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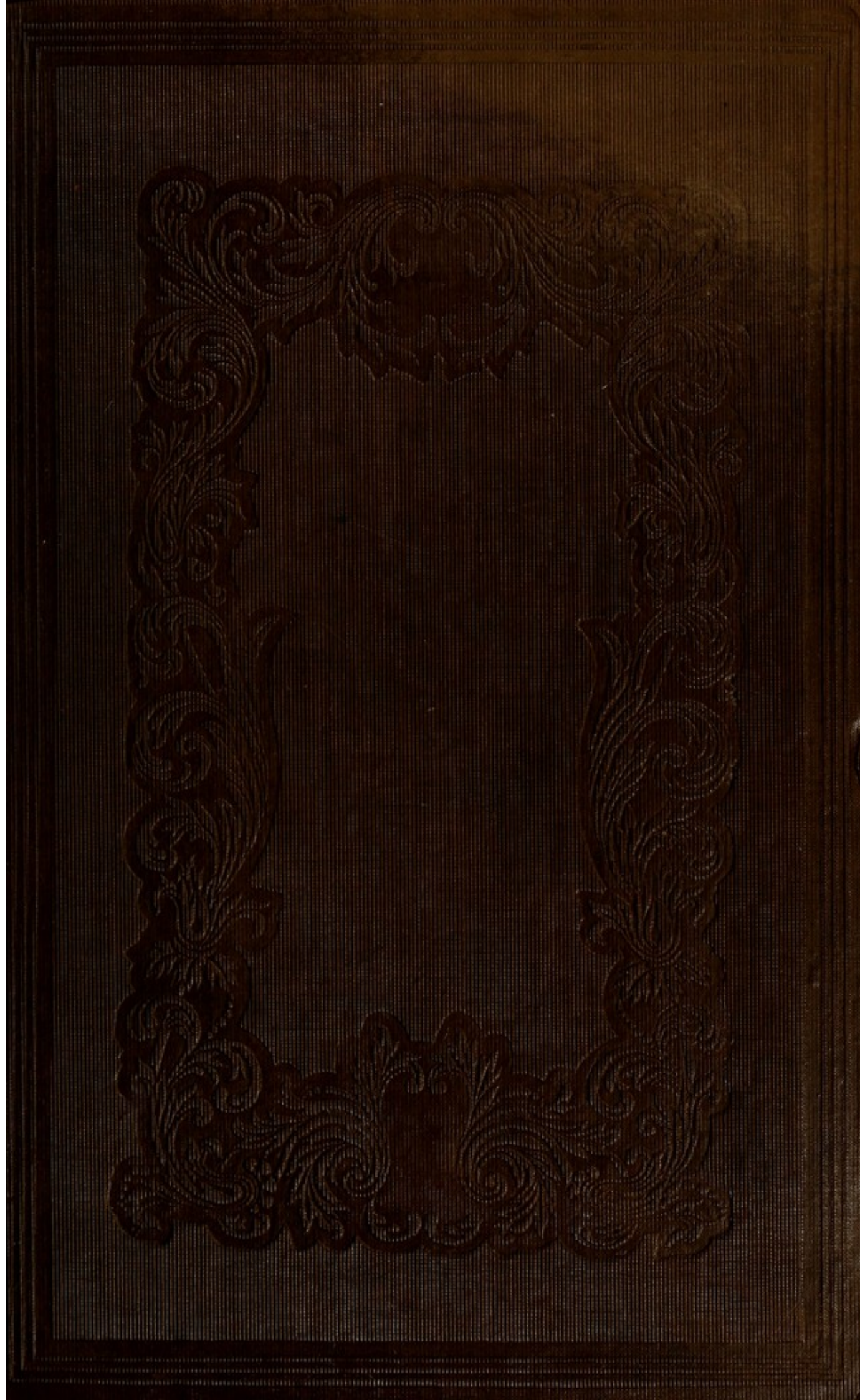
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TO SIR GEORGE S. MACKENZIE, BART.,

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MY DEAR SIR,

Among the names of those who have endeavoured to awaken the attention of the Public to the necessity of Reform in our present system of Criminal Treatment, your own occupies a distinguished position; it is, therefore, with the highest satisfaction that I avail myself of the privilege of dedicating this work to you, as a slight acknowledgment of the respect and esteem with which

I am,

My dear Sir,

Very sincerely yours,

M. B. SAMPSON.

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THE GREAT BRITAIN

AND

P R E F A C E.

THE following chapters appeared originally in "The Spectator" newspaper. The influential character of that journal secured for them much notice; and the Author was gratified in receiving, during the intervals of their publication, kind assurances from many of its readers, that the progress of his argument was regarded with the warmest interest.

Upon their completion, he had also the pleasure to learn that his letters had attracted the favourable attention of the Trustees of the Henderson fund for the advancement of Phrenology, and that the publication of them in a collective form had been resolved upon, in accordance with the following minute:—

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“The Trustees having perused Letters upon ‘Criminal Jurisprudence in relation to Mental Organization,’ by M. B. Sampson, Esq., are of opinion that their extensive circulation, in a cheap form, would tend to promote ‘the Advancement and Diffusion of the Science of Phrenology, and the Practical Application thereof in particular,’ (the objects of Mr. Henderson’s Trust bequest,) and therefore resolve to print and publish an edition of them, in double columns, at a price which may bring them within the reach of all classes of the community.”

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abler minds, it is next to impossible, while an attempt is made to express them with clearness and force, to present them in a style entirely free from all appearance of arrogance or presumption ; and what he would ask is, that his readers should estimate this difficulty, and do him the justice to believe that it has been his anxious endeavour to avoid it. In his own mind, he feels certain that the views which he has stated must, sooner or later, overturn the present system for the treatment of criminals ; but he lays claim to no discovery, and is aware that, under any circumstances, his only merit must consist in his having been among the first to apply to a consideration of the subject the aid of our advanced physiological knowledge — an aid sufficient at once to remove the chief difficulties of his task.

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CONTENTS.

CHAPTER I.

Conflicting theories respecting the treatment of criminals.—Dependence of the mind upon the conformation and health of its material instrument, the brain.—Mental sanity dependent upon the harmonious developement and activity of the cerebral organs.—Obedience to the laws and customs of society the true test of the possession of mental health.—Definitions of insanity.—Views of Sir William Ellis, Dr. Andrew Combe, and Mr. S. B. Woodward. Page 1

CHAPTER II.

Insurmountable difficulties consequent on the present mode of testing insanity.—Practical bearing of the views set forth in the preceding chapter.—Affections or diseases of the brain arise from causes analogous to those which produce affections or diseases of any other organ, and should be treated upon similar principles.—Injustice and inefficiency of human punishments.—Arguments in their favour on the ground of responsibility, licence, and example.—Answer to the objection regarding responsibility. 23

CHAPTER III.

Answer to objections continued.—Views which should actuate society in the treatment of criminals. 45

CHAPTER IV.

Practical adaptation of the foregoing views. — Eastern State Penitentiary of Pennsylvania.—Neglect of education in England, and of the obligations of society.—Inexpediency of capital punishments. Page 64

CHAPTER V.

Statement of homicides committed in Great Britain for five years, from 1831 to 1835; with other cases showing the coincidence of the suicidal with the homicidal propensity, and the tendency of capital punishment to act as a stimulant to the perpetration of murder. 78

CHAPTER VI.

Further illustrations of the inexpediency of capital punishment.—Objections on the part of Government to its abolition.—Objections answered.—Neglected duties of the government.—Summary of the principles upon which criminal laws should be founded. 103

APPENDIX.

No. I. Obedience to the laws the test of mental sanity,	125
II. Eastern State Penitentiary of Pennsylvania,	131
III. The destructive propensity,	135
IV. Term of imprisonment,	139
V. Dread of being considered insane,	141
VI. Unaided efforts to escape from crime,	146

CRIMINAL JURISPRUDENCE

CONSIDERED

IN RELATION TO CEREBRAL ORGANIZATION.

CHAPTER I.

Conflicting theories respecting the treatment of criminals.—Dependence of the mind upon the conformation and health of its material instrument, the brain.—Mental sanity dependent upon the harmonious developement and activity of the cerebral organs.—Obedience to the laws and customs of society the true test of the possession of mental health.—Definitions of insanity.—Views of Sir William Ellis, Dr. Andrew Combe, and Mr. S. B. Woodward.

It usually happens that those questions which are of the greatest importance to the welfare of mankind are the last to become the subjects of general public discussion. The practical details of life form the objects to which the action of popular opinion is more immediately directed, and it is only when the evil working of any of these details is shown to be beyond the possibility of reform, except by an attack upon some great principle to which they owe their origin, that men can be persuaded to question the soundness of any general idea, upon

which, through past time, they may have been accustomed to rely.

Among the subjects which have of late, in this way, been forced upon the public attention, that of Criminal Jurisprudence has been the most conspicuous. The want of a well-defined and fundamental principle with regard to the treatment of criminals is generally felt and admitted; and conflicting theories are everywhere promulgated on the subject. The intentions of Nature, however, are always simple, and have only to be clearly stated to be understood; and as the theories hitherto propounded in relation to the treatment of criminals have almost all of them in turn found advocates amongst the most eminent men, of whom not any two agree upon the matter, a strong suspicion may reasonably be entertained, that amongst all the discordant systems referred to, we shall attempt in vain to find the true one.

I propose in the present work to draw the attention of my readers to this important subject, and to attempt to lay down some general principles in relation to it. In doing this, it will be necessary that I should enter into a consideration of the cerebral organization of man in connection with the subject of social responsibility: and regarding the latter point, I shall be able to show, by some important facts, the urgent necessity which exists for a concise definition of its nature and bounds. I shall then suggest a new view of its nature, of a

wider character than that which at present obtains ; in the hope that I may be able to induce a belief that a system of criminal treatment may be based upon it, which, while it is unchangeable in its principles, and certain in its effects, will also harmonize more fully with our advanced knowledge of the human organization, and with the clear and benignant doctrines of Christianity.

It is now acknowledged as an unquestionable truth, that all the manifestations of the mind, including the feelings and the passions, are dependent upon the conformation and state of health of its material instrument, the brain ; and that all derangements of this organ arise from causes analogous to those which produce derangement of any other organ of our physical frame. The question then arises, Why do we not treat irregularities of the mind in the same way as we treat all other physical disorders, viz. by confining ourselves solely to an attempt to cure the patient ? and why do we talk of punishment when we are considering a case of morbid action of the brain, any more than when we are considering a case of morbid action of the heart, the lungs, or any other organ ?

The difference has arisen from the confused notions which have been universally entertained regarding the social responsibility of man, all tending to the belief that there exists a middle ground, not to be doubted, yet never to be defined, where responsibility ends and irresponsibility begins.

It will be admitted, that if a man could be found in whom *all* the qualities of mind and body were healthfully constituted and harmoniously developed, we should then behold a being who would realize, humanly speaking, our ideas of perfection. That all men fall far short of this standard, is a truth which religion and experience alike confirm ; but, some approach more nearly to it than others ; and the question that we have to consider, in estimating the qualities of our fellow men, is not whether any one exists whose mind and body are thus perfectly sane, but, What is the relative degree of his divergence from the perfect type which we have supposed ? The tendency to evil, which, more or less, is the characteristic of all men, indicates in each the amount of this divergence from that harmonious balance of the mental powers in which alone true soundness of mind can consist. False impressions, ungovernable desires, deficiencies of intellect or feeling—in short, all that makes up the sum of human errors—arise from an unbalanced action of the various faculties of the mind ; and to the extent, therefore, that any one faculty is deficient in its comparative relation to the others in any individual, such is the extent of his departure from true soundness of mind in regard to those objects to which that faculty may relate. For instance, we may suppose a man exerting his natural tendency to the acquisition of property : if this tendency does not exist in his mind to a greater degree than the sentiments of benevolence and con-

scientiousness, he will gratify it by the acquisition of property through means consistent with justice and humanity ; but, if the tendency to acquire preponderates greatly over the moral tendencies which I have named, he will then gratify it by theft or falsehood, or by any means that may be open to him ; and this will arise from his deficiency in those portions of the brain which are the necessary instruments of the two higher feelings. Owing to this deficiency, he is unable to manifest, to a proper degree, these emotions, which are common to man ; and the result is, that he cannot perform the mental operations that are necessary to keep his acquisitive tendency within its legitimate bounds. Now, it would be as reasonable to expect a man to run fast with feeble legs, as to expect a man, in the case which I have supposed, to act with benevolence and justice. Just as reasonable, also, would it be to say that the man who is deficient in those portions, or qualities, of the brain which are necessary to the manifestation of these feelings, possesses anything else than an unsound mind.

To the extent, then, that any one power of the mind assumes an irregularity of developement, such is the extent of the departure from mental sanity, and the consequent tendency to a disobedience of the moral or physical law over which the defective faculty was intended to preside ; and, as there exists not an individual in whom a perfect balance of all the faculties can be found, so it has been well said,

that, "If we speak with rigorous exactness, there is no human mind in its right state."

It will probably be urged, that, as the perfect type to which I have alluded has no real existence, it is impossible to estimate, with any degree of exactness, the amount of departure of each individual from its bounds; and that, as mankind are too apt to make their own notions of morals the standard by which they measure the actions of others, this standard would vary not only with individuals but with entire nations, and that it is, therefore, totally inapplicable to any practical purpose. Now, although it cannot be maintained that there exists any human mind in a state of perfection, yet we may consider as perfect, for all social purposes, that mind which comes up to the average state of mental power characterizing the society of which it is a part. This average state of the social mind is precisely indicated by the laws and institutions which society frames, or permits to be framed, for its own governance; and, hence it may very safely be taken as a rule, that every person is sane to the requisite extent for the performance of social duties, so long as he possesses the mental power and disposition to act in obedience to the laws. Although, therefore, it may be asserted that, in the eye of Perfection, there exists no human mind in its right state, yet so long as an individual infringes no general law or habit of society, he may be considered as coming up

to the average point of civilization, and may, therefore, be regarded as perfectly sane.*

Irregularities of disposition arise from two causes, — viz. the transmission of an irregular cerebral organization from parent to child; and, subsequently, the effect of accidental circumstances, as bad example, ill-conducted education, injuries of the head, &c. It is precisely from analogous causes that irregular conditions are occasioned in other organs of the body. They are more or less, in all cases, transmitted in an imperfect and unhealthy state; and the subsequent effect of defective physical education and accidents aggravates the predisposition to morbid action which was thus originally established. If a child be born with an irregular organization of brain (and to say that every child is born thus, is merely to aver that none are born perfect), he comes into the world to the extent of that irregularity insane; and as, by subsequent education, that irregularity may be reduced or increased, so will this insanity be aggravated or relieved.

I am aware that one of our most successful practitioners, the late Sir William Ellis, in treating of insanity, arrives at the conclusion that, “Independently of cases of idiocy, imbecility, eccentricity, and moral evil, man is sane while the manifestation of his mind, sentiments, passions, and general conduct continue either to improve or to keep in

* Appendix, No. 1. Obedience to the laws the test of mental sanity.

accordance with the exhibition of his previous powers and habits:" but we must not overlook the fact, that Sir William is treating expressly of that kind of insanity which results from disease. In many instances, as in idiocy, we meet with mental unfitness or incapacity combined with perfect health of the organization, such as that organization is: just as we may have a child born and live healthy without legs or arms. By accurate medical philosophers the term insanity is used only to describe a morbid state; but, in order to avoid unnecessary distinctions, I have used it in its wider and more popular sense, viz. as applying not only to unsoundness of mind resulting from diseased organization, but also to that unsoundness which arises from a conformation originally defective. If we were to take Sir William Ellis's definition in any other shape than in the limited one which I have explained, it would be difficult to conceive upon what grounds his views have been formed, since he acknowledges the law of hereditary transmission, and says, "As we find that children resemble their parents in conformation of the body, in feature, and complexion, and even in the colour of the eyes and hair, it is but reasonable to presume that there should be a like resemblance in the structure of the brain." If, therefore, the possible transmission of a defective form of brain be recognised, how can we in fairness limit the plea of unsoundness of mind to those whose conduct exhibits a *sudden* derangement

from their usual mode of action? since those who inherit a defective organization commit crimes to which, on account of that conformation, they have exhibited an invariable tendency, and for the commission of which they certainly cannot be considered responsible to a greater degree than those who are impelled by a sudden derangement!*

The argument of Sir William Ellis, if received without the limitation which I have named, would lead us to presume, that, if a man who has during his whole life been a model of integrity, should suddenly exhibit an uncontrollable propensity for thieving, he should be allowed the plea of insanity; but that, if a man is tried for theft who has exhibited that propensity from the first moment when he

* "The form of head possessed by all dangerous and inveterate criminals is peculiar. There is an enormous mass of brain behind the ear, and a comparatively small portion in the frontal and coronal regions. Such a conformation always characterises the worst class of malefactors; and wherever it exists we find an excessive tendency to crime."—MACNISH.

"It has now been fully established by the researches of modern physiologists, that the visceral ganglionic system, the medullary columns of the spinal chord, the annular protuberance, and other cerebral ganglionic expansions, together with the numerous complex formations at the base of the brain; that the cerebellum and the middle and posterior lobes, with but a rudimental or deficient expression of the anterior ones, and of the upper convolutions of the hemispheres, are those parts of the nervous system which, subserving chiefly muscular and animal activity, predominate and characterise the lower exemplar of type. The base of brain predominates.

"Such are the brains of savage tribes, and the degraded cha-

was capable of action, he should, on the contrary, be considered responsible, and be severely punished.

In one case, a sudden and morbid action of the brain produces the effect, and in the other it is produced by malformation of that organ from birth. It is the duty of Justice and Benevolence to adopt means for the cure of both. To speak of punishment, in either case, is erroneous; because, as regards the question of social responsibility, there can be no real distinction between the two states: yet, if we could imagine it to be necessary, it would most assuredly seem more fair to punish the man who, having originally possessed a comparatively healthy organization, had contrived to impair it, than to inflict it upon one who never possessed from racters of even civilised populations; such also are the brains of those found in the prisons, at the galleys, the penal colonies," &c.

"Those parts, on the contrary, of the cerebral system which are deficient in the lower type, form, by their complete development, the very characteristics of the higher. These are the upper convolutions of the hemispheres and of the anterior lobes, which may be considered as the last additional extensions of the nervous system having relation to the higher attributes of humanity."—Dr. ROBERT VERITY "*On Changes produced in the Nervous System by Civilization.*"

"The cerebral system being the system of the sensations, of judgment, of volition, it is to it we must refer all morbid conditions of these mental acts or functions. Every derangement of the senses, every form of delirium, or of coma, or of perverted imagination or judgment, every *act* of violence, must be referred to the condition, primary or secondary, of the cerebrum or cerebellum."—Dr. MARSHALL HALL "*On the Diseases and Derangements of the Nervous System.*"

his very birth, a tendency different from that which he has exhibited. Those who make the distinction in favour of the former case, might as reasonably assert that a man who falls into consumption through sudden exposure to cold, is deserving of our pity; but that he who suffers from the same disorder, owing to an original narrowness of chest, brought it on of his own accord — that it was an ‘optional’ act on his part, and that he is therefore unworthy of like consideration.

Dr. Andrew Combe, in his valuable Observations on Mental Derangement, takes a view with regard to the definition of insanity similar to that which has been adopted by Sir William Ellis. He says, “Many men in the full enjoyment of health are remarkable for peculiarities of character and idiosyncracies of thought and feeling which contrast strongly with the general tone and usages of society; but they are not on that account to be held as insane, because the singularity for which they are distinguished is with them a *natural* quality. *It is the prolonged departure, without an adequate external cause, from the state of feeling and modes of thinking usual to the individual when in health, that is the true feature of disorder of mind.*” It will be seen that to this definition the same restriction must be applied as to that of Sir William Ellis. To show that this is necessary, we may suppose the case of a person who, from his earliest youth, has given indications of possessing in a very weak and inactive state any

one organ of the body. Let his lungs, for instance, be so constituted that it is only by a painful effort they are able to perform the function of respiration ; or let the liver or kidneys be so constitutionally weak as imperfectly to fulfil their respective offices in the animal economy : it would not be asserted that the possessor of any one of these organs in the weakly state of developement which I have supposed, is in a state of bodily sanity, merely because the ailment with which he is afflicted presents in its effects no appearance of departure from his " usual " state of health. In like manner, it must be impossible to say with correctness that the mind is in a state of sanity, according to the popular sense in which that word is understood, when any one or more of its important organs are, and have been from infancy, in such a state of feeble developement as to be incapable of performing with effect their relative duties.

If we were to entertain Dr. Combe's definition as applicable to all cases of mental unsoundness, we should be entitled to come to the conclusion, that the subject of the following account is perfectly sane, although it is considered by the medical officers of the institution in which he is confined, that any jury, before whom he might be brought, would satisfy their doubts by returning him insane.

