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Contributors

Butler, Josephine Elizabeth Grey, 1828-1906.
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Publication/Creation

Printed, by request, for private circulation among friends in Scotland,
Manchester : Ireland & Co., printers, 1871.

Persistent URL

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ADDRESS,

DELIVERED IN

CRAIGIE HALL, EDINBURGH,

FEBRUARY 24TH, 1871.

BY

JOSEPHINE E. BUTLER.

PRINTED, BY REQUEST, FOR *PRIVATE CIRCULATION* AMONG
FRIENDS IN SCOTLAND.

PRICE ONE SHILLING PER DOZEN.

To be had at the Central Office, 280, South Hill, Park Road, Liverpool.

MANCHESTER :

A. IRELAND & CO., PRINTERS, PALL MALL.

1871.

A. D. R. E. S.

THE STATE OF CALIFORNIA

TO THE HONORABLE SENATE

AND ASSEMBLY

FOR THE YEAR 1880

AND TO THE HONORABLE SENATE

AND ASSEMBLY

A D D R E S S .

ONCE when I was in Paris, I saw in a gallery a picture, which taught me a lesson. It was a picture of Saint Marguerite, as the representative of purity. She was very frail and youthful-looking, but, nevertheless, was seen advancing in the attitude of a conqueror, trampling upon a hideous dragon. The contrast between the gentle lady, in her pure white dress, and the disgusting creature beneath her feet, was striking. The dragon, the embodiment of some foul impurity, wickedness, and cruelty, was enraged at its conqueror, but terrified too, wallowing on the ground, breathing forth fire and venom, as hideous a monster as you can conceive. St. Marguerite had no look of fear, nay, not even of disgust, on her calm face, which was turned straight heavenward; and her fair feet, stepping with a conqueror's tread on the rough scales of the prostrate monster, were not the least soiled by his vileness, but remained as white as her heart was pure. This picture carried my thoughts away to many a struggle which the world has witnessed between good and evil, and it taught me to remember that when God sends forth his messengers to combat impurity in its most hideous forms, these messengers, weak though they be, need never doubt his power to keep them unharmed. There is no evil in the world so great that God cannot raise up to meet it a corresponding beauty and glory, which will blaze it out of countenance. But mark me, friends, in order to escape unhurt, we must oppose and tread upon the evil. If we merely look on at this unclean monster, wondering at him, amazed, we shall be the worse for it. It is the very pain and vigour, and humble trust in God,

induced by opposition, which enable us to rise above hurtful influences. It *is* possible to rise above all such hurtful influences, above the horror and disgust, and to attain to a region in which pure and elevating thoughts alone prevail. This is of God's goodness, who gives us armour fitted for the battle.

I was asked this morning when it was that my thoughts were first directed to this subject concerning which we are met together. As I am here among friends and fellow-workers only, I may answer this question, which is personal to myself. It is many years ago that I first became acquainted with this system as it existed in Paris. I was one of those persons—they were few, I believe—who read that very brief debate in the House of Commons in 1866, when Mr. Henley and Mr. Ayrton alone, but clearly and boldly, entered their protest. It was in that year that the knowledge first broke upon me that this system, which I had so long regarded with horror, had actually found a footing in our England. It seemed to me as if a dark cloud were hanging on the horizon, threatening our land. The depression which took possession of my mind was overwhelming. A few days ago I found a record of those days, in an old manuscript book long laid aside. In turning over its leaves, I found a note of that debate in the house, the date, and a written expression, which I had since forgotten, of a presentiment which at that time filled my mind, that in some way or other I should be called to meet this evil thing face to face—a trembling presentiment, which I could not escape from, that, do what I would, I myself must enter into this cloud. I find there recorded also a brief prayer, beseeching that if I *must* descend into this darkness, that divine hand, whose touch is health and strength, would hold mine fast in the darkness. I can recollect going out into the garden, hoping that the sight of the flowers and blue sky might banish the mental pain, but it clung too fast for a time for any outward impression to remove it; and I envied the sparrows upon the garden walk, because they had not minds and souls capable of torment like mine. But *now*, when I look back, I see that that prayer has been heard—the divine hand has held mine—often when I knew it

not. And, friends, God can give more than power to bear the pain ; there is a positive *joy* in His service, and in any warfare in which He who conquered sin and death and hell goes before us, and is our reward.

