings in the trial of the king, as published by authority, is reprinted (with other illustrative materials) in the 'State

CHAPTER VIII.

THE Act of 1648–49, c. 4, 'Proclaiming of any person to be king inhibited,' is printed in Scobell's 'Acts and Ordinances,' part ii., p. 3. The Acts entitled 'Kingly office abolished,' and 'The House of Peers taken away,' cc. 16 and 17 of the same year, are on p. 8. At pp. 66, 67, is printed the Act, 'What offences shall be adjudged Treason,' relating especially to the 'Keepers of the Liberty of England and the Council of State' (1649, c. 44). The remarks in the text on the form of writs, and the course of legal business under the earlier Commonwealth, are founded upon an inspection of the rolls of the period at the Public Record Office.

Pp. 168–173. Concerning treason against the Commonwealth: Lilburne.

The trial of Lilburne for treason in 1649 is reprinted from the contemporary account, in the 'State Trials,' vol. iv., coll. 1269–1470. The ordinance for his banishment is in the Journals of the Commons, January 20, 1651–52 (vol. vii., p. 75), his subsequent trial in the 'State Trials,' vol. v., col. 407, from his own account. The examination of the jury is also reprinted in the same volume.

The Act declaring it treason to attempt, compass, or imagine the death of the Lord Protector is 1656, c. 3, and came into operation in October, 1656 (Scobell, p. 372).

Whitelocke ('Memorials,' p. 654) relates that the judges at Sundercombe's trial (February 1656–57) pronounced any attempt against the life of the Chief Magistrate *de facto* to be high treason. The full record of the judgment, in which it is possible that this doctrine may have been set forth, was in the 'Baga de Secretis,' as appears by a reference in the Controlment Roll of 1656, m. 121 and m. 133. This portion of the 'Baga de Secretis,' however, is not known to exist, and there is no record of Sundercombe's trial on the ordinary Judgment Roll. It is not difficult to imagine a reason for the disappearance, though, unfortunately, some other equally important documents of the same series have shared the same fate. The writ for Sundercombe's execution is extracted from the Controlment Roll 1656, m. 133. It is printed in substance, but not

Pp. 173–175. Treason against the Protector: Sundercombe.

verbatim, in the 'State Trials,' where also is given what purports to be the indictment.

The statute which declares that it is not treason to support the *de facto* king, even though he be not king *de jure*, is 11 Hen. VII., c. 1.

The successive ordinances to change the Church government and form of worship, which are mentioned in the text, are 1643, c. 11 (Scobell, part i. p. 42), 1644–45, c. 51 (p. 75), 1645, c. 57 (p. 97), 1646, c. 64 (p. 99), 1647–48, c. 104 (p. 139) 1648, c. 118 (p. 165).

Pp. 175–182. Concerning offences against religion: Naylor.

The petition for a confession of faith is printed in Scobell, part ii., p. 381 (1656, c. 6, s. 11). The words at the end, 'The Lord Protector doth consent,' approach very nearly to the formula used by the hereditary sovereign in similar cases.

In Scobell, part i., p. 149, is printed the Ordinance of 1648, c. 114, 'for punishing of blasphemies and heresies;' in part ii., p. 124, is the Act of 1650, c. 22, 'Against several atheistical, blasphemous, and execrable opinions, derogatory to the honour of God, and destructive to humane society.' At the Restoration the old state of the law with respect to heretics was revived in theory, though no more heretics were actually burned. When Charles II. was approaching his end, and fears were entertained that his successor might send religious opponents to the stake, Parliament went even beyond the Ordinance of 1648, and enacted that not only the writ *de heretico comburendo*, but also all capital punishments in pursuance of any ecclesiastical censures should thenceforth be abolished (29 Charles II., c. 9).

See the Act of 1656, c. 6, s. 11 (to which references has already been made), for evidence of comparative toleration under the Commonwealth. For the position of papists under the Protector, *see* the Act of 1656, c. 16 (Scobell, part ii., 443).

Particulars of Naylor's case have been extracted from the Journals of the Commons, vol. vii., pp. 448, 465 *et seq.*, 775, October 31, December 8, December 16, etc., 1656, and September 8, 1659. (Order for his discharge). Whitelocke mentions his release in September 1659 ('Memorials,' p. 683).

In Scobell, part ii. p. 121, is printed the Act of 1650, c. 10, relating to incest, adultery, and fornication. It is often represented that the commission of the last-mentioned offence a second time was made felony. But the words of the Act do not admit of such a construction, which has been adopted by some one who referred to a very imperfect index, instead of the Act itself, and then repeated in one book after another. Indictments for fornication appear on the 'Coram Rege Roll' [or Upper Bench Judgment Roll] 1656, Hilary, 'The Protector,' Nos. vi. and viii. Reference to

Pp. 182–184. Laws and records concerning incontinence.

various other similar cases is made on the Controlment Rolls of the same and other years.

The legislators of the Commonwealth had some precedents in certain local customs or borough laws, for bringing such matters under lay instead of ecclesiastical jurisdiction, as appears from various corporation records.

For the ordinances respecting stage-plays and actors, *see* Scobell, part i., pp. 135, 143 (1647, c. 97, and 1647–48, c. 106). The ordinance against cockfighting is in Scobell, part ii., p. 28 (1654, c. 2), and at p. 321 mention is made of c. 39, of the same year, prohibiting horse races for six months. Gaming in general was forbidden by the Act of 1656, c. 26 (Scobell, part ii., p. 501). The observance of the Lord's day, which had been the subject of previous legislation, was most carefully regulated by the Act of 1656, c. 15 (p. 438). The Act against profane swearing is 1650, c. 16 (p. 123). The indictment for playing football is from the Upper Bench Judgment Roll [Coram Rege], 1656, Hilary, 'The Lord Protector,' No. 51. Servants and apprentices frequenting taverns on days of recreation are the subjects of the Ordinance of 1647, c. 83 (Scobell, part i., p. 129). The Ordinance relating to drunken watermen, and the custom-house officers, is 1654, c. 38 (Scobell, part ii., p. 320).

Pp. 185–189. Touching amusements, drunkenness, &c.

For Acts relating to the establishment of a High Court of Justice, *see* Scobell, part ii. p. 111 (1650, c. 1), p. 130 (1650, c. 24), and various other passages.

Pp. 189–191.

The Habeas Corpus Act was but the enunciation, as law, of principles which had from time to time found expression in such Acts as the Petition of Right, and still more in various pamphlets, and in the language of prisoners on their trial, during the period of the Civil War and the Commonwealth. The Act of 12 Charles II., c. 24, for the abolition of military tenures, was fully anticipated by the Act of 1656, c. 4 (Scobell, part ii., p. 375). The necessity of dealing more severely than before with the practice of duelling, was declared in the Ordinance of 1654, c. 36, and the model of the present law on the subject is there to be found (Scobell, part ii., p. 319). Prosecutions under this ordinance are not uncommon on the Rolls. *See* Controlment Roll, 1656, mm. 86, 89, 116, &c. The Commonwealth Act for directing that 'All proceedings at law shall be in English' is 1650, c. 37 (Scobell, part ii., p. 148). And the laws relating to the punishment of blasphemies and heresies, without burning, are the Ordinance of 1648, c. 114, and the Act of 1650, c. 22, to which reference has already been made.

Pp. 191–193. Commonwealth laws subsequently adopted.

The particulars of Major Strangeways' case are from the 'Harleian Miscellany,' vol. iv., pp. 1–11.

Pp. 193–195.

The cases of suicide were found on the Controlment Roll (Upper Bench) for the year 1656. The more modern statistics are given, for England, in the 'Judicial Statistics' year by year, and by similar publications for France and other countries. The preponderance of male over female suicides is not greatest in England, and if there were any necessity to support the proposition put forward in the text by evidence from abroad, that evidence would be even stronger than any to be found at home.

Pp. 195–198. Records of suicide.

CHAPTER IX.

Pp. 200–202. Touching the attainder of Oliver Cromwell. Trial of the regicides, &c.

THE Act of Attainder against Cromwell and others after death is 12 Ch. II., c. 30. In the Journals of the Commons, December 8, 1660, (vol. viii., p. 252), appears the Resolution, as finally amended, of the Lords and Commons in Parliament assembled, that 'the carcases of Oliver Cromwell, Ireton, Bradshaw, and Pride should be taken up, drawn on a hurdle to Tyburn, and there hanged up in their coffins for some time, and after that buried under the gallows.'

For the official account of the trial of the regicides, see the 'Baga de Secretis,' Pouch lxiv. (calendared 5 Rep. D. K., App. ii., pp. 149, 150). The Proclamation respecting the surrender of the Judges who had tried Charles I. is reprinted in the 'State Trials,' v. 959.

The execution of Harrison is mentioned in Burnet's History of his Own Time (Ed. 1724), vol i., p. 162. The capture and execution of Barkstead, Okey, and Corbet are related in contemporaneous accounts reprinted in the 'State Trials,' v., 1302 &c. Their outlawry appears by the 'Baga de Secretis.' The law on this point is explained in vol. i. of the present work, p. 347.

The trial of Vane, written by himself, appears (with references to other sources) in the 'State Trials,' vi., 119, and his execution is fully described by Burnet, i., 164. The letter of Charles II. to the Lord Chancellor is reprinted in the 'State Trials,' vi., 187, from Harris's Life of Charles II., vol. ii., p. 34. Charles's practice of canvassing individual lords, both in public affairs and in private matters of justice, is described in Burnet's History of his Own Time, vol. i., pp. 271, 272. Hobbes's justification of such arts, and generally of the practice of making friends by bribery or otherwise in a public assembly, is in the 'Leviathan,' part ii., 22. (Molesworth's Edition of Hobbes's Works, iii., 222.) It is, however, right to add that Lord Clarendon in his 'Survey of the Leviathan' (p. 192), protests against it.

Pp. 203–208. Touching Vane and Penn, the conduct of trials, &c.

The trial of Penn and Mead is printed, from their own account, in 'State Trials,' vi., 951. For the doctrine respecting the juror's knowledge of facts, *see* Vaughan, Rep., (Ed. 1706) 147, Bushell's case, and

'State Trials,' vii., 267 (trial of Reading) for which references I am indebted to Mr. Forsyth's History of Trial by Jury, p. 163. The appeal by the judge to the jury respecting the credibility of a witness occurs in Craik's 'English Causes Célèbres,' from a contemporary pamphlet. The taxes upon unfortunate prisoners before they could be released, even when acquitted, appear only too prominently in the Assise Books. *See*, for instance, those of the Western Circuit.

For Jeffreys' conduct at the trials of Sidney and Hampden, *see* the reprints in the 'State Trials,' vol. ix., especially cols. 395 and 1123, and compare it with the conduct of other judges in preceding trials. His speech to Herbert is printed in the 'Collectanea Juridica,' vol. ii., pp. 405–407.

Pp. 209–218. Monmouth's rebellion: Jeffreys and other judges.

In the Commons' debates (Anchitell Grey's collection), November 6, 1689, the tone of party-feeling against Jeffreys is sufficiently manifest. Its historical value for a description of his character as distinguished from that of his contemporaries can be appreciated only by those who are familiar with the earlier and later proceedings in Parliament.

The first Act fixing the time for the execution of murderers is 25 Geo. II., c. 37. The remarks on the executions and pardons of the rebels of 1685 are founded on the Gaol Book, Western Circuit, 1685, in which also appears (under 'Southampton, Winchester Castle') the sentence on Alice Lisle. Her trial and the subsequent commutation of her sentence are related in Burnet, i., 649, 650. There is a full contemporary account of the trial of Delamere in the State Papers (Domestic) James II., vol. iii., and the remarks of Jeffreys quoted in the text occur at p. 149 of the pamphlet. For the trial &c. of Elizabeth Gaunt (with others), *see* 'State Trials' vol. vii., 381, and Burnet (i., 649), who gives Penn's description of her execution by burning—Penn having been present.

Burnet's account of Jeffreys appears in the History of his Own Time, i., 648 etc. *See* also his account of the military atrocities by Kirk's command after the Battle of Sedgmoor, i., 647.

For the manner and appearance of Titus Oates, *see* a passage in the State Papers (Domestic) Charles II., No. 253 (page unnumbered), and the more prejudiced remarks in North's 'Examen.'

Pp. 218–221. Touching Oates's parentage and early life.

The warrant for the arrest of Samuel Oates, 'clerk,' father of Titus, is enrolled on the Controlment Roll 1649, m. lxiii. d; the institution of Samuel Oates to the living of All Souls, Hastings, is in the Liber Institutionum, and the fact that the Oates of Hastings was the father of Titus is shown in the volume of State Papers to which reference has been made above. That both father and son were during the Commonwealth Anabaptists, and afterwards conformed again, appears in Baxter's

Life and Times, part iii., fo. 183 (Ed. 1696), and in Burnet's 'Own Time,' i. 424.

Evidence respecting the early character of Titus was given at the trial of Ireland, Pickering, and others, at which also was brought into Court (though not admitted as evidence), a copy of an indictment against him for perjury ('State Trials,' vol. vii., col. 128, from the contemporary account authorised by Scroggs).

North, in his 'Examen,' charges Oates with having committed, while acting as a naval chaplain, certain offences which would have left him without any form of depravity of which he could acquire new experience. There is nothing improbable in the story, and it is confirmed by Burnet, 'Own Time,' i. 425, and partly also by the State Papers Charles II. (Domestic), No. 253 (one of the pages numbered 33). *See* the same vol. for his first acquaintance with Tonge.

Oates's admission into the seminary of Jesuits, and his life among them, are established by evidence given at the trials in which he was a witness, and those in which he was arraigned for perjury.

The details of the pretended Popish plot, and of the manner in which it was made public, are chiefly from the volume of State Papers to which reference has already been made; but *see* also Oates's narrative reprinted in the 'State Trials,' vol. vi., 1430, Burnet's 'Own Time,' vol. i., p. 425 *et seq.* The trials of the persons accused of murdering Sir Edmundbury Godfrey, of Coleman, of Ireland and his fellow sufferers, of Wakeman, and of Lord Stafford, are reprinted in the 'State Trials,' vol. vii., from contemporary accounts. The proceedings of Oates and Bedloe against Scroggs, in the Privy Council (with the result of them), are also printed in the 'State Trials,' vol. viii., col. 163 &c. The description of Oates's success is from the speech of Chief Justice Jeffreys at the trial for perjury of May 8, 1685, reprinted in 'State Trials,' vol. x., 1214, and the other details given in the text from the account of that and the subsequent trial in the same volume. For the proceedings in Parliament upon his petition after the Revolution, *see* Commons' Journals, vol. x., pp. 144–264.

Pp. 221–234. Touching the 'Popish Plot.' Oates's punishment, &c.

The statute relating to perjury in force at this time was 5 Eliz., c. 9. An account of the treatment of approvers and appellors who failed, has been given in vol. i. of the present work, pp. 286, 287. The late appearance of witnesses as distinguished from jurors, has also been there pointed out, pp. 126, 206–208, 386.

The particulars of the trial of the Suffolk witches are fully given in a little volume published in 1682, the preface to which is a curious illustration of the age. The trial of the Devonshire witches is reprinted in the 'State Trials,' vol. viii., col. 1018,

Pp. 235–238. Sir M. Hale and Dr. Brown on witchcraft &c.

from a contemporary pamphlet. Francis North's letter on the subject is in the State Papers (Domestic), 1682, August 19, bundle 427, No. 67.