In the Richmond Lunatic Asylum, Dublin, Mr. George Combe saw a patient, in 1829, who had been confined for ten years. He exhibited a total

want of moral feeling and principle, yet possessed considerable intelligence, ingenuity, and plausibility. He had been a scourge to his family from childhood—had been turned out of the army as an incorrigible villain—had attempted the life of a soldier—had been repeatedly flogged—and had since attempted the life of his father. Respecting this man, Dr. Crawford, Substitute Physician at the Asylum, made the following remarks:—“ *He never was different from what he now is; he has never evinced the slightest mental incoherence on any one point, nor any kind of hallucination. It is one of those cases where there is great difficulty in drawing the line between extreme moral depravity and insanity, and in deciding at what point an individual should cease to be considered as a responsible moral agent, and amenable to the laws. The governors and medical gentlemen of the Asylum have often had doubts whether they were justified in keeping him as a lunatic, thinking him a more fit subject for a Bridewell. He appears, however, so totally callous with regard to every moral principle and feeling, so thoroughly unconscious of ever having done anything wrong, so completely destitute of all sense of shame or remorse, when reprov'd for his vices or crimes, and has proved himself so utterly incorrigible throughout life, that it is almost certain that any jury, before whom he might be brought, would satisfy their doubts by returning him insane, which, in such a case, is the most humane line to*

pursue. He was dismissed several times from the asylum, and sent there for the last time for attempting to poison his father; and it seems fit he should be kept there for life as a *moral lunatic*: but there has never been the least symptom of *diseased* action of the brain, which is the general concomitant of what is usually understood as *insanity*. This, I consider, might with propriety be made the foundation for a division of lunatics into two great classes,—those who were insane from *original constitution*, and never were otherwise; and those who have been insane at some period of life from diseased action of the brain, either permanent or intermittent.”

There are few who will hesitate to coincide with the opinion of the governors and medical officers of the above institution respecting the proper, and therefore humane, course to be pursued towards its unhappy inmate. But from this case the absurd cruelty of our general system of criminal treatment becomes at once apparent. The individual is here admitted to the benefit of medical care and treatment, because he has proved himself totally incapable of manifesting one spark of moral feeling. Owing to the utter depravity of his nature, he escapes the vengeance of the laws; but let him manifest one gleam of human kindness,—let him express one remark of sorrow for what has passed, or one slight aspiration towards a better frame of mind, he then becomes a fit subject for “punishment:” a Bridewell is selected for his temporary

detention, whence, after the expiration of his sentence, with evil passions excited to the utmost, he is turned upon the world, and placed in the way of temptation to the gratification of those propensities which must finally lead to his own destruction, and probably to the destruction of a fellow-creature.

It is evident that the moral depravity of the patient, in the above case, arises from an original malformation of brain. It is only from disease, or from malformation of this organ, that such manifestations can ever arise. Mr. Combe observed, that in this individual the coronal region, which is the seat of the moral sentiments, was in a state of the most imperfect developement, while the posterior region, the seat of the animal propensities, was of an unusual size: but, apart from the external indication which is thus afforded by the shape of the head, we have quite enough to carry us to the conclusion, that the frame of mind which leads to criminal acts should invariably be attributed to a derangement of the mental organs, or to an inherent defect in their structure.

In coming to the conclusion that malformation, affection, or disease of any kind, exists in one of the internal organs of the body, our only means of judging arises from the observation that the functions which we have been accustomed to attribute to that organ are not efficiently conducted. We know, for instance, that it is the function of the liver to secrete bile; and when we perceive from external

signs that this function is irregularly performed, we do not hesitate to infer that there must at least be diseased action going on in that organ. We also know that it is the function of a healthy brain (it must not be forgotten that *all* the manifestations of the mind are dependent on the brain as its instrument) to guide its possessor to at least an average fulfilment of all the duties of life: that it is not, for example, the function of a healthy brain (and by a healthy brain I mean one of average form and quality), to be the instrument of pleasurable emotions at the contemplation of murder, fraud, or rapine, as was the brain of the subject of the foregoing case. Hence, when a desire for these or any other criminal acts becomes a feature of the mind, we should—if in forming a judgment of derangement or inefficiency of the brain we were to follow the same course as we now pursue in judging of the derangement or inefficiency of any other organ—infer, from the irregularity that is visible in outward signs, that some wrong action is going on in the organ itself.

One great source of error in considering the proper treatment of criminals, has arisen from the fallacious opinion that insanity is limited to the operations of intellect alone; and that, if no hallucination of the reason can be proved to have existed, the criminal could have been actuated by no impulse but such as his will might have restrained; and that his intellect being in an average state with

the intellects of his fellow men, he might have resisted the temptation to crime with as much ease as any other person. Now, however, that it is known that the operation of the feelings and passions, which alone furnish *motives* to the intellect, depend upon the physical system no less than the understanding, our views in this respect must undergo alteration. Mr. S. B. Woodward, the superintendent of the State Lunatic Asylum of Massachusetts, to whose valuable experience I shall constantly refer, in a report, dated December, 1837, has the following remarks:—

“ Is it not well known that the passions and propensities are even more affected by disease than the mental powers? Is it unphilosophical or irrational to suppose that these faculties can be subject to such impairment as to be beyond the control of the reasoning powers and the judgment?”

And again—

“ Besides this *disease* of the moral powers, there seems to be in some cases something like MORAL IDIOCY, or such an imbecile state of the moral faculties from birth as to make the individual irresponsible for his moral conduct. The persons to whom I allude have rarely much vigour of mind, although they are by no means idiots in understanding. Of the idiots that have come under my care, there have been some whose minds are very imbecile, who seem to have considerably correct views of moral obligation, and whose moral powers are susceptible

of culture. There are others, who, having much better powers of understanding, are capable of learning to read, and of understanding what they read, yet seem to have little or no moral sense."

"There is also what I denominate *INSANE IMPULSE*; which is an uncontrollable propensity, as transitory as it is sudden, by which an act is committed without one moment's reflection or premeditation, the individual being sometimes perfectly conscious of what he is doing, and sometimes apparently not at all so. The mind in such a case may be under the influence of a delusion, or it may not: even when it exists, the delusion does not always impel to the deed of outrage; nor has it, in many cases, as far as can be discovered, any connection with it in the mind."

In illustration of the fact that a person may be fully convinced that he is doing wrong, and yet be unable to resist the tendency, Mr. Woodward further says—

"To establish moral insanity, it is not necessary that the subject of it should be wholly reckless and regardless of consequences. Many individuals are constantly under the influence of uncontrollable propensities, and at the same time are conscious that they are not doing right. Such instances are daily presented to us: they violate and repent, and resolve to do better; and in a moment violate again! This is as often seen in acts of petty

mischief as in high-handed crime and misdemeanour." *

When a man commits a crime, it is the custom to exclaim that "he *ought* to have known better." Now, if he was, from natural deficiency of the reasoning or moral powers, unable to perceive that he was doing wrong, it cannot be disputed that he was of unsound or partially idiotic mind. If, on the other hand, he did possess the power to perceive the right course, and yet was unable to act up to his conviction, it is evident that he possessed a brain of such an irregular formation, that the higher mental

* Georget mentions a case of a woman who consulted him, and who was evidently healthy and rational, whose irresistible propensity it was to murder her children; she abhorred herself for the feeling, and avoided windows and sharp instruments, and often fled the house to get out of their way.

Gall relates the case of a man at Vienna, who, after witnessing an execution, was seized with a desire to kill. He wept bitterly, struck his head, wrung his hands, and cried to his friends to take care and get out of his way. Pinel speaks of a person, exhibiting no unsoundness of intellect, who confessed that he had a propensity to kill; he nearly murdered his wife, and then frequently attempted self-destruction.

It was recently mentioned in the London Medical Gazette, that in 1805 a man was tried at Norwich for wounding his wife and cutting his child's throat. He had been known to tie himself with ropes for a week, to prevent his doing mischief to others and to himself. A man exposed to a sudden reverse of fortune was heard to exclaim, "Do, for God's sake, get me confined; for, if I am at liberty, I shall destroy myself and my wife! I shall do it unless all means of destruction are removed; and, therefore, do have me put under restraint. Something above tells me I shall do it—and I shall!"

powers bore no sufficient relation to the lower propensities, which it is their duty to control; and that the latter, when roused by the presentment of their own stimuli, possessed a strength so disproportionate as completely to overpower the former. If, while in this state, he commits a crime, he will exclaim that "he could not help it," or that the Devil (i. e. the cerebral organ of the offending propensity) was too strong for him. His judgment, in fact, was strong enough, under ordinary circumstances, to teach him the erroneous tendency of his passions; but it was not strong enough to prevent his falling, when those passions, always disposed to disproportionate action, became suddenly excited by some external cause. In such cases, the mental balance is completely lost, and he is reduced to a state of relative insanity. Under these circumstances, the "responsibility" which attaches to the result of his conduct should be (and under the operation of the Divine laws certainly is) shared by those who, being too ignorant to estimate the nature of his infirmity, suffered the exciting causes to be placed in his way, instead of endeavouring to repress the activity of the overruling propensity by withholding the objects of temptation, and by appealing to his higher but hitherto neglected powers.

One point, at all events, should never be forgotten by those who condemn him; and that is, that, if at birth they had received a brain of a quality and formation similar to that which the unfortunate

criminal received at his birth, they would, if they had been subsequently surrounded by the same external influences, have acted precisely in a similar manner. It is vain to say that he may have brought his present position upon himself, by giving way to temptation, and by associating with evil companions in his youth. Whence arose the reason of his selecting such companions? Let us, in answer, suppose the case of two youths of equal temperament, similarly educated, and subject to the same circumstances of external condition, placed in the midst of the most depraved society, one of whom gives way to the temptations that are held out to him, while the other looks upon them with disdain, and firmly rejects them. The difference of conduct between the two boys arises solely from the difference of their cerebral organization as transmitted to them at birth. If the two boys could have changed heads, the conduct of each would have been reversed. He, therefore, who pursues the upright course, has no cause for self-pride, and no claim for reward, since he reaps his reward in the innate sensations of pleasure which such a course alone can generate; and he has no cause for pride, because, had he been originally similarly circumstanced in all respects with his less fortunate companion, he would then have fallen into a similar fate. In the writings of Jeremy Taylor, of whom it has been truly remarked, that his influence and authority in the Church, whether for power and splendour of mind, orthodoxy of belief, or sanctity

of deportment, have never been surpassed, I find the following passage:—"If a man be exalted by reason of any excellence in his soul, he may please to remember that *all souls are equal*; and their differing operations are because their *instrument* is in better tune, and their body is more healthful or better tempered; which is no more praise to him than it is that he was born in Italy." On the other hand, if his course entitles him to no reward in this world beyond the natural one of the inevitable happiness of mind which Heaven has decreed to be the consequence of its physical health, so it is but fair to allow that the opposite course can merit no punishment beyond the inevitable pain which Heaven has decreed to be the consequence of its physical derangement. If the argument is good for anything, it must tell both ways with equal force.

CHAPTER II.

Insurmountable difficulties consequent on the present mode of testing insanity.—Practical bearing of the views set forth in the preceding chapter.—Affections or diseases of the brain arise from causes analogous to those which produce affections or diseases of any other organ, and should be treated upon similar principles.—Injustice and inefficiency of human punishments.—Arguments in their favour on the ground of responsibility, licence, and example.—Answer to the objection regarding responsibility.

IN the preceding chapter I called attention to the dependence of the mind upon the conformation and quality of its material instrument, the brain, and I referred particularly to the fact, that the operation of the feelings and passions depends upon the physical system, no less than the understanding. It was also my object to show that the proper function of a sound brain is to lead its possessor to an average manifestation of all the mental powers common to man ; that this average manifestation is tested by his obedience to the laws and institutions of the society of which he forms a part ; and that, consequently, as our only mode of judging of the degree of unsoundness of any organ arises from observing the extent of its departure from the due performance of its proper functions, we are bound

when a person has committed or attempted to commit a crime, to receive that fact as sufficient evidence that his brain is in an unsound state: the degree of this unsoundness being indicated by the extent of his offence. The recognition of this fact necessarily leads us to the conclusion, that the infliction of punishment, in any case whatever, is wholly inconsistent with all ideas of justice.

But, although this conclusion is founded upon physiological truths which are now generally admitted, it will doubtless seem in the eyes of those before whom it may for the first time be presented to be one of a startling and dangerous description. I trust fully to show, that the difficulties by which it may appear to be surrounded exist only in imagination.

Before proceeding, however, to a consideration of the objections which are likely to be raised, I beg to call the attention of my readers to the contradictory ideas and lamentable results which must continue to arise under the present modes of testing the existence of insanity, and estimating thereby the responsibility of criminals.

From the time of Lyttleton to the present day, almost every legal authority upon this subject seems to have laboured under a consciousness of the insurmountable difficulties by which it must be surrounded so long as the assumption is persevered in, that there are some peculiar descriptions of crime which result from defective or disordered organiza-

tion, and that there are other descriptions which result from causes independent of organization altogether. We find each succeeding writer exhibiting a tendency towards the recognition of forms of insanity, which, in a preceding age, would have called forth upon their hapless subjects the severest tortures of the law; and, even up to the present hour, indications of this steady progression of opinion may readily be observed. But from amidst all these changing views, no one doctrine appears ever to have been selected as deserving of permanent recognition in our criminal courts. Jurors are instructed that the possession of an unsound mind entitles an offender to exemption from punishment, while at the same time they learn that there are no definite means by which the existence of this unsoundness can be estimated. The opinions of the judge, the counsel, and the medical witness are not unfrequently found to be mutually discordant; and, amidst the perplexities thus raised, a decision is at length come to by a body of men from whom, in a majority of cases, it would be found the question had never previously received one moment's serious consideration.

It is obviously unnecessary to enlarge upon the evils to which circumstances of this description must constantly give birth. It would also needlessly occupy space to select, from amid the ever-shifting and contradictory decisions which are recorded, any number of specific cases, for the purpose

of pointing out the erroneous nature of the different views from time to time set forth. There are, however, one or two physiological facts, too well established to admit of a supposition that they are not generally recognised in our courts, to which it is proper to allude, because deductions may be made from them which must inevitably show, that, under the present system, the decision at which juries arrive regarding the mental condition of the prisoners brought before them can have no other foundation than the merest guesses; and that, in a country where the maxim that "it is better that fifty criminals should escape than that one innocent person should suffer" is familiar to every ear, the mode of testing the existence of mental unsoundness is confessedly so uncertain that it must frequently involve not only the entire escape of guilty parties, but the far more serious calamity of the condemnation of the innocent.

It is known, that, according to the excessive size of any organ, such is its tendency, other things being equal, to disproportionate or excessive action. This holds good with regard to the various organs of the brain, as well as to the other portions of our system. Excessive action can only be maintained by an over-supply of nutriment; and hence a permanent increase of sanguiferous circulation occurs in the region of the organ; which increase, if suffered to exist in a great degree for a lengthened period, may lead eventually to structural change,

and assume the form of incurable insanity. But, although in old cases of insanity diseased organization of the brain is almost invariably found, in recent cases there is *rarely* diseased organization, but the vessels on the whole surface of the brain are surcharged with blood, and clearly indicate the existence of increased cerebral action. Now, as diseased organization is not necessary to the production of insanity, at what point of excessive sanguiferous action shall we decide that insanity commences? If a person is under the slightest excitement, nay, under the mere operation of any ordinary feeling, an increased supply of blood for its manifestation is required and sent to its organ in the brain. If the emotion increases, the supply of blood to its organ increases in due proportion, until rupture of a vessel ensues, or the supply shall have become so great as to carry it to a state of blind excitement sufficient to cause it to overpower all other emotions, and eventually even lead it to act without the knowledge of the intellect or the concurrence of the other feelings. The excitement might at first be raised by a very trivial cause, since, coupled with original malformation or defective quality of brain, the slightest cause is sometimes sufficient (and where these conditions do not, either one or both of them, previously exist, maniacal excitement will never arise, except in cases of accidental violence to the brain, or from sympathy with other diseased organs of the body); but, having once

arisen, unless the exciting cause be removed, or some unusually strong antagonist motive be presented, its tendency is to increase in power, until, spending its force in blind and ungoverned action, the whole system becomes so exhausted that the circulation is enfeebled in every part.

The following anecdote will serve as an illustration of the coincidence of excited feeling with increased sanguiferous circulation:—A Portuguese, of the name of Rabello, was employed by a mechanic in the western part of Lichfield county, Connecticut, to assist him as a shoemaker. He had been in the neighbouring towns, and his conduct seemed singular, but usually inoffensive. In the family of the mechanic he had appeared pleasant, and grateful for the kindness which had been extended to him. One day a little son of his new employer accidentally stepped upon his toes. The lad was twelve years old only. Rabello was exceedingly angry, and, in the moment of his rage, threatened his life. The next day he appeared sullen, refused his food, and looked wild and malicious. The following morning he went to the barn-yard with the boy, seized an axe, and killed him on the spot, mangling him in the most shocking manner. He went deliberately away from the house, but was soon overtaken by those in pursuit. He acknowledged that he had killed the boy; and gave as a reason, that he had stepped upon his toes. It was found from the evidence produced on his trial, that this was an offence

considered most heinous, and not to be forgiven. Many instances were given in which the same accident had produced the same excitement of temper, often accompanied with threats. One of the physicians who visited him in gaol stepped, apparently by accident, on his toes while he was counting his pulse: the pulse, he declared, rose immediately forty strokes in a minute, his countenance flushed up, and he appeared instantly in a rage.

The result of this tendency to a rapid supply of circulation to the brain, is often exhibited in the daily events of life. A person, naturally predisposed to destructive emotion, meets with some slight offence, and vents his fury in angry words and cutting remarks; roused by resistance, he seizes some article of furniture, breaks a glass or a window, and laughs with wild delight at the gratification which this act has given to the excited propensity. In this way, if the opposition be withdrawn, the maniacal excitement may be expended, and the unfortunate victim of "temper" may find relief in tears. If, however, he be of a firm disposition, the gratification in which he has indulged may serve only to stimulate his "mad fit" to an ungovernable extent, and it may then find vent only in the utter destruction of his opponent.

There are cases of murder which are apparently committed without any previous excitement; but, in these instances, it will generally be found that excitement has been produced by the use of stimu-

lating drink. It has, indeed, been calculated that nine-tenths of criminal homicides have resulted from this cause.* Where this is not the case, it will usually be found that the predisposed mind of the criminal has been for some time stimulated by a perusal of details of murder or suicide in the public prints, by visiting executions, or by the unhealthy condition of some other organ (frequently the liver) acting by sympathy on the brain.

“Insanity,” says Sir William Ellis, “whatever may be its primary cause (with the exception of cases arising from loss of blood, want of nutrition, or some other debilitating source), *begins* with an excess of sanguiferous circulation in the brain, or some part of it. The immediate cause of this excess of circulation is either over-exercise of the brain, or some part of it, or irritation produced in it by its sympathy with some other diseased bodily organ.” Since, then, the proximate cause of insanity is the increased supply of sanguiferous circulation, and since it must always be impossible to ascertain the amount of circulation with which the brain, or any part of it, was charged at any given time, it is clear that we must always remain in every case unable to fix upon any stage of in-

* “In the ordinary use of fermented liquors, until, from their being taken to excess, torpidity is produced by a *quasi* apoplexy, the operation of the mind, the sentiments, and the passions, are quickened in the same ratio in which the stimulus increases the action of the brain.”—*Ellis on Insanity*.

creased supply as that at which *insanity* really commences. If, therefore, we are, in Criminal Jurisprudence, to continue to act as if the line between responsibility and irresponsibility had an absolute existence, we must (as we can never, in any case, get at information as to what was the condition of the criminal's brain at the time of the commission of the offence) be prepared to submit to the belief that, in those cases which approach most nearly to the imaginary verge, we frequently pass erroneous judgments; sometimes wrongly granting an acquittal, and sometimes sentencing a culprit to death, for the commission of a crime, of which, had we known the precise state of his brain, we should have declared him to be guiltless by reason of insanity. Indeed, Sir William Ellis remarks, that "In insanity arising from moral causes diseased action of the brain is rarely produced by any sudden shock, but it generally arises from the continued operation of some exciting cause, producing excessive vascular action in the brain, or some part of it. Unfortunately, the alteration in the sentiments and conduct, in many cases, is so gradual that diseased action of the brain may have existed *without being suspected* until diseased organization" (the incurable stage of insanity!) "has actually taken place."