In England the aspect of the question before us, which affects most strongly the masses of the working-class electors, is the constitutional aspect. Even apart from the moral considerations involved, which are by far the most important, the working men will wage war to the death against this legislation, on account of its unconstitutional character ; and it is not, you may suppose, as a merely theoretic iniquity which these practical men oppose it. It comes home to them very closely ; they see at once the dangers which threaten their own homes first, and the whole commonwealth ultimately, through the admission of a principle into our penal legislation which is directly and violently opposed to the principles of the English constitution. Their instincts on this subject are more keen than are those of the upper classes ; this keenness of perception arises mainly from the fact that they, not being sheltered by rank, position, or wealth, have no guarantee of liberty, and of penal justice, except what is found in the bulwarks of that constitution which these Acts of Parliament have broken down.

I will presently briefly recount to you the main features of those just criminal laws which Englishmen have lived under hitherto. Scotch laws differ, I believe, in many respects from English laws ; and it may be that there is not among Scotch working men that deep attachment to the Constitution which I find in the English, though I believe the Scotchman has quite as strong a passion for freedom, and would be found to be stronger on the moral argument. It is well that we should understand clearly the illegal character of the Acts we oppose. I have been the more deeply impressed with the importance of this aspect of the matter, by reading the almost universal and powerful testimony of our great lawyers and historians to the danger of introducing, in any single instance, a lax, vicious, or unjust principle into our criminal code, and to the moral and social evils which such an introduction necessarily involves. Niebuhr,

De Tocqueville, Guizot, Hallam, Lieber, Creasy, Mackintosh, Blackstone, and a host of others, have again and again pointed out that upon the justice and purity of the penal legislation of a country the political wellbeing of that country mainly depends. The consideration of this subject has induced in me the deep conviction that public worship and the teaching of the Bible in a country where laws are corrupt, and freedom insecure, will do little more than to keep conscience alive in a remnant as it were, a minority of protestors, becoming yearly more saddened and more feeble amidst the corruption of social life through the sure and subtle teaching of the laws and public institutions; it will do little more than create an antagonism in the whole of society, between Christianity and the educational influence of public law and custom. The purity of our laws, then, is of the very highest importance in every aspect, political, social and moral. Again, if any great purification of our laws is to be brought about, as I trust it *is* to be brought about, at this anxious crisis of our nation's history, I, for my part, am deeply convinced, it cannot be achieved except through a mighty awakening of the conscience of the people—through a baptism into fresh spiritual life—through a great stirring up of hearts to prayer and to action. Day by day, as I work in this cause, it is more deeply impressed on my mind that we need a very great reviving from on high. Since I came to Scotland this thought has never been absent from my mind for a moment, night or day. My soul travails in pain up to this hour, wishing and longing for that outpouring of God's Spirit, that breath of heaven which, my friends, I declare to you I believe to be our only hope, in this our day, of preventing our country from entering upon the first step towards speedy national decline and dissolution; and it is a cause of grief and pain to me that I can find no words in which to convey to you the strength of that conviction which is laid upon my heart, and of that motive which impels me forward as by the force of an internal fire which burns without ceasing. I resolved before coming here this evening that I would be bold, and that, though some here might perhaps think

me fanatical, I would tell you frankly out of my heart what I wish for, what I think we need, and more—what I believe God will grant us. There is, to my mind, a cloud of blessing hanging over our land, which will not long remain a *little* cloud, but will cover the sky. The enemy we have to contend with is materialism, productive of a despotic absolutism, in one form or other. The evil we are combating has its root in a deep scepticism as to the possibility of virtue, and in the denial of eternal principles. Therefore it is that we can only combat it, and its manifestations in our laws and institutions, by the power and Spirit of God visiting once more in an unusual degree this vexed land of ours.

Before pointing out, then, the corrupt tendencies of some of our modern legislation, I will sketch to you, in the words of a great legal writer, the main characteristics of just criminal jurisprudence, begging you never to forget that while the Contagious Diseases Acts have been imposed upon us in the name of merely sanitary and economical regulations, they are, *in fact*, grave penal enactments—they have introduced a great and serious change into our criminal jurisprudence. This legal writer says—“The characteristics of a just, fair, and sound penal trial (which characteristics are invariable in essence, and hold good for all time) are as follows : No intimidation before the trial, no attempt by artifice to induce the prisoner to confess, or criminate himself; the fullest possible realisation of the principle that every man must be held innocent until he is *proved* to be guilty; bail; a total discarding of the principle, that the more heinous the imputed crime, the less ought to be the protection of the prisoner, but, on the contrary, the adoption of the reverse; a distinct indictment, and the acquaintance of the prisoner with it a long enough time beforehand to give him time for preparing the defence: the accusatorial process, with jury and publicity; counsel and defence for the prisoner; a distinct theory of evidence (such as is defined by our statutes); no *hearsay* testimony: a verdict upon such evidence alone; the accusation not to be made by the *executive*.” Now this definition of a just penal trial has hitherto been strictly adhered to in