The Coventry Act is 22 & 23 Charles II., c. 1, and the outrage which led to it, and was said to have been committed by the king's desire, is described in Burnet's Hist. Own Time, i., 269. Cook and Woodburne were executed under it for slitting the nose of Mr. Crispe, 8 Geo. I. *See* 'State Trials,' xvi., 53. Colonel Blood's career is described in Strype's 'Stow,' vol. i., pp. 92–96, on sufficient authority. A riot on one of the apprentices' holidays gave rise in 1668 to a trial of some importance from a legal point of view—that of Messenger and others for 'constructive treason.' *See* Keelyng, Rep., p. 72. For a general account of the London apprentices, *see* Magalotti's Travels of Cosmo III. in England in 1669, pp. 296, 297. For the weavers' riot against engine-looms, *see* Hale's Pleas of the Crown, vol. i., pp. 144–148.

Pp. 239–242. The Coventry Act: Blood: The apprentices &c.

The proceedings upon the Exclusion Bills are entered upon the Journals of the Commons, vol. ix., 620–712. Papers relating to the Rye-House Plot are in the State Papers (Domestic), Charles II. *See* also 'State Trials,' ix., 358 *et seq.* for matters relating to it, including the trial of William, Lord Russell and Algernon Sidney.

Pp 242–249. Touching the events leading to the Revolution.

The proceedings of the Convention Parliament upon Armstrong's case appear from the Journals of the Commons, vol. x., pp. 110, 137, 284 *et seq.* His *outlawry*, upon which the attainder was founded, was reversed by the Judges of the Court of King's Bench (6 Will. and Mary), on the very technical ground that the words 'pro civitate Londini' had been omitted after the words 'at a court of hustings.' *See* 4 Mod. Rep., 366, Case 128.

The Bill of Rights eventually became the stat. 1 & 2 Will. and Mary, st. 2, c. 2, s. 1.

James's Declaration suspending the penal laws in ecclesiastical affairs, and granting liberty of conscience, and its reception by Protestants are described in Burnet's 'Own Time,' i., 714, 738, etc.

The incidents of James's fall, and of the enthronement of William and Mary in his place, are too well known to require special references.

The Habeas Corpus Act is 31 Charles II., c. 2. The Act which finally abolished military tenures (in accordance with principles of the Commonwealth), is 12 Charles II., c. 24. The stat. 13 & 14 Charles II., c. 12, was the foundation of the later Law of Settlement and Removal of the Poor; and c. 6 is an Act for the repair and enlargement of highways which indicates a progressive increase of traffic and commerce. The statute 15 Charles II., c. 1, was for the establishment of toll-gates.

Some materials for a comparison of the condition of England with that of France towards the end of the seventeenth century, are to be found in the 'Mémoires de Fléchier sur les Grands Jours d'Auvergne en 1665.'

Pp. 249, 250. State of France.

Defoe's account of the Plague in London, and of its hardening effects upon some natures during the height of the danger, may, perhaps, be more picturesque than accurate in details. He was, it is true, but an infant in 1665, and wrote not as an eye-witness, but from the descriptions of others. There is, however, no reason to suppose that he deliberately invented the blasphemies, the robberies, the callousness, and the despair, or the occasional tenderness and self-sacrifice, which he describes.

Pp. 250, 251. On the Plague.

CHAPTER X.

By the statute 8 & 9 Will. III., c. 27, the act of opposing execution of any legal process in places of 'pretended' privilege was made penal; and the names of the sanctuaries are mentioned in it. Some facts and authorities relating to the early history of sanctuaries will be found in vol. i. of the present work, pp. 232–233, 235, 472, 473. By stat. 26 Hen. VIII., c. 13, s. 2, the privilege of sanctuary was denied to traitors; in 27 Hen. VIII., c. 19, is the regulation that sanctuary men are to wear badges, with various rules for the governors of sanctuaries; and in 32 Hen. VIII., c. 12, by which the privilege of sanctuary is taken away from the greater criminals, the names of the permanent sanctuaries are mentioned, and various other details are given. The stat. 21 James I., c. 28, nominally abolishes the privilege of sanctuary, after which follow the statute of Will. III., already noticed, 9 Geo., I. c. 28 ('Suffolk Place, or The Mint'), and 11 Geo. I., c. 22 ('Wapping, Stepney,' &c.)

Pp. 252–255. Acts &c. relating to the sanctuaries.

The account of the clandestine marriages in the sanctuaries and prisons is from a broadside now in Lincoln's Inn Library, and entitled 'Reasons for Passing the Bill to prevent Clandestine Marriages.' Leave to bring in this Bill was given in 1718, as appears by Commons' Journals, xix., 88, but it did not become an Act.

An account of the trial of Jonathan Wild appears in the 'Select Trials at the Session House at the Old Bailey' (published in 1742, and giving the executions, as well as trials of convicts), vol. ii., pp. 212–218; and there are incidental notices of him in other trials in the same volume.

Pp. 255–259. Jonathan Wild.

There is evidence of the diminution of the offence of forcible entry about the year 1700 in the Controlment Roll, King's Bench, Crown Side, 12 Will. III., the entries upon which have been carefully studied. The similar roll for the year 23 & 24 Geo. II. has been compared with it, and the practical extinction of forcible entry in the interval established by the comparison. The remarks upon riots, routs, &c., are founded upon the same records, upon which (sometimes at length, sometimes in abstract) appears the whole of the business of the Court of King's

Pp. 259, 260. The evidence relating to forcible entries, affrays, &c.

Bench in each year. Some cases appear more fully upon the 'Coram Rege,' or Crown Roll, with which, in a great number of instances, I have compared the Controlment Roll, but there are matters on the Controlment Roll which do not appear on the Crown Roll at all. Neither the Crown Rolls nor the Controlment Rolls suffice to give the total of accusations throughout the country, because much of the criminal business of the judges was transacted on circuit. The records of the circuits, after the reign of Henry VI., are not, like those of the Court of King's Bench, at the Public Record Office, but under the custody of the respective Clerks of Assise. They are in various repositories, difficult of access, and incomplete. To discover what was the total of crime in England from the fifteenth century to the eighteenth is therefore more difficult than to discover what it was in the fourteenth, and is indeed impossible. The criminal business of the Court of King's Bench, however, gives a fair sample of the graver offences throughout the country; and, as the records of the Court are continuous from year to year, they afford very trustworthy standards of comparison.

P. 260. The silk-weavers' riot against the East India Company is narrated in Luttrell's 'Brief Relation of State Affairs,' January 21 and January 26, 1696–97.

Pp. 261–269. Touching the pirates of the eighteenth century. The general view of the temptations to enter upon the life of a pirate has been suggested by Captain Charles Johnson's History of the Pirates (1724). Among the attempts to suppress piracy may be mentioned the statutes 11 Will. III., c. 7, 6 Anne, c. 34, 6 Geo. I., c. 19, 8 Geo. I., c. 24, and 18 Geo. II., c. 30. Whatever good might have been otherwise done by these Acts, their effects were continually neutralised by proclamations of pardon to the offenders under them.

For the affair of Captain Kidd, and the Company of which Somers was a leading member, *see* the Journals of the House of Commons, December 4, 1699, 11 Will. III. (vol. xiii., pp. 11–36), where are printed the numerous documents relating to this matter which were laid on the table of the House; and for the rest of the proceedings in relation to Kidd and his associates, *see* the State Tracts, vol. iii., p. 230 *et seq.*

The account of Captain Bartholomew Roberts is from Johnson's History of the Pirates. *See*, for the earlier portion, the Life of 'Captain' England and his Crew, and of 'Captain' Howel Davis and his Crew. The regulations for the Crusaders appear in Rog. Hoved. vol. iii., p. 36 (Ed. Stubbs). *See* also vol. i., p. 168, of the present work. The similar rules for the pirates are given in Johnson's History (p. 170 *et seq.*), and the other incidents relating to Roberts are from

the same source. Johnson was a contemporary, and professes to have obtained his information from the pirates themselves. He also quotes some of the colonial indictments, which are apparently genuine. For the career of Gow, and his terror of the press, *see* the description of him by the Ordinary of Newgate in 'Accounts of the Convicts,' vol. ii., p. 254, etc. 'Pardons' and 'Acts of Grace' to pirates are frequently mentioned in Johnson's History. *See* also Narcissus Luttrell's 'Brief Historical Relation of State Affairs,' May 13, 1693.

Pp. 269–271. Wrecking.

Wrecks had been defined and provision made for salvage by the Statute of Westminster the First, 3 Ed. I., c. 4; also by 27 Ed. III., st. 2, c. 13. The statute of Anne's reign is known as 12 Anne, session 2, c. 18. Among contemporaries who deplored the continuance of wrecking was Adam Anderson, whose 'Historical and Chronological Deduction of Trade and Commerce' was the basis of Macpherson's Annals of Commerce. For the passage mentioned in the text, *see* the latter work, vol. iii., p. 41.

Pp. 271–273. Impressment &c.

Evidence of the legality of impressment, so far as prescription is synonymous with legality, is abundant. The case in which workmen were impressed to serve in the Durham mines is recorded on the second roll of Bishop Hatfield, in the Durham Cursitor's Series, m. 5 dors. The statutes in which the custom of impressing landsmen to serve at sea is implied are 2 Richard II., c. 4, 2 & 3 Philip and Mary, c. 16, s. 1, 5 Eliz., c. 5, s. 26, 7 & 8 Will. III., c. 21, s. 13, and others of later date.

Pp. 274–277. Evidence of the highway robberies of the period.

For various cases of highway robbery, see innumerable entries in Narcissus Luttrell's 'Relation,' 1678–1714, and for that of Horton or Norton, who robbed the Bristol mail, the 'Select Trials,' First Series, vol. ii., p. 217 *et seq.* The Act 4 Will. and Mar., c. 8, appears to be the first passed 'for encouraging the apprehending of highwaymen' by rewards. Streets were to be deemed highways within the meaning of this Act, according to 6 Geo. I., c. 28, s. 8. It was an indication of progress that so much attention was now given to the subject.

In order to verify the remarks upon the Diaries of Evelyn and Luttrell, no further reference than is given in the text seems necessary. The particular passages can be found in any edition by means of the date. It should, however, be observed that the month described as January, 1693, in the text is to be found in the Diaries for 1692–93, as the legal year then began on March 25. For the case of Parsons, *see* the Old Bailey Sessions Papers for the year 1750, No. 142 &c.

The Act commonly known as the Waltham Black Act is 9 Geo. I., c. 22, continued by 12 Geo. I., c. 30, &c. This is one of the class of statutes (not altogether unknown in more modern times), which are

sometimes passed in a panic. A more striking illustration of emotional legislation occurred a few years earlier, when an attack upon Harley (afterwards Earl of Oxford), caused the passing of a statute (9 Anne, c. 16) by which it was made felony to assault a Privy Councillor in the execution of his office. The lesson to be learnt is that the actual condition of society is not to be ascertained from the Statute Book alone, which does not distinguish between Acts passed because a crime is of common occurrence, and Acts passed to prevent the repetition of an offence only once committed.

Pp. 277, 278. Note on the Waltham Black Act &c.

Particulars of the case of Mary Young *alias* Jenny Diver are given in the 'Select Trials,' First Series, vol. iv., p. 335 *et seq.*

P. 279.

The statute of 1698 for branding in the cheek is generally known as 10 William III., c. 23. In the Statutes of the Realm, however, it appears as c. 12, s. 6. The repealing statute (in which also are the other provisions respecting benefit of clergy mentioned in the text) is generally known as 5 or 5 and 6 Anne, c. 6. In the Statutes of the Realm it is given as 6 Anne, c. 9.

Pp. 280–283. Touching benefit of clergy.

Particulars of the case of Fielding and the Duchess of Cleveland are reprinted in the 'State Trials,' vol. xiv., col. 1327 *et seq.* The Act in virtue of which he could claim benefit of clergy as a bigamist is 1 Ed. VI., c. 12, s. 16.

Burnworth's indictment at Kingston Assises, and the application of the press to him after the thumb-tying process, are related in the 'Select Trials,' vol. ii., p. 345.

Pp. 283–285. Standing mute: note on torture.

Cases in which the whipcord torture was applied to persons standing mute are mentioned in Keeling's Reports; and that of Durant appears in full in the Old Bailey Sessions Papers for the year 1734, p. 75. It is often asserted in legal and historical works that torture to extort confession was practised in England as late as the reign of William III. The foundation for the opinion is no better than a statement by Sir Walter Scott in his edition of the Somers' Tracts, vol. i., p. 209. The statement is true as affecting Scotland, to which probably it refers. A warrant for the infliction of torture in England as late as 1620 is printed in the Archæologia, vol. x. The Act for the abolition of torture in Scotland is 7 Anne, c. 21.

For the case of William Fuller, *see* his own narrative, and the various documents printed in the 'State Trials,' vol. xiv., p. 517 *et seq.*, and for that of Parson Young, Luttrell's 'Brief Relation,' February 7 and 14, 1692–93, etc. Kinnersly's case is related in 'Select Trials,' First Series, vol. iii., p. 106 (January, 1728–29).

Pp. 285–289. The pillory and the stake.

The first entry with respect to Mrs. Merryweather in Luttrell's 'Brief Relation' occurs on January 19, 1692–93. Between that and the final

entry of her pardon on February 23 there are various remarks upon her, as described in the text.

The trial, sentence, and execution of Barbara Spencer are related in the 'Select Trials' (First Series), vol. i., pp. 40–44, and of Catharine Hayes, vol. iii., pp. 1–23.

For the case of Hathaway and Sarah Morduck *see* the 'State Trials,' vol. xiv., col. 639 *et seq.*, where the trial is reprinted from a contemporary report confirmed by records of the Surrey Assises, 1702. Sacheverell's trial upon impeachment is described in the account printed by authority in 1710. Other matters relating to him are described in Burnet's History of his Own Time, ii., 537–553. Particulars of the subsequent trial of Damaree for the No Dissent riots are reprinted in the 'State Trials,' vol. xv., col. 522 *et seq.* Woolston's case is related in 'Select Trials,' First Series, vol. iii., p. 113.

Pp. 289–292. Hathaway, Sacheverell, Damaree, Woolston.

Dr. Davenant, who, when he died in 1714, had been some time Inspector-General of Exports and Imports, wrote various works upon commerce, and showed, from the documents to which he had access, the increased and increasing wealth of the country. *See* his Discourses on the Public Revenues, vol. i., p. 359 etc., his Report to Commissioners for Stating the Public Accounts, in vol. v. etc. The increase of the population between 1600 and 1750 is given upon the authority of tables drawn up by Mr. Rickman from the Registers of Baptisms and Burials, and published in the Population Abstract for 1841, p. 36.

Pp. 292–294. Evidence concerning commerce, labour, population, &c.

The statute against forestalling, regrating, and engrossing (in which there is a definition of those offences), is 5 and 6 Ed. VI., c. 14; *see* also the Judic. Pillor. of uncertain date, (not later than the reign of Edward II.), etc., etc. Instances of prosecution for them appear upon the Controlment Roll 12 Will. III., etc., etc. The Act 'Touching divers orders of Artificers,' etc., is 5 Eliz., c. 4 (not altered before 53 Geo. III., c. 40), and prosecutions for offences under it are readily to be found on the Controlment Rolls. There exists among the State Papers, Domestic (in the Public Record Office), Geo. II., February 28, 1738, bundle No. 47, an anonymous letter, signed 'Englishman,' and addressed to Lord Harrington, in which the payment of workmen in kind is made the subject of very bitter complaint.