Thus, it will be seen that insanity may go on even to its ultimate stage without being suspected; and that it is, therefore, impossible, excepting by a

post-mortem examination, to assert that any given individual is not only not already visited with the incipient growth of the disorder, but that he has not passed even to its last and incurable stage. Yet, notwithstanding the difficulty which is thus known and confessed, it is always presumed that any twelve men taken from the ordinary duties of their shops and counting-houses, are fully qualified to pronounce an opinion as to the mental condition of the culprits that may be brought before them. Assuredly the old method pursued among the Scottish Borderers of executing the prisoner first and trying him afterwards, was much more consistent with reason than the modern plan, since in those cases they did really possess the means, by a *post-mortem* examination, of ascertaining from the *only source which can be relied upon*, (if we reject the evidence afforded by functional disturbance,) the absolute condition of the brain of the offender.*

* In the consideration of all cases of extraordinary atrocity, the first attempt is to discover the motive which actuated the perpetrator. If no motive can be traced, he stands a chance of being considered insane, and of thus escaping from punishment; but, if there can be found the slightest indication of the concurrent action of any other faculty with that, the activity of which led to the outrage, the minds of his judges are completely satisfied. Thus, suppose a man were to kill another under the effect of a momentary impulse, and without the slightest apparent motive (beyond the motive of gratifying the destructive propensity), it is just possible that some juries might be disposed to doubt his perfect sanity; but if it should be proved that, having murdered the man, he had taken from his pockets a few shillings, or even a few halfpence,

Having endeavoured in these few words to point out the evils which must inevitably continue to arise under a perseverance in our present mode of estimating the mental condition of offenders, I proceed to consider the practical bearing of the views set forth in the preceding chapter.

All affections or diseases of the body may be traced to causes analogous to those which produce affections or diseases of the brain, viz., original malformation, sympathy with other diseased parts of the system, ill-directed exercise, contagious association, accidental lesion, &c., &c.; but when we speak of persons being in ill health, in cases where any other organ of the body than *the brain* is affected, we never think of expressing a desire to *punish* them for their misfortune, because we consider that the pain they must necessarily suffer, and the restraint and confinement to which they must submit, in order to promote recovery, are circumstances that should awaken our pity rather than our anger, and we urge them to seek the aid of a competent physician. Yet the moment the

the conviction of his soundness of mind would be complete. As if to any person of sound mind such a motive would be *sufficient*. In one case the destructive tendency acts singly, in opposition to all the other faculties of the mind; in the other case, the destructive and acquisitive tendencies are united in action, and these two act in opposition to all the remaining faculties. The difference is one of very slight degree; that part of the brain which is the instrument of the moral sentiments being in both cases in a state of impaired health or deficient development.

brain is discovered to be the organ that is in an unsound state, our view of the matter immediately changes. We then talk of "responsibility," and of the necessity of "punishment" (without questioning as to whether these terms must necessarily be united); although it would be quite as rational to flog a man at the cart's tail for having become infected with the scarlet fever, owing to a predisposition and exposure to the disease, as to pursue the same course to one who, falling into temptation, had given way to a predisposition for taking possession of whatever he could lay his hands upon. To be sure, it might be said, that the flogging could not operate so as to deter the man from catching another fever, while it might deter the thief from repeating his offence; but this distinction will not hold good, because, in the first instance, dread of the punishment might possibly induce the patient to attend in future so closely to the laws of health as to keep him safe from infection, and it could do no more in the latter case with regard to the laws of morality.

But it will be said that one who offends against the laws of health by neglecting the precautions and duties necessary to the preservation of bodily sanity, injures only himself; that the evil consequences are entirely personal, and that society has nothing to do with it; while, in the case of a moral offender, society generally is exposed to injury, and it therefore becomes its duty, as a matter of

self-defence, to resort to the infliction of punishment. There is, however, nothing in this argument that can be maintained for a moment ; for the injury done to the race is just as extensive in the one case as in the other. If a man by his own imprudence ruins his bodily health, society suffers by the impairment, in one of its members, of those energies which were given and intended to be used for the good of all ; and it suffers far more seriously even than this, when the man of ruined constitution transmits to another generation his own delicate and enfeebled powers. Assuredly, if mankind could at one view take a glance at all the ills that have been brought upon the race collectively by the inattention of man to the general health of his frame, they would be disposed to allow that they had quite as much interest in enforcing obedience to the physical as to the moral laws !

Another argument will be raised, to the effect that, as a consequence of the neglect of health, pain is felt, and that this consequence is quite sufficient to act as a punishment, and to deter others from similar neglect, without the infliction of additional torture ; while, in cases of moral delinquency, the patient does not suffer any pain beyond that which society may inflict. This idea can only be urged by those who are accustomed to regard the mind as an immaterial power, manifesting itself in this world independently of any material instrument. Those who are accustomed to consider the fact

that the brain is the instrument of the mind, and essential to all its manifestations in this life, will not for a moment suppose that this, any more than any other organ, can be subject to derangement without the production of a consequent and proportionate amount of pain. All our faculties were intended to be harmoniously gratified; and, if we are subject to a deficiency of any one of them, we lose a means of pleasure which it was intended we should possess: and if, on the other hand, one is so much in excess as to create a great relative deficiency in the rest, we are then confined to one source of pleasure, and lose the varied delights that spring from a healthy developement of all. He only can truly enjoy life who possesses, in an harmonious state, all the faculties which were implanted by his Creator as the means of such enjoyment; and in proportion as this frame of mind is deranged, so are our means of happiness surely diminished. But not alone is pain thus negatively inflicted by the diminution of our means of pleasure, for the morbid emotions of an irregular mind act by sympathy on the rest of the system, and produce general uneasiness: there is, moreover, actual pain in the organ itself; for, the moment the balance of mind is once disturbed, (and the true balance, as I have said, exists in no one,) the various faculties cease to act in their intended relation to each other; and, instead of that which gratifies one being the source of gratification to all, we are tormented, to the extent of

our irregularity, by a constant sense of opposing desires.

Having thus attempted to show that the infliction of punishment for disorders of the brain is no more reconcileable to our ideas of justice than would be the infliction of punishment for disorders of any other organ of our physical frame, it is probable that my readers will suggest the following objections :—

1. That the doctrine which I now advocate would destroy all ideas of responsibility.
2. That it would leave all men to follow their inclinations with impunity ; and,
3. That, as it would enforce no punishment on offenders, it would present nothing that could deter others from following their example.

But these objections, as I shall proceed to explain, are wholly without any solid foundation. And first, with regard to Responsibility.

Although upon this great question legislators, lawyers, physicians, and moralists have differed and doubted from all time, almost all of them have been unanimous in what appears to me to be the one great error — of allowing that there exists “ somewhere ” a line of demarcation where responsibility ceases, and irresponsibility, by reason of insanity, is to be allowed ; the former being subject, in cases of murder, &c., to the punishment of death, the latter entitling the culprit to immunity. The application

of these views depends entirely, of course, upon the peculiar metaphysical opinions which may dwell in the minds of the jury before whom a criminal is tried; and, as no fixed ideas exist, a person may be executed as "responsible" under the verdict of one jury, for the very same offence which, committed under like circumstances, might, in the eyes of another jury, entitle him to the plea of insanity. In illustration of this fact, I cite from a numerous collection, the following remarkable case:—

Catharine Ziegler was tried at Vienna for the murder of her bastard child. She confessed the act, and said she could not possibly help it; she was forced to do it; she could not anyhow resist the desire she felt to commit the murder. The frankness of this her confession, connected with favourable circumstances, her good character, &c., induced the tribunal to pass a merciful sentence; and, on the ground of insanity (which she did not herself plead), she was acquitted, and at length let out of prison. But she told the court, that, if they let her escape, they would be responsible for the next murder she committed, for that if she ever had a child again she should certainly kill it. And so in fact she did. About ten months after her release from prison, she was delivered of a child, which she soon murdered. Brought again to her trial, she repeated her old story; and added, that she became pregnant merely for the sake of having a child to kill. It does not appear whether she was brought before the same

judges as before ; most likely not ; she was *executed* for this second murder.

Cases have also been known where a criminal has been executed under the verdict of a jury, although the well-informed and more experienced judges of the court before whom the trial was had, entertained no doubt of his insanity. The following case occurred in one of the New England States:—On the morning of the 23rd June, 1833, Abraham Prescott went into a field with Mrs. Cochran, his foster-mother, to pick strawberries. They had been gone but a short time, when Prescott returned nearly to the house, and was heard crying, or whining, so as to attract the attention of Mr. Cochran, who was left in the house reading. Upon inquiry of Prescott why he cried, he replied, that “ he had killed Sally ” in the pasture ; which, upon examination, proved true : near to her was a billet of wood that had been a stake in the fence, with which he had struck her on the head. On his trial, it was proved that Prescott had, in the month of January preceding, risen in the night, about ten or eleven o’clock, and built a fire in the kitchen, preparatory to butchering swine, which was to have been done the next day ; that Mr. and Mrs. Cochran slept in an adjoining room ; that Prescott, without waking them, took an axe, and entered their room, and there inflicted on the head of each a severe blow, which left them entirely senseless. This extraordinary transaction was supposed at the time, both

by the physician and the wounded friends of Prescott, to have been done in a fit of somnambulism. He disclaimed any knowledge of the affair, and was diligent and active in procuring relief. He had lived with Mr. Cochran some six or eight years, and had always been respectful and affectionate, particularly to Mrs. Cochran. Upon inquiry of him how he came to do so diabolical a deed, he stated that he had a violent toothache come on while in the strawberry-field, and sat down upon a stump; after which he disclaimed any knowledge of what had happened till he found Mrs. Cochran dead before him. After his arrest, he made various confessions in the gaol, so discordant, that the Chief Justice, in his charge to the jury, declared them worthy of no consideration whatever. The plea of insanity was made on his trial; but the jury gave a verdict of wilful murder, and he was sentenced to be executed.

A second trial was had, in consequence of some irregularity in the proceedings of the first jury. At this trial there was little or nothing proved differing from the first; and, although the court evidently felt favourably disposed towards the prisoner, he was condemned to death, and was executed.

After the second trial and verdict, the Judges of the court before whom the trial was had, united in a petition to the Executive, that execution of the sentence might be postponed till the legislature should be convened, that an opportunity might be

afforded for a commutation of punishment to perpetual confinement. This petition, signed by all the Judges of the highest court in the State, contained the following language :—“ The defence set up by the counsel assigned him (Prescott) was insanity ; and the very strange circumstances which attended and preceded the act, go far, in our opinion, to raise reasonable doubts whether he was at the time of sound mind.” Speaking of the jurors who tried him, they say—“ But the circumstances tending, in our opinion, to excite doubts of the prisoner’s sanity, do not appear to have operated with the same force upon their minds as upon ours.”

The extraordinary degree of confusion which prevails regarding the question of moral responsibility, and the necessity that exists for a more perfect definition of insanity, was well exemplified in the trial of the imbecile Edward Oxford.

In this case, it was asserted that the grandfather of the culprit had been insane : it was fully proved that the father had always been subject to destructive and suicidal mania ; that the mother was affected by nervous delusions ; that one of her children had been born an idiot ; and that, during the time when she was pregnant with the subject of the inquiry, she was exposed to great distress, from frequently receiving from her husband blows on the head which rendered her insensible ; and that on one occasion she was subjected to the greatest terror by his presenting a loaded gun at her person.

These things were coupled with proofs of habitual conduct on the part of the prisoner chiefly of a similar character to the following: — “When he was out, he would get stinging-nettles, and beat children with them on their arms until they were quite blistered. He was sometimes given to laugh and cry violently at the same time, without any cause. When any one boxed his ears for doing anything wrong, he would laugh in a very peculiar manner; and he was often in the habit of breaking, or throwing out of windows, different articles that came in his way.” With all these facts before them, coupled with the absurdity of his plans, and the subsequent indifference of the prisoner; with the knowledge that by far the largest class of insane cases can be traced to hereditary causes; that the impressions produced upon the mind of the mother during the period of gestation are usually the source of peculiar dispositions on the part of the child; that the want of power to repress ordinary emotions is one of the most frequent symptoms of insanity; and that this disease, when it arises from transmission, usually assumes its most violent appearance at about the age at which the prisoner had arrived; — we see the counsel for the prosecution, among the highest legal authorities of the realm, gravely attempting to assert the sanity of the individual, with the view of subjecting him to a verdict that shall involve the penalty of a public death; and while, in common with the medical witnesses, they

stated their utter inability to draw the line where responsibility ends and irresponsibility begins, perfectly willing to condemn in ignorance, and to leave the definition upon this point to future inquirers.

In the evidence upon this trial, Dr. Chowne stated: "I have patients often come to consult me who are impelled to commit suicide without any motive for so doing. They tell me they are happy and comfortable in other respects, but that they have a strong desire to commit suicide." This showed that persons may be insane, and yet possess a perfect knowledge of what they are about. The jury listened to this evidence from a high authority; and, half an hour afterwards, they were informed by one of the legal advisers of the crown, that "if the prisoner was of unsound mind, unless he was so mad, so unconscious, that he did not know what he was doing, or what would be the effect of his pulling the trigger, the plea of insanity would not avail!" Fortunately, the jury determined otherwise. Yet it is evident that, amidst all the conflicting arguments by which they were perplexed, the fate of the prisoner completely hung upon the result of their theoretical opinions, instead of upon the operation of any well-defined and rational law.

Thus we see that the line of demarcation between responsibility and irresponsibility shifts place according to the imaginations of different individuals; and that, although in all other respects the laws of the country are so narrowly defined that the Executive

is not suffered to swerve a hair's-breadth in the administration of them, the law of responsibility is perfectly enveloped in doubt; and its administration, upon which in reality depends the fate of the criminal, is left to the casual decision of, in many cases, uneducated jurors, whose metaphysical notions may be reasonably presumed to be somewhat capricious and indefinite.

The doctrine of responsibility, which appears to me to be alone consistent with reason, religion, and morality, is simply this: that, so far from the Creator having sent into the world some beings who are responsible, and others who are exempt from responsibility, there is, in fact, no exception whatever; and that every human being is alike responsible, — responsible (according to the degree of his departure, either in mind or body, from that degree of sanity necessary to the proper discharge of his social duties,) to undergo the painful but benevolent treatment which is requisite for his cure.

CHAPTER III.

Answer to objections continued.—Views which should actuate society in the treatment of criminals.

IN the last chapter, it was my object to illustrate the vague manner in which the question of Social Responsibility has usually been considered; and to show that it has been the custom to regard it in too limited a sense, all persons being alike responsible, according to the degree of their departure from a perfect state, to undergo the treatment necessary for their cure.

He who neglects the laws of health, by exposing himself—say, to a sudden and violent change of atmosphere, and has thereby produced a pulmonary affection—has to submit to the restraint of confinement at home, or to a temporary exile in a warmer climate, to remedy the evil effects of his disobedience; or, if, by incautiously venturing into an impure air, he has contracted an infectious fever, and he should nevertheless refuse to take measures for his recovery, it would be the duty of society, both to themselves and to him, forcibly to remove him to a better atmosphere, to keep him secluded

from all to whom there might be danger of his communicating the disease, and to enforce the administration of proper remedies. In like manner, if he offends against the moral laws from hereditary disposition and the contagion of bad example, or from any other cause, it becomes the duty of society to remove him from the source of contagion, and from the means of transferring it to others; to repress the unhealthy tendency of the mind, and to stimulate its deficient organs.

But, although religion, justice, and benevolence point to this as the chief, nay, the only duty which should be regarded by society in the treatment of offenders, it is one which, in the blind and popular eagerness for the infliction of "punishment," is almost invariably lost sight of; and, as a natural and inevitable consequence of this neglect, details of the most disastrous kind are day by day forced upon our attention.

The following appeared some months back in the "Times." "*Suicide.*—Thomas Pepper, fourteen years of age, potboy, a clever lad, but of sullen and morose disposition, committed suicide by hanging himself in an arbour in his master's bowling-green, where he was not discovered for two or three days. It appeared, from the landlord's evidence, that 'he considered the mind of the deceased to be peculiarly formed; his conduct frequently evincing a predisposition to cruelty. Frequently he would hang up minor animals, such as mice, &c., for the

purpose of enjoying their throes in death ; and often he would call in boys like himself, saying ‘ Here ’s a lark ; he ’s just having his last kick.’ He had often been known to catch flies and throw them into the fire, that he might observe them while burning. He had also been observed, while passing along the streets, to pull the ears of the children, lifting them off the ground by their ears, and, when they cried at his unfeeling conduct, he would laugh with a kind of fiendish delight at their sufferings.’ ”

Other witnesses deposed, that, about four years since (when he was ten years of age), he attempted to strangle himself on an occasion of his mother chastising him for some offence, and locking him up in a room by himself ; and, when discovered, life was nearly extinct.*

The above account forms a forcible illustration of the necessity of early measures of prevention and cure, and the duty which exists on the part of society to see them enforced. The conduct of this boy, even up to the time of his death, and in its

* In this, the jury found a verdict similar to that which is rendered in most cases of suicide, viz. Temporary insanity ; because it is a common opinion (and a very just one), that any person who is so deficient in the natural feeling of love of life as to destroy himself, must necessarily be regarded as possessing an imperfect mind. It should also be remembered, that benevolence is a feeling just as natural to man, and much higher in degree, than love of life ; and that any one, in whose mind this sentiment is so deficient as to admit of his committing homicide, should, in like manner, be regarded as insane.

mode of execution, continued to keep in accordance with his previous powers and habits. His chief delight appears to have been in acts of destruction; and, as from habit they increased in degree, they at length terminated in suicide. Had not this been the case, it is probable that he would have gone on until he had destroyed some fellow-creature; when it would have been the province of the law, as it at present stands, to terminate his life—an act which he himself had contemplated with pleasure. It would be a vain employment to endeavour to fix a point at which insanity commenced in this boy. Is it not evident that he possessed from the first a badly constituted mind; that he was impelled by an irresistible desire; and that the act of suicide was merely a result of an increase of that tendency which induced him to watch with pleasure the death-struggles of his tortured victims? It was the duty of society to remove him from the means of gratifying the desire, and of doing injury to himself or others. By this course his life might have been saved, his disposition ameliorated, and the list of suicides, which by its amount forms a national disgrace, might have been lessened. It is well, however, that his career did not terminate more fatally. He gave, by his conduct for many years, a warning to those around him, which they were too ignorant to construe rightly; and if he had terminated his career by a more fearful tragedy,

how much of responsibility would have fallen upon them?

But, although, when these tendencies lead to their most fearful and natural result, society is prepared and eager to inflict the severest punishments, it never seems to be conscious of its own neglect in not acting upon previous minor indications, which should have called forth a preventive care. The London papers of the 26th June, 1840, copied the following from the *Greenock Advertiser* :

“A man named Miller, a barber at the Broomielaw, was arraigned before Bailie Small, on the charge of fearfully maltreating his wife. The evidence which was adduced brought out a case of extreme barbarity. It appeared that the man had thrown her down stairs, kicked her, dashed her into the fire, and inflicted many other cruel injuries. The man had a curious method of refinement with his cruelty; for it was brought out that he was used to place a razor and huge ham-knife under his wife’s pillow, upon which he forced her to lie down, hinting, at the same time, that he would operate upon her with them as soon as he found it convenient. Bailie Small sentenced him to confinement in Bridewell for sixty days, and almost regretted that the case had not been taken before a higher tribunal, as *this was not by any means the first instance of his cruelty.*”

This man has given a warning to society; and

the only advantage that is taken of it, is to inflict sixty days' imprisonment, without medical or moral treatment of any kind; at the end of which time, whether improved or otherwise, he is again to be turned loose upon his fellows. If his conduct should go on to its most probable conclusion, society will doubtless (when it is *too late* to prevent a fatal consequence), inflict revenge by its most energetic means.

Another curious instance of the indifference of the public to its own duties of prevention, may be mentioned in the fact that the identical London daily papers which endeavoured to excite the indignation of the public, by characterizing the insane conduct of Oxford as "an atrocious," "abominable," "treasonable and diabolical" attempt, contained on the very same page the following paragraph:—
"Another mad visitor to the Queen.—On Thursday afternoon, a man, very genteely dressed, went to Buckingham Palace, and demanded to see the Queen. It *was soon seen* from his demeanour and incoherent language, that he was insane, and he was persuaded to accompany an officer to the Police station in Scotland Yard. When asked the nature of his business, he said he wanted to see the Queen, to tell her in person that he was not a leader of the Chartists, as some of the country papers had represented. The unfortunate lunatic further said, that, if the Queen should change her religion from Protestantism to Catholicism, as he had understood she

would do, *he would offer violence to her*, and think it no sin. It was elicited from him that he had come from a town near Scarborough, in Yorkshire; that he was in independent circumstances, and was at present staying at a hotel in the neighbourhood of the office. He was then allowed to depart, being considered to be labouring under a momentary delusion."

Here we see that the premonitory symptoms of dangerous mania are allowed to pass without the slightest advantage being taken of them. When a fellow-creature is in this state, it is "soon seen" that he is insane, or that he is labouring under a "momentary delusion." Should his insanity (pursuing the usual course of neglected disorders) increase in violence, and ultimately lead to some fatal outrage, by which the life of the offender would be brought within the power of the law, it is probable that we should then read of the "atrocious" or "diabolical" nature of the attempt; and, so far from its being "soon seen" that he was in a state of insanity, a hundred witnesses in his favour would not be able to convince the counsel for the prosecution that there was the slightest ground for finding a verdict to that effect.

