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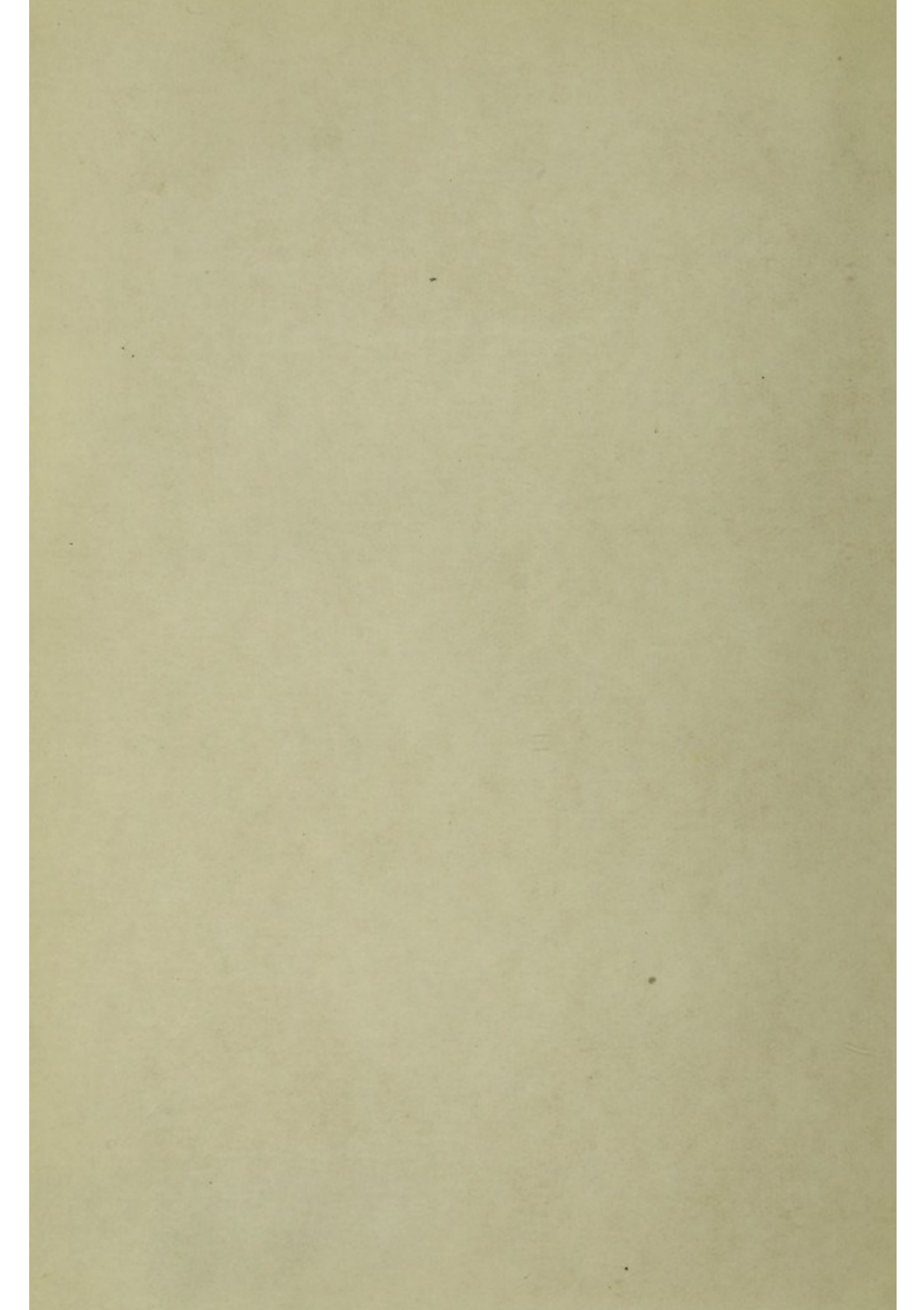
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