The mode of appointing inspectors of cloth-mills etc. is regulated by the statute 13 Geo. I., c. 23; c. 24 also contains clauses directed against abuses in the dyeing trade. The stat. 18 Geo. II., c. 24, is directed against frauds in the stamps of linen etc., and c. 25 against other but similar deceptions.

clippers, that it is hardly necessary to refer to particular passages; but *see*, for example, under January 28, February 18, February 25, March 16, March 21, 1692–93, etc., etc. The statute of 1694, which relates to clippers and their accomplices is 6 and 7 William and Mary, c. 17. For the forgery of Nottingham's writing, the Secretary's seal, etc., etc., *see* Luttrell, March 11, March 16, 1692–93.

Pp. 295, 296. Clippers, counterfeiters, &c.

For the stock-jobbing and company-mongering schemes between 1692 and 1695, *see* the 'Angliæ Tutamen' and Anderson's Annals of Commerce (Macpherson, vol. ii., p. 671). The statute by which the Governor and Company of the Bank of England came into existence is 5 and 6 William and Mary, c. 20, in which the borrowing scheme is fully detailed.

Pp. 296–306. Stock-jobbing; the South Sea scheme, and frauds.

The account of the origin and development of the South Sea scheme is from the first South Sea Act of 1711, 9 Anne, c. 15, from the Journals of the Commons, vol. xvii., pp. 222, 224–227, 255, 261–264, etc., from the South Sea Acts, 7 George I., st. 1, cc. 1 and 2, and from the Annals of Commerce, by Anderson, who was a clerk in the South Sea Company (Macpherson's 'Anderson,' vol. iii., pp. 77–114). In the last-named work also have been preserved the titles and alleged objects of the bubble companies which appeared in the year 1720, an account of the Welsh Copper Company of the Prince of Wales, and a number of details of the mode of subscription, together with the stories of various men who opened their rooms in the morning, and disappeared with a small fortune in the afternoon.

For the matters brought before the Houses after the explosion of the bubbles, *see* the Parliamentary History of the period, the Journals of the Lords, vol. xxi., p. 395 *et seq.*, and the Journals of the Commons, vol. xix., pp. 391, 493, 502, and innumerable passages at short intervals afterwards. For the appointment of the Commons' Secret Committee and its report, *see* the latter volume, p. 401 *et seq.*

The passage in which Anderson admits the erasures and many other of the iniquities connected with the company of which he was a clerk is in page 112 of the third volume of Macpherson's edition.

Burnet, in his History of his Own Time (ii., 42), gives an account of Trevor's early career, and employment to distribute bribes among members of Parliament. *See* also Commons' Journals, ix., 713, x., 347. The particulars of the acceptance of a bribe by Trevor himself, and the subsequent action of the House, are to be found in the Commons' Journals, xi., 271–274, in Burnet, ii., 144, and in North's Life of Lord Keeper Guilford, p. 218, where it appears that Trevor continued to be Master of the Rolls.

Pp. 307–315. Corruption: Trevor, Danby, Duncombe, Montague, Walpole, Sutton, Pelham.

For the career of Danby and the accusations against him *see* Burnet,

i., 373, 382, 453–455, ii., 4, 145, 155, 280, etc.; the Journals of the Lords, vol. xiii., p. 432 *et seq.*, xiv., 7, xv., 580, xvi., 769, and Journals of the Commons, vol. ix., 324–329, 559–629, 708, and vol. xi., 327–332.

Duncombe's exposure and the Bill of Pains and Penalties against him appear in the Commons' Journals, vol. xii., pp. 63–132, and in the Lords' Journals, xvi., 222 *et seq.* The previous trial and acquittal in the King's Bench are printed in the 'State Trials,' vol. xiii., 1061 *et seq.* His accusation against Montague is mentioned also in the Commons' Journals, vol. xii., p. 116. The later accusations of corruption against Charles Montague (Lord Halifax), including that of a corrupt disposal of an auditorship in the Exchequer by him, appear at length in the articles of impeachment (Journals of the Lords, vol. xvi., pp. 743–746).

Robert Walpole's arrangement to secure the reversion of an office for his son appears in the Parliamentary History, vol. vii., p. 460 (May 20, 1717). The report of the Secret Committee upon the last ten years of his administration is in the Journals of the Commons, xxiv., 348. *See* also the Lords' Journals, vol. xxvi., p. 125 *et seq.* The affair of Sir Robert Sutton during Walpole's administration is the subject of a report in the Commons' Journals, vol. xxi., 914, &c. Horace Walpole's account of the corruption during his father's tenure of office, and that of Pelham, is from his Memoirs of the Reign of King George II., vol. i., pp. 234–235 (edition of 1847).

Marlborough's treachery, double-dealing, and avarice are indicated in letters printed in Macpherson's 'Original Papers.' His betrayal, when Lord Churchill (1694), of the expedition to Brest, appears among the same papers, vol. i., p. 487.

P. 315. Marlborough.

The particulars relating to suspected corruption of all the judges are from two broadsides in Lincoln's Inn Library (date apparently a little after 1715).

Pp. 316–321. The judges: Macclesfield &c.

For the corruption, impeachment, and sentence of Macclesfield, *see* the Journals of the Commons, vol. xx., pp. 408–542, and the Journals of the Lords, vol. xxii., p. 417 *et seq.* There was still in force at the time of Macclesfield's trial the statute 5 and 6 Edward VI., c. 16, against the sale of offices; and in the opinion of so recent an authority as Lord Chancellor Campbell, Macclesfield's offence came within the meaning of the Act. The two Chief Justices, however, are expressly excepted from its provisions, and a question might be raised whether that could be permitted to them which was forbidden to the Chancellor. That previous Chancellors had done as Macclesfield did is certain, not only from the general character of previous ages, but also from precedents cited at the trial.

The application of the fine inflicted on Macclesfield to defray the claims of injured suitors appears in Sanders's 'Orders in Chancery,' vol. i., pp. 514, 529, etc., as pointed out by Lord Campbell in his 'Lives of the Chancellors.' Macclesfield's order with respect to funds in the hands of Masters is printed in Sanders, i., 465, and the similar order of King, p. 514 *et seq.* The Acts 12 George I., cc. 32 and 33, were also for the relief of suitors whose property was in Chancery, and who would previously have received no interest on it—perhaps for years.

The statute by which it was finally established that judges' commissions should be made 'quamdiu se bene gesserint,' instead of 'quamdiu nobis placuerit,' or 'durante bene placito,' is 12 and 13 Will. III., c. 2. s. 3; and the statute by which it was finally established that written pleadings should be in English is 4 Geo. II., c. 26, amended with respect to the titles of writs etc. by 6 Geo. II., c. 14. The rolls of the various courts show how the change was carried out.

Pp. 321–323.

Pp. 323–324.

The statute of William III., 'For Regulating of Trials in Cases of Treason' is 7 and 8 Will. III., c. 3.

P. 324.

For particulars of the attainder of Fenwick, *see* Commons' Journals, vol. xi., pp. 579–657, and Lords' Journals, vol. xvi., p. 19 *et seq.*, and the detailed account of the proceedings published in 1696.

Pp. 325–327. Fenwick, Charnock, the Pretender, &c.

Of the case of Charnock, King, and Keyes, there is an account in the 'State Trials,' vol. xii., 1377, etc.

The Acts for imprisoning Counter, Bernardi, and others, are 9 William III., c. 4, and 10 William III., c. 19 [13]. *See* Statutes of the Realm.

The Act of Attainder against 'the pretended Prince of Wales,' is 13 and 14 William III., c. 3.

The impeachment of Bolingbroke appears upon the Commons' Journals, vol. xviii., pp. 166, 253–261, and the Bill of Attainder against him, xviii., 261; the Act is 1 George I., st. 2, c. 16.

Pp. 328–330. Touching the punishments after the Rebellion of 1715 &c.

The proceedings upon the impeachment of Oxford (remarkable for the technical questions raised upon them) are in the Journals of the Commons, vol. xviii., pp. 166, 216–324, 570–616, and the impeachment of Strafford, vol. xviii., 183, 294, etc., and Lords' Journals, vol. xx.

The impeachments of Derwentwater, Kenmure, and the other lords, will be found in the Journals of the Commons, vol. xviii., pp. 330–371, and the execution of the two in Tindal's 'Continuation of Rapin,' vol. iv., p. 487. The records of the trials of the inferior rebels have been preserved in the 'Baga de Secretis,' Pouch lxvi. (Calendar D. K. 5 Rep., App. ii., pp. 153–167), from which and from Tindal, iv., 485, 497, 501–503, the particulars of the manner in which they were

treated have been extracted. The Act of Grace is 3 George I., c. 19. An Act relating to transportation passed about this time is 4 George I., c. 11.

The atrocities perpetrated after the Battle of Culloden, are placed above all doubt by various letters existing among the State Papers (Domestic) 1746. The letter of the Duke of Cumberland in which he depreciates the British troops, and makes his joke about blood-letting is addressed to the Duke of Newcastle, and the passages mentioned in the text have been printed in Coxe's 'Memoirs of the Pelham Administration,' vol. i., pp. 302–303.

Pp. 330–334. Touching the punishments after the Rebellion of 1745 &c.

'Horace Walpole's Letters' (Cunningham's Edition) have been used in the following order:—for the statement that popularity had changed sides, vol. ii., p. 50; for the suggestion that Cumberland should be made free of the Butchers' Company, and for his bloodthirstiness in general, p. 43; for the wish of Cumberland to give a ball to 'Peggy Banks' on the day on which sentence was passed on the rebel lords, p. 44; for the day on which that ball was actually given, p. 47; for the 'new heads' at Temple Bar, and the spying-glasses to look at them, p. 50.

The conditional Act of Attainder against rebels who had escaped is 19 Geo. II., c. 26. The Act of General Pardon is 20 Geo. II., c. 52. The overcrowding of prisons with rebel prisoners of which not a little complaint was made in some letters of the time, receives its best confirmation in the 'Baga de Secretis,' where the long lists of the prisoners have been preserved (Bundle lxix. calend. 'Fifth Report of the Deputy Keeper of Public Records,' Appendix ii., pp. 171–195).

The Act which abolished the private jurisdictions of the Scottish chiefs is 22 Geo. II., c. 43, s. 1. The Act by which the two kingdoms and the two Parliaments of England and Scotland had previously been united, is 6 Anne, c. 11.

P. 334.

The statutes 4 Anne, c. 17 (4 & 5 Anne, c. 4, in Statutes of the Realm) and 5 Anne, c. 22, relate to fraudulent bankrupts. The forgery of certain stamps was made felony by various statutes from 5 & 6 Will. and Mary, c. 21, s. 11, downwards; that of the Bank Seal and Bank Notes by 8 & 9 Will. III., c. 20, s. 36, and 11 Geo. I., c. 9, s. 6; that of Exchequer Bills by various Acts from 7 & 8 Will. III., c. 31, s. 36, downwards; that of the signatures of proprietors of stock, by 8 Geo. I., c. 22; that of annuity orders, by 9 Geo. I., c. 12; that of East India and South Sea bonds, by 12 Geo. I., c. 32; that of acceptances of Bills of Exchange, by 7 Geo. II., c. 22; and that of deeds in general, by 2 Geo. II., c. 25.

Pp. 334–335. Statutes relating to new offences.

The 'Gin Act' is 9 Geo. II., c. 23, and the Act repealing it and substituting lower duties is 16 Geo. II., c. 8. The debates on the subject, which, if not strictly authentic, represent, at any rate, some of the opinions of the time, will be found in the 'Parliamentary History.'

Pp. 325-336. The Gin Act &c.

Fielding's 'Enquiry into the Causes of the late Increase of Robbers &c.' is printed in the tenth volume of the edition of his works published in 1784.

Pp. 337-344. Touching society in the first half of the eighteenth century.

The Mohocks and other murderous roysterers are described in Gay's 'Trivia,' Book III. (especially line 321 *et seq.*), and in 'A Trip through the Town,' published in 1735. *See* also State Papers, Scotland (in the Public Record Office), March 1726, Bundle 18, Letter to the Speaker describing the thefts, murders, &c. in the streets of London.

A Parliamentary enquiry concerning prisons was made in 1729. *See* Reports of Select Committee presented May 14 in that year, and Commons' Journals, vol. xxi., p. 376.

The Toleration Act is 1 Will. and Mary, c. 18.

CHAPTER XI.

THE *peine forte et dure* (for an explanation of which, see vol. i., pp. 210–11, 387, 468, 498), was abolished by the statute 12 Geo. III., c. 20.

The report of the Commons' Committee recommending the abolition of capital punishment for minor offences appears upon the Journals of the House, 1770, vol. xxxiii., p. 365. The contribution of 100,000*l.* by the British Government to the sufferers by the Lisbon earthquake is also mentioned in the Journals, December 8, 1755, vol. xxvii., p. 331. See also 'Parliamentary History,' xv., 543.

Pp. 345–352. Evidence of the growth of public sympathy, as affecting punishments, the slave-trade, &c.

From 1788 downwards, the Journals and Parliamentary Debates fully illustrate the growth of popular opinion on the subject of the slave-trade.

The case of Strong the negro-slave, in 1765, was one of a series in which Granville Sharpe was engaged. It was brought to his notice through his brother, a surgeon who had healed the wounds of the black man. His writings and other efforts probably aided in bringing about the decision in the case of Somerset. See his 'Representation' on Slavery, (London, 1769), and see 'Clarkson's History of the Abolition of the Slave-Trade,' p. 67. Somerset's case (1771–2) is reported in the 'State Trials,' vol. xx., p. 1, from contemporary sources, and in Lofft, 1. Some curious technical points are argued in Smith v. Browne, and Smith v. Gould, in Salkeld's Reports, 666–7. See also Granville Sharpe's 'Just Limitation of Slavery' (London, 1776).

By the Transportation Act of 1718, 4 Geo. I., c. 11, persons within benefit of clergy might be transported for seven years, instead of being burnt in the hand, or whipped; the offence of returning from transportation before expiration of the term was made punishable by death; and persons between fifteen and twenty years of age, in want of employment, might volunteer for transportation, and make contracts with merchants for 'service in America.'

The kidnappers of Bristol are mentioned in North's 'Life of Lord Keeper Guildford,' p. 216, in a passage illustrative of the earlier history of transportation when it was the condition of pardon for capital offences.

The much-hated Jeffreys incurred odium for attempting to suppress the cruel practices of the Bristol traders. Upon this subject, see also the trial of Langley, the highwayman.

The substitution of work in raising sand &c. and cleansing the river Thames in the case of men, and of imprisonment with hard labour in the case of women, for transportation, was practically effected by the stat. 16 Geo. III., c. 43. The abortive Penitentiary Act was 19 Geo. III., c. 74. The Act of 24 Geo. III., sess. 2, c. 56, empowered the King in Council to appoint a place of transportation, and Australia was named in accordance with the terms of the statute. For Howard's description of a 'Penitentiary,' see 'Lazarettos,' p. 220 *et seq.*

Howard's own account of his series of efforts beginning in 1773, and rewarded with success in the year 1774, is given in the introduction to his 'State of the Prisons in England and Wales.' His opinions on the causes of the gaol-fever, and his statement that it had disappeared in 1782, are to be found in the same work, fourth edition, pp. 467–8.

Pp. 352–359. Prisons &c. in Howard's time.

A description of the gaol of Newcastle-upon-Tyne is given in the same work at p. 423, of Ely gaol, pp. 291–2, and of Durham county gaol at pp. 419–20. The full particulars of Howard's visits to the various prisons of Europe (many times repeated in England) are to be found partly in the same work and partly in the 'Lazarettos of Europe.' A general reference to the 'State of Prisons' is all that is needed in confirmation of the general description of gaols. St. Alban's Bridewell is described at p. 258.