The necessity for the adoption of curative means in the cases of moral offenders, and the injustice of inflicting punishment where this course has been neglected, was admirably enforced some few years back, in a work called "Old Bailey Experience" by

an imaginary letter from a lad convicted of picking pockets, who was on the point of leaving England for Botany Bay. It ran as follows, and the truthful satire which it conveys is worth a hundred essays :—

“I was born in Dyot Street. I never remember my mother; but my father’s companions sometimes spoke of her as one who had been transported for passing bad money: my father used to look gloomy and sorrowful when she was mentioned, and never recovered without a glass of liquor: some people said she died broken-hearted in gaol; but I never heard the truth of it. In our street, he who thieved most cleverly was the most admired, and the only disgrace that could be incurred was the shame of detection. I sometimes, at the end of it, saw people ride past in fine coaches, and these, I supposed, had robbed still more successfully. I knew nothing, and was taught nothing but to steal; and I practised my art with an industry which I thought most laudable. I have heard of God, of Hell, and the Devil; and they once told me, when the bell tolled at St. Giles’s, that people went there to pray that they might go to heaven; but I saw nobody who seemed to believe this, and I thought these words, like many others, were only useful to swear by. The only thing I was taught to fear was a thief-catcher; and, though I eluded his vigilance for some time, he caught me at last. In prison the parson told me how I ought to have

been brought up. He found that I had never been idle ; that I had laboured in my calling ; that I had never robbed my father, or cheated my landlady, and that to the best of my power I had done what I was told to do ; and yet I was put into gaol, and, if I had not been a very little boy, the parson said I should have been hanged.

“ There are some hundred boys in London who are all living as I lived ; and, when I was tried, a gentleman in a great wig talked very kindly to me, and if I knew what his name was, I would send this letter to him : he said he would have a school in Dyot Street, where boys might be told what was right ; and I think, Sir, before they are caught and hanged, it would just be honest to tell them that they are in danger of it, and to tell them what is law, and what is society, and not to let them hear of it for the first time when they are tried.

“ I am going, they say, among savages, and I never desire to come back : the savages would have taken care of my education, have taught me to hunt, shoot, and fish, and would have told me how to be a great and good man ; but the Christians have not done so ; and if it was not that I am sorry for my companions that are left behind, and hope the gentleman in the large wig may see this letter, I would not give myself the trouble of asking my fellow-prisoner to write it.

“ JACK WILD.”

Having answered the objection that the views which I have advocated would destroy all ideas of responsibility, by showing, that, so far from destroying these ideas, they lead us to consider it to be necessary to *extend* the sphere of their application, I proceed to the second objection, which I have supposed as likely to be raised, viz., that the doctrine which I have advanced would leave all men to follow their inclinations with impunity.

I have just stated, that I consider all men to be alike responsible, and that this responsibility involves submission to the treatment necessary for the cure of their disorders. In cases, such as those of which the law now takes cognizance, it is the duty of society to see this treatment *enforced*, but in slight matters it might be left, as it now is in medical cases, to the option of the patient; trusting to the effect which public opinion, the natural sensations of discomfort caused by the disorder, and the spread of knowledge regarding the advantages of obedience to the physical and moral laws, would naturally bring about. In dangerous cases, where a mitigation cannot be effected to the requisite extent, so long, indeed, as there exists cause of apprehension of bad results from the disordered person holding communication with others, it must always be necessary to keep him in a state of seclusion, apart from temptation. This will obviate the objection that my views would leave all men to follow their inclinations.

Punishment from man is not necessary; when a patient is suffering from fever, we do not attempt to "punish" him, but we keep him in seclusion from all but his medical attendants (who run little risk of infection), and we oppose his irrational desires, control his actions, and, if necessary, perform painful operations.

I shall now consider the third point of objection to which I have alluded, viz., that my doctrine would not enforce any punishment on offenders that should deter others from following their example.

In the case of all ordinary physical maladies, we see the pain which is inflicted upon the patient, and to which he is obliged to submit, coupled with surgical operations, tedious confinement, or nauseous and restricted diet. And this pain, which is the price at which he purchases his cure, and thereby avoids more serious pain which otherwise awaits him, being in accordance with the intentions of our Creator, is, I should presume, as likely to be effective as any punishment could possibly be, in deterring the patient himself, and the parties who witness it, from running any risk for the future of contracting a similar disorder. It will be observed, too, that the system to which the patient has to submit, is precisely that which, under his individual circumstances, must be the most painful to him. For instance, if a man of sanguine temperament, to whom exercise is one of the chief

delights of life, indulges the tendency beyond its legitimate bounds, and, by some violent action, ruptures an organ of motion or respiration, he has in order to his cure, to submit to a long period of total restraint from exercise of any kind, which to him would be the most painful infliction he could possibly undergo ; and if a person of lymphatic temperament impairs his digestive powers by over-indulgence in the pleasures of the table, he has to submit to the bitter restraint of the most simple diet. If, however, the sanguine man were to legislate for the punishment of the lymphatic, he would doubtless think that he inflicted the heaviest penalty by forbidding *exercise*, and the lymphatic man, on the contrary, would forbid *all indulgence at the table*. Each party would think that he had inflicted upon the other a very terrible punishment, whereas they would have inflicted scarcely any punishment at all, and would only, by denying to each other the source of pleasure to which they were least prone, and which would have been most beneficial to them, have increased the tendency of each to fall into the very sin which it is sought to repress. Thus, then, we see that in physical disorders the patient suffers more from the discipline to which he is subjected by the benevolent physician by whom his cure is attempted, than he could be made to feel by one who merely legislates with a view to his punishment. The same holds good in all cases ; and in like manner it may be affirmed, that, in all

cases of moral delinquency, pain would be more severely administered to the patient by the adoption of those measures which would at the same time effect a cure, or at least insure a mitigation of his infirmity, than by any other method. This, however, would be a work of benevolence instead of revenge; for, although all his desires flow in the direction of his offending propensities, in the gratification of which he has found his only source of pleasure, and in the suppression of these faculties, therefore, the greatest amount of pain is incurred, yet, as the work of suppression goes on, and other faculties are called into play, new and higher sources of pleasure are awakened, and less pain is felt from the non-gratification of the erring desire; while, at the same time, he is saved from the inevitable and accumulating consequences which would otherwise have arisen from fresh infringements of the Divine laws. It leads, therefore, to good alone, good to society with good to the sufferer; and the real good of both must always go hand in hand, since

“ True self love and social are the same.”

As a curious illustration of the fact, that the most severe pain which can be borne by an offender is that which is inflicted by benevolence in the first efforts to cure, I may cite a remark made at the Lambeth Street Police office by Mr. Wallace, one of the Guardians of the Poor of the White-chapel Union; who stated, in answer to some com-

plaints on the part of a pauper respecting the Workhouse discipline, that, "the *greatest possible punishment* that could be inflicted upon those persons who were in the habit of living in filth and rags, was to take them into the workhouse, and compel them to clean themselves, and to keep themselves so."

Again, let us take the case of drunkenness. Would the severest advocate for the punishment of his fellow-creatures wish to inflict upon a drunkard any more terrible pain than that which is involved in the first step towards cure? The hand that, in kindness, and with no desire to punish, withdraws the bottle from the infatuated drunkard, inflicts upon him the most excruciating sufferings.

In Macnish's "Anatomy of Drunkenness," the following characteristic anecdote is related:—A gentleman of very amiable dispositions, and justly popular, contracted habits of intemperance; his friends argued, implored, remonstrated; at last he put an end to all importunity in this manner: To a friend, who was addressing him in the following strain: "Dear Sir George, your family are in the utmost distress on account of this unfortunate habit, they perceive that business is neglected, your moral influence is gone, your health is ruined; and depend upon it the coats of your stomach will soon give way, and then a change will come too late," the poor victim, deeply convinced of the hopelessness

of his case, replied thus : “ My good friend, your remarks are just ; they are indeed too true : but I can no longer resist the temptation. If a bottle of brandy stood at one hand, and the pit of hell yawned at the other, and if I were convinced I would be pushed in as sure as I took one glass, I could not refrain ; you are very kind, I ought to be grateful for so many kind good friends, but you may spare yourselves the trouble of trying to reform me ; the thing is impossible.”

To this man, who confessed that even the certainty of eternal torture would have no effect in deterring him from the gratification of his propensity, what terror would have been imparted by any human punishment ? The dread of the punishment of death which was inflicted by the Athenians for this crime, would, in his case, have been without avail. It is evident that the only course which could operate with success in a case of this sort is the forcibly withholding the means of gratification and exercise to the morbid propensity.

Is there any greater pain to one who has long indulged in the gratification of lust, than that which is administered in his case, also, by the first step towards cure, viz., a separation from all intercourse with the objects of his desire ? Would a miser feel anything so keenly as the being deprived of the power of accumulation, and compelled to distribute his riches to the needy ? And does not

the same rule hold good with regard to all the faculties of the mind? The only way in which the *most severe* pain is inflicted, is, by preventing the indulgence of the easily-besetting sin, and forcing into activity the higher and hitherto neglected faculties. That this is widely different from the present system of criminal treatment, we are too well aware: for, although sometimes a little good is effected by the infliction of fines, and the endurance of personal restraint, these methods occasionally tending to bring other faculties, such as caution and the love of property, into antagonising action to the offending propensity, yet no attempt is ever made to repress that propensity by any direct means: such as absolutely preventing its exercise, and at the same time promoting the activity of the moral feelings. In fact, from the promiscuous association to be found in our demoralizing prisons, an effect the very reverse of this is usually obtained.

Let any man contemplate for a moment the possibility of his being placed in a situation where all the long-cherished and strongest tendencies of his mind are opposed, and where the only feelings that he is permitted to gratify, are those, the exercise of which have, up to the present moment, been most distasteful to him. He may then form some idea of the painful nature of those moral remedies which have cure, and cure only, for their object. Let the religious man contemplate what his sensations would

be were he forcibly held in a situation where only the grossest impiety and blasphemy were breathed around him, and amid which he should be compelled to exist without the power of expostulation or resistance. Let the benevolent man imagine himself compelled to watch, day by day, in some inquisitorial cell the infliction of torture upon helpless and unoffending fellow beings. Let the mother, who has found all her delight in the presence of her children, contemplate what her feelings would be if they were withdrawn for ever from her sight and knowledge. The pain which would be felt in these instances would, nevertheless, not exceed that which must be felt by those who are suddenly forced to abandon the gratification of long-loved vices, which arose from the predominance of the lower feelings, and to submit to a discipline, of which cleanliness, industry, justice, subordination, and a consideration for the feelings of others, are the prominent features. Yet, in the latter case, the pain inflicted would only be subservient to kindness; it would be that which had been decreed by Heaven, and not revengefully administered by man. Between man and man, however different their relative situations may be, nothing but love should ever subsist. He who lives in the practice of religion and virtue should not look even upon one who is staggering in the wild intoxication of crime with any other feelings than the love and pity which the sad fate of a brother should awaken — love for him as a fellow

man, possessing the same capabilities of an eternal destiny, liable to the same sufferings, and sharing, all misused, neglected, conflicting though they be, the same inherent feelings. If we could cure the evil dispositions of men without the infliction of any pain whatever, it would be our duty to hail the opportunity of doing so, instead of looking out eagerly, as we now do, for the means of inflicting punishment long before we have satisfied ourselves that the punishment will produce improvement. As the Creator has established a system whereby pain must be suffered as the consequence of disobedience of his laws, he has not left this penalty to be inflicted by the ignorant hand of man, but has provided that, in the natural order of things, it shall inevitably follow, and in fact arise out of, the offence itself. Man, therefore, has nothing to do with punishment: this has been provided for by his Creator; but, although it cannot be averted after an act of disobedience, we may lessen the future weight of human misery by arresting the offender in his wrongful career, and preventing him from adding, by the commission of new offences, to the amount of pain which he is already destined to endure. To diffuse, then, by general instruction and example, a knowledge of the Divine laws, the relation subsisting between the constitution of man and his Maker, and the inevitable consequences of disobedience, is our first great duty. The next is, to remove from temptation all those who are so

constituted as to be peculiarly liable to its effects, to prohibit the use of the faculties which they may have abused, and to force into activity those, from the non-exercise of which they have fallen into crime.

CHAPTER IV.

Practical adaptation of the foregoing views.—Eastern State Penitentiary of Pennsylvania.—Neglect of education in England, and of the obligations of society.—Inexpediency of capital punishments.

THAT the views which I have endeavoured to enforce, of the necessity for abandoning, in moral disorders, all ideas of inflicting punishment *as such* (substituting the simple effort to *cure*), are correctly founded, I am happy to be able to illustrate by the long and valuable experience of those who have, in the right spirit, partially made the experiment, and who have met with corresponding success.

At the Eastern State Penitentiary of Pennsylvania, United States, an institution which is under the superintendence of a gentleman remarkable for benevolence of feeling and acuteness of intellect, the idea of inflicting any avoidable pain upon a prisoner is never entertained. It was organized by the efforts of those who avowed their belief "that religion and policy alike dictate the adoption of mercy, of kindness, and forbearance in the infliction of reformatory punishment," and that "*the infliction of pain, misery, and terror on our offending bre-*

thren, has not been entrusted to fallible and erring mortals by that Being who has emphatically prohibited retaliation by the declaration, 'Vengeance is mine—I will repay.'"

The following is a brief outline of their plan, extracted from the Reports of its promoters:—
"The convict, on his entrance, after the customary examination, is clothed, blindfolded, and conducted to his cell, where he will remain locked up; and, after a patient and careful inquiry into his history, and the delivery of an appropriate address to him on the consequences of his crime, and the design to be effected by his punishment, he is abandoned to that solitary anguish and remorse which his reflection in solitude must inevitably produce. Every means which have been devised by philanthropy and experience for effecting reformation, will be zealously applied. The labour in which the convict will be employed is considered as an alleviation, not an aggravation, of his sentence. Labour prescribed as a *punishment* is an error in legislation, founded on an ignorance of the feelings, the desires, and antipathies, the habits and associations of mankind; the tedious hours spent in solitude will be a punishment sufficiently severe, without rendering the infliction of hard labour for this cause necessary. The want of occupation will produce a feeling of tedium or irksomeness; the state of mind in which labour or employment will appear to the convict, perhaps for the first time in his life, as

a means of preventing uneasy feelings, of producing relief and pleasure; and, as the powerful influence of association is acknowledged, this beneficial feeling will become habitual, and, after the discharge of the convict from his durance, will be a most effectual safeguard from the temptations of idleness. Accordingly, persons duly qualified will be employed to teach the prisoner suitable trades, and to instruct him in religion and in the elements of learning. The prohibition of all intercourse with society is not, therefore, to be continual: the visits of the virtuous cannot injure, and must benefit, the majority of the prisoners, between whom *alone* all communication is to be rendered impossible." And again, "religious and other instruction will be constantly and regularly administered; the visits of the virtuous and benevolent permitted and encouraged, under proper restrictions; unremitting solitude, or separation from all society will not, therefore, be practised. Intercourse with the enlightened and virtuous members of the community must inevitably frequently console and benefit, and can never torture or injure the convict. *He will be separated only from evil society*, from association with the depraved and hardened: the progress of corruption will be arrested; he can neither impart nor receive from them contamination: if a germ of virtue or of shame exists, it may be preserved and *cultivated*; his character will not be irreparably destroyed by exposure; his resolutions of reformation blasted by an

acquaintance with his fellow convicts—an acquaintance which, when once formed, can never be dissolved.”

These were the views under which the institution was organized by the Legislature; and, although, from the circumstance that the true principles of criminal treatment are here only partially adopted, and imperfectly carried out (the institution requiring to be systematized as a moral hospital), I am prevented from fully entering into the sanguine views of its founders, I can yet offer the best testimony of its success as compared with all previous plans. After an experience of four years, the Annual Report of the Warden contained the following passages:—“The punishment (discipline?) inflicted, not merely on the body, but on the mind, of the prisoner, *uniting severity and humanity*, is one which the unhappy culprit feels with all its force; but there is nothing in its operation calculated to increase his evil passions, or stimulate him to hatred or revenge. Those who have the care of him treating him with the *kindness and compassion which are due to the unfortunate man, rather than the unnecessary and unfeeling harshness too frequently displayed to the victims of folly, vice, and crime*, he is soon made to feel that the horrors of his cell* are

* Although the Warden speaks of the “horrors of the cells,” he must not be understood to imply that the cells are rendered horrible in themselves, by the absence of light, warmth, proper ventilation, or convenient space. In a visit which the author

the fruits of sin and transgression, and the only certain relief to be obtained is through the Redeemer. Having no one to prompt in wickedness, or shame him for his tears, he becomes humbled in spirit, and anxious for help in the way of truth; and, I am pleased to be able to say, that *I believe there are some who rejoice that they have been brought here.* I can truly say, that the more I see of the operation of our system, and the more thoroughly I become acquainted with the character of its inmates, the more important I view its establishment, and *the greater its humanity appears.* It is a mistake to suppose that the inmates of prisons are a set of outlaws and tiger-like beings, lost to all good in this world, and without hope of an hereafter. Too many (indeed most of them), on first conviction, are either neglected youths thrown into the world without education and without friends (often the victims of hard masters), or ignorant men, the dupes of artful knaves who know how to elude detection. Neglect of early education, the use of ardent spirits, gambling, and dealing in lottery-tickets, are the most prominent causes of felony.

“The deficiency in common school learning is greater than is generally supposed: of the 142 prisoners who have been received here from the commencement, only four have been well-educated, and

paid to this institution in the year 1838, he was most agreeably surprised by the appearance of cleanliness and comfort which was visible throughout.

only about six more who could read and write tolerably; and we rarely meet with a prisoner who has had attention paid to moral and religious instruction."

Every person convicted of a felonious offence within the city and county of Philadelphia, whose term of servitude is for two years and upwards, is sentenced to this Penitentiary; as also all prisoners convicted of felony in the counties lying east of the mountains, whose term of imprisonment exceeds one year. This district includes the largest portion of the State of Pennsylvania, with a population of more than a million.

In 1838, after it had been established nine years, the report testifies—"The experience of another year enables us to state that no instance of insanity has occurred in this institution which has been produced by solitary or separate confinement operating injuriously on the mind. Cases of dementia, the effects of vicious conduct, occur every year; but they usually yield to medical remedies. The fears which some entertained as to the influence of long confinement in injuring the health of the body as well as the mind of the prisoner, have proved groundless. One, who had been in confinement for seven years, was recently discharged in good health, reformed in temper and conduct, and is now doing well. When he was convicted, he declared that he preferred death to confinement for seven years. When discharged, he expressed grateful feelings for

the kindness manifested to him; declaring that he had received benefits which could never be forgotten, and which he hoped never to lose.

“ There are some prisoners now in the institution who have been in confinement for eight years, some six, and some five, and all of them in good health. Among the healthiest prisoners are those who have been the longest time in prison.

“ Many of our discharged prisoners are doing well, and some exhibit satisfactory evidence of a reformation of heart and life. In our walk through the city, we frequently meet them; and they always greet us with thankfulness, uniformly declaring that it was good for them to have been in the cells of the Eastern Penitentiary.

“ We cannot close this report without our acknowledgment to the Supreme Ruler of the universe for His goodness in crowning our efforts with so much success. We feel persuaded that the legislature will continue to this enterprise of benevolence its fostering care and protection; and that the time is not far distant when, by the influence of moral and religious instruction about to be diffused by the aid of common schools throughout the State, such a healthful state of morals will ensue, that intemperance, poverty, and crime, shall almost cease to have a name in our beloved State.”

And in 1839, after the experience of ten years, during which time 1036 prisoners had been received, the reports continued to present the same

favourable character. The following striking paragraph will illustrate the fact, that a large portion of the infringement by individuals of social duties, arises from the previous non-fulfilment of the duties which society owed to them. Speaking of the prisoners received during the past year, it says—“More than one third of them could neither read nor write: 28 had been apprenticed, and served until twenty-one years of age; 34 had been at trades and left their masters; and 116 had never been placed out at any regular business—a sad proof of the neglect of duty in parents and guardians.”*

It is well known, that in England, a similar neglect of duty prevails to a great extent. In the returns presented to both Houses of Parliament, dated 11th June, 1840, entitled “Criminal Tables for England and Wales for 1839,” it is stated that the calculations which have for several years been made as to the ages and degrees of instruction of criminals, exhibit a very great uniformity of result. During the last four years, nearly 41 per cent. of the criminals do not exceed twenty-one years of age; and the number of those not exceeding thirty years amounts to 71 per cent. The tables dated 19th May, 1842, contain the following report, viz.:

* Appendix No. 2, Eastern State Penitentiary of Pennsylvania.