every case of moral and legal guilt involving severe penalties. I could point out to you—(but you can see it for yourselves)—how in *every one* of these particulars the Contagious Diseases Acts depart from the characteristics of a fair, just, and sound penal trial. In the matter of mere economical laws there is no harm in the fact of the accusation being made by the executive, indeed it is needful—as for instance, when the policeman is the person who accuses a cab-driver of driving recklessly; but when it comes to a matter of such awful seriousness as that of a woman's honour, involving loss of character, which character is often, to a poor woman, her sole earthly property, her only possession and capital; involving, moreover, the penalties of personal assault, of a nature inadmissible hitherto in law even in the case of proved outrageous guilt; of imprisonment and of public registration as an infamous person; when it comes to this, I say, it is an awful thing to put the accusation in the power of the executive—that executive being the secret police, paid by the State, for the sole business of detecting and hunting down suspected or unchaste women. Again, the evil is aggravated by the fact that no other witness to the guilt of the woman is required, except the government spy, and that he, by this law, is not required to bring forward any overt act on the part of his prisoner, or one iota of positive proof, but is only required to believe and swear that the woman has a certain purpose or intention.

If you doubt, read the Act carefully for yourself, and read the accounts of proceedings under the Act. Again, and this is all important, the denial of jury trial is cardinal to the very existence of these Acts. Thus while to male criminals all the safeguards of penal law are granted, as indeed they *ought* to be, women are deprived of every one of these safeguards under these Acts. Now even supposing that none but the most guilty of the outcast class were brought under the Acts, the Acts still remain an extreme injustice, and an aggression upon our constitution, fraught with danger to the commonwealth; for, as Chancellor Hobart said, “an element of license introduced into our criminal code is the first step towards the destruction of the liberty for

all." I will not dwell on other points, as for instance the enforced self-crimination of the women, the dispensing, often, with the formality even of a Justice, but will pass on.

My recent inquiries on these matters have made me very sorrowful, as a lover of my country, and not only of woman-kind. There are other Acts of Parliament now in force, and several others I fear about to be passed, the tendency of which is in every case more or less unconstitutional, and more or less demoralising, using these words in a general sense. This type of legislation seems to me to flow from *one* source. I scarcely know how to designate that source. It is clumsy and despotic; and, though I have no doubt well-intentioned, it tends to the steady increase of the criminal class, by the rapid creation of new crimes, new offences, followed by new pains and penalties. It tends to bring us back to the old pantheistic State worship, to the substitution of the will of the State for individual conscience, and to that cruellest of all tyrannies which De Tocqueville shadows forth in his pages on the despotism of the future, the despotism which may exist with democratic institutions. This species of legislation assumes the right to coerce human beings to any extent which may seem to minister to a given material end, or to be temporarily expedient. It is stringent, punitive, and arbitrary. It is unchristian in the sense that it practically denies the possibility of moral renovation, and cuts off the means of rising from the stage of criminality to that of a reinstated membership of society. It deals out more and more punishment, more and more penalties, more and more espionage. It, in fact, legislates more and more for persons, as if they were "physical facts," and not "moral agents." It defies the instinct of freedom in man, and ignores the power of renewal in human character. The broad principles of our Constitution are so glorious in their acknowledgment of the dignity and worth of human beings, that wherever this new legislation takes root, it is obliged to do so outside of the Constitution, so to speak, or in direct violation of its principles. To the class of laws of which I speak belongs the Habitual Criminals Bill, which even now has begun to bring forth vicious fruit, to fill our streets with spies, and to drive men to despair.

Again, there is the Pedlars Licensing Bill, which forbids a poor man to get a license to sell anything who may have been formerly committed for a legal offence, and which in fact says to a man, "You have sinned once, you shall not henceforward be allowed to pursue an honest trade." Pre-eminent among such legislation stand the Acts against which we are contending, in this particular of branding those once fallen, and assigning them to the rank of professional and marked criminals.