Howard's strong but discriminating sympathy with debtors is so frequently expressed that it does not need a reference to any particular passage in proof of it. His remarks on public executions occur in a note at p. 215 of the 'State of Prisons,' his recommendation that every prisoner should have a separate sleeping cell, at p. 22. He describes each particular Bridewell minutely county by county, and gives some of the details in his general plan of improvement, p. 37.

Among the series of Acts relating to the poor during this period, may be mentioned 7 Geo. III., c. 7, s. 5, (restricted to the metropolis,) against 'false parsimony' in the rearing of pauper children, and 22 Geo. III., c. 83, and 36 Geo. III., c. 23, by the latter of which out-door relief was established and the Act of 9 Geo. I., c. 7, prohibiting such relief, was repealed. The amount of money annually expended for the relief of the poor in England and Wales from 1748 to 1750 was on the average 689,971*l.*; in the year ending at Easter 1776, it was 1,530,800*l.*, and in the year ending at Easter 1818 it was 7,870,801*l.* For further details see the third Report of the Poor Law Commissioners, p. 324.

Pp. 360–364. Laws and expenditure for the poor.

In 1755 was passed the Act 28 Geo. II., c. 8, for the construction of the Sankey Brook Canal. The progress of our canal system, the application of steam to navigation, and the successive stages by which our railways were developed, are so well known that they need no references to prove them. The Highway Acts of the period are far too numerous to be mentioned in detail. They occupy no small portion of the Statute Book.

Pp. 364-365. Communications.

Acts to protect engravings from piracy are 8 Geo. II., c. 13, and 7 Geo. III., c. 38. The stat. 21 Ja. I., c. 3 is for the abolition of monopolies, and incidentally for the protection of inventions for fourteen years. Other statutes to which reference is made in the text are 8 Anne, c. 19, and 54 Geo. III., c. 156, s. 4 (copyright). For the proceedings on appeal in which the Lords decided in 1774 that an author had not at common law a perpetual copyright in his own works, *see* 'Parliamentary History,' xvii., 953 *et seq.*

Pp. 365-368. Laws to protect science, art, and literature.

The origin and early functions of jurors have been described in the first volume of this work. The persistence of the ancient manner of regarding them has also been pointed out from time to time in the course of the history. The ruling of Lord Ellenborough in 1816 respecting a juror's own knowledge of facts appears in Maule and Selwyn (K. B. Rep.), iv., 541, 542, R. v. Sutton, as pointed out by Mr. Forsyth in his History of 'Trial by Jury.'

Pp. 368-369. Development of trial by jury.

Particulars relating to the constables, watchmen, and patrols of the metropolis as existing at the end of the eighteenth century are given in a 'Treatise on the Police of the Metropolis' attributed to Colquhoun, 2nd Ed., published in 1796. See in illustration of the text pp. 226, 240. The need of centralisation is shown at pp. 374, 436, &c., and the suggestion of a Thames Police is made at pp. 76, 457, &c.

Pp. 369-370. Police in the eighteenth century.

The practical disappearance of forcible entries during the eighteenth century has been ascertained by an inspection of the King's Bench Records for the period. On the Controlment Roll of the year 1700 (12 William III.), the number of cases is not by any means contemptible as compared with the number of other offences. On the Controlment Roll of the year 1750 (23 and 24 Geo. II.), it is with difficulty that even one or two can be discovered. In 1796 Colquhoun in enumerating the offences committed in or near the metropolis makes no mention of forcible entry.

P. 370. Evidence that forcible entry had disappeared.

Our mediæval seamen have been described in the first volume of the present work. The extinction of piracy (as an organised system) in the latter half of the eighteenth century is shown by its gradual disappearance from our records, and from those detailed accounts of

trials which were then and previously very popular. Macpherson, in his edition of Anderson's 'History of Commerce' published in 1805 (vol. iii., p. 369) describes the pirate's career as practically at an end, and Sir W. Scott (Lord Stowell), in one of his judgments (at the beginning of the nineteenth century) as out of fashion (Dodson's Admiralty Rep., vol. ii., p. 374). The Act by which wrecking was made a capital offence is 26 Geo. II., c. 19.

Pp. 371–372. Touching piracy, wrecking, &c.

The fact that convicts (no matter what their offence) were pardoned on condition of serving in the army or navy in the latter half of the eighteenth century, will become apparent, without a very laborious search, to anyone who will take the trouble to investigate the series known as 'State Papers, Criminal Papers' in the Public Record Office. If No. 9 be taken as a specimen, a proof of the statements made in the text will be found at pp. 72, 75, 76, 77, 79, 80, 86, 89, 105, 111, 115, 116, 119, 130, 135, 149, 150. Similar evidence occurs in equal abundance in other volumes. The Act of 1795 for the employment on board ship of able-bodied persons without lawful occupation is 35 Geo. III., c. 34.

Pp. 372–374. Convict recruits.

Instances of attempts to assassinate George III. appear in the 'Annual Register,' 1786 (Appendix to 'Chronicle,' p. 233, from the London Gazette Extraordinary of August 2), 1795 ('Chronicle,' p. 37), and 1800 ('Chronicle,' p. 14). Vallettan's letter respecting the intended assassination of George II. exists in the Public Record Office, 'State Papers, Domestic, 1756, Bundle 133, No. 45.'

Pp. 374–376. Assassination, plots, treachery, &c.

Dunster's project of a foreign invasion is to be found also in the same series of State Papers, November, 1757. The case of Florence Hensey is very well known from a variety of sources. The record of his trial and conviction exists in the 'Baga de Secretis,' Bundle 73 (calendared by Palgrave, 5 D. K. Rep., App. ii., pp. 196–7). The trial and conviction of O'Coighly are also preserved in Bundle 84 (Cal. pp. 223–4). *See* also Gurney's account of the trial, published 1798. The case of James Aitken, executed for arson in 1777, appears in the 'Annual Register' of that year, Chronicle, pp. 245–249.

The proceedings in the Court Martial upon Admiral Byng were printed and published in 1757, with certificate of correctness given by Thomas Cook, attorney.

A copy of the document in which the recommendations of the Bishops for the suppression of crime (February 20, 1754) are detailed is among the State Papers (Domestic), 1754, in the Public Record Office. It was delivered to the Duke of Newcastle on the following day.

P. 376. The Bishops on crime.

Frequent illustrations of the

connexion with compurgation are given in the first volume of the present history. The Act which restricted the punishment of the pillory to the offences of perjury and subornation of perjury is 56 Geo. III., c. 138; that which abolished it is 7 Will. IV. and 1 Vic., c. 23.

P. 377. Perjury.

A case in which a woman was sentenced to the pillory for fortune-telling occurs in the State Papers (Criminal Papers) 1757–1760, p. 59.

Pp. 377–378. The pillory.

For the case of Egan, Salmon, and others, see Old Bailey Sessions Papers, 1756, No. 168. There is a remarkable speech of Burke against the pillory, made in 1788 ('Parl. Hist.,' xxi., 318). The final trial of Eaton in 1812, and sentence upon him to be pilloried for a blasphemous libel, appears in the 'State Trials,' xxxi., 958.

Sentence of drawing and burning is recorded against Rebecca Downing in the Minute Book of the Western Circuit (Devon Summer Circuit) 1782, and against Mary Bayley also in the Minute Book (Southampton Lent Circuit) 1784. The indictment of Mary Bayley (with the verdict on the coroner's inquest), also exists among the records of the Western Circuit in their repository in Gray's Inn. For permission to search these documents, and for very kind assistance in searching them, I am much indebted to Mr. Bovill, the Clerk of Assise of the Western Circuit.

P. 379. The stake and the lash in 1784.

In the 'Bath Chronicle' of March 13, 1784, it is stated that Mary Bayley and John Quin were executed 'pursuant to their sentences. . . . Her body was burnt, and Quin's delivered for dissection.' The statute by which the punishment of burning was fully abolished in 1790, is 30 Geo. III., c. 48.

The Gaol-book of the Western Circuit, *annis* 1787–8, affords a very good illustration of sentences of flogging at that period.

The Act of Attainder passed in 1798 against Lord Edward Fitzgerald and others, after death, is 38 Geo. III., c. 77, among the statutes of Ireland. It must have been passed (according to the terms of the statute 23 Geo. III., c. 28) by his Majesty [George III.] and the Parliament of that kingdom. It was reversed, so far as Lord Edward was concerned, by 59 Geo. III., c. 93 (1819). Particulars of Despard's treason are given in the 'Baga de Secretis,' bundle 88 (Cal. Palgrave, 5 D. K. Rep., App. ii., pp. 226–8), Surrey Spec. Com., 1803.

Pp. 380–381. Attainder &c.

Some account of the murder of Ruth Osborne for her supposed witchcraft is given in the 'State Papers, Domestic, 1751, Bundle 116, April 25,' in the Public Record Office. The Act by which the statute of James I. respecting witchcraft was repealed, and the crime (except as an imposture) ceased to exist in the

Pp. 381–382. Witchcraft.

The case of Sarah Metyard and her daughter is related in the 'Annual Register,' 1762, Appendix to Chronicle, pp. 132–138. The case of Elizabeth Brownrigg occurs in the Old Bailey Sessions Papers of 1767, Nos. 404–406. See also the 'Annual Register,' Appendix to Chronicle, p. 190.

Pp. 382–383. Cruelties of women.

In the Controlment Roll of the period no offences appear more frequently than those against the form of the statute for the better preservation of game.

Pp. 383–384. Poachers and highwaymen.

A description of the classes from which highwaymen and other criminals were recruited at the end of the eighteenth century is given in Colquhoun's 'Police of the Metropolis' (1796) pp. 96–7. Some details relating to William Page the highwayman appear in the Old Bailey Sessions Papers, 1758, No. 135, and the 'Annual Register,' Chron. p. 84.

The Act for apprehending criminals (English or Scottish) taking refuge across the border is 13 Geo. III., c. 31.

P. 385.

An account of the destruction of the Town-Hall of Nottingham, during a corn riot, is given in State Papers, Domestic, 1756, August 21. Horace Walpole, in a letter to Mann, September 25, 1766 ('Cunningham,' vol. v., p. 13), says 'the dearness of everything is enormous and intolerable, for the country is so rich that it makes everybody poor.' His letter to the Earl of Hertford, May 20, 1765 (vol. iv., p. 363), contains an account of the riot of weavers in London, and his apprehensions from the 'general spirit of mutiny and dissatisfaction in the lower people.' The riots of the Newcastle and Sunderland colliers are mentioned in the 'Annual Register,' 1765, Chronicle, p. 131, of the Tyne and Thames sailors in the 'Annual Register,' 1768, Chronicle, p. 92 and p. 278. The trials of the Berkshire, Wiltshire, and Gloucestershire rioters are recorded in the 'Baga de Secretis,' bundles 74–77 (Cal. 5 D. K. Rep., App. ii., pp. 197–204). By the stat. 9 Geo. III., c. 29, the destruction of draining-engines in mines, mills, &c., was made felony without benefit of clergy.

Pp. 385–387. Corn and machine riots.

The special commissions and the proceedings under them for trial of the rioters and breakers of machines used in the woollen and cotton factories, are in the 'Baga de Secretis,' bundles 90–91 (Cal. 5 D. K. Rep., App. ii., pp. 231–244.

For details of the mutinies at Spithead and the Nore, see the 'Annual Register,' 1797, pp. 140–159, and 379–395, and the Parliamentary Debates of the year.

Pp. 387–389. The Mutinies.

The Act of 1778, which in one sense was the origin of the No Popery riots, was 18 Geo. III., c. 60, repealing 11 and 12 Will. III., c. 4. For the petition of Roman Catholics of Scotland recommended to the consideration of the Commons by the King, *see* the Journals of the House, 1779, vol. xxxvii., p. 263, and the

Pp. 389–392. No Popery riots.

'Parliamentary History,' vol. xx., p. 322. An account of the riots themselves is given in the 'Annual Register,' 1780, pp. 254–270, in Horace Walpole's 'Letters,' vol. vii., p. 375 *et seq.* (in which Lord George Gordon's insanity is very frequently insisted on), and in other letters of the period. Horace Walpole's later letters are full of jokes upon Lord George Gordon's conversion to Judaism. The proceedings against the inferior rioters are recorded in the 'Annual Register,' 1778, pp. 271–287, and so far as Surrey is concerned, in the 'Baga de Secretis,' Box 79 (Cal. 5 D. K. Rep., App. ii., pp. 206–216).

The statute 14 Geo. III., c. 42, shows that the practice of importing base coin was still prevalent. The statute 31 Geo. II., c. 29 (as well as various others from 51 Hen. III. downwards), relates to the Assise of Bread and the deceptions of bakers. The Report of the Committee of the House of Commons on this subject is printed in 'The Pamphleteer,' vol. vi., p. 147 *et seq.*, and the Act to which it gave rise is 55 Geo. III., c. xcix.

Pp. 392–394. Perpetuation of old frauds.

Statutes of this period relating to the offence of using false weights and measures are 35 Geo, III., c. 102, and 37 Geo. III., c. 143. In Macpherson's 'Annals of Commerce' (published in 1803), vol. iv., p. 425, the continued prevalence of the crime is the subject of remark. In 1767 was passed the stat. 7 Geo. III., c. 23, for the protection of the purchasers of coal. The statutes 5 Geo. III., c. 51, 24 Geo. III. sess. 2, c. 3, 28 Geo. III., c. 17, and 31 Geo. III., c. 56 were directed against various frauds in spinning and weaving.

For the career and trial of James Bolland, *see* the Old Bailey Sessions Papers, 1772, No. 252, the 'Annual Register,' Chron. p. 84, the 'Newgate Calendar,' iii., 208, etc. Dr. Dodd's trial appears in the Old Bailey Sessions Papers, 1777, No. 161. *See* also for various particulars relating to him, the 'Gentleman's Magazine' of the same year, etc. The presentation of a petition on his behalf from the Lord Mayor and Common Council at St. James's Palace by the Sheriffs and City Remembrancer is mentioned in the 'Annual Register,' 1777, Chronicle, p. 186. The Perreaus were the subject of various contemporary pamphlets; their trials appear in the Old Bailey Sessions Papers, 1775, Nos. 390, 391.

Pp. 394–397. Bolland and Dodd.

There is an Act against adulterating tea as early as 11 Geo. I. (c. 30). The statute 17 Geo. III., c. 29, is for the punishment of persons selling counterfeit tea, and the statute 36 Geo. III., c. 60, against false marks upon buttons.

P. 397.

The statutes against seducing British artificers into foreign parts are 5 Geo. I., c. 27, and 23 Geo. II., c. 13. Instances of prosecutions under the latter appear on the Controlment Rolls 1750 (23 and 24 Geo. II.) *et seq.*

P. 398.

The record of the trial for the murder of the Custom House officers Chater and Gally, is in the 'Baga de Secretis,' bundle 72 (Cal. 5 D. K. Rep., App. ii., pp. 195–6). Among the State Papers in the Public Record Office (Dom. 1755, bundle 132, No. 55), is a curious description of the method of smuggling French wines and spirits into England. For the opinions on the subject of smuggling in Adam Smith's time, *see* his 'Wealth of Nations' (Ed. McCulloch, 1850), p. 406. The statutes which relate to smuggling during the period are too numerous to be mentioned in detail, but among those upon which the statements in the text have been founded are 15 Geo. III., c. 37 (earthenware), 19 Geo. III., c. 69 (spirits, tea, thread-lace, &c.), 22 Geo. III., c. 28, and 23 Geo. III., c. 11 (tobacco &c.), 23 Geo. III., cc. 70 and 76 (spirits, tea, wine, &c.), 23 Geo. III., c. 74 (muslins, calicoes, and nanquin cloths), 24 Geo III., sess. 2, c. 38, c. 46 and c. 47 (various kinds of smuggling), in the preamble of the last of which it is recited that laws and officers were set at defiance), 26 Geo. III., c. 40 (various frauds of smugglers), 28 Geo. III., c. 38 (smuggling wool out of the kingdom), 29 Geo. III., c. 68 (tobacco), 47 Geo. III., sess. 2, c. 66, and 48 Geo. III., c. 84 (for the prevention of smuggling in general). *See* also 1 Geo IV., c. 43, and 8 and 9 Vic., c. 87, &c.