Degree of Instruction.	1841.	1840.	1839.	1838.	1837.	1836.
Unable to read and write,	33.21	33.32	33.53	34.40	35.85	33.52
Able to read and write imperfectly,	56.67	55.57	53.48	53.41	52.08	52.33
Able to read and write well,	7.40	8.29	10.07	9.77	9.46	10.56
<i>Instruction superior to reading and writing well,</i>	0.45	0.37	.32	.34	.43	.91
Instruction could not be ascertained,*	2.27	2.45	2.60	2.08	2.18	2.68

And yet, in the face of this non-fulfilment on the part of society of obvious obligations, advocates can be found for the infliction of revengeful punishments upon those who are the hapless sufferers from its neglect!

It will be seen, from what I have stated, that, so far from being the advocate of a sentimental humanity, which turns with horror from the contemplation of that law of the Creator by which pain is rendered consequent upon misconduct, I advocate a

* In relation to the above figures, Mr. Redgrave observes,—“ These results are favourable. The decrease of uninstructed criminals ‘unable to read and write’ and the increase, amounting to nearly 4 per cent., of those who have received the minimum of instruction, ‘able to read and write imperfectly,’ is to be attributed rather to the general increase of instruction, which has been considerable for some years, than to the increased proportion of instructed criminals; while the decrease of nearly three per cent. in those better instructed, ‘able to read and write well,’ may be considered a proof of the effects of education in restraining from the commission of crime.”

severer system than that which at present obtains, since I assert that the most severe pain which can be inflicted upon any offender is precisely that pain which results from a philosophical treatment for his cure. It is a treatment which the patient would ever afterwards remember with mingled feelings of gratitude and terror,—gratitude for the improvement which it has wrought upon his nature, and terror at the remembrance of the prolonged and bitter struggle by which that improvement was attended. The difference between the system which I advocate, and that which is at present in force (if the vague and contradictory treatment of offenders, which is now practised, can be called a system), is simply this, that I advocate a discipline which should benevolently produce great pain at first, with the view of preventing much greater pain, which must otherwise inevitably be endured for the future; while at present we revengefully inflict pain in a lesser degree, which is productive of little future benefit to the sufferer—leaving, indeed, his disorder generally unmitigated, and oftentimes increased.

If, then, in moral complaints, the true system is that in which the cure of the offender is the sole thing to be considered (for by the means taken to effect that object we insure the other object of Criminal Jurisprudence, viz., inspiring a wholesome dread in the minds of others, as there can be no more powerful check upon the tendency to abuse an over-ruling faculty than the dread of its being forci-

bly subjected to entire restraint), it will be impossible to justify in any way the infliction of capital punishment, by which the grand object which I have named—the reform of the criminal—is rendered altogether impossible. At the present day, the infliction of capital punishment is mainly confined to the crime of murder; and it is on that account that the chief difficulty is presented against its abolition. It will not, however, take many words to show that, if capital punishment is unsuitable as a remedy for other descriptions of crime, it is, above all, the most unfit to be applied as a corrective in the case of homicide.

The infliction of death puts the sufferer out of the reach of improvement: it is, therefore, as far as he is concerned, *unmitigated punishment*. It has been my object to show that the mere infliction of punishment, as such, upon any human being, is an act of inherent and barbarous injustice. If I am correct in this position, it becomes my task to prove that it is, at the same time, not only ineffectual in producing the result at which it aims, but that it actually aggravates the evil which it professes to cure. This must be the natural result of any unjust proceeding, since the real good of society was never yet promoted by the infliction of injustice upon any individual. The good which is done to the whole, produces, in its ultimate effects, good to every part.

The punishment of man consists in the infliction upon him of a treatment which is in opposition to

his desires. Pleasure arises from the gratification of his desires ; pain is the result when they are offended. If a man desires above all things to gratify the tendency to destroy, which results from the activity of a faculty common to his race, it being at the time in a state of excitement so great as to overmaster the dictates of all his other and higher powers, and to act independently of them, the idea that in gratifying it he incurs the risk of *self-destruction* is that which of all others would be least distasteful to him. That, under such circumstances, he might even contemplate it with pleasure, is shown by the large proportion of cases of murder which are terminated by the suicide of the criminal. The tendency to destroy is one of the blind propensities of man's nature, absolutely necessary to adapt him to his relation to the external world; and, when acting harmoniously with the intellect and moral sentiments, it produces only the most beneficial results : but, when roused to unbalanced action, it exhibits itself in maniacal fury, and, overpowering the reason and the feelings (which it must do before its possessor can commit murder), imparts oftentimes as strong an impulse towards the destruction of its possessor as towards the destruction of any other individual. It gives, in its morbid state, an inordinate tendency to violent *action*, a wild desire to overpower restraint of every kind, and to break down and destroy all that comes within its reach. To one, therefore, who is labouring under this feel-

ing, the present sanguinary law acts chiefly as a stimulant. The only thing that would at all operate with preventive force upon a mind in this state would be, the impression that if the organ should be gratified up to the point of homicide, it would subject its possessor to a life of perpetual RESTRAINT.

From the consideration of these views, it would hardly be too much to assert, that the present system of punishment for the crime of murder has actually been the *cause* of a large proportion of those murders which have been committed; and that outrages of this nature would become extremely rare, if the stimulus which this punishment affords to the suicidal tendency (which, as I am prepared to show, is always an accompaniment of homicidal mania) were altogether removed.

One means of judging of the efficacy of any given punishment in deterring from crime is, by observing the degree of anxiety which is manifested by the criminal to escape from its infliction, particularly as to the degree of caution with which he lays his plans previously to the committal of the deed. In all ordinary cases of crime we see this caution exhibited. Burglaries are seldom executed but upon well-matured plans, and the most ingenious contrivances are employed to escape observation; frauds are accomplished and secreted by false tales and the alteration of accounts; and even the common pickpocket acquires his chief reputation amongst his colleagues by the artfulness with which

he contrives to elude detection. The only exception to this rule is to be found in cases of homicide. The punishment for this crime is death, and it therefore becomes necessary, in support of my last assertion, to examine into the degree of anxiety which is manifested by criminals of this class for the preservation of their own lives in connexion with the commission of the offence.

In my next chapter I shall be able to illustrate this point by a long string of facts, calculated to impress my readers with a just estimate of the effect of the law, as it at present stands, in regard to this crime.

CHAPTER V.

Statement of homicides committed in Great Britain for five years, from 1831 to 1835; with other cases showing the coincidence of the suicidal with the homicidal propensity, and the tendency of capital punishment to act as a stimulant to the perpetration of murder.

IN the last chapter I stated that, however unsuitable the punishment of death may be as a remedy for other descriptions of crime, it is, above all, the most unfit to be applied as a corrective in the case of homicide; and I proposed to corroborate this assertion by showing, that the contemplation of this punishment, so far from producing a beneficial effect upon the minds of persons labouring under homicidal tendencies, actually, in many cases, stimulates them to the commission of the crime.

Those who will take the trouble to refer to any considerable number of cases of murder, will be struck by the remarkable fact, that the homicidal is almost invariably accompanied by the *suicidal* tendency; and hence, that persons, who are in the state of mind which renders them capable of attempting the destruction of a fellow-creature, are usually, at the same time, *desirous* of self-destruction. In a proportion of at least two out of three cases, this

peculiarity is evidenced either by the circumstance that the individual has attempted suicide previously to the perpetration of the murder; that he has destroyed himself immediately afterwards; that he has given himself up to justice, expressing at the same time a desire to be hanged; or that by his conduct previously to the offence he has evinced the absence of any solicitude so to lay his plans as to enable him to escape from its consequences. Now it is, doubtless, a startling conclusion, that the punishment of death, by ministering to the suicidal propensity, operates as a stimulant to the perpetration of the very crime which it is intended to repress; but, startling though it be, it is one to which, by a consideration of the circumstances to which I have alluded, we are inevitably led.

On referring to the "Annual Register," I find that the murders recorded therein, as committed in Great Britain during a period of five years, from 1831 to 1835 inclusive, amount in all to thirty-one. Of these, in ten cases the perpetrators surrendered themselves to justice, expressing, in most instances, a perfect readiness, and sometimes an eager desire, to meet the fate that awaited them; in three cases the murder was followed by the immediate suicide of the culprit; in two cases suicide had been attempted previously to the perpetration of the homicide; and in five the parties showed by their general conduct the absence of any wish to escape from the consequences of the act: thus

making a total of twenty out of thirty-one cases in which the desire for self-destruction was more or less clearly manifested. From these I select the following :

29th July, 1831.—John A. Bell, aged fourteen, tried at Maidstone, for murder of Richard Taylor, aged thirteen. The prisoner *made a confession previously to the trial*. On entering the gaol, he said he need not be ironed; he knew he should be hanged, and would not attempt to escape. He was found guilty; but the Jury recommended him to mercy, on account of his youth, and the profligate and unnatural manner in which it appeared that he had been brought up. This recommendation was not attended to, and the sentence was carried into execution.

5th August, 1832.—Thomas Songe, of Stockport, murdered his wife, and then *destroyed himself*. One of his children, a girl eleven years old, was present at the time, but was compelled to be silent, in consequence of a threat that Songe held out to her, that, if she spoke a word, he would murder her also.

8th August.—A man, named Cook, tried at Leicester, for the murder of Mr. Paas. The prisoner was traced to Liverpool, and arrested as he was making off in a boat. He leaped overboard and *attempted to drown himself*. Failing in this, he took out a bottle and tried to swallow something from it; but it was knocked out of his hand. The pri-

soner *confessed the murder*; and said, that “afterwards he did not care whether he was apprehended or not.” It is stated that “he died the death of infamy as cool and unappalled as if he had been a martyr sacrificing himself for his country or the human race.”

14th January, 1833.—Inquest at Leeds upon William Cryer, an infant who had been murdered by its mother; who *immediately afterwards destroyed herself*.

25th March.—Samuel Chadwick, tried at Derby, for the murder of Susannah Sellers. Labouring under an impression that a surgeon in the neighbourhood had given him a slow poison, he assaulted the surgeon with a hammer; for which he was taken to gaol, and on his way he made an attempt to *destroy himself* by jumping into a river: subsequently he attempted to do so with a razor: both these attempts having been frustrated, he promised to behave well in future, and WAS SET AT LIBERTY! He afterwards called at the house of the deceased, and asked her for a cup of water, which she rose to give him, when he seized an axe and killed her. A surgeon gave an opinion that he was of unsound mind; and he was acquitted on the ground of insanity, and ordered into confinement.

16th December.—Mary Evans, aged twenty, was murdered by Richard Tomlinson, at Ranton, Staffordshire. The prisoner had kept company with deceased for some time: walking together on the

day of the murder, a quarrel took place between them ; and, upon her repeatedly reminding him that "his father was poisoned, and that his mother died in gaol," he knocked her into a ditch and killed her. *He then went to a farmer in the neighbourhood, and confessed his crime.* Upon being apprehended, he said, "I did it ; *I am ready to die for it.* I only wish to be laid by her side."

25th July, 1834. — Benjamin Gardiner, aged twenty-nine, private grenadier, Fiftieth Regiment of Foot, tried for murder of Patrick Feeney, Sergeant of the Regiment. The prisoner deliberately shot the deceased during parade, in the barrack-yard at Chatham. Immediately afterwards he said, "I have rid the world of a tyrant and a rascal, and *I am ready to die for it.*" He then turned to another Sergeant, named Hewer, and said, "Sergeant Hewer, you are safe that you are living, for that piece was loaded for you before ;" and on hearing that the Sergeant who was shot was not dead, he said, "I hope he will soon die, for I am not afraid of the rope."

20th March, 1835.—Norman Welch was tried for the murder of William Southgate, at Liverpool. Deceased was a surveyor of warehouses ; prisoner had been a locker, but had been reduced to the inferior station of weigher in consequence of a representation from deceased that a robbery had taken place in one of the warehouses. The day before the murder, he had said, "Mr. Southgate and I

have been too long in the world together; we shall both resign. I hope we shall both go to heaven together." The prisoner shot the deceased while he was in conversation with another officer of the Custom-house. He then threw down the pistol, and said "There!" A Custom-house weigher instantly seized him: when he said, "It is I who have done it; I am a robbed man." When asked if he was aware what he had been doing, he replied, "Yes, that he had shot a d—d rogue, who had robbed him." During his confinement, he said he had drunk spirits very hard of late, which had kept up a constant excitement in his mind; he had taken leave of his family on the morning of the murder, *as he did not expect to return to them.* For the defence, Dr. Norris, an army-surgeon, proved that the prisoner had formerly received an injury of the head which might affect his mind, and the more readily when he had taken liquor. Several witnesses proved the propensity of the prisoner to acts of violence and outrageous passion, frequently excited and inflamed by drinking. He was, however, found guilty, and sentenced to death.

7th September.—An inquest was held on the body of Henry Stanynought, junior, who had been killed by his father. A surgeon, who had been sent for, found Mr. Stanynought in bed, and the dead body of his child lying by his side. He had also wounded himself; and said, in a perfectly quiet manner, that he did it with his own hands; that he had medi-

tated destruction to himself and child some length of time; that he had burnt charcoal in his room for two nights with that object; he had also taken laudanum. Subsequently he said, "How could I do it? It would be a mercy for any one to *destroy me*." The Jury pronounced a verdict of "Wilful Murder;" but added, that they entertained a strong suspicion that Mr. Stanynought was labouring at the time under mental delusion.

It is proper to remark, that the records from which I have collected the above details, are for the most part extremely limited. I consider, therefore, that it is very probable, that if I were in possession of full particulars relating to each case, including some account of the previous lives of the culprits, I should be able to show that, even in the eleven instances in which I have not been able to collect facts illustrative of my present view, the union of the suicidal with the homicidal tendency had also been strongly manifested.

Towards the close of 1841, when the public mind was excited by the case of Blakesley, I was induced to look over a file of the daily papers to see how far my views would be carried out by the experience of the few preceding weeks. I went through a period of little more than *two months* and met with the following cases:—

"Suicide and murder.—A policeman at Abergavenny, named Powell, murdered a woman with whom

he had cohabited, *and immediately afterwards drowned himself.*”

“Murder in Bristol.—On Thursday, a man was stabbed in the public thoroughfare of Bristol. It was dark at the time, and the perpetrator was unknown; he escaped into a house, but immediately, upon seeing a police constable, exclaimed, ‘*I am the man who did it.*’”

“Horrible murder.—The ‘Louisville Tablet’ contains the particulars of an awful murder by Mrs. Roper, who cut off the heads of three of her own children with an axe. It was her intention to have killed two more in the same manner, and afterwards *hang herself* with a hank of yarn; but she was prevented by the interference of her husband.”

“Murder and Suicide at Haywood.—A poor woman and her child were taken into custody on a charge of stealing half-a-crown. She was locked up: and on the following morning was found to have murdered her child, and to have *terminated her own existence by hanging.*”

“An inquest was held on the body of a linen-draper at Camden Town. Latterly the deceased had had some difficulty in business, and had frequently been heard to declare that he ‘would murder some one.’ Speaking of a person who had offended him, he said ‘The villain has only three days to live; by God! I will murder him.’ He repeated this several times, and added that he had

no value for his own life. He went out to get some pistols for the purpose, as he said, of murdering this person; but he was eventually captured. He was attacked by a fit on the way to the Station-house, and subsequently died in the Marylebone Infirmary."

"Shocking occurrence at Gainsborough. — A young man, named Wilson, in a fit of jealousy, attempted to murder the object of his affection. He made a plunge with a knife at her side; but, having hit against a rib, the fatal purpose was not effected. After striking the blow the assassin ran off, and was never seen afterwards till discovered next morning *hanging upon a pear-tree quite dead.*"

"St. Alban's. Jabez Kirk, private in the 34th Regiment, was charged with an attempt to murder Jane Pearce. The prisoner had passed the night with her at a public-house, and in the morning arose and cut her throat with a razor, which he had previously borrowed. He then raised a cry of 'murder,' and upon the landlord answering his call, he exclaimed '*Send for the police to take me into custody.*'"

"Thomas Johnson, confined in Beverley Gaol on a charge of poaching, has *made a full confession* of the murder of a gamekeeper, three years back. Many innocent persons have been from time to time suspected of committing the deed."

"Shocking tragedy at Burnley.—Robert Morris, private, Sixtieth Rifles, stabbed the Lieutenant of

his Regiment, and a girl named Isabella Hadden. He *immediately afterwards stabbed himself*. All these deeds were perpetrated in about two minutes.

I believe that the above instances cannot fail to induce a strong belief of the correctness of the position which I have taken, and, if the subject were one of less importance, I would here willingly abstain from any further reference to details so shocking in their nature. But, painful as it is, I feel it a duty to present, concerning it, a mass of evidence that shall be sufficient to convince all before whom it may come, of the urgent necessity which exists for the abolition of the not merely ineffective, but dangerous law, which decrees to the homicide the punishment of death. I subjoin, therefore, memoranda of similar occurrences which took place during the first *four months* of the past year (1842), extracted from such newspapers as casually passed through my hands during that period.

3rd January, 1842.—Mansfield. A young woman, named Mary Allan, was murdered by a man named Jones. He had been paying his addresses to her; but had been rejected by her family. He took her to his work-room, and there destroyed her. Upon the discovery of the murder, the girl's father sought for Jones, and found him "asleep, in bed with the son of his landlady." He instantly confessed that he had committed the murder, and described the way in which it was done. The account goes on to say, "He expressed no regret, but says that he in-

tended to have destroyed himself, only he was afraid of the responsibility of two murders. *He wishes to be hanged*, and hopes his example will be a warning to others."

11th January. — Sheffield. A coroner's inquest was held upon Henry Vaughan. The deceased, after having for some time paid attentions to a young woman, named Sarah Poole, by whom he had been rejected, rushed into her presence, one evening, exclaiming, "Revenge! revenge this night, if I go out a corpse!" He discharged a pistol at her, but she escaped; he then fired at and wounded one of her sisters. Subsequently he fired another pistol through a door at some parties who had arrived to take him into custody, and, upon the door being forced open, he was found to have *destroyed himself*. The Jury returned a verdict of *Felo de se*.*

* It seems to be a cherished opinion amongst Juries, that it is one of the functions of a sound mind to impel its possessor to the crime of murder. In mere cases of Suicide — no matter if performed with the most unparalleled coolness—a verdict of "Temporary insanity" is almost invariably rendered; but when it is proved that an individual has previously committed, or attempted to commit, murder, all doubts regarding the healthy state of his mind are at once removed, and a verdict of *felo de se* is returned. Some time back, an inquest was held on a shoemaker named Silcox, who, calling upon a man and his wife with whom he was acquainted, rose up, after partaking of some elder wine, and stabbed and beat them to death. He then pursued a boy with the same intent, but, not succeeding, retreated from the house, and, after mutilating himself, threw himself into a stream where he was drowned. This was pronounced *felo de se*. Had the case been that of some rich merchant who had destroyed himself in a

19th January. — Joseph Cherry, a journeyman-bricklayer, was charged with attempting the life of John Raymond. Cherry rushed upon him with a knife, stabbing him severely, and exclaiming that he would “do for him.” Previously to the attempt, he had said, “Never mind, Jack, you shall suffer, and *I shall suffer*; but I’ll do it.”

29th January.—“John Hogan, the murderer of Roughan, at Castle Waller, has been arrested. He has confessed his guilt, and states that it was without premeditation, but that *he is anxious to expiate the offence by capital punishment*. It appears that he went to the wood to cut timber, and, being discovered by the steward, and dreading prosecution, he at first fled, but returned and slew his victim.”

29th January.—William Taylor, a law-writer, was charged with threatening to take away the life of his son by stabbing him. He had been observed to carry a knife about his person, and, in one of his fits of passion, threatened to do away with his son, saying, that he knew he “*should eventually have to suffer for him at Newgate*.”

13th March. — A man named George Lucas murdered his three children, and then *destroyed himself*. “Previously to the murder, he had, on one or two

calm and deliberate manner, after an unsuccessful speculation in the Stocks, it would doubtless have been “Temporary insanity.” In the latter case, the destructive feelings of the Jury would not have been excited. Here, by anticipating the action of the law, the poor maniac aroused a sense of disappointed vengeance.

occasions, expressed his fears that he would be tempted to lay violent hands upon himself."

24th March.—"One of the soldiers of the Guards, in the St. George's Barracks, loaded his firelock with ball-cartridge last evening, while four other men were in the room, and commenced firing, whether at either of them it is not possible to say: but, immediately on his doing so, the others most improperly left the room instead of disarming him, and he continued firing some time, until the whole of his ammunition was expended. One of the shots seared a man who happened to be near. During this time, he was so furiously excited that nobody durst enter the room. He then *threw himself from the window* (it being a top-room that he was in) into the barrack-yard, and he now lies at the hospital, of course, in a hopeless state."