But I must here point out very emphatically that the Contagious Diseases Acts stand alone in one sense, inasmuch as they embody a far deeper iniquity than any of these other laws, and directly violate the law of God, by offering protection to a vice which in opposition to that law they pronounce to be necessary, and inasmuch as, while they cruelly brand the class to whom they apply, they at the same time give to the awful traffic which this class pursues the dignity of a recognised, legitimate, and even protected industry.

It should be one of the aims of wise legislation to throw wide open the door of recovery to the lapsed classes; and motives even of self-interest should prompt legislators to endeavour to reinstate every criminal who has endured his legal punishment. The element, which I have tried to indicate, embodied in some of our recent legislation, tends to create a large class of criminals and outlaws, of sullen and despairing people, lost to self-respect, and for ever hunted by a watchful police. We are being hurried into fearful dangers. It has appeared to me at times as if we were smitten with a curse, a judicial blindness, which is leading a Parliament, nominally the most liberal we have ever had, to inaugurate a reign of materialism and despotism. We know the effects of the growth of a proletariat class in ancient Rome and in other countries. We are rapidly creating at this moment a proletariat class, and the creation of such a class ensures sooner or later the smothering of a nation in its own mud. I hold in my hand an Act of Parliament, called "A Bill for the better protection of infant life," which to some extent illustrates what I have been saying. I do not wish to be understood to condemn absolutely all such

legislation, but it is impossible not to be struck with the fact that this Bill, the "Habitual Drunkards Bill," and others which I have mentioned have not in them one particle of *prevention*. These Acts of Parliament assume that we are to acquiesce in the present state of England as its normal state; they assume that we are to continue to have so many thousands of paupers, so many thousands of habitual criminals, of outcast women, of drunkards, &c., &c. Measures for dealing with these classes as they now exist may be necessary; but, while they are enacted, common sense requires, and surely the country will demand, that measures for *preventing* these enormous evils shall at least keep pace with measures for regulating them. A measure, for instance, is passed for licensing baby-farming, and for punishing infanticide, but nothing is done to increase the responsibility of the fathers of illegitimate children, and the seducers of girls who are minors are still left unpunished by law. Little or nothing has yet been done to lessen the temptations to drunkenness, while expensive provision is to be made for those who have become confirmed in that vice.

Now the spirit of the teaching of Christ is the very opposite of that which animates so much of this legislation. It is said of God, "He giveth liberally and upbraideth not;" but man gives grudgingly, upbraiding all the time. The Christian religion teaches that we shall forgive a fallen brother not once but many times, and that forgiveness shall be practically proved by granting an open path to recovery, that it shall not be a forgiveness followed by perpetual espionage, suspicion, and the ban of society fastened upon the once fallen for the rest of their lives. I am not insisting that the Christian rule is to be followed out to the letter in penal legislation, but I maintain that legislation which violently adopts principles the very opposite of Christian comes from an evil source, and will be followed by disastrous consequences.

The principle of arbitrary compulsion embodied in some of our *sanatory* Acts is fraught with danger. The medical and sanatory measures embodied in such Acts may in themselves be excellent, but they are for the most part grounded on opinion

only—the opinion sometimes of a mere clique,—which opinion has none of the authority of those eternal principles of right and wrong which are written within the human conscience. Wherefore, by the creation of a multitude of technical crimes through the multiplication of these compulsory-sanatory and other Acts, the criminal class is enormously increased, and to some extent the mind is demoralised, while the body may or may not be kept in health. The forcible doctoring of the people, whether they will or no, is, as a matter of mere policy, a most dangerous experiment. The magisterial powers now granted to State doctors, the amount of domiciliary visitation already legalised for police and medical men, to which the families of the poor have to submit, are not likely to make the people in love with the laws, or to induce in them a readiness to help their operation; and if the people at large do not cheerfully help the action of any law, that law must come to end either by dying a natural death or by revolution. Much sullenness and revengefulness are even now being bred in the minds of large sections of our working men by the action of some of these stringent criminal-making laws; whereas it should be the policy of a wise government to secure the co-operation of this vast and powerful portion of our population in the maintenance of law and order.