Pp. 398–406. Smuggling, theft in port, &c.

The statute 2 Geo. III., c. 28, is directed against thefts upon the shipping in the Thames. The system of river plunder is fully described in Colquhoun's 'Police of the Metropolis,' 1796, pp. 57–77 and a remedy (Thames Police) is suggested at p. 76.

CHAPTER XII.

THE statistics of population in England and Wales from 1570 to 1750 are from Mr. Rickman's Preface to the Census Returns of 1841, p. 36, and are deduced from the Register of Baptisms and Burials. According to that calculation the numbers were 4,160,321 in the year 1570, and 6,517,035 in the year 1750. According to the Census Returns of the respective years the numbers were 8,892,536 in 1801, 12,000,236 in 1821, and 22,712,266 in 1871, exclusive of the army, navy, marines, and merchant seamen. *See* Census of 1871, 'General Rep.,' vol. iv., App., p. 8. *See* also the same App., p. 38, for the proportion of rural to urban population in 1861 and 1871.

Pp. 408–410. Evidence of the growth of population &c.

For the state of the roads in England in the latter half of the eighteenth century, see Arthur Young's Tours, especially the tour in the North of England (pub. 1770).

The state of society caused by the mode of administering the Poor Law is most fully illustrated in the Report of the Royal Commission, 1834, and its effects upon the labourers in particular, at p. 87. The Poor Law Amendment Act is 4 and 5 Will. IV., c. 76. According to sec. 27 outdoor relief was to be restricted to persons wholly unable to work; but by sec. 52 power was given to defer the intended abolition of out-door relief in money or kind to the able-bodied, on the ground that the sudden application of one universal remedy to past abuses might be attended with difficulty.

Pp. 416–422. Pauperism before and after Poor Law Amendment Act.

The statistics of the sums expended for the relief of the poor in 1834 (immediately before the passing of the Poor Law Amendment Act) and in every subsequent year to 1874 are given in the fourth Annual Report of the Local Government Board 1874–5, p. 354. In 1834 the sum was 6,317,255*l.*, in 1837 4,044,741*l.*, and in 1874 it had increased gradually to 7,664,957*l.* According to the same table of statistics the rate per head of the estimated population expended in relief to the poor was 8*s.* 9½*d.*, in 1834, and only 5*s.* 5*d.* in 1837; it has since fluctuated considerably, reaching 7*s.* 1¾*d.* (the highest point) in

1847, falling to 5*s.* 4½*d.* (the lowest point) in 1852 and 1853, touching 7*s.* 0¾*d.* in 1869, and falling again to 6*s.* 6*d.* in 1874.

The 'mean number of Paupers of all classes (including children) at one time in receipt of Relief in England' as well as the 'ratio per cent. of Paupers relieved on the population,' from 1849 to 1874 is given in the fourth Report of the Local Government Board, p. xv. The principal facts relating to pauperism in earlier years, from 1775 downwards, are to be found in the second Rep. of the Select Committee of the House of Commons on Poor Laws, Sess. 1777; similar Rep. on returns relative to the state of the Poor, Sess. 1787; Abstracts of Returns relative to the Poor in H. C. Papers No. 175, Sess. 1804, and No. 82, Sess. 1818; Rep. of Sel. Com. H. C. 1822 and 1825, H. C. Papers No. 83, Sess. 1830, and No. 444, Sess. 1835. For these last references I am indebted to the 'Miscellanea' in vol. xxiii. of the Journal of the Statistical Society. *See* also the Reports of the Poor Law Commissioners from 1837 to 1846, and the subsequent Reports of the Poor Law Board.

It is shown at pp. 372–3 of the fourth Report of the Local Government Board (1874–5), that paupers were thus distributed in some of the districts of England on the first of January 1874:—In Durham 18,702, in Northumberland 12,048, in Essex 23,894, in Suffolk 17,796, in Norfolk 23,893, in Cambridgeshire 11,727, in the Metropolis 118,366, and in the North-Western Counties (Cheshire and Lancashire) 78,908. The population, however, of Durham was 742,205, of Northumberland 336,646, of Essex 440,880, of Suffolk 347,210, of Norfolk 430,638, of Cambridgeshire 192,033, of the Metropolis 3,254,260, and of the North-Western Counties 3,389,044. *See* Census Report 1871, vol. iv., p. 16. The pauperism of the agricultural districts is thus seen to be very remarkable, for while the agricultural counties of Cambridge, Norfolk, Essex, and Suffolk have respectively 6·1, 5·5, 5·4, and 5·1 per cent. of paupers in their whole population, the manufacturing counties of Chester and Lancaster have but 2·3 per cent., the mining counties of Durham and Northumberland but 2·5 and 3·5 per cent. respectively, and the Metropolis but 3·6 per cent.

Pp. 422–424. Local distribution of pauperism.

'Session Paper' 1865, No. 31, contains the curious statistics of drunkenness and disorderly conduct as varying on the various days of the week, which have also been confirmed by more recent enquiries.

Pp. 424–429. Statistics of drunkenness and drink.

Statistics relating to the distribution of drunkenness in England and Wales appear in the Judicial Statistics. *See* especially the volume for 1873, Table 7, pp. 25–31. In the Metropolis (including the city), in which the police organisation is most perfect, the apprehensions for drunkenness and disorderly conduct were in 1873 31,977, in the

mining counties enumerated in the text 43,434, and the total throughout England and Wales was but 182,941. In other words, the metropolitan district and the mining counties together (with less than one-third of the whole population) furnish nearly half of the whole of the charges of drunkenness; and the mining districts alone, with less than one-sixth of the population, furnish nearly a quarter of the whole of those charges. In this calculation some towns are included in which manufactures are carried on, and there would, perhaps, be a difficulty in showing that mining industry alone is accompanied by excessive drunkenness. But there is no doubt whatever that where wages are remarkably high pauperism diminishes and drunkenness increases, and that wages are remarkably high in the mineral districts. In them the increase of drunkenness has been very great in the last thirty years, as may be seen by comparing the recent Judicial Statistics with the Parliamentary Sessions Paper 1853, No. 531 (Drunkenness in each town, 1841–51, year by year).

The Statistical Abstract for the United Kingdom, published annually for each of the preceding fifteen years, affords the readiest means of comparing the consumption of intoxicating liquors with apprehensions for drunkenness and disorderly conduct. The twenty-first number, published in 1874, shows that the quantity of imported spirits retained for home consumption was 8,926,733 gallons in 1871, 9,068,329 in 1872, and 10,259,798 in 1873; and of British spirits 24,563,993 gallons in 1871, 27,279,519 in 1872, and 29,322,087 in 1873 (pp. 41 and 97). It also shows (p. 43) that the consumption per head of the total population of the United Kingdom was, of imported spirits, 0·28 gallons in 1871, 0·29 in 1872, and 0·32 in 1873; of British spirits, 0·78 in 1871, 0·86 in 1872, and 0·91 in 1873; and of malt, 1·72 bushels in 1871, 1·93 in 1872, and 1·98 in 1873. The number of bushels of malt retained for home consumption was 54,160,917 in 1871, 61,608,569 in 1872, and 63,496,785 in 1873. The number of persons in England and Wales apprehended for disorderly conduct was 142,343 in 1870–71, 151,084 in 1871–72, and 182,941 in 1872–73, according to the Judicial Statistics for 1873, p. xix.

In England the consumption per head of British spirits was 0·74 gallons in 1860, and the same in 1870; of imported spirits 0·19 gallons in 1860, and 0·27 in 1870. The consumption of malt, which was 1·67 per head in 1859, had increased to 1·98 in 1873; but this calculation is affected by the change made in 1864, when malt for feeding cattle became free of duty, and the increase in the demand for malt to be used in brewing must be slightly greater than appears in the returns. As between later years *inter se* the comparison is, of course, not affected.

In the Judicial Statistics for 1873, pp. xv, xi, it appears that

the total force of police and constabulary in England and Wales amounted to 1 in every 887 of the population in 1862–63, to 1 in every 811 in 1871–72, and to 1 in every 795 in 1872–73. In ten years it had increased 26·2 per cent., and the population (as appears by the Census General Report of 1871, vol. iv., p. 7) only 14·320 per cent. between 1861 and 1871. The borough police had increased 23·5 per cent., the county constabulary 20·7, the metropolitan police 34·6, and the City of London police 25·4. In the one year from 1871–72 to 1872–73 the same bodies had increased respectively 2·2, 2·2, 0·7, and 10·3 per cent., or a little less than 2 per cent. on the average. The number of men in the whole force was in 1872–73 28,550. The borough constables were in the proportion of 1 to every 753, the county constabulary of 1 for every 1,294, the metropolitan police of 1 for every 412, and the City police of 1 for every 95 of the population with which each body respectively had to deal.

Pp. 429–430. Police and statistics of drunkenness.

Two Parliamentary Papers (H. C. Sess. 1853, Nos. 136 and 531) give between them the whole of the statistics of persons taken into custody for drunkenness and disorderly conduct in the Metropolis from 1831 to 1851. The persons apprehended for those offences were 41,736 in 1831, 41,407 in 1832, 38,440 in 1833, 30,816 in 1841, 31,238 in 1850, 29,490 in 1851. According to the Judicial Statistics the number was 31,615 in 1873. In the intervals there were very considerable fluctuations. The population of the Metropolis was 1,654,994 in 1831, 1,948,417 in 1841, 2,362,236 in 1851, 2,803,989 in 1861, and 3,254,260 in 1871, in which year, however, the 'population within the metropolitan police boundary was 3,885,641.' (Census General Report of 1871, vol. iv., pp. 37 and xxxiv).

Pp. 430–433. Distribution of drunkenness: London, Liverpool, &c.

The number of persons taken into custody for drunkenness and disorderly conduct in Liverpool was 17,508 in 1841, 19,564 in 1845, 21,535 in 1848, 16,874 in 1849, 18,522 in 1851, and 18,038 in 1873. (H. C. Sess. Paper 1853, No. 531, and Jud. Stat. 1873, p. 27.) The population of Liverpool was 286,487 in 1841, 375,955 in 1851, 443,938 in 1861, and 493,405 in 1871. (Census General Report 1871, vol. iv., p. 36).

In support of the remaining assertions in the text relating to drunkenness, it is only necessary to refer to the table in the Judicial Statistics of 1873, No. 7, pp. 25–31.

The riots against machinery in 1812–13 have been described in the preceding chapter. For manufacturers' outbreak of 1842, *see* paper by J. Fletcher, Esq., Journ. Stat. Soc., vol. vi., p. 226 etc.

Pp. 434–438. Education, strikes, &c.

By the stat. 53 Geo. III., c. 40, the justices were deprived of the power of fixing the rate of wages.

By the stat. 5 Geo. IV., c. 95, and further by 6 Geo. IV., c. 129 (especially sec. 4), combination of workmen to raise wages ceased to be conspiracy; and by 22 Vic., c. 34, workmen, if forbidden to threaten, were expressly allowed to 'persuade' other workmen. The Criminal Law Amendment Act, however (34 & 35 Vic., c. 32), defined obstruction and molestation with more precision than its predecessors, and excluded various practices from the description of harmless persuasion.

Some particulars relating to the state of education in England in the middle ages are given in the first volume of this History, pp. 312–316, 333, 353, 367, 481–482, 485, 487–488, 493. For the proposed application of the revenues of chantries to educational purposes, *see* the stat. 1 Ed. VI., c. 14.

Pp. 438–442. Progress of instruction.

The labours of Raikes and Stock (with their result in the establishment of Sunday-schools in 1785), of Bell, and of Joseph Lancaster, are so well known to persons interested in the history of education that there is no need to establish them by references. The growth of denominational schools possessing any endowment can best be traced in the deeds for charitable purposes enrolled in Chancery, of which a brief abstract is given in the 32nd Report of the Deputy-Keeper of Public Records (1871), vol. ii.

The great 'Elementary Education Act' of 1870 is 33 & 34 Vic., c. 75, providing for the formation of School Boards etc.

A full and authentic account of the trial of Thistlewood and others for the Cato-Street Conspiracy is given in the 'State Trials,' vol. xxxiii., coll. 681 *et seq.* They were hanged and their heads were cut off, but the remainder of the sentence for treason was remitted by the king.

P. 442

Witnesses in favour of a person accused of felony were first sworn according to stat. 1 Anne, st. 2, c. 9. The Prisoners' Counsel Act of 1836 is 6 & 7 Will. IV., c. 114. Lord Chief Justice Cockburn remarked when trying the case Reg. *v.* Castro: 'I hope our criminal procedure will not be considered what it ought to be until the Court has power to examine witnesses whom either side is not disposed to call.'

Pp. 444–446. Trials; cruelty; punishments.

Among the suggestions in Edward Livingstone's remarkable 'Système de Législation Criminelle,' is (in tome ii.) one for the abolition of arbitrary judicial authority over Contempt of Court, and the subjection of the offence to the ordinary course of law.

The first Act for the Prevention of Cruelty to Animals was practically the Police Improvement Act, 2 & 3 Vic., c. 47, passed in 1839, by the 47th section of which spectators of bear-baiting, cock-fighting, &c. became subject to a penalty, and by the 56th section of which persons

Police District. It was followed by 12 & 13 Vic., c. 92, for the protection of domestic animals.

The pillory ceased to be a punishment for perjurers and suborners by 7 Will. IV. and 1 Vic., c. 23, and for all other offenders by 56 Geo. III., c. 138.

Pp. 447–452. Capital punishment.

The history of the various stages by which the range of capital punishments was reduced, and of the various attempts to reduce it between 1770 and 1838, has been excellently sketched by Mr. Redgrave in Porter's 'Progress of the Nation.' His statements respecting the later period may be accepted as those of a trustworthy contemporary having a special interest in the subject. For the earlier efforts in the same direction, *see* the Journals of the Commons, 1770, vol. xxxiii., p. 27 (appointment of Committee on capital offences), p. 365 (report of Committee recommending abolition of capital punishment in certain cases), p. 442 (appointment of new Committee), p. 612 (report of Committee recommending abolition of capital punishment in certain cases), p. 695 (order to bring in a Bill to same effect). Murder actually committed (as distinguished from the attempt to murder), became the only capital offence (apart from high treason) by the stat. 24 & 25 Vic., c. 100.

Criminals ceased to be executed in public in the year 1868, according to the Capital Punishment Amendment Act, 31 and 32 Vic., c. 24.

The sentences of death and executions for murder and other offences, from 1805 to 1831, have been ascertained from Sess. Papers, 1819, Nos. 138 and 59, and 1831–2, No. 282.

Pp. 453–454. Prison discipline and penal servitude.