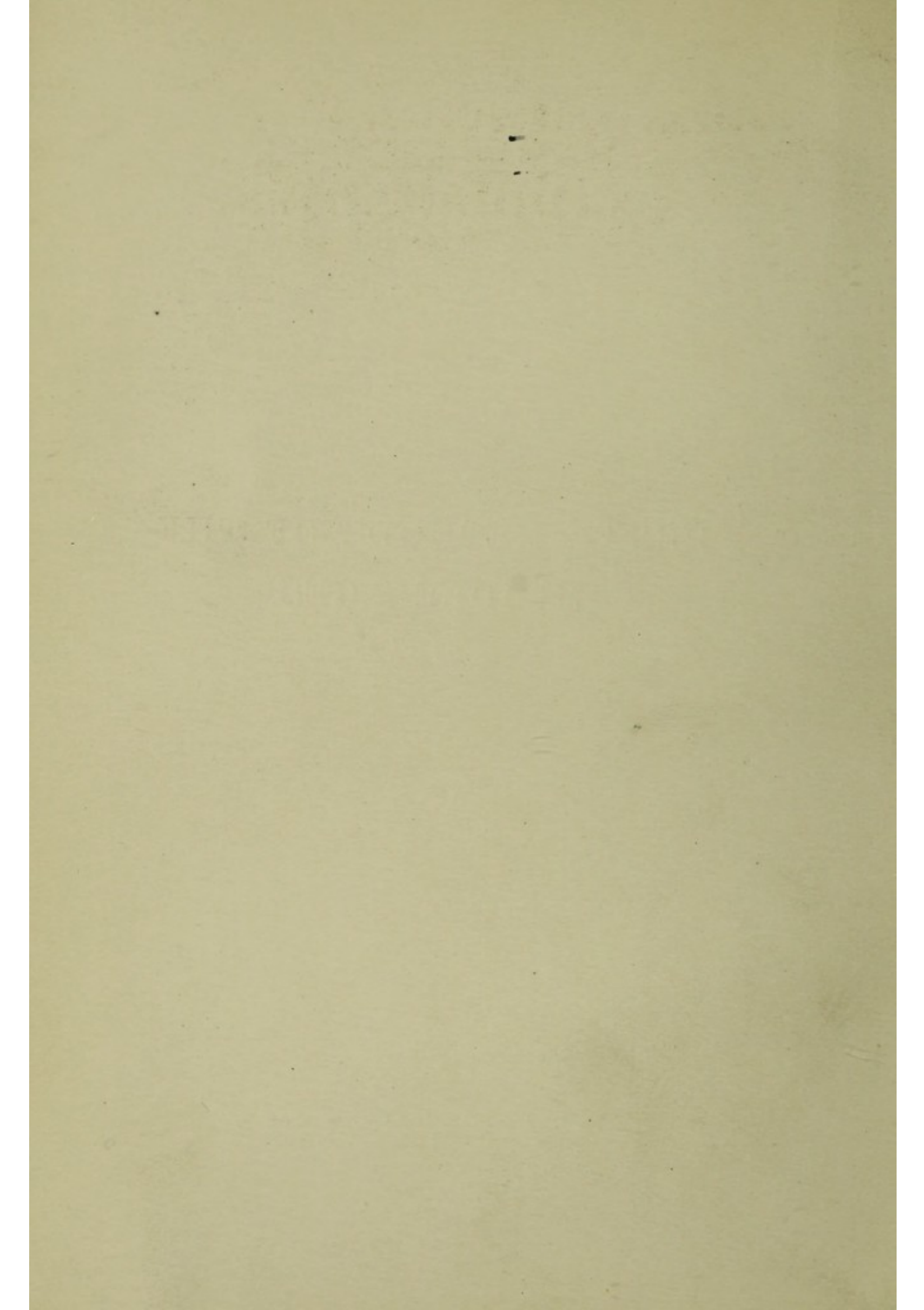
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PENAL METHODS OF THE
MIDDLE AGES