30th March.—"Charlotte Godfrey, landlady of the Crown and Sugar-loaf, on Garlick Hill, was charged by her husband with intending to do violence to herself, or him. The husband stated that she was addicted to drinking, and, when drunk, she became ungovernable, and had made several attempts to *kill herself* and to injure him. She had hung herself three times, and once thrown herself into the Thames, though she was only twenty-four years of age, and had made several attempts on *his life*. He was now afraid to live with her, but he would willingly make an allowance for her separate maintenance. After an admonition from

the magistrate, she was surrendered to the care of her uncle."

4th April. — Bristol. Samuel Cook murdered his sister, Edith Cook, and then *destroyed himself*. "When discovered, life was nearly extinct, and he was unable to speak, with the exception of the following words, which he once uttered distinctly: 'It was I who did it. I murdered her first, and then myself.' The cause of the quarrel is not known, but they were of penurious habits, and it is supposed to have arisen out of some money affairs."

23rd April. — "An insane attempt to murder, and subsequently to commit self-destruction, occurred at Southampton on Wednesday night. A young man rushed into a shoemaker's shop, and, seizing a knife, made an attempt on the life of the errand-boy by making a plunge at his throat. The poor boy instinctively hung down his head, but was dreadfully cut. The assassin then endeavoured to *stab himself* in the left side, and immediately sank exhausted into a chair, exclaiming 'I am a murderer!' The wounds were not mortal in either case."

It will be observed that the cases which I have cited extend over specific periods, and they will, therefore, possess more weight than merely isolated illustrations. If I were to select cases of the latter description, I could furnish proofs of a still more irresistible kind. Thus I may allude to a case which is upon

record, of a woman at Onolbach, who murdered a girl with whom she was on the best terms, merely because she *wished to die*; and she thought that, by committing murder, she would have time allowed for repentance, which she would not have were she to destroy herself. In 1822, a woman murdered her child in Bethnal Green, exclaiming immediately afterwards, that she *wanted to be hanged*. In 1840, a man shot his wife at Mitcham, and, when secured, said, "I have done it! I have done it! I have murdered my wife, and *I hope I shall be hung!*" At the commencement of 1841, a woman at Norwich murdered a child to whom she had been much attached, for no other reason than that she herself was "*tired of life,*" and wished to be put to death by the operation of the law. In April of the same year, a deliberate murder took place at Manchester, the perpetrator of which was found to have *previously* made preparations for *hanging himself*. During the same month a man, who had previously avowed his intention, shot another at Bristol, in the presence of several persons; and, when apprehended, said to the constable, "I will go anywhere with you, for *I know that I shall be hanged for it!*" Within one week of this event, the papers contained an account of a female who committed suicide under the apprehension that she should murder her husband and child; and, at Kensington, a man named Brooke committed suicide by strangling himself, "having first, it is believed, meditated the

murder of his family." A person, also, named Jenner, at Liverpool, by whom *self-destruction* had been attempted in the preceding September, destroyed his wife and child.

It will be seen, that, in a large majority of the foregoing cases, the punishment of death was fully contemplated previously to the committal of homicide; and that the subsequent confession, and voluntary surrender, of the guilty party, in each instance, was, in fact, a sort of indirect suicide added to the first crime, and intended to form part of the transaction. In some cases, it seems, indeed, as if the murderer considered that, in surrendering himself to death, and gratifying the suicidal propensity, he achieved a kind of moral expiation of his crime; and that it was by contemplating this course that he reconciled it to his views of equity.

In the remaining cases, where murder was followed by the direct perpetration of suicide, it will be seen that the latter act did not arise from remorse, or from any sudden impression that suicide had become necessary as a means of escape from the more fearful alternative of a public execution. In some instances attempts at suicide had *preceded the murder*; in each case the two acts appear to have been committed almost simultaneously; and not infrequently there is evidence that they both formed part of a premeditated course, and that the culprit had prepared himself and indeed entertained a desire for his own death.

A curious instance, bearing upon this point, may be referred to in the case of William Lees, who was executed, a year or two back, for the murder of his wife. In this, it was satisfactorily proved that the prisoner had, at different times, received severe wounds on the head, the scars of which remained, and were of a permanent nature. Those about him had often found it needful to remove dangerous instruments from his reach; and, *on different occasions, he did violence to himself*. When brought up for examination, he had an absolute fit, which deprived him of consciousness, and required the abstraction of one or two pints of blood for his recovery.* This man, after having murdered his wife, prepared a rope for the purpose of hanging

* "It is questionable," says a writer in the *London Medical Gazette*, "whether we direct sufficient attention to the physical treatment of certain mental conditions. In many cases where a morbid propensity to kill has been manifested, a timely-administered purge and the abstraction of blood have cured the patient of his depraved propensity. We know well enough, by a reference to our own experience, how much the spirits are affected by what is termed bilious derangement. There are crimes for which men are hanged, but of which they might easily have been cured by physical means. Damien persisted to the last in declaring that, had he been bled that morning, as he wished and requested to be, he never would have attempted the assassination of Louis the Fifteenth." It is recorded of Caligula, that his reign commenced with mildness, but that at the end of the first year, *after a violent fit of illness*, he entered upon the practice of cruelties of the most capricious and revolting kind: slaughtering the noblest men of Rome, and hunting the spectators of a public show into the waters of the Tiber.

himself; but he deferred his purpose, and went first to acquaint his friends with the crime he had committed. After this, he was taken into custody; and, it appearing on his trial that he had committed one crime, viz., the murder of his wife, and that he had intended to commit another of equal magnitude, viz., the murder of himself, the law awarded, that, as a punishment for the first, his desire for the second should be gratified; and he was accordingly executed in the very mode which he had previously contemplated.

Despite "the example" intended to be effected by the public strangling of this unhappy being, we afterwards hear of the murder of a wife in the public thoroughfare of Clerkenwell, followed by the immediate suicide of the criminal; and, although executions have of late been frequent, the tendency to homicide seems fearfully to have increased; every case, with rare exceptions, also furnishing a striking illustration of the desire for *self*-destruction which animates the perpetrators.

In further illustration of the peculiar features of destructive mania, the following instance of homicidal insanity, the subject of which murdered his wife, and afterwards became an inmate of the State Lunatic Asylum of Massachusetts, may be quoted from the reports of that institution:—It is stated that, on the morning of the murder, the man was sitting with his wife. He was in a state of excitement; and, in these circumstances, the noise of the

children always disturbed him. In order to render all quiet, the children were sent into a field to play, or labour: he and his wife sat by the fire; he on one side indulging in the gloomiest forebodings; she at her work on the other side, doing all in her power to console and comfort him. After a while she arose, went to the cupboard, and poured some wine into a tumbler, brought it to him, and said, in the most cheerful manner, "Come, let us drink and forget our sorrow, and remember our poverty no more!" She tasted the wine, and handed it to him, and he drank, and said, in reply, "*I wish it might kill me,*" or "I might die." She took her seat again by the fire, and went to her work: he arose soon after, without any particular object, or design, and walked into an adjoining room; in a moment the idea of Samson and the weaver's beam rushed into his mind; he instantly seized a weapon which was before him, stepped behind his wife, and gave her the fatal blow.

This man, during his confinement, often spoke of the amiable disposition of his wife: he declared that he had no fancied direction from higher powers; and that the thought of killing her never entered his mind till that impulse came upon him, and that it was as sudden as possible, and wholly irresistible. He also spoke of his having made many attempts previously to commit *suicide*.

In conclusion, I would call attention to the illustration which the practice of duelling affords of the

fact that personal recklessness is a usual accompaniment of that depraved state of mind which impels an individual to the destruction of a fellow-creature. I must also call attention to the effects of capital punishment as applied to this form of homicide. "One of Richelieu's severest and least politic laws," says Sir E. L. Bulwer, "was that which made duelling a capital crime. Never was the punishment of the offence more relentlessly enforced; *and never were duels so desperate and so numerous.*"

The above facts are sufficient to show that the coincidence of the suicidal with the homicidal propensity is not an accidental circumstance, but one that arises from a natural law of the human constitution. The imperfect statements which I have drawn from the Annual Register show its occurrence in 60 per cent. of the cases recorded during five years, and the experience of subsequent periods goes far to establish a much higher proportion. It will be seen that the class of persons by whom the crime of murder is committed, are not only not affected by the dread of death, but that the so-called "punishment" is actually regarded by them, in some instances, as a desirable infliction; and we shall therefore be led to the conclusion, that, however unsuitable death-punishment may be for other crimes, it is most especially so for that of murder. If it be true that this class of offenders are animated by a desire for self-destruction, to hold out self-destruction as a consequence of the act, must be as

sure a way of affording a stimulus to its perpetration as would result if, in cases of theft, we were to "punish" every offender by presenting him with a purse of money. "There are many instances on record," says Dr. James Johnson, "where the monomaniac lacks courage to commit suicide, or cannot make up his mind as to the means of accomplishing it; under which circumstances *he has committed capital crimes with the view of being capitally punished;*" and, among the cases which I have quoted, there are several in which the prospect of this punishment appears to have operated as the sole motive to crime. Hence, I do not hesitate to express my belief that a remarkable diminution in the number of murders by which our country is annually disgraced would be the immediate consequence of its abolition.*

* The undue activity of the destructive propensity appears to impart not only a desire for self-destruction, but, in cases of high excitement, it awakens in the individual an uncontrollable wish to inflict upon himself tortures of the most frightful description. Instances of this peculiarity are by no means rare. In 1841, a lunatic of St. Hymer, in Calvados, in one of his paroxysms, opened his body with a scythe-blade, and, with every demonstration of satisfaction, continued to tear out and cut up his entrails, until he was seized and prevented. Some years back, a man named Howison was tried for murder in Scotland, respecting whom the following facts were incidentally narrated:—"He had a fancy to become a Quaker, and attended the meetings of that persuasion for some months, where he paid no attention to the worship, but muttered to himself, smelt his Bible, and pricked himself with pins or needles, to the effusion of his blood. He demanded instant admission to the Society on one occasion, and with violence; he went more than once to the meeting-house early in the morning,

But as I have shown that this infliction is regarded by those who come within its scope rather as an incentive than a check to the perpetration of homicide, it may be said that there is, at all events, little inhumanity in its nature, since it accords so much with the desire of the criminal. I fear, however, that, although it produces no beneficial effect in deterring from crime, it will, nevertheless, oftentimes be found to involve the highest refinement of cruelty. Before the crime is committed, the excitement of the culprit is at the highest pitch: when he is taken into custody, he is subjected to quiet and restraint, all stimuli are removed, his diet is of the least exciting kind. Feelings, calculated to repress the activity of the destructive propensity, are called into action; and thus to the criminal, under the influence of this amended physical state, life is sometimes again made to appear an object of desire only at the very moment when it is about to be extinguished. Hence, many of those who, while they are under the influence of excitement, readily avow

and was seen to kneel, and heard to invoke the Virgin Mary while he wounded himself over with both hands, and smeared the doors with his blood. He habitually wounded his hands, wrists, and arms with needles or pins; and if he went to bed without his weapons, he rose and came for them. He had an incredible appetite, and used to suck the blood from his own wrists after every two or three mouthfuls of food." Many attempts were made to convince the proper authorities that these were not the manifestations of a perfectly healthy mind; but they were disregarded, and the poor wretch underwent the penalty of the law.

the commission of offences, and express an avidity to meet the punishment of death, become, after subjection to prison discipline, most anxious to escape from its infliction. Benjamin Gardiner, the soldier who, in 1834, shot his sergent, and exclaimed that he was "ready to die for it," pleaded at his trial that he did not know the gun was loaded.

But although, when it is too late to operate upon the mind of the criminal so as to deter him from evil, the prospect of death may sometimes be rendered terrible to him, it must be recollected that its exhibition never strikes any fearful example into the minds of those who witness it, and who gaze upon it solely under the activity of the same brutal instinct which impelled the culprit to the crime for which he suffers. The state of their feelings approaches to the state which characterized the mind of the criminal at the time of the perpetration of his offence, and the motives which induce them to take part in the ceremony are not unfrequently precisely similar to those which at that period actuated their miserable victim, viz.: the desire to enjoy the pleasure of terminating the life of an individual whose existence is distasteful to them, and whom they conceive they have a right to destroy. In these people the destructive principle has not been tamed, as in the case of the prisoner, by the administration of prison-discipline, moral advice and medical treatment — influences which would impart a

real terror to the spectacle, and consequently induce them to shun with horror, instead of to seek with delight, an opportunity of witnessing the scene.

I seek to lay great stress upon the facts which I have cited in this chapter, because it seems to me to be impossible that they can admit of any other interpretation than that which I have drawn from them, and that they must, therefore, operate conclusively upon the question of capital punishments. I entreat the supporters of these punishments to weigh them deliberately, and with that deep sense of responsibility which a consideration of the consequences of promulgating erroneous opinions on a subject which bears upon the existence of many of their fellow-creatures, is calculated to generate. I have a firm trust that they will not dismiss the argument now adduced with the inattentive haste of those who desire not to be convinced, because I believe that the supporters of the present system, or at least that portion of them whose influence is likely to tell upon society, are actuated, equally with its opponents, by a sincere wish for the general good; that they look upon the existing law as a painful necessity, and that they will gladly welcome any argument which may enable them conscientiously to change their views. If the punishment of death be calculated to lessen the number of murders, it is evident that the voice of humanity should be raised to demand its infliction. Those amongst the educated classes who support it, support it only

upon this ground. I am therefore far from charging them with any want of benevolence, and I feel some degree of confidence that I shall not appeal to them in vain, when I ask them respectfully to examine for themselves the result to which the above statements lead, with the view of pointing out where the error lies, if error there be in my deductions, or of aiding, if satisfied of their correctness, in the call which should immediately be founded upon them for the abolition, in this country, of the last vestige of sanguinary laws.

CHAPTER VI.

Further illustrations of the inexpediency of capital punishment.—
Objections on the part of Government to its abolition.—Ob-
jections answered.—Neglected duties of the Government.—
Summary of the principles upon which criminal laws should
be founded.

IN the last chapter, I laid before my readers a series of facts, calculated to impress them with a just estimate of the inefficiency of capital punishment, by showing the satisfaction with which it is usually contemplated by those who are labouring under homicidal tendencies.

Other instances of the effect of this brutalising infliction have been so frequently dwelt upon by the public Press, that it is hardly necessary to dilate upon them here. It may be as well, however, just to allude to some of the most prominent objections which have been urged against its continuance, and which offer striking instances of the way in which the action of an unjust law inevitably recoils upon the society having recourse to it.

1st. With this view, I may notice the acknowledged effect of executions in exciting the de-

structive impulse, coupled with the *imitative* tendency, which is, in a greater or less degree, inherent in every human mind. In a work from the pen of M. L. M. Moreau Christophe, Inspector-general of Prisons, on the reform of Prisons in France, published some few years back, the author alludes to the very remarkable tendency, which is developed in society under certain circumstances, to imitate atrocious deeds. Of the influence of imitation, two strange instances among others may be quoted. Under the Empire, a soldier killed himself in a particular sentry-box, and immediately many others acquired the suicidal monomania, and selected this box for the scene of self-destruction. The box in consequence was burned, and the imitation at once ceased. Again, an invalided soldier hung himself at a particular door: in a fortnight afterwards twelve other invalids chose the same door for the same purpose. The gate was then walled up, and the hanging ceased to be epidemic in the hospital. These things are not peculiar to Frenchmen. It is notorious in other countries that instances of rare offences, remarkable for their atrocity, for some singularity in their mode of execution, or otherwise calling largely on the public attention, are uniformly followed up by successive iterations of the crime.

It is a well-known fact, that the class of persons by whom executions are attended, or by whom accounts of them are most eagerly read, are those who

feel a peculiar kind of fascination in witnessing the infliction of pain; and it is obvious that, when in individuals thus constituted the imitative tendency is excited in the direction of cruel acts, the additional impulse must prove of the most dangerous description.*

It has been stated by Mr. Ewart in the House of Commons, upon the most unquestionable testimony, that out of 167 persons who had been executed during a certain period, 164 had been present at executions. The ordinaries of Newgate affirm, that it is very rarely that any one suffers at the Old Bailey who has not previously been a witness at a similar scene. These facts are universally admitted

* In relation to the above point, some remarkable circumstances are alluded to in a letter received by the author shortly after the first publication of this treatise; it ran as follows:—"A clergyman who has read the treatise on Criminal Jurisprudence would suggest whether the following fact is not connected with the general theory: Some years ago, in the north of England, a clergyman of the Church of England, in a town of moderate size, deemed it proper to preach a discourse to his parishioners on suicide. There had been no case of the kind occurring to induce him. Within three weeks afterwards *three* of his parishioners cut their throats. Is not the well-known fact in Roman history, of the suicide-mania among young women, and which was cured only by passing a law that such should be exposed after death, also to the purpose? Is not even the ardour to become martyrs observable in the Christian Church under the emperors something of the same kind, which Marcus Aurelius attributes, in his time, to the *madness of habit*? The writer of this note has collected many similar facts, which he has been accustomed to resolve into the attraction of the sympathetic powers, but is now convinced that phrenology affords a more philosophical or at least a more obvious, solution."

and deplored; and yet capital punishments are supported by those who, at the same time, confess that the infliction of death in a secret manner presents, if possible, still more objectionable points. It seems strange that it should not occur to the persons who make these allowances, that, if the punishment itself were consistent with religion, benevolence, and justice, there must exist some mode in which it might be performed without outraging these feelings, and that the fact that no such mode can be discovered, clearly shows that it is not founded in wisdom.

The following is stated to have been the scene at the execution of the two men, named Bishop and Williams, on the 5th of December, 1831 :—By daybreak it was estimated that not fewer than 30,000 persons were assembled. Before proceeding to the scaffold, both prisoners confirmed their confessions. Bishop mounted first. The moment he made his appearance the most dreadful yells and hootings were heard amongst the crowd. Williams was then taken out, and the groans and hisses were renewed. The moment the drop fell, the mob, who had continued yelling and shouting, gave *several tremendous cheers!*

I presume that those who contend for the advantages of public executions, do so on account of the moral feelings which they believe such exhibitions are likely to excite in the minds of the spectators, coupled with the salutary dread which they are cal-

culated to inspire, thereby deterring others from pursuing a similar course. Upon the degree of moral feeling excited by such occasions, the fact, that, in the above instance, the mob, consisting of 30,000 persons, gave "several tremendous cheers" at a moment when the two unfortunate beings of a race of which all are sinful, were launched into the presence of an Eternal God, is a fearful commentary. And regarding the "salutary dread" to be inspired in the way of example, it will be sufficient to notice the fact, that, for many subsequent months, the newspapers teemed with accounts of murders of a similar character to those for which these criminals suffered, and which, being of a nature previously unknown, were distinguished from ordinary homicides by a name derived from their original perpetrator.

Those who have rightly studied the facts, which everywhere abound, relating to the exciting causes of the various emotions of the human mind, know that those who attend executions from choice, do so with the view of gratifying the very propensities, the activity of which it is ostensibly intended to suppress. The benevolent and religious are shocked at the infliction, and abstain from witnessing it. The tendencies which find gratification, and which, under the laws of habit, are fostered at scenes of this description, were pretty strongly indicated at the execution of Blakesley, in November, 1841. "For the first couple of minutes," says the news-

paper account, "the wretched man struggled very much, and some persons in the crowd *expressed gratification at the pain which it was supposed he suffered.*"

The *Metropolitan Magazine*, for March, 1840, contained a curious account of one of the natural results which arise from these exhibitions. It ran as follows:—"Odd taste for Newgate ropes, and its consequences.—We knew a healthy, robust, independent gentleman, who went some years since with the Sheriff into the interior of Newgate, to visit a malefactor who was to be executed the same day. After the drop had fallen, he went with others to the breakfast-table, where he could think of nothing but the execution he had witnessed; and, before he left, he requested the sheriff to procure the rope with which the man had been suspended. It may be mentioned, that it was not an execution of common occurrence. Possessing one rope, it subsequently occurred to him, as the next much-talked-of execution was to take place, that he would also have the rope used on that occasion. In the course of a short time, he had a collection of ropes, labelled and carefully deposited in a drawer. About two years after the *penchant* for collecting ropes used at executions had manifested itself, it was observed by his friends that his conversation most frequently turned on the subject of the executions he had witnessed, and the success he had met with in procuring such a number of ropes; which he usually brought out to exhibit to his friends, expatiating on the comparative

merits or demerits of the sufferers, until at length his society became unbearable, and he received the *sobriquet* of 'The man with the pensile idea.' He lived about fourteen years after witnessing the first execution; at last *putting an end to his own life*, by suspending his body with one of the ropes he had collected from the common hangman."

2nd. A strong point of objection is found to exist in the natural and intuitive disinclination of benevolent men to become the means of putting a fellow-creature to death, and the consequent falsification of their duties as jurors; by which means a culprit of the most dangerous kind is sometimes permitted to escape. This was well instanced in the recent case of Gould: had the contingent punishment been anything short of death, it is most probable that he would never have received an acquittal.