An idea of the improvement of our prisons during the present century may be formed by comparing Sir T. F. Buxton's 'Enquiry whether crime and misery are produced or prevented by our system of prison discipline' and the account given by Mrs. Fry ('Memoir' of her life and 'Extracts' from her journal, pub. 1847) with the successive Reports of the Inspectors of Prisons, beginning in 1836, and the Reports of the Directors of Convict Prisons, showing the operation of the Act passed in 1853, when penal servitude began to take the place of transportation. The Report of the Commission of Enquiry into the management of Birmingham Borough Gaol in 1853 shows the persistence of brutality among some gaolers as late as that year, when infractions of prison discipline were punished by placing upon the offender a strait jacket (such as was once used in lunatic asylums) and a rigid collar, and strapping him in that condition to a wall. But this appears to have been exceptional. 'An Account of the Manner in which Sentences of Penal Servitude are carried out in England,' by Col. Du Cane, C.B., the Surveyor-General of Prisons, printed separately

gives a very clear and succinct account of the present system of dealing with persons convicted of the greater crimes but not capitally punished. A visit to Pentonville, Chatham, Portsmouth, and some of our county and borough prisons, following a study of the official accounts of their general management, is sufficient to convince anyone that now, at least, we do not sin on the side of excessive severity.

Benefit of clergy was abolished by the statute 7 and 8 Geo. IV., c. 28. Some of the previous modifications in its application appear in the statute 3 Geo. I., c. 11, 6 Geo. I., c. 23, 19 Geo. III., c. 74, etc.

P. 454. Benefit of clergy abolished.

For the gradual cessation of transportation between 1852 and 1867 *see* the Report of the Directors of Convict Prisons for 1874, p. xix. *See* also the Penal Servitude Act, 20 and 21 Vic., c. 3, passed in 1857, amended so far as tickets-of-leave are concerned by the Penal Servitude Amendment Act of 1864, for the working of which *see* Parliamentary Paper H. C., Sess. 1866, No. 188. For the numbers transported to the Australian colonies between 1787 and 1857, viz. 108,715, of whom 94,532 were males, and 14,183 females, *see* the 'Judicial Statistics' for 1857, p. xvii. The transportations to Bermuda have not been mentioned in the text because they were in effect executions of sentences equivalent to penal servitude. The criminals might be brought back to England after they had served their time, just as they were still later brought back from the convict prison at Gibraltar just abolished. For further information upon the later working of the transportation system, *see* the Reports of the Committees of the House of Commons on that subject, 1837, 1838, and 1856. For the advance in the age of criminals since the abolition of transportation, *see* table in References and Notes to Ch. xiii., pt. 2 (p. 669).

Pp. 455-457. Transportation abolished.

An account of the ancient system of police known as the peace pledge, and of the responsibilities of the hundred and the tithing, has been given in the first volume of the present work. For the establishment of two constables in every hundred and franchise, *see* Stat. Winchester, 13 Ed. I., st. 2, c. 6.

Pp. 457-464. Touching the modern police system.

The Act of 1839 relating to county, and district constables is 2 & 3 Vic., c. 93; and that of the following year is 3 & 4 Vic., c. 88. The Act of 1856 (19 & 20 Vic., c. 69), rendered these Acts compulsory where they had previously been permissive; the justices, having previously been empowered, were then required to appoint constables. This statute applied not only to the county but also to the borough constabulary appointed under the Municipal Corporation Act of 1835. Both

make an annual report on the crime in their districts to the Home Secretary; and thus (in a sense) was established uniformity in the system of police throughout the country. The Act by which the Metropolitan Police was established, in 1829, is 10 Geo. IV., c. 44; and c. 45 provided for the management of the Thames Police on the same principles. For the system, or want of system, previously existing, *see* the Report of a Committee of the House of Commons on the Police of the Metropolis, 1828, and a 'A Treatise on the Police and Crimes of the Metropolis,' 1829.

The numbers and proportion of police to population throughout the country at successive periods are given in the Judicial Statistics, year by year, and from that publication the figures in the text have been taken. *See* also these References and Notes, p. 656.

In 1869 it was provided by the Habitual Criminals Act, 32 & 33 Vic., c. 99, that any person twice found guilty of felony and not sentenced to penal servitude, should *ipso facto* be subject to police supervision, (unless the court declared otherwise) for seven years.

In 1871 it was provided by the Prevention of Crimes Act (34 and 35 Vic., c. 112) by which the Habitual Criminals Act was repealed, that persons holding tickets-of-leave might, if believed by the police to be getting their livelihood by dishonest means, be brought before a court of summary jurisdiction and there deprived of their licences. Judges might make police supervision part of the sentence on persons convicted a second time, and the Home Secretary might make regulations for photographing criminals. The figures showing the diminution in the number of habitual offenders etc. are from the Judicial Statistics 1873, p. viii. The details given from pp. viii to x show an increase in the actual number of the criminal classes in the metropolis, but not as compared with population.

In the Report of 1816 of the H. C. Select Committee on the Police (p. 26 of annotated edition 'by a Magistrate' with minutes of evidence), there is an account of the abuses of the earlier detective system, the flash houses, etc. Further information is given in Mr. Fletcher's exhaustive 'Account of the Police of the Metropolis' in the 13th volume of the Journal of the Statistical Society, in which the sources of information are very fully indicated, and to which the author of the present work is much indebted.

Pp. 464-466. Character of police.

A statement of the number of cases in which photographs 'led to detection,' 'from the time the Act of 1870 came into force to the 31st December, 1872' is given in H. C. Sess. Papers, 1873, No. 289.

P. 467.

The findings of juries at coroners' inquests are given in the Judicial

tion of Yorkshire in 1871 is stated in the fourth volume of the General Report of the Census of that year, p. xxvi, to have been 2,436,355 in all. The population of the same county was about 405,428 in 1600. *See* Census Report of 1841, p. 36. For the proportion of homicides to population in 1348, *see* vol. i. of the present work, pp. 253–255, and 476.

Pp. 468–473. Statistics of homicide and offences against the person.

By the statute 21 Jac. I., c. 27, it was enacted that a mother concealing the death of a bastard child should, in the absence of evidence to prove that it was born dead, suffer for murder. The frequency of child-murder is recited in the preamble. According to the Judicial Statistics published in 1874, p. xxii, there were, out of the whole number of verdicts of wilful murder in the cases of infants of one year old and under in England and Wales, 57·9 per cent. in Middlesex in 1873. Between 1872 and 1866 the percentage in Middlesex ranged from 43·3 to 57·2. But the total number of such verdicts in England and Wales in the same period was not in any year more than 203 (in 1864), and was as low as 131 in 1871. For the average percentage in recent years of concealments of birth in the urban and in the rural districts of England and Wales, and for the distinction between the population under the county constabulary (as described in the Judicial Statistics) and the rural population (as described in the Census Reports) *see* the 'table showing the percentage of the graver crimes in the rural and in the urban districts, and its relation to the population of those districts,' in the References and Notes to Part 2 of Chapter xiii. (*post*, p. 673). The figures seem to show that the crime of concealment of birth is not affected by density of population as one of the principal causes, or that, if excessive density is one cause, excessive sparsity is another and equally operative.

It appears by H. C. Sess. Paper 1871, No. 109 (Mr. Lambert), that the total number of verdicts of wilful murder on coroners' inquests from 1860 to 1869 (inclusive) was 2,495, or on the average 249·5 *per annum*. The Judicial Statistics (England) 1873, pp. xxii–xxiii, show that the average number from 1862 to 1866 (inclusive) was 247, and it may be shown by computation from figures given in the same place that the average annual number of verdicts of wilful murder from 1867 to 1873 and from 1860 to 1873 was as stated in the text; the verdicts of manslaughter are also given in the Judicial Statistics, 1873, pp. xxii–xxiii.

In 1873 there were 2,011 persons committed for trial for offences against the person, and 1,233 for offences against property with violence (Jud. Stat., England, 1873, p. 45), and there had been a steadily progressive decrease in the numbers of both classes since 1863, Id., p. xxv. Though there had been some fluctuations, there had been no practical increase of numbers in the latter half of this century, great as had been

A curious case of alleged forcible entry (curious from its singularity) was brought before the magistrate at Marlborough Street on May 23, 1874, and reported in the newspapers of the 25th. The doctrine that offences against the game laws are 'no sin' has been enunciated in a publication entitled the 'Anti-Game Law Circular,' in which also various other doctrines of a similar nature are supported.

Pp. 475-477. Touching offences extinct or nearly extinct.

Witchcraft, as already stated, ceased to be a crime by the provisions of the statute 9 Geo. II., c. 5. Forestalling, regrating, etc., were offences at common law until the passing of the Act 7 and 8 Vic., c. 24, s. 1, though the statutes relating to them had been repealed by 12 Geo. III., c. 71.

The Act by which fines and recoveries were abolished is 3 and 4 Will. IV., c. 74. The fine was commonly an action of which a fictitious covenant on the part of the alienor to convey lands to the alienee was regarded as the basis. It had the effect of evading sundry difficulties in other forms of conveyance. The recovery was an action in which there was introduced a fictitious Hugh Hunt, who was supposed to have disseised the alienee at some time before the alienor came into possession. It is needless to consider in this place their legal effect.

The principal statistics of crime, from the year 1805 to the year 1854, are to be found in the Sessions Papers 1819 vol. xvii., 1831–32 vol. xxxiii., 1854–55 vol. xliii. ('Criminal Tables'), and from the year 1856 onwards in the Judicial Statistics. From those publications have been extracted or computed the figures for the various years mentioned in the text. In 1855 was passed the 'Criminal Justice Act,' 18 and 19 Vic., c. 126, which gave to justices of the peace the power of dealing summarily with certain cases of larceny.

Pp. 478-481. Statistics, 1805-1873, and note.

The decrease in the number of sentences to transportation and to the substituted punishment of penal servitude has been very remarkable—from 4,488 in 1843 to 1,493 in 1873 (Report of Directors of Convict Prisons, 1873, p. xix.). It probably indicates some decrease in the more serious forms of crime; but on the other hand, there is reason to believe that the substitution by the Act of 1864 of five years for three years as the minimum term of penal servitude has had a progressive effect in reducing the number of persons sentenced, and that the general softening of manners has had its influence in causing greater leniency in sentences in general. The number of persons committed for trial, therefore, is probably a surer indication of the course of crime than the number sentenced to penal servitude, though here, again, the leniency of modern times may have decreased the committals for trial, and swollen the totals of summary convictions. In any case, however,

thieves and robbers than they ever were before. Some remarks on the sense of insecurity at the beginning of the present century will be found in Mr. Frederic Hill's 'Crime,' p. 4, etc.

The apparent decrease of crime with the collapse of police organisation, and its apparent increase again with the renewal of police organisation (as distinguished from real increase and decrease) are well shown in the 'Compte Général de l'Administration de la Justice Criminelle en France,' for the years 1871–1873 (pub. in 1873, 1874, 1875).

Pp. 481–484. The judicial staff.

During the reign of Edward III. the number of the judges varied considerably (chiefly, no doubt, by reason of the terrible pestilences for which the period was remarkable). But there were even during that reign sometimes as many as four judges of the Court of King's Bench, six judges of the Court of Common Pleas, and six Barons of the Exchequer. From that time to the present there have been some not very considerable fluctuations (which are detailed, with the authorities, in Foss's 'Judges'); but in accordance with the stat. 11 Geo. IV. and 1 Will. IV., c. 70, the number of judges to each Court was increased from four to five—one chief and four puisne. According to the Supreme Court of Judicature Act of 1873, the number of puisne judges in the Divisions corresponding to the ancient Courts was to have been rigidly restricted to four; but the section relating to this matter was repealed by the Supreme Court of Judicature Act of 1875, s. 3. It should, however, be added that the Equity jurisdiction of the Court of Exchequer was transferred to the Court of Chancery in 1841. By the stat. 12 Ric. II., c. 10, it was provided that there should be no more than six justices in any commission of the peace, and this was confirmed by the stat. 13 Ric. II., st. 1, c. 7. By 14 Ric. II., c. 11, the number was limited to eight; but anyone who takes the trouble to inspect the actual commissions, a generation or two later, will discover that these enactments very soon became obsolete.

For the effect of the Municipal Corporation Act of 1835, as affecting borough justices, recorders, and sessions, *see* the stat. 5 & 6 Will. IV., c. 76, ss. 98–111; *see* also the amending statutes 6 & 7 Will. IV., cc. 103–4, and 1 Vic., cc. 78, 81; and *see* the 'Reports of the Commissioners to Enquire into Municipal Corporations,' ordered by Parliament to be printed, 1839. Recent enquiries have shown that some ancient abuses eluded the grasp of the Acts, but the general effect was as stated in the text.

The Old Bailey Sessions come into notice at an early period. Their transformation into the Sessions of the Central Criminal Court was effected by the stat. 4 & 5 Will. IV., c. 36. *See* also 19 & 20 Vic., c. 36. The Middlesex Sessions of the Peace are held twice a month, in accordance with the stat. 7 & 8 Vic., c. 71.

The county, city, borough, and liberty prisons are enumerated in the annual Reports of the Inspectors of Prisons, in the Judicial Statistics of each year, and (in a more accessible form) in the H. C. Sess. Paper, 1873, No. 156; the Convict Prisons in the Reports of the Directors of Convict Prisons, and in the Judicial Statistics. The comparison of the numbers of ancient and modern prisons is founded on an inspection of the Patent Rolls of the reign of Edward III., on which the Commissions of Gaol Delivery are enrolled, but somewhat irregularly.

Pp. 485-487. Prison establishment.

Full statistics of reformatories from 1854 to 1871, and of industrial schools from 1857 to 1871, are given in 'English Efforts for the Prevention of Juvenile Crime,' by Mr. C. R. Ford, late Secretary of the Reformatory and Refuge Union. A yearly Report on both is published, and the chief points relating to them find a place in the Judicial Statistics of each year. The statutes relating to reformatories are 17 & 18 Vic., c. 18; 29 & 30 Vic., c. 117; and 35 & 36 Vic., c. 21; and to industrial schools, 20 & 21 Vic., c. 48; 29 & 30 Vic., c. 118; 34 & 35 Vic., c. 112, s. 14, etc.

CHAPTER XIII.

PART I.

THE passage in the text in which mention is made of the Greatest Happiness principle is not in any way to be taken in depreciation of the intellectual efforts of the Utilitarian School, the greatest of whom was Bentham. It was, perhaps, his chief merit that, unlike many philosophers, he wished to give the widest range impartially to all the faculties—mental, moral, and physical—of each individual, so far as was possible without injury to other members of the body politic. But in his scheme he attributed to mankind at large a breadth of sympathy (no doubt possessed by himself and others like him) which would be hardly intelligible to a cunning savage, or to those modern representatives of the savage in civilised states who know no gratification so great as that of driving a hard bargain. To any one who really has a regard for his fellows, such as Bentham possessed and taught, the Greatest Happiness of the Greatest Number is a principle which would be a truism were there no difficulty in defining happiness. Bentham's definition—enjoyment of pleasures and security from pains ('Principles of Morals and Legislature,' I. i. &c.)—might perhaps be accepted if all human beings were constituted exactly alike; but until they are so constituted the maxim '*quot homines, tot sententiæ*' will be applicable to pleasures as to all other subjects of human opinion. The emotion of sympathy and the practice of beneficence afford much pleasure to some persons, less to others, and to some, perhaps, none at all. The unsympathetic would accordingly accept the Utilitarian doctrine in one sense, the more sympathetic in another. To the less highly organised intellects it would be a self-regarding system of the narrowest kind, which they would be perfectly able to practise without any aid from philosophers; to the more highly organised it would be, as Bentham intended it to be, a system allowing full play to the sympathetic sentiments, without which it loses all its beauty and all its practical adaptability to civilised society.