There is another evil incidental to the enforcement of these multiplied enactments which are now so rapidly following one another. All these laws are administered by the central authority, which, from London, stretches its hand over the vast populations of our great cities. This gradually increasing centralisation overrides municipal authority, represses corporate freedom, and tends to deaden and stupefy the political life and self-governing power of our great provincial capitals. The local self-government of our country has ever been the object of the admiration of thoughtful foreigners, who attribute to it much of the manly character, the respect for law, and the readiness of resource in emergencies which characterise our countrymen. But all these things are struck at by this threatening imperialism, which works the ruin of corporate freedom as much as that of individual virtue and liberty, by treating the subject as a mere child or chattel, and imposing a uniform rule upon all alike.

The new forthcoming Sanatory Bill is one which ought to be jealously watched by the people. It seems likely to involve uniformity of prescription in matters where such uniformity is least wise, and where the power of self-regulation is most wholesome, as well as to increase the magisterial powers of State doctors to an extent hitherto unknown.

The influence of women and their faith in the recoverability of human nature are needed in these legislative matters. Our male legislators are apt to ride rough-shod over us in matters of domestic detail. Their heavy-handed legislation is applied now not only to matters of imperial interest, but to everything which most nearly concerns our conscience and feelings. It seems to me that we women shall soon have to fight for the last inch of ground left us;—not for our civil rights only, but for our hearths, our homes, our beds, our babies, our very persons. The crudeness of intellect of some of our young male legislators needs to be corrected by the wisdom of the thoughtful matrons of England. A young M.P. said to me lately, "We shall do no good at all until we make poverty a crime; disease is already made a crime in some cases, and poverty ought to be so also." I did not answer him, but in my heart I said, "Thou fool!"

Such are some of the dangers before us. It has lately been suggested by several gentlemen who are alive to this subject, that it may be desirable and necessary to form some sort of a Covenant or League, of a wide and national character, for the protection of freedom and virtue as its general object, and in particular to observe vigilantly, and examine strictly, every proposal and act of the legislature, especially such as emanate from certain favoured cliques or professions, and to secure that nothing passes into law which has not the sanction of the whole nation, marked by open debate in Parliament, and by a majority of votes in a House where there is more than a mere fraction of members present. It has been suggested that no penal measures, involving extensive interference with the liberty of the subject, or measures sanctioning the erection of new tribunals for the assigning of grave and terrible penalties, shall in future be enacted except where two-thirds, or at least some

reasonably large proportion of the House are present. It is a rule, in many private and public associations, that no grave or important changes or measures shall be made or enacted except in the presence of a very large proportion of the members, constituting a quorum. It would surely be a very right and natural demand on the part of the people of England (with the warning they have now before their eyes of the secret passing of the Contagious Diseases Acts) that Parliament should never again make any great change in our penal code, or infringe upon constitutional principles, in the name of sanitary improvements, medical necessities, or any other thing, except by means of such a parliamentary quorum as would satisfy the nation.

Any national league, such as has been suggested, for the defence of the constitution, of liberty, and of morality, would of course be composed both of men and women. Women are becoming rapidly educated in all these matters, and their vigilance would naturally exceed even that of men, for most of these threatening tyrannies fall *first*, if not exclusively, on women and children.

I know not what work God may have in store for us, dear friends, but this I know, that it is not for any small end that He has called our Association together, a mighty band throughout the kingdom, united with one heart in the presence of a common danger. He has not called up all these rapidly-formed and grave friendships, this loving co-operation and powerful mutual help, for any end or aim inadequate to so great an instrument. I believe that the repeal of the Contagious Diseases Act, which is our immediate object, is only a small part of the work He has designed for us. I know not what that work may be; but this is sure, that God knows and that he is guiding us. I believe that the materialism of the day and the principle which opposes that materialism are about to meet and to try their strength in a deadly encounter, and that we have a great and holy work before us. We must be filled with high courage, hope, and stern resolve. Think what a machinery we have now for work! Our branch societies, our local secretaries, our power of concentration on a given point at a given moment, our organisa-

tion generally, resembles a great telegraphic system which is a swift and formidable power. But our power is not in the machinery; it is in the living principle which runs like lightning through this great telegraphic system.

I know there is abundant life in Scotland, but I venture to beseech you, friends, on behalf of England, which needs your help, as well as of your own country, to pray and seek for a redoubling of that life; for surely God is about to do great things. The power of evil is very awful, but greater is He who is with us than they who are against us. All cannot work actively for the ends we have in view, but all can pray, and

“More things are done by prayer than this world dreams of.”

Faint, illegible text, likely bleed-through from the reverse side of the page. The text is mirrored and difficult to decipher.