3rd. Another evil of this punishment is presented in the occasional instances which occur of parties suffering for crimes of which they were innocent, society being thus disabled from offering reparation for injuries which they have themselves committed. It must also be remembered, that the more heinous the crime laid to the charge of the accused, the greater is the probability of an erroneous conviction, on account of the excited feelings of his accusers.

4th. The employment of death-punishment destroys one source of testimonial proof. The death of one criminal is in a great measure an act of

amnesty in favour of all his accomplices. The "honour-among-thieves" feeling can nerve a man to die like a wolf, in silence; but, amid the tedium of confinement, haunted by fancy's pictures of the liberty his equally culpable colleagues are enjoying, his determination may relax, and information calculated to promote the ends of justice be obtained from him.*

5th. The remarkable diminution in the number of offences which has invariably followed the abolition of death-punishment for other crimes, furnishes an irresistible argument for its abolition in cases of murder. If this penalty is insufficient to deter men from the committal of crimes to which they are prompted by comparatively slight motives, it must be expected to prove inefficacious in deterring them from homicide,—an act which is usually perpetrated under the influence of the most violent passion. The experience of the past goes to prove, that death is less dreaded than almost any other infliction, and yet it is maintained by our legislators as the penalty for murder, which they profess to regard as the most heinous crime that can be committed, and as one to which the most dreaded penalties should therefore be applied.†

* *Spectator*, 11th July, 1840.

† A large proportion of suicides originate in the desire to escape some threatened punishment of a trivial kind. I extract the following from a country paper:—"John Thompson, a boy only twelve years of age, in the service of Mr. F. Phillips, of Haskerton, was some time ago reprovved for cutting the hair off the tails of the cows. On Friday afternoon he put out the eyes of one of

In a debate which occurred in the House of Commons on a motion for the abolition of capital punishments, Lord John Russell stated that he did not think that any substitute could be proposed for the punishment of death, by which the frequency of murders might be lessened; but, as I have shown, from recorded cases, and also upon the authority of Dr. James Johnson, that the present law has actually *been the cause* of many murders, it may be urged in reply that some good would surely result from the substitution of a mode of treatment, which, failing to deter men from murder, might at least possess the negative virtue of offering no stimulus to its perpetration. Moreover, as it is well known that there are countries where a substitution has been effected, and followed by eminent success, his Lordship's opinion seems to be entitled to little weight. In Tuscany, while there were no capital punishments, there were but four murders in twenty-five years; while in Rome there were twelve times that number in a single year, death being the penalty. It has been found that in

his master's pigs, for which Mr. Phillips threatened to have him punished by a magistrate. This threat appears to have very much alarmed the youth, who went into a shed adjoining the house and hanged himself to a beam with a plough-line. An inquest was held, and a verdict of *felo de se* returned." And, at the time of my writing, the current number of the *Times* reports the case of a female pauper, who, after committing a paltry theft, resorted to self-destruction to escape being taken before a magistrate for punishment.

all countries where capital punishments are rare, the tendencies of the people are always proportionably humane: indeed the punishment of death could not long exist under the authority of any government which did not possess, in by far too strong a degree, the very propensity, the morbid indulgence of which it is intended to repress.

In Mrs. Trollope's "Austria and the Austrians," I find the following passage: It relates to the fate of a criminal convicted of a murder of more than ordinary atrocity; and states that, "Upon its being announced that it was the emperor's intention to commute the punishment of death to that of imprisonment, although the perpetration of the crime unquestionably spread abroad a universal feeling of horror in Vienna, where capital punishments are extremely rare, *the satisfaction inspired by the news was very general.*" Will it be asserted that the satisfaction which was thus generally expressed, arose from the delight which was felt at the prospect which it imparted to others of being enabled to commit murder without subjecting themselves to the punishment of death? Did it not rather arise from the general respect for human life which had been generated by the rareness of this punishment?

A striking instance of the general misapprehension which exists regarding the predisposing causes of crime, was exemplified in one stage of a debate which took place on Mr. Fitzroy Kelly's bill for the

abolition of the punishment of death in all cases excepting that of murder. This bill was thrown out on the 29th of July, 1841. During its discussion, the opponents of the measure expressed the greatest desire, in case the bill should pass, to retain the punishment of death for the crime of setting on fire, or destroying, the Queen's ships; thus showing a total ignorance of one of the chief features of destructive mania. In looking over a large number of cases, it will be found that, in many instances, the suicidal impulse has first manifested itself by setting buildings on fire. To make suicide the consequence of this act, (as the law really does by holding out self-destruction as the penalty,) must only tend to stimulate the excited mind, and it may thus, in some cases, become the actual cause of the commission of the offence. Mr. Woodward, in relating a case of homicide, the perpetrator of which was afterwards placed under his care, says,—“ On one occasion he felt that he must *burn* his barn; he instantly seized a firebrand, and ran towards it with the fullest intention of accomplishing his object; he was fortunately prevented by the interference of his friends. Much of the time his thoughts were occupied by the contemplation of *suicide*, and the impression that he must commit *homicide*.* ”

The only point of objection to the abolition of capital punishment for the crime of murder which

* Appendix, No. III. The destructive propensity.

seems to carry any real weight, is, that, in cases of highway-robbery, burglary, &c., if the robber knew that the punishment would be the same whether he murdered his victim or not, he would invariably do so, in order to remove the danger of his evidence. This, however, offers only an apparent obstacle. The treatment for any crime below that of murder, should not, even if death-punishment were abolished, be so severe as for murder itself. In lesser crimes the same necessity for *perpetual* restraint does not exist; and therefore the period of the incarceration of the criminal should be contingent entirely upon his own improvement,* and certainly need rarely be so prolonged as to terminate only with his life. In these cases, hope at all events need never be abandoned; but the crime of murder should involve, as its penalty, the doom of *perpetual* imprisonment; since, although a person by whom it has once been committed may be apparently cured of the tendency, it can never be safely predicated that the impulse may not again arise under the sudden influence of external excitement. He must be kept from temptation, because the maniacal tendency may always be presumed to lurk in the system; and, even if the patient were to be so far brought back to habits of self-control as to be no longer dangerous, the possibility of his transmitting the fatal tendency to another generation should never be permitted. Although, therefore, in cases of murder, the con-

* Appendix, No. IV. Term of Imprisonment.

finement of the patient should be effected with as much humanity as possible, it should never, *on any pretence*, be remitted. Every effort should be made to bring his mind to that state which should induce him to acknowledge the justness of his fate, and to be sensible that it is inflicted out of regard both for the welfare of himself and of society, and that revenge has no voice in the administration of his doom. That these measures would operate powerfully in deterring others from the commission of the crime by which they became necessary, is well instanced in the suppression of the regicidal mania which existed in France during so many years of the reign of the present king. In the early instances, the usual impolitic course of a revengeful trial and a sanguinary death, was resorted to by the authorities; it was not until that course was abandoned, and one of the offenders was consigned to the *obscurity of a private madhouse*, that the regicidal epidemic appears to have been in any degree stayed.

I may here remark upon the well-known fact, that the chance of being considered to be insane is always looked upon with horror by every mind. If it were once clearly understood, that obedience to the laws is the real test of social sanity, we should forthwith take away all the temptations to crime which operate upon that large class who commit it for the sole purpose of acquiring notoriety. Criminals of the Corsair, Eugene Aram, and Jack

Sheppard school, would soon become obsolete, if the only prospect which awaited their career was that of being transferred to an hospital for the cure of mental disorders, instead of being enshrined in the pages of romance, as interesting men, possessed of dark yet mighty minds, far beyond the ordinary level or comprehension of their race. The stimulus which the vague admiration of the public affords at present to this class of criminals, exciting, as it does, their unduly developed faculties of love of distinction and self-esteem, to act in unison with their preponderating animal propensities, would be withdrawn ; and these very faculties would then furnish powerful motives to deter their possessor from running the risk of subjecting himself to a fate so low as that which would distinctly mark the condition of his brain as being below, instead of above, the ordinary level of the brains of his fellow men. If all crime were acknowledged to result from mental disorder, we should not hear so frequently of those who are anxious to blazon and boast of their misdeeds, any more than we now hear of persons who are desirous of challenging public attention to any other physical infirmity.*

Another advantage which would attend the recognition of the fact that criminal acts result only from an ill-conditioned brain, would be found in the ready aid which the relatives and best friends of the criminal would offer to the operation of the law.

* Appendix, No. V. Dread of being considered insane.

Under the present system, there are few persons who, in the case of crime committed by a husband or wife, a father or brother, would not attempt to stand between the culprit and the vengeance which awaited him in the shape of capital punishment; while, if his crime were recognised to arise from a disorder, which, unless it should be speedily mitigated, must lead to more fearful results, they would at once use all their efforts to place the unhappy subject of their care in a position where alone this object could be effected.

If, in reviewing the "difficulties" of this question, Lord John Russell had given expression to the difficulties (which, under the present system, should arise in the mind of every man), regarding the justness of the infliction by society of capital punishments, or, indeed, any *punishments* whatever, on those persons who commit offences to which they have been stimulated by the institutions of society itself, we should have had reason to hope for some good result. By a reference to the records from which I have quoted of the murders committed in Great Britain from the year 1831 to 1835, it will be seen that a very large proportion have been committed by soldiers. It is also well known, that the sympathetic crime of suicide is prevalent in a very disproportionate degree amongst this class. In cases of English cities, where a very large proportion of the military are quartered, the ratio of suicides is greater than in the whole population of the country,

but still much below that among the troops. On the whole, the suicides among the Dragoon Guards and Dragoons are at least five times more numerous than among civilians. These men are trained to a life, the duty of which consists chiefly in the exhibition of the destructive propensity. According to the degree in which it is effective in battle, it is pronounced to be praiseworthy; and if, when the war is over, and the soldier returns to his country, the propensity which has thus been excited, gratified, and applauded, should refuse to subside, and should at last assume a vigour of action beyond the control of the individual, he is then to be punished for the fatal effect of that very disorder which it has been the effort of his fellow men to stimulate to the utmost.

But it is not alone with regard to the crime of murder that these considerations should have been awakened in the mind of one to whom the administration of the government was confided. The large majority of crime of all kinds is committed by those who are not only the inheritors of defective organization, but who have also been neglected by that society of whom, helpless as they were, they had a right to demand guidance and protection.

There are, as I have shown, few amongst criminals who possess the power of reading or writing; and there are many classes trained up to meet the wants of society, who, when their power of rendering their bitter and ill-paid service is over, have

no resource but in depravity and crime. Then only is it when men begin to reap, from the depredations of these unhappy creatures, the just punishment which follows, under the operation of the moral laws of the world, as the result of their own culpable indifference, that they awaken to a sense of what virtue, duty, and "responsibility" are; and, that, after having been oblivious of their own duties, they preach to the wretched victims of their neglect the duties which they, the victims, owe to them.

To future generations it will appear scarcely credible, that, in the nineteenth century, revengeful punishments were not only resorted to in all ordinary cases, but that they were commonly inflicted upon many unhappy beings who, conscious of their own infirmities, had perseveringly appealed for aid towards their extrication from crime; the government of the country, ever ready to punish their offences, having looked with calm indifference upon the unavailing struggles by which these offences had been preceded.

The fulfilment of the duties which we owe to those who are less favourably constituted than ourselves, involves, however, a necessity not only for watchful exertion but for a strict self-discipline, to subdue those instincts towards retaliation which at present find a place in almost every human mind; and although these exertions, and this self-denial, would yield an immeasurable harvest of good, we shrink

* Appendix, No. VI. Unaided efforts to escape from crime.

from undertaking the irksome task, and contentedly sacrifice the future to the present. To check vice by methods that shall accord with the dictates of the intellect and the moral feelings, is a task demanding from the highest minds the exercise of anxious thought and untiring zeal: in punishing it by the whip and the gallows, we may dismiss all trouble, and appropriately delegate the office to the vilest of our race, avoiding, at the same time, that bitter trial of philosophy (although the surest evidence of conscious power) which consists in receiving a blow without striking in return.

“ I am clear for hanging all criminal madmen,” said an educated gentleman to a high officer of the criminal law in Scotland. Nearly the same sentiment lately appeared in one of the medical journals in the United States; and it was only a few years ago that the Attorney and Advocate-general of France, in a case of homicide, declared that the plea of insanity is dangerous; that it leads to encourage simulation, and defraud justice. Had these persons been aware that, by the multiplication of public executions, they increased the personal danger of every member of society, by stimulating and fostering the destructive tendency; had they also known that their own liability to an accession of mania was by no means so limited as they had been accustomed to suppose it to be, since the growth of a spiculæ of bone, pressing upon a certain part of the brain, might induce, in their own minds, the tendency to

similar acts; had they known that hepatic disorder, exposure to cold, intemperance, or inanition, a blow on the head, over-exercise of the mental powers, *coup de soleil*, old age, and many other unthought-of conditions, might lead to a similar result, either in themselves or in their children; that the effect of sudden terror, or other violent emotions, occurring to women during the period of gestation, frequently leads to the most fatal tendency of mind in their offspring: and that the advocates for the indiscriminate infliction of death might, from these causes, themselves become, at some future day, the parents of those who might exhibit "criminal madness," it is probable that these considerations, coming home to their feelings of *selfish* regard, would have operated so as to produce a more benevolent view of the duties of the law. When mankind, actuated, as it unfortunately is, by a predominance of personal and selfish emotions, shall become more fully acquainted with the causes of mental unsoundness, and shall learn to regard the infliction as one to which all persons are more or less liable; and when each man shall consider that there is not a human mind, not even his own, or that of any one of his dearest friends, which may not, by some of the accidental causes which I have enumerated, become suddenly affected, even to the most frightful extent of maniacal fury, we shall be more anxious that the subject should be rightly considered, and that care should be taken never to inflict additional tortures upon

those who ought only to be the objects of our sincerest pity.

In conclusion, I may be permitted to repeat, that the true object of all criminal laws should be simply to remove offenders from the power of gratifying the special tendencies from the action of which their errors of conduct may have arisen, and at the same time to stimulate those faculties which have hitherto lain dormant and inefficient. This must in all cases be the most painful operation that the criminal could undergo; but the object should be, by enlightening the minds of those who are doomed to suffer it, to show that it is undertaken with no feeling of vengeance, but with the same certainty of producing a good result to the patients themselves, as would be felt in medically administering a specific for any ordinary disease. They should be taught to feel that the *cure* of the depraved mind (or, to speak more correctly, of its disordered instrument), is the only thing that is aimed at, and that an eventual increase of comfort to themselves must be the result of the pain which is inflicted; that the desire is not to administer punishment, but the reverse—to see, in fact, how far they can be saved from punishment, by an effort to produce the cure or mitigation which is benevolently sought, by the infliction of the least possible amount of pain. It is happily known, that, when those who are suffering from any unfortunate tendency of mind can be made to see and understand an intention of this description, many an offender will voluntarily submit

to the necessary discipline. The pangs which are thus freely borne by that large portion of the Irish population, who have been made to know the inevitable effects of gratifying the propensity for ardent spirits, and who, while this knowledge was imparted to them, had also their higher feelings of religion, faith, self-respect, &c., stimulated by the eloquent appeals of their benevolent countryman, Father Matthew, is a good illustration of this point.

The almost universal ignorance, which prevails at present, of the fact, that the dispositions of men are within the power of remedial treatment directed to the brain, is much to be deplored; but I am sanguine enough to believe that the time is not far distant, when men will learn that the gratification of their lower passions, by the blind punishment of unfortunate criminals, is only worthy of the days when the lash and chain were considered to be the proper portion of the madman; that they will perceive that it is the duty of those who have inherited high endowments to show nothing but kindness and compassion to their less fortunate fellow-creatures, and to endeavour to raise them as nearly as possible to their own state; and that, if they neglect to do so, they will assuredly share, with the offenders themselves, the evil consequences that may arise. Above all things, we should remember that *a mitigation of the evil tendencies of the lowest mind is never impossible, so long as lesion of the brain has not taken place*; and that when lesion has occurred, and improvement is no longer practicable, death will cer-

tainly result. To destroy the life of a fellow-creature, in whom any improvement may be effected, must be an act of wickedness and barbarity; and to destroy him when he has passed to the state in which death is approaching from the hand of his Maker, must be not only barbarous but impious.

Under these views, when they shall be more effectively enforced, and more amply illustrated, how much of increased happiness may be looked for! when the only object of the law shall be a consideration as to the means by which it can best work towards the permanent good and happiness of the offender, and when the injunctions of the Divine Teacher shall find a place in our hearts as frequently as they do now upon our lips, and our sole aim shall be to return good for evil!

POSTSCRIPT.

In dismissing this treatise, it is proper for me to remark, that the views which it expresses regarding the treatment of criminals are in accordance with principles of moral philosophy, which have been for some time before the public. Most of my readers are doubtless familiar with the work of Mr. George Combe on the Constitution of Man; to those who are not acquainted with it, and to whom these pages may have appeared in any degree valuable, I beg leave to recommend a consideration of its doctrines.

APPENDIX.

No. I.

OBEDIENCE TO THE LAWS THE TEST OF
MENTAL SANITY.

THE remarks upon this subject in the text drew forth the following letter to the Editor of the Spectator, at the time of their appearance in that Journal:—

“ TO THE EDITOR OF THE SPECTATOR.

“SIR,—I take the liberty of asking Mr. Sampson, through you, whether there is not some qualification required to his statement in the first note to his letter [No. I.], wherein he asserts that every one is sane to the requisite extent, who has the power and disposition to act in obedience to the laws. Now, is not this giving more credit, even to the general laws of any existing society, than is their due? And does it not go far towards admitting them to be in stricter harmony with the laws of God, than the view of the constitution of man, for which he pleads, can justify? Can obedience to such be the true test of sanity? Are *reformers* insane?

“ I merely throw out this as a hint (perhaps a worthless one), because I am exceedingly anxious that he should

make his ground good as he advances in the all-important cause he has undertaken, and in which I from my heart wish him God-speed in bringing it to a successful issue.

“ I am, Sir, your obedient servant,

“ W. R. EVANS.

“ *Kingsland Rectory, Leominster,*
13th October, 1840.”

To this pertinent and well-expressed inquiry, the following answer was published :—

ANSWER.

“ In asserting that the laws and institutions of any society precisely indicate the average state to which the mental organization of such society has advanced, I mentioned that the mere fact of an infringement of the laws on the part of an individual is a sufficient evidence that his organisation does not reach to the average degree of health, or capacity, and that he is therefore to be regarded as socially insane. But, in speaking of an average point of mental power, it will be seen, that, while there is a class who fall below the average, there must also exist an equally extensive class who rise above it,—men who see some of the imperfections of the law, and who are capable of suggesting improvements. These men, however, implicitly obey it, although they see its errors. They appeal to the intellect and to the moral sentiments of mankind, and endeavour, by the diffusion of knowledge, to raise the social mind to that point at which men will, by common consent, proceed to the necessary alterations. But active resistance to the law implies the use of violence, and the cause of improvement has never yet been aided by this means. The advancement of mankind is observed to result from the increasing

ascendancy of the moral powers over the animal passions, which are merely supported by brute force. The enemies of those who would advance the condition of the race, are the class who seek to maintain their power by the agency of the latter; and an attempt to meet them with their own weapons must always prove abortive. If a reform can only be effected by means of physical force, it is a sure sign that a preponderating amount of the social mind is not yet upon its side, and consequently that society has not advanced to that stage of civilization to which the reform is adapted. An attempt to force its operation before the public mind is ripe for its reception, although it may advance it for a moment, must eventually retard it. In this country there are many persons who regard the infliction of the punishment of death as an objectionable law. If these persons are correct in their views, they are, as far as a perception of this question is concerned, in advance of the social mind; and they will, as reformers, endeavour, by appealing to the intellect and higher sentiments of mankind, to raise the social mind to the point at which they have themselves arrived. But, if these persons were to overpower the officers of the law, and to rescue the convict from the hands of the executioner, they would be rightly looked upon as criminals. It should always be remembered, that, if the social mind preponderates in favour of any one point, there can exist no necessity to force that point by violence; because human power dwells in *mind* alone, and it is impossible for the lesser to stand for one moment before the greater power.

“These facts have been so long observed, that there is scarcely a page of history on which they may not be traced: and thus it is, that, even as the lower animals seem instinctively to become cognizant of the unseen presence of their

natural destroyers. the oppressors of the earth, the believers in the might of material power, have always instinctively dreaded the general diffusion of learning and morality. Those who, in any circumstances, would have recourse to violence, show a want of confidence in the final strength of reason, morality, and religion, treasonable to the cause of truth: and perhaps the worst enemy to human interests is the man who would endeavour to force a law, even good in itself, upon a society that had not become sufficiently advanced to be prepared for its reception."

"20th October, 1840."