P. 491. Note on the 'Greatest Happiness Principle.'

It is unnecessary to mention in detail the various interpretations

which might be given, and which have, in fact, been given to the Greatest Happiness principle. Bentham himself was not satisfied with Priestley's famous expression, 'The Greatest Happiness of the Greatest Number' ('Deontology,' Ed. Bowring, vol. i., p. 298). It may be added that the words are less precise (and express nothing more) than those of an earlier and a far greater Teacher—'Be ye perfect even as your Father which is in heaven is perfect.' The latter may be interpreted as meaning that the foundation of true morals is the due exercise of all the faculties; and the difficulties impeding that due exercise have never yet been removed by modern philosophers.

From the days of Plato to the days of Prudhon, there have been innumerable systems devised for the mitigation of social ills, and especially for the removal of the inequalities of property. There is, however, not one which has had even a partial success in practice, and the sole result of those which have not been treated with contempt has commonly been most useless bloodshed. The teaching of history is, above all things, that history cannot be set at nought, and that any attempt to force human beings into conformity with a philosophical scheme at variance with past experience must necessarily fail. In a savage or semi-savage tribe there need not be any property; but there has never yet been a highly civilised society in which property did not exist. No one was more fully persuaded of this fact than the great Utilitarian philosopher Bentham. His words deserve to be remembered no less by the adversaries than by the advocates of his doctrines. 'It is the right of property,' he said, 'which has overcome the natural aversion to labour, which has bestowed on men the empire of the earth, which has led nations to give up their wandering habits, which has created a love of country and of posterity. To enjoy quickly, to enjoy without punishment, this is the universal desire of man; this is the desire which is terrible, since it arms all those who possess nothing against those who possess anything. But the law which restrains this desire is the most splendid triumph of humanity over itself.' ('Principles of a Civil Code,' ix.)

The Greatest Happiness principle, or the principle of Utility, was, in its original form, novel in name rather than in essence. It taught no more than the fulfilment of the law, together with the encouragement of that tender emotion which had already been extolled by Christ. So far as it protected the rights of person and of property, its truth was already acknowledged; so far as it dealt with the sentiments, its teachings were as vague as any which had preceded. And here lies the weak point of all moral codes founded on *à priori* arguments; if their authors attempt more than was accomplished by Jesus, if they pretend to give details where only principles can be laid down, they either fail in their object

through want of precision, or destroy all liberty of thought and action, and substitute a tyranny more intolerable than the worst of despotisms. A system must be complete in itself or it is no system at all; and for that reason some of Bentham's disciples would enforce what they consider to be the greatest happiness of the greatest number in a manner directly opposed to the principles of Bentham himself. They apparently forget that mankind is not to be regarded in the present generation alone, and that, if the human family continue to exist, posterity must outnumber the population of to-day in the proportion of millions to one. The greatest happiness of the greatest number is thus, according to the strict meaning of the term, the happiness of posterity. One question to be answered by moralists is, therefore, whether posterity may fairly expect to discover happiness in a higher standard of cultivation than exists at present, or in a retrogression towards the condition of the savage and the brute.

PART II.

It will, perhaps, be observed that the expression 'inherited association' has, in the text, been applied to the instinct of young animals. Mr. Herbert Spencer (who has long advocated the doctrine of development, from a psychological point of view, not less strenuously than Mr. Darwin), commonly uses the expression 'experience.' Perhaps, however, 'inherited association' is a not less exact description of the same undoubted facts. It is the capacity of having like psychical action excited by like causes which is inherited, rather than experience in the ordinary sense of the term. We inherit the mental constitution of our ancestors, but it cannot be said that the child has the benefit of the father's experience without direct instruction.

Pp. 496 and 505. Note on 'inherited association' and the 'moral sense.'

That which has been commonly termed 'the moral sense,' has been treated in the text from a point of view to which, perhaps, sufficient attention has not hitherto been paid. It has been regarded by the light of continuous historical progress, the evidence of which has been given in the earlier chapters of the history.

The habitual criminal, who calmly expresses his determination to set the law at defiance, and who, when asked what he can say in answer to any charge brought against him, quietly answers 'Nothing!', is by no means an unknown character in police courts and courts of law. He has no doubt been made what he is partly by training in youth, but his natural disposition must also count for something.

P. 510. References to show the existence of criminal families.

Instances of criminal families are given in the third Report of the Inspectors of Prisons for Scotland (1838), pp. 129–30; in a paper on the Criminal Statistics of Preston by Rev. J. Clay, Journ. Stat. Soc., vol. ii., p. 88; and in a Paper on the 'Hereditary Nature of Crime' by Mr. J. B. Thomson, in the 'Journal of Mental Science,' No. 72.

Pp. 512–516. *Table showing the proportion per cent. of persons 'committed for trial,' (1835–40) or 'committed' [to prison] (1864–73) in England and Wales at various ages.*

Years	Under 12			12 and under 16			16 and under 21			21 and under 30			30 and under 40		
	Males	Females	Total M. & F.	Males	Females	Total M. & F.	Males	Females	Total M. & F.	Males	Females	Total M. & F.	Males	Females	Total M. & F.
1835	...	...	1·67	...	...	9·70	...	...	29·65	...	...	31·92	...	...	14·01
1840	...	...	1·79	...	...	9·80	...	...	28·10	...	...	30·99	...	...	15·32
1864	1·5	0·5	...	6·6	3·4	...	20·7	17·8	...	32·3	35·7	...	19·0	21·3	...
1865	1·5	0·5	...	7·4	3·4	...	20·5	17·9	...	32·2	35·1	...	18·8	21·8	...
1872	1·4	0·2	1·1	6·4	2·6	5·3	18·8	15·8	17·8	30·5	33·4	31·4	20·0	23·7	21·1
1873	1·3	0·2	1·0	6·2	2·5	5·1	18·5	14·8	17·4	30·5	31·0	30·6	20·3	25·6	21·9

Years	40 and under 50			50 and under 60			Above 60			Unknown		
	Males	Females	Total M. & F.	Males	Females	Total M. & F.	Males	Females	Total M. & F.	Males	Females	Total M. & F.
1835	...	...	6·60	...	...	3·24	...	...	1·30	...	...	1·91
1840	...	...	7·21	...	...	3·12	...	...	1·57	...	...	2·10
1864	11·3	13·6	...	5·3	4·7	...	2·7	2·2	...	0·6	0·8	...
1865	11·3	13·6	...	5·2	5·1	...	2·8	2·4	...	0·3	0·2	...
1872	12·2	14·8	13·0	6·7	6·2	6·5	3·9	3·2	3·7	0·1	0·1	0·1
1873	12·4	15·5	13·3	6·7	6·7	6·7	3·9	3·6	3·8	0·2	0·1	0·2

P. 513. *Table[1] showing the proportion per cent. of 'accusés' at the Cours d'Assises in France, at various ages.*

Years	Under 16	From 16 to 21	From 21 to 30	From 30 to 40	Above 40
1826–9 inclusive : (average)	1·7	16·4	35	23	23
1868	0·3	15·3	31·6	23·1	29·2

[1] Computed from the Official 'Compte Général de l'Administration de la Justice criminelle en France.'

See also Quetelet, 'Sur l'Homme,' vol. ii., p. 254, and cf. Guerry's calcula-

Table showing the ages of prisoners in 'convict prisons' under sentence of penal servitude.

	Total number			Number aged 35 and upwards			Percentage of convicts aged 35 and upwards		
	Males	Females	Total	Males	Females	Total	Males	Females	Total
1862 March 31	5,952	1,218	7,170	1,696	330	2,026	28·4	27·0	28·2
1873 Dec. 31	8,678	1,156	9,834 [2]	2,867	495	3,362	33·0	42·8	34·1

Table[3] *showing the advance of the criminal age since* 1851. Pp. 513–14.

	Percentage of prison population, or persons committed to prison, above the age of 35 [4]			Percentage of prison population, or persons committed to prison, above the age of 40 [5]			Percentage of convict population (in penal servitude) above the age of 35		
Year	Male	Female	Total M. & F.	Male	Female	Total M. & F.	Male	Female	Total M. & F.
1851	21·73	24·67	...	...	...	...	...	...	...
1862	...	...	...	...	...	...	28·46	27·06	28·2
1873	...	...	...	24·8	26·4	25·3	33.0	42·8	34·1

tion of the mean of the years 1826–1830, as affecting persons accused of theft, viz. :—

Aged from 16–25, 37 per cent.
,, 25–35, 31 per cent.
—'Statistique morale de la France,' p. 11.

In Prussia there were in 1855, according to the 'Statistik der Preussischen Schwurgerichte,' in 8,089 persons accused, 64 under 16 years of age, 1,647 between 16 and 24, 4,553 between 24 and 40, 1,669 between 40 and 60, and 156 above 60.

[1] Of whom 3 only were under 15.

[2] Of whom 1 only was under 15.

[3] Computed from Dr. Guy's 'Results of Censuses of Convict Prisons' (1875) pp. 15–16; the 'Report of the Directors of Convict Prisons for 1873,' p. xxx, and the 'Judicial Statistics of England and Wales for 1873,' p. xxxii.

[4] Exclusive of all under 15 years of age.

[5] Exclusive of all under 16 years of age. When all below 16 are included, the

Table for comparison of the ages of persons under sentence of penal servitude with those of the general population, and of those employed in some of the chief branches of industry.[1]

Pp. 514–516.

	Population of England and Wales	Shepherds	Tailors	Agricultural labourers in general	Bootmakers
Total at and above 15 years of age	14,698,531	22,021	109,130	689,994	190,873
At and above 35	7,032,465	14,452	63,039	396,357	108,583
Percentage of those at and above 35 in the total at and above 15	47·8	65·6	57·7	57·4	56·8

	Labourers (undefined)	Employed in woollen manufacture	Carpenters	Employed in cotton manufacture	Employed in [illegible] manufacture	Under sentence of penal servitude
Total at and above 15 years of age	487,833	64,929	202,449	154,549	168,503	9,833
At and above 35	257,327	31,8	92,191	59,001	61,269	3,362
Percentage of those at and above 35 in the total at and above 15	52·7	48·1	45·5	38·1	36·5	34·1

TABLE I.—*Illustrating the effects of Migration upon Crime.*

	Proportion of immigrants of 20 and upwards, to native residents of 20 and upwards[2]	Proportion of persons committed to prison to total inhabitants[3]	Proportion of persons of Irish birth committed to prison to total inhabitants of Irish birth	Proportion of persons committed to prison to total population above 20 years of age
North-Western counties	3,224 in 10,000	1 in 87	1 in 22	1 in 47
South-Western counties	1,103 in 10,000	1 in 338	1 in 63	1 in 183

[1] Extracted and computed from the Census Returns of 1871, and the Report of the Directors of Convict Prisons for 1873.

[2] Census Returns, 1871, vol. iv., pp. 74, 75.

[3] Computed from the same, and from 'Judicial Statistics, England,' 1870.

TABLE II.—*Illustrating the Effects of Migration upon Crime.* Pp. 516–526.

	Total population		Total immigrant population[3]		Number of Irish immigrants		Percentage of Irish immigrants in total population	Percentage of Irish immigrants of corresponding ages in total immigrants[6]		Percentage of Irish-born committed to prison in total committed to prison[7]
	Of all ages	Above 20	Of all ages	Above 20	Of all ages[4]	Above 20[5]		Of all ages	Above 20	
North Western counties (Cheshire and Lancashire	3,380,696[1]	1,830,722[3]	741,225	590,479	224,003	196,876	6·6[5]	30·2	33·3	25·6
South-Western counties (Cornwall, Devonshire, Dorsetshire, Somersetshire, and Wiltshire)	1,879,914[2]	1,c 8,794[3]		112,207	12,924	10,109	0·6[6]		9·0	3·6.

Comparative Statistics of Crime in Ireland and in England and Wales.[8] Pp. 517–522

	In equal portions of the populations of Ireland and of England and Wales respectively	
	Irish less than English per cent.	English less than Irish per cent.
Offences determined summarily, other than indictable offences (England, 1873, Ireland, 1874)	...	47
Indictable offences disposed of summarily but among them	17	...
Malicious and wilful destroying of property	...	37
Indictable offences not disposed of summarily among which	35	...
Offences against property without violence	49	...
Offences against property with violence but also among which	58	...
Offences against human life	...	16
Murders of children aged one year and under	19	...
Murders of persons above one year of age	...	41

[1] Census Returns, 1871, vol. iv., p. 71. (Counties proper).

[2] Ib., p. 12, by computation. (Counties proper).

[3] Ib., p. 73, by computation. [4] Ib., p. 70. [5] Ib., p. 71. [6] By computation.

[7] By computation from Judicial Statistics, England, 1873, pp. 63–6.

Table showing the criminal tendencies of the Irish in the principal English towns to be excessive even after allowance has been made for age

Pp. 519 520.

Total population of 63 principal English towns [1]	Number of Irish inhabitants in 63 principal English towns [1]	Percentage of Irish inhabitants in 63 principal English towns	Percentage of persons of Irish birth in total of persons committed for indictable offences (not determined summarily) in England and Wales [2]	Percentage of persons, aged 20 years and upwards, in 42 large towns of England [3]	
				Maximum (Bath) 60·6 Above 50 per cent. in 41 out of the 42.	Minimum (Dudley) 49·2 Below 50 per cent. in 1 out of the 42
7,915,667	320,860	4·0	8·1		

Order of Criminality of nine representative towns as illustrated by indictable offences.

Pp. 520-521.

	Total population in 1871 [4]	Total indictable offences in 1873 [5]	Number of inhabitants to each indictable offence
1. Manchester	379,374	4,516	84
2. Liverpool	493,405	3,838	128
3. Birmingham	343,787	1,746	196
4. Durham	14,406	69	208
5. Newcastle-on-Tyne	128,443	487	263
6. Metropolis (Police District)	3,885,641 [a]	13,287	292
7. Wolverhampton	68,291	210	325
8. Sheffield	239,946	660	363
9. Bristol	182,552	283	645

Order of the same nine towns arranged according to the percentage of Irish-born residents in them in 1871.

	Total population. [6]	Total number of Irish-born residents. [6]	Percentage of Irish-born residents.
1. Liverpool	493,405	76,761	15·5
2. Manchester	379,374	34,066	8·9
3. Newcastle-on-Tyne	128,443	6,904	5·3
4. Durham	14,406	723	5·0
5. Wolverhampton	68,291	2,347	3·4
6. Metropolis (Registrar-General's district)	3,254,260	91,171	2·8
7. Birmingham	343,787	9,076	2·6
8. Sheffield	239,946	6,082	2·5
9. Bristol	182,552	3,876	2·1

[1] 'Census Report,' 1871, vol. iv., p. 70.

[2] 'Judicial Statistics: Ireland,' 1874 (special return through Home Secretary), p. 23.

[3] By computation from 'Census Report,' 1871, vol. iv., pp. 40–45.

[4] 'Census Returns,' vol. iv., p. 76 (except Metropolitan Police District).

[5] Ibid., p. xxxiv. [6] Ibid., p. 76.

The statements relating to the English-born and Irish-born inhabitants of Liverpool and Manchester are founded partly on the definite statement at p. 71 of the Census Report 1871, vol. iv., and partly on computation, from figures given in the same Report, p. 76.

Table showing the percentage of the graver crimes in the rural and in the urban districts, and its relation to the population of those districts. Pp. 522–526.

Population 1871	Rural **38·0**[1] (wholly under County Constabulary)	Urban **62·0**[1] (under Borough Constabulary and Metropolitan Police, and partly under County Constabulary)	
	Under County Constabulary [2]	Under Borough Constabulary[2]	Under Metropolitan Police[2]
Total population 1871	56·3	27·0	16·7
Murders (average of three years 1870–1 to 1872–3)	61·8	30·9	7·2
Attempts to murder (Average as above)	53·1	35·7	11·0
Manslaughter . . ,,	35·7	33·6	30·5
Shooting at, stabbing, &c. ,,	37·0	49·0	13·9
Concealment of birth . ,,	57·3	17·5	25·2
Burglaries . . . ,,	40·2	42·1	17·2
Breaking into shops &c. . ,,	20·3	70·8	8·8
Robbery (and attempts) with violence . . ,,	30·4	54·5	15·0
Arson . . . . ,,	88·7	6·6	4·6
Attempted suicides . . ,,	19·2	27·1	53·6

[In the Police Reports from which the above average has been computed, the 'cases are classed in accordance with the finding at the trial.' 'Jud. Stat. Eng.' 1873, p. xxii.]

The calculations of M. Guerry (as illustrated in Plates 1 and 3 of his 'Statistique Morale de l'Angleterre comparée avec la Statistique Morale de la France') give similar results with respect to the crime of arson. The inhabitants of great agricultural counties (Cambridge, Huntingdon, and Suffolk) stand, according to his method of computation, conspicuously at the highest point of criminality, while those of Middlesex fall very low, in the twenty-three years from 1834 to 1856. The excess of murders in the rural districts

Note on rural and urban crime.

[1] Census Report 1871, vol. iv., p. xxxii. The urban population includes that of all so-called towns, though containing less than 1,000 inhabitants. The County Constabulary, on the other hand, has authority wherever there is no organisation of Borough Police, and therefore over some towns containing a portion of the 'urban population' of the Census.

[2] Computed from the 'Judicial Statistics for 1872,' p. xiv, and for 1873, p. xiv and pp. 1–4.

is not made apparent in M. Guerry's Plates because he has thrown all crimes against the person into one great class.

A paper by Mr. John Glyde on Crime in Suffolk (printed in the nineteenth volume of the Journal of the Statistical Society) affords some very remarkable evidence that the most heinous crimes of violence are committed by the rural rather than by the town population, though of course the aggregation of great numbers in towns affords opportunities for brawls as well as for larceny. Various other papers expressing almost every shade of opinion on this subject are to be found in other volumes of the same publication; but of the main facts, as stated in the text, the official statistics from their first appearance to the present time afford the most complete evidence.

In the 'Judicial Statistics for England,' 1873, p. xx, it is stated that there were 489,041 males and 123,450 females apprehended for offences of all kinds, and at p. xxxi, that there were 117,391 males and 47,751 females committed to prison in the year. At pp. xxxi and xxxii are given also figures which show a remarkable increase in the proportion of female to male crime in recent years: in 1869 there were but 40,609 commitments of females to 132,425 of males, and the change was progressive in the years intervening between 1869 and 1873. The percentage of females had thus risen from about 23 per cent. in 1869 to about 28 per cent. in 1873. There have been various fluctuations, but when the investigation is carried back to the year 1834 it appears that there were less than 19 per cent. of female offenders. *See* the 'Criminal Tables' for 1842. In France too, so far as the greater crimes are concerned (viz. those determined at the Cours d'Assises), the male offenders exceed the female in a greater proportion than in England, (*See* 'Compte Général de l'Administration de la Justice criminelle en France, 1868,' Part I., and other volumes of the same publication antecedent to the last war. *See* also Quetelet, 'Sur l'Homme,' tome ii., p. 225). In Germany (where criminal statistics are as yet very deficient) the same rule, so far as can be ascertained, prevails. According to the 'Statistik der Preussischen Schwurgerichte,' 1855, the accused were in the proportion of 6,926 males to 1,163 females.

Pp. 526–530. Statistics of male and female criminals in England, France, Germany, Ireland, &c.

Of the persons of Irish birth confined in gaols in Ireland in 1874, 22,920 were males and 13,777 females ('Crim. and Jud. Stat., Ireland,' 1874, p. 42); the total number of commitments of all kinds was of males 24,569, and of females 14,001 (Id., p. 39). Of the natives of Ireland committed to prison in England in 1873, 12,396 were males, and 9,704 females ('Jud. Stat., England,' 1873, p. xxxiv).

By Census Report 1871, p. 90, it appears that of the 6,463,645 females aged 20 years and upwards in England, no less than 4,915,650

were of the 'domestic class,' *i.e.* were wives, and women engaged for the most part in household duties, 'or in performing personal offices.'

PART III.

Beccaria's teaching of the doctrine that 'Education' (including the cultivation of the sentiments) is the great preventive of crime appears in the 45th chapter of his 'Dei Delitti e delle Pene,' (Op., vol. i., p. 133, Edition of 1830) and elsewhere. The subject has attracted considerable attention during the present century both in England and in France. In Porter's 'Progress of the Nation' (pp. 656-7), and in most of the volumes of the Journal of the Statistical Society, will be found elaborate arguments to show that crime is diminished by instruction. (*See* especially vols. x., xi., xii., through which is carried a paper by Mr. Joseph Fletcher). M. Guerry, with not less energy, and with not less sure foundation, argues that figures, at any rate, will not establish the point. *See* 'Statistique Morale de la France,' p. 47, where he supports his conclusions not only by French statistics but also by the Report of the Select Committee of the House of Commons, June 1827, and Minutes of Evidence before Select Committee on Secondary Punishments, Sept. 1831. *See* also 'Statistique Morale de l'Angleterre comparée avec la Statistique Morale de la France,' p. lviii.

Pp. 532–541. Crime and 'Education.'

Table showing the State of Instruction of persons committed to Prison in England, in 1836, 1842, *and* 1873.

	Proportion per cent.		
	1836 [1]	1842 [1]	1873 [2]
Neither read nor write . . .	33·52	32·35	33·4
Read and write imperfectly . .	52·33	58·32	63·1
Read and write well	10·56	6·77	3·0
Superior instruction	0·91	0·22	0·1
Instruction not ascertained . .	2·68	2·27	0·4

It appears from the foregoing table that the proportion of criminals who could read and write well was somewhat less in 1873 than in 1842 or 1836, and the proportion of criminals who could read and write but imperfectly or not at all somewhat greater. From these figures there may be drawn an inference slightly in favour of the doctrine that crime is

[1] 'Criminal Tables,' 1842.
[2] 'Judicial Statistics, England,' 1873, p. 34.

checked in the manner suggested in the text by instruction. The result, however, appears small when we remember that nearly forty years have been required to bring it about. It indicates, perhaps, that the literature which reaches the lower classes is not altogether in accord with that which would be approved by the lawgivers, and that there are many cross-currents in the stream of public opinion. The change, too, which has been effected is, perhaps, less even than it seems to be, for there is no evidence that there is not a higher standard applied now than in former times, and that many convicts who would have been described as reading and writing well in 1836 were not described as reading and writing imperfectly in 1873. The diminution in the number of persons whose state of instruction was not ascertained shows that greater care was bestowed in the attempt to arrive at the truth in 1873 than in 1836. The extreme danger, however, of drawing any conclusion whatever from statistics in which are employed any vague terms (such as 'read and write well,' or 'read and write imperfectly') may be shown from the remarkable discrepancy between the Irish and the English statistics. According to the Irish Judicial Statistics for 1874 (p. 42) 43·0 per cent. of the male criminals and 21·9 per cent. of the female could read and write well, while in England the proportions were 3·8 and 1·0 per cent. respectively; and there was, of course, a corresponding divergence in the other degrees of instruction. The fact, however, remains, that wherever 'superior instruction' is rare in the general population, the commission of crime by persons of 'superior instruction' is rare also; and there are no statistics which invalidate the argument that the diffusion of education strengthens the various currents of public opinion.

The total known number of cases of forgery in 1873 in England was but 199, and the number of persons apprehended for that crime only 184 ('Jud. Stat., England,' 1873, p. 20).

PART IV.

Pp. 565-567. Poor-Laws and private charity.

I am indebted to a paper by Mr. Edwin Chadwick (published in vol. xxviii. of the Journal of the Statistical Society, pp. 492–504) for the illustration from Spain and the Italian dominions of the social accompaniments of private alms-giving as distinguished from state poor-laws. In the case of Italy, however, some modifications have been effected by the law of 1862, for which, and for matters in general relating to the poor in Italy, *see* Reports communicated to the Local Government Board (Poor-laws in Foreign Countries), 1875, pp. 437–464.

The Laws of Mental Association, first brought prominently into notice by Hobbes, have attained the singular distinction in psychology of acceptance by psychologists of every shade of opinion. Men act upon them, indeed, as familiar maxims in everyday life, who have never thought upon them as laws; and so do children, if it be true that the burnt child dreads the fire and takes care not to be burnt a second time. It is unnecessary to give a full account of them in this place; psychologists will understand without difficulty the reference made to them in the text, and they are explained in every psychological work of importance. It can hardly be doubted that, could the pauper and criminal be taught to associate the ideas of sustenance and comfort with the idea of industry, both pauperism and crime would be diminished.

Pp. 568–572. Labour and punishment.

The Howard Association (though, I believe, without anywhere proposing any scheme in accordance with the voluntary system suggested in the text) have been enthusiastic advocates of the employment of prisoners in productive labour, as distinguished from such punishments as the crank, the shot-drill, and the tread-mill. *See* their Reports, *passim*.

For the opinions of the Judges, Chairmen of Quarter Sessions, Commissioner of Metropolitan Police, Stipendiary Magistrates, etc. *see* 'Reports to the Secretary of State for the Home Department on the State of the Law relating to Brutal Assaults etc.,' 1875. The description of modern flogging is from what I have seen myself in Newgate Gaol.

Pp. 573–578. Brutal assaults.

Among the latest expositions of medical theories in their relations to crime may be mentioned Dr. Maudsley's 'Responsibility in Mental Disease,' a work in which (though full force is given to the doctrine that crime is frequently an evidence of insanity), the deterrent effects of prospective punishment are not, as elsewhere, left altogether out of consideration (p. 129). In many other medical writings on the subject there seems too little allowance made for the fact that any real tendencies which prisoners may show towards insanity may be in part at least caused by their imprisonment, and the generally depressing circumstances in which they are placed.

Pp. 580–584. Insanity and crime.

The suggestion made in the text that abnormal or unnatural sexual offences might fairly be regarded as evidence of mental infirmity is very strongly supported by a table given at p. 27 of the 'Results of Censuses of the Population of Convict Prisons in England,' taken 1862 and 1873. It there appears that the males convicted both of crimes *contra naturam* and of rape are found to be in a far higher degree than males convicted

respects besides their abnormal tastes; *see* also Dr. Norman Chevers' 'Indian Medical Jurisprudence.'

The evidence that one kind of abnormal sexual crime is associated with physical, and therefore probably with mental weakness, is rendered most apparent in the form in which the French criminal statistics are prepared. In the 'Compte Général de l'Administration de la Justice criminelle en France, 1868' (pub. in 1870), the whole of the men above eighty years of age who were accused at the *Cours d'Assises*, were accused of the same offence—'*Viol sur des enfans au dessous de quinze ans*,' and they were all convicted. They were, it is true, but 3 in number, but there were 57 men between the ages of 70 and 80 accused of the same offence out of a total of only 61 accused of offences of all kinds. Between the ages of 65 and 70 there were 47 accused of this offence out of a total of 78; between the ages of 60 and 65 there were 33 out of a total of 88; between the ages of 55 and 60 there were 66 out of a total of 177; between the ages of 50 and 55 there were 63 out of a total of 221, and so on progressively until we arrive at the accused between the ages of 30 and 35, of whom only 61 were accused of this offence out of a total of 571. At the age of mature manhood the crime is comparatively rare, but is a little more common between the ages of 16 and 21, at which there were 102 accused of it out of a total of 694. The year 1868 (from the statistics for which these figures have been taken) was by no means exceptional, but is fairly representative of ordinary conditions. Similar results present themselves when the criminal returns of any other year are inspected, even though the enquiry be carried back half a century. *See* Guerry, 'Statistique Morale de la France,' p. 21; and Quetelet, '*L'Homme et ses Facultés*,' p. 247. The form in which our English Judicial Statistics are drawn up does not afford the means of obtaining any information on the frequency with which persons of different ages are accused of criminal assaults upon children, but there is no doubt that the oldest men are in England the greatest offenders.

The evidence that pauperism varies inversely with drunkenness, and consequently with summary convictions, and that the payment of wages has a great effect in increasing the number of persons charged with drunkenness and disorderly conduct on certain days of the week, has been given in the notes to Chapter xii. p. 654.

Pp. 584–589. Prosperity, adversity, drunkenness, and crime.

The Criminal Tables from 1810 downwards, afford some indication that hard times, and increased competition or diminished demand for labour, are attended and followed by an increase of commitments for larceny and graver offences, and better times by a decrease. The year 1815, when the troops returned home and began to compete with other

labourers, was attended and followed by a marked increase of commitments; so also was the year 1825, when there was great commercial depression. In the year 1835, in which there was a great decrease in the price of corn, following a successive decrease in the three previous years, there was a considerable decrease also in the number of commitments. In the years 1847 and 1848, in which there was much distress, there was also a great increase in the number of commitments, to be followed by a decrease in 1850 when there was renewed prosperity, and by an increase in 1854, when there was a war with Russia. See further the table (printed at p. xix of the 'Report of the Directors of Convict Prisons' for the year 1873) showing the population of England and Wales, with the number of sentences to imprisonment, transportation, and penal servitude, for forty years. *See* also the table compiled by Mr. Fletcher (at p. 168 of vol. xii. of the Journal of the Statistical Society), showing the progress of criminal commitments from 1810 to 1847, and comparing them with the prices of wheat during the same period; *see* also vol. ii. of the same Journal, p. 88, and vol. xviii., pp. 74–79 (papers by the Chaplain of the County House of Correction at Preston, on the effect of good and bad times on the commitments to prison), vol. xx., pp. 77–8 (paper by Mr. Walsh), and vol. xxviii., pp. 505–519, 'On the Statistics of Crime in Australia' by Mr. Westgarth. The effect of times of adversity in increasing *indictable* (or the more grave) offences is shown also in the Judicial Statistics from year to year, in which it is made apparent that crime is more prevalent in the winter months (October to March) than in the remainder. *See* (e.g.) 'Jud. Stat., Eng.,' 1873, p. xii and pp. 9–12. *See* also Quetelet, 'Sur l'Homme,' vol. ii., p. 220, and Guerry, 'Statistique Morale de la France.' In France, at least, the excess of crime during the winter months applies to crime against property alone, as crimes against the person (rape etc.), are in excess in the summer months.

The population of Scotland in 1841 was 2,620,184, and the number of persons apprehended for drunkenness and disorderly conduct 12,509, or one in 208; in 1851 the population was 2,888,742, and the number of persons apprehended for the same offences 27,643, or one in 104. The population of England and Wales was in 1841 15,914,418, and the number of persons apprehended for the same offences 75,268, or one in 211; in 1851 the population was 17,927,609, and the number of persons apprehended for the same offences 70,097, or one in 255.[1]

For statements made by criminals themselves of the effects of drunkenness in producing crime (which, however, are for obvious reasons probably much exaggerated) *see* papers by the Chaplain of Preston

[1] 'Census Report,' 1871, vol. iv. p. 4; and 'Parl. Paper, H. C. Sess. 1853,' No. 531, pp. 6-7.

Gaol, in vol. i., p. 124, and vol. ii., p. 87, of the Journal of the Statistical Society.

It is needless to refer again to the many passages in the text in which the connexion of the military spirit with crime is pointed out.

P. 592. The painful effects of war, however, upon highly civilised countries may be inferred from the French 'Compte Général de l'Administration de la Justice criminelle' of the successive years 1872–1874.

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