The above answer will, I trust, appear to my readers to be satisfactory; but I desire to avail myself of the present opportunity to add a few further remarks. It will be asked,—If it is a fact that when a preponderating amount of the social mind is on the side of any measure, it is impossible for the opponents of that measure to offer one moment's effectual resistance to it, how is it that violence is sometimes used, and not only used, but that, after a long struggle, it sometimes actually succeeds? The answer to this is very plain. Let us suppose any given question to have been broached, and gradually to have made some way on the public mind, without any violence or means of artificial excitement having been had recourse to, for the purpose either of forwarding or retarding it; and that it gradually makes its way until the mental majority against it is not very large. Still, in the ordinary course of things, while any preponderance exists against it, it cannot gain a recognition on the part of society so as to be acknowledged as a law. We will then imagine that the advocates of the measure become so excited as to determine to have recourse to violence in order to establish their views.

While they are acting under this temporary excitement, an increased amount of mental power is evolved. The action of their brains is quickened, demanding and receiving an increased supply of sanguiferous circulation, and this increased activity causes the exhibition of increased mental powers sufficient to turn the scale, and to make the amount of active mind on their side greater than that on the side of their opponents who are not acting under similar excitement. In illustration of this point, it will be seen, that, although two parties may exist, each possessing equal powers of mind, yet, if the powers of one party be subjected to greater excitement than those of the other, the balance of mental force will temporarily be in favour of the active side; just as of two persons, one asleep and the other awake, the former would easily be overpowered by the latter. We will, therefore, as I have said, suppose that the minority suddenly become strongly excited, and have recourse to violence; and that this excitement, producing an increase of mental power, turns the scale, which previously was in favour of the existing state of things, and gives the triumph to its opponents. But the excitement, having been carried to an unusual height, at length subsides to its ordinary amount,—it cannot maintain itself constantly at the undue height which it had temporarily reached,—and, sinking to the point whence it arose, or perhaps somewhat lower, the scale is again turned, and both parties are then once more placed upon their former footing. All that had been gained by violence has then to be restored, and perhaps some penalty is exacted in addition. The question, which had been steadily advancing in the public mind by the force of reason and right, has thus been pushed forward for a moment only to be thrown backward eventually to a greater extent;

for its advance did but wait upon the increasing intellect and virtue of its opponents; and the measures to which its professed friends have had recourse, can merely have awakened and stimulated those lower propensities, in the very activity of which lay the only obstacle to its success.

No. II.

EASTERN STATE PENITENTIARY OF PENNSYLVANIA.

THE remarks lately made by Mr. Dickens, in his "American Notes," call for a few observations in relation to the statements in the text. He appears to have been unfavourably impressed with the above penitentiary; and, after speaking of the system as one of "rigid, strict, and hopeless solitary confinement," he describes the appearance and manner of the prisoners whom he was permitted to see, as indicating minds crushed rather than reformed. His cases are too vague to render them of much value in support of his opinion, but they are sufficient to strengthen the belief which I have expressed, that the sanguine views of its founders will not be fully realized. This belief arises from the circumstance, that the plans of its original promoters, and even the avowed intentions of its present conductors, do not appear to be faithfully worked out. The penitentiary professes to be a place whence all idea of punishment is discarded, but the amount of solitude to which the prisoners are subjected appears to be unnecessary and cruel. It is stated to be the intention to "separate them only from the corrupt;" but they receive only occa-

sional visits from the warden, and as there appears to be but one "moral teacher" to nearly four hundred convicts, it is evident that the promise to benefit them "by the society of the virtuous and refined," is very imperfectly performed. "He never," says Mr. Dickens, speaking of the prisoner, "hears of wife or children, home or friends, the life or death of any single creature! He sees the prison-officers, but, with that exception, he never looks upon a human countenance, or hears a human voice!" That this description is in some degree erroneous is rendered evident by the circumstance, that several of the prisoners were permitted to see Mr. Dickens, and to converse with him. The Author of this treatise was also allowed a similar privilege; and the Moral Instructor, in his Report, dated January, 1842, mentions, that he has "been aided by ministers of the Gospel of various denominations." I was not aware that the prisoner was not allowed to hear of his relatives; and, supposing Mr. Dickens to have been correctly informed on this point, the rule is evidently an infringement of the professions of the founders of the institution. It can form no incentive to virtue to deaden or blot out all exercise of the social feelings; to shut a man for ever from those associations which at all times shed a lustre upon the good, and often form the sole redeeming virtues of the depraved, and therefore such a course, not being calculated to promote the reform of the culprit, can only be regarded as a mode of revenge. I believe that solitary confinement for a few weeks is absolutely necessary, to break down the ruffianly spirit which a convicted criminal is prone to exhibit; but it is evident, from the Warden's Report, that this effect is soon produced, and that the patient then becomes docile, and apparently thankful for all acts of kindness — a stage at which the attempt to

strengthen his mind in the direction of virtue should instantly be commenced.

Some of the facts mentioned by Mr. Dickens are contradicted by others which he quotes. Thus, after having said "the faces of the women it humanizes and refines," — perhaps on account of "their better nature, which is elicited in solitude," — I understand him to remark, that it is upon the *best disposed* that the system produces the most disastrous results: and, after describing the general discipline of the institution as involving an amount of torture which it is scarcely possible for the human mind to contemplate without horror, he concludes by narrating an anecdote of a drunkard, who, being anxious to reform, voluntarily subjected himself to this discipline for a period of two years, although "the officers of the prison had orders to release him at any hour of the day or night when he might knock upon his door for that purpose!"

It is evident that the true test by which this institution can be judged must chiefly be looked for in carefully-prepared statistical returns of the number of re-commitments, the health of the prisoners, their subsequent course of life, &c., &c. I am now in possession of all the published reports, and even the latest of these do not afford evidence of failure. The following paragraph, from the Report of January, 1842, will show that the system cannot with fairness be described as one of "rigid, *strict*, and hopeless solitary confinement." "Of the number discharged, seventy-four could read and write, *nine of whom learned in prison*; sixty-nine could read, *twenty-eight of whom learned in prison.*"

At all events, whatever may be the true state of the case, it is evident that the doubts of Mr. Dickens and others, as to the ultimate success of the institution, arise

from the belief that *too much punishment* is still inflicted; that the plan of its promoters having been deviated from, the present management is at variance with the views which it has been my endeavour to establish in the preceding pages, and that, for this reason, disappointment may be expected.

No. III.

THE DESTRUCTIVE PROPENSITY.

ON the 10th February, 1841, Mr. Fitzroy Kelly again brought in a bill for the abolition of the punishment of death in certain cases. The old arguments were repeated, and Lord John Russell renewed his declaration, that it was of paramount importance to retain this punishment in cases of persons destroying her Majesty's ships by fire, &c. It is much to be lamented, that, previously to the passage or rejection of any bill for the suppression of the undue exercise of the destructive propensity, the members of the legislature do not consult the various cases which might throw light upon the nature of its operations. If they were to pursue this course, they would soon observe that the tendency to commit destructive acts arises from the disproportionate developement of a blind propensity which seeks only to destroy, and which is incapable of exercising the slightest discretion as to the objects of its attack; fire-raising, murder, suicide, &c., imparting to it indiscriminately the means of gratification. They would also remark, in confirmation of this, that, by persons labouring under a tendency to the perpetration of these acts, the prospect of death, in any shape, is usually hailed with satisfaction. The newspapers of the very day on which the above discussion took place, were teeming with evidences of this fact. The lamented death of Mr. Simpson,

the Arctic discoverer, and the cases of Madame Laffarge, Mr. Pearce, a surgeon at Kensington, the Countess of Resterlitz, and others, all furnished illustrations in point. The press also of other countries afforded, at the same time, facts of a similar nature. The "Boston Mail," of the 28th January, contained a remarkable case of "attempted murder, arson, and self-destruction;" and the following case, showing in like manner the simultaneous adoption of these three modes of gratifying the propensity, recently appeared in the French papers:—

"A man named Rouillard, who kept an inn at St. Martin, Dordon, and who, though sixty-two years of age, is unusually strong and vigorous, is now in prison under indictment for the following extraordinary acts of violence:—

"On the 29th September, 1840, the produce of his vintage was to have been sold under an execution for debt; but, before the hour fixed for the sale, he *set fire* to the vineyard. He then armed himself with a gun, went to the house of a person named Payen, and, levelling the piece at him, demanded 200f. Payen succeeded in escaping and hiding himself. Rouillard piled up the furniture of the house, set fire to it, and afterwards, seeing Payen in the street, *fired at him*, and lodged some small shot in his head. He next fired at Payen's wife, and several other persons, but they all escaped unhurt. Having threatened to kill a person named Delcour, and to set fire to his property, because he had bought a farm formerly belonging to him, some gendarmes were called in to protect M. Delcour. Rouillard, however, contrived to carry part of his menaces into execution, and succeeded in burning the buildings of Delcour's farm, and setting fire to a wood near it. When people came to endeavour to extinguish the flames, the incendiary shot at them. Still he remained at large, and

even returned to his home on the following day. Here, being reproached by his wife, he put the muzzle of the gun to his head, as if with the intent of *killing himself*, but started up suddenly, saying that he recollected he had five more persons to shoot first. Furnishing himself with bread, brandy, powder, and shot, he took up his gun, and went out, declaring his resolution to burn down the house of a person to whom he was hostile, but in this he was foiled by those who were on the alert. He avenged his disappointment by shooting an inhabitant of the place. Again Rouillard escaped, and gained a forest of considerable extent; where it was extremely difficult to reach him. After a time, the gendarmes were informed by a person who inhabited a cottage in the middle of the wood, that Rouillard had been to him to ask for food, and was to come again next evening. Men were accordingly stationed in concealment; and he was at last seized and secured.”

This man was sentenced to death, and the “Morning Post” of the 25th of February, 1841, contains an account of his execution. I extract the following passage, which furnishes a striking commentary upon the effects of capital punishments:—

“The violent character of the man was maintained to the last: and when the preparations were making in prison, a leathern thong was found in his pocket, with which he intended to *hang himself*. The guillotine was so badly constructed, or the axe was so faulty, that it was found inadequate to sever his head from his body, and a most horrible scene ensued, the operation being renewed over and over again by three executioners before he was dead. The populace became furious at the spectacle, and *would have torn the executioner to pieces* but for the presence of a large military force.”

It will be remembered that, on the 16th March following, a man named Taylor was hung at Fisherton gaol for *murder*. Many efforts were made to obtain a commutation of his sentence, the jury having recommended him to mercy; but Lord Normanby, upon the authority of Mr. Justice Erskine and the visiting justices, declared that the state of the man's mind was perfectly healthy, and he was accordingly left for execution. After singing "Jim Crow" upon the scaffold, and recommending the populace to murder as many people as they could, he stated "hanging was *just the fun he liked*." Some time previously he had been in custody for attempting to *burn down* his father's cottage.

Dr. Prichard, in his work on Insanity, mentions the case of a country-girl who twice attempted to set fire to a house. She was incited, as she said, by a voice which continually commanded her to *burn*, and then to *destroy herself*.

No. IV.

TERM OF IMPRISONMENT.

THE chapter "On the Treatment of Criminals," in Mr. Combe's "Moral Philosophy," contains the following remarks:—

"If the principles which I advocate shall ever be adopted, the sentence of the criminal judge, on conviction of a crime, would simply be one finding that the individual had committed a certain offence, and was not fit to live at large in society; and, therefore, granting warrant for his transmission to a penitentiary, to be there confined, instructed, and employed, until liberated in due course of law. The process of liberation would then become the one of the greatest importance. There should be official inspectors of penitentiaries, invested with some of the powers of a court, sitting at regular intervals, and proceeding according to fixed rules. They should be authorised to receive applications for liberation at all their sessions, and to grant the prayer of them on being satisfied that such a thorough change had been effected in the mental condition of the prisoner, that he might safely be permitted to resume his place in society. Until this conviction was produced, upon examination of his disposition, of his attainments in knowledge, of his acquired skill in some useful employment, of his habits of industry, and, in short, of his general qualifi-

cations to provide for his own support, to restrain his animal propensities from committing abuses, and to act the part of a useful citizen, he should be retained as an inmate of a prison. Perhaps some individuals, whose dispositions appeared favourable to reformation, might be liberated at an earlier period, on sufficient security, under bond, given by responsible relatives or friends, for the discharge of the same duties towards them in private which the officers of the penitentiary would discharge in public. For example, if a youth were to commit such an offence as would subject him, according to the present system of criminal legislation, to two or three months confinement in Bridewell, he might be handed over to individuals of undoubtedly good character and substance, under a bond that they should be answerable for his proper education, employment, and reformation; and fulfilment of this obligation should be very rigidly enforced. The principle of revenge being disavowed and abandoned, there could be no harm in following any mode of treatment, whether private or public, that should be adequate to the accomplishment of the other two objects of criminal legislation — the protection of society, and the reformation of the offender. To prevent abuses of this practice, the public authorities should carefully ascertain that the natural qualities of the offender admitted of adequate improvement by private treatment; and, secondly, that private discipline was actually administered. If any offender, liberated on bond, should ever re-appear as a criminal, the penalty should be inexorably enforced, and the culprit should never again be liberated, except upon a verdict finding that his reformation had been completed by a proper system of training in a penitentiary.”

No. V.

DREAD OF BEING CONSIDERED INSANE.

SINCE the first edition of this work, public attention has been attracted to the cases of Francis and Bean, and owing to the fact that, after his apprehension, Francis confessed that he had been prompted to the attempt by a desire to share the notoriety and comfortable provision of Edward Oxford; an idea has been expressed in many quarters, that, if capital punishment had been inflicted on that individual, the subsequent attempts on the life of her Majesty would not have taken place.

A momentary impression may be entertained that, if this opinion be correct, it must greatly militate against the view expressed in the text, but a little consideration will show that the facts of the case bear a totally different construction. The confession of Francis was made long after the excitement of the criminal impulse had passed away, and there is strong reason to believe that it was originated by the suggestion of his counsel and his friends. He averred that he had no intention of injuring the Queen, but that he merely desired notoriety; and this was evidently discredited by the jury, since they found him guilty of devising her Majesty's death. If he had merely been actuated by the alleged desire, it is hardly probable that he would have discharged a

loaded pistol, since he must have been well aware, after what passed at the trial of Oxford, that, if his attempt had terminated fatally, he would have had little chance of escaping a violent death. If a rational person—to suppose an impossibility—were to desire perpetual incarceration in a mad-house, he would see that many ways much more certain are at all times open to him. This point was well put by the Solicitor-General: “Could any sane man have acted thus? If he had not been protected by Colonel Arbuthnot, who could tell what might have been the consequences from the indignation of the by-standers? Insanity was not set up; and yet what sane man would have taken voluntarily upon himself the character of an assassin merely for the sake of a morbid love of notoriety?” Those, therefore, who state that Francis was perfectly sane, that his attempt was merely in imitation of Oxford, and that he should therefore have been hanged, fall into the predicament of asserting that death-punishment should have been inflicted for an act which is admitted by one of the law-officers of the crown to afford indubitable evidence of insanity!

But, even supposing that his confession was correct, it cannot be held as giving any evidence against the assertion that the idea of being considered insane is universally received with horror. Oxford, it must be remembered, has, in a majority of instances, been alluded to by the press and by medical men, as a person perfectly in his right mind, and as one who had made a very good provision by means of his attempted crime. Of course these opinions, widely circulated as they have been, have had a considerable effect in stimulating those unfortunates who labour under a morbid desire for notoriety, to the supposition that, by imitating his attempt, instead of proving themselves to be madmen, they

would stand forth, if not as heroes, at least as men of more than ordinary shrewdness.

The occasional reports, too, circulated by the press, of the comforts (comforts in a mad-house !) which the "sane" youth, Oxford, enjoys, must naturally tend to do away with all the dread which his fate would otherwise inspire. To the vulgar, who have no opportunities of knowing his actual condition, he has been represented rather as a State-prisoner, surrounded by distinctions and every ordinary gratification, than as a wretched being, the victim of an infirmity which must render it necessary that he should wear out the long remainder of his days in hopeless separation from the world.

The circumstance that Oxford seems perfectly comfortable in his present situation has often been cited as a proof of his sanity. The author of this work paid him a visit some months back, and had he required any further proof of unsoundness of mind than the crime which had been committed, this very contentment would have furnished it. Let the reader visit Bethlem Hospital, or any other lunatic asylum, and then say what he would think of a person who could make himself "perfectly comfortable," if doomed to continue within its walls for the remainder of his days !

In addition to the temptations afforded by the glowing representations of Oxford's state, we may notice the stimulus afforded to an insane desire for distinction by the proceedings usually adopted with criminals of this description. When we read of the examinations with which they are honoured before the Privy Council, at which "the Duke of Wellington, the Lord Chancellor, Sir Robert Peel, and others," attend with all solemnity; the rumours which dignify the culprits as agents of "secret societies," and

the eager attention bestowed by the press upon their minutest actions, our chief cause of surprise will be, not that these attempts occasionally take place, but that they occur so rarely.

The consequences which might have been expected if Oxford had been condemned to death, or transportation, were indicated by the event which took place after sentence of death had been passed upon Francis. The attack of the wretched creature, Bean, can admit of no misconstruction. It is true that the attempt occurred just after the sentence of Francis had been commuted to transportation, but there is evidence that it was meditated and determined on before this commutation took place. The commutation, moreover, had been long doubtful, and was granted amidst a degree of opposition sufficient to show that, in the event of the offence being repeated, no mercy was to be expected. At all events it is quite evident that Bean could have had no idea of being "comfortably provided for;" and that, apart from the danger of the law, he ran no slight risk from the sudden vengeance of the crowd. Indeed, so strong a feeling appears to have been entertained in some quarters that the act of shooting at her Majesty is perfectly consistent with the operations of a sound mind, and so great was the dread that future juries might be led to regard it as an irrational undertaking, that a correspondent of one of the daily newspapers felt called upon to offer a suggestion (which does not appear to have met with the slightest reproof), that, in order to avoid the possibility of so preposterous a decision, attempts of this kind should never be submitted to the judgment of a jury, but "that the by-standers, not waiting for the law's delay, should take instant and signal *vengeance* on the ruffian by sacrificing his life on the spot!"

It is worthy of remark, that when Bean was asked the cause of his absconding from home, he said "he was tired of his life." A newspaper also made a statement—regarding the correctness of which I am unable to speak—that Francis had attended the execution of Good, which took place a few days previously to his attempt, and that he had been so much excited by this exhibition that he could talk of nothing else, constantly referring to it with evident delight, and punning upon the man's name by such exclamations as "Hanging was too *good* for him." If this last statement be correct, it cannot fail to suggest misgivings as to whether this government spectacle may not either have originated, or at least in some degree stimulated, the excitement which impelled him to crime. What a satire does it present on the views of those who would have had Francis executed in order to deter persons similarly disposed from a repetition of his offence !

No. VI.

UNAIDED EFFORTS TO ESCAPE FROM
CRIME.

IN a Report of the Surrey Society for the employment and reformation of discharged prisoners, I find the following remarks: "The Committee are repeatedly hearing of cases of destitution and wretchedness (among prisoners, too, of whose penitence there can be little doubt,) to which the state of the Society's funds prevents them from affording any relief: and the consequence is, that many of them, most probably, fall again into crime.

"A case of this kind occurred within the last few weeks. A boy was committed to the House of Correction at Brixton for a month, for some petty theft. He had lost both his parents, and had no friends or relatives except one brother, whom he did not know where to find. He was anxious to go into the 'Refuge,' but the Committee, from want of funds, were unable to send him. He was advised to apply to the Workhouse for relief; but in a few days he returned to prison, having been a second time convicted of stealing. He stated, that he had applied to the Workhouse, and was taken in for one night, but he was turned out the next morning, and, being perfectly destitute of the means of support, he had recourse to stealing. The Chaplain at Brixton states to the Committee, that he sees and converses with many of the prisoners on their discharge,

on whose minds he believes a decidedly religious impression has been made; but, when urging on them the necessity of honest industry, he is frequently met with the question, ‘What are we to do, sir? We would gladly work; but we have lost our character, and nobody will employ us.’”

On the 10th July, 1841, Charlotte Cullum, a girl who had made a false charge against a policeman, and who had been remanded in order that an endeavour might be made to get her into some of the institutions for reclaiming girls who are inclined to become reformed, was brought before the magistrates at Guildhall. The Secretary of “The London Society for Protecting Female Servants” declined to receive her, the object of that Society being to sustain the well-disposed.

The Secretary of “The London Society for the Protection of Young Females,” Mile-End, attended, and said that the case appeared to be within the limits of the Society. The rules restricted their attention to reclaiming juvenile prostitutes; but, by one rule, they might make an exception in favour of a girl above fifteen years of age, and he would submit the case to the Committee. The great difficulty was, that the number of objects seeking to be reclaimed very much exceeded the means of the Society. *It did not receive above one out of every eighty applicants!*

THE END.

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