PENAL METHODS OF THE
MIDDLE AGES

CRIMINALS, WITCHES, LUNATICS

BY

GEORGE IVES, M.A.

PRINTED FOR PRIVATE CIRCULATION

1910

NTAL DISEASES, Treatment: Medicinal
TECHRAFT: Medicinal

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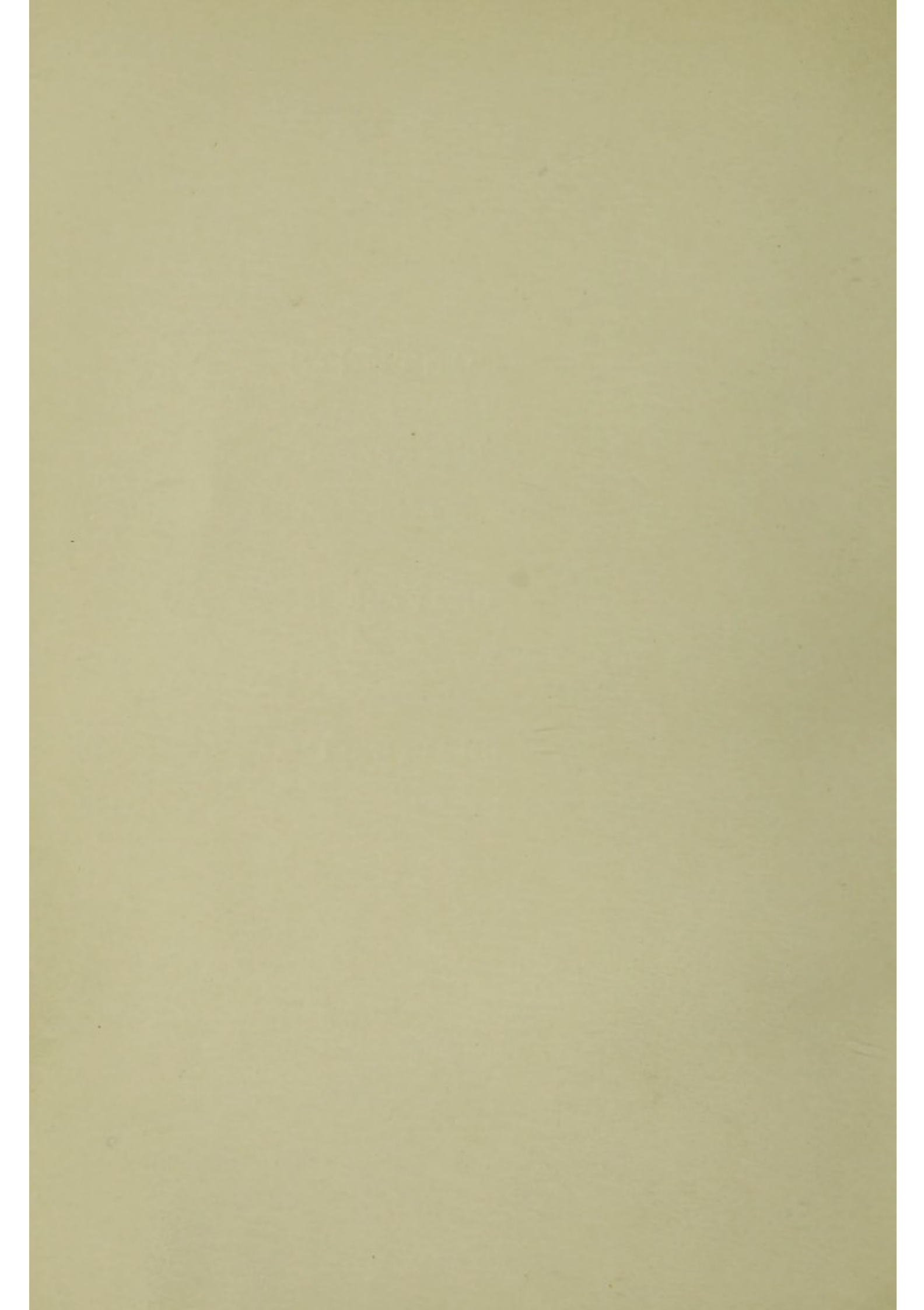
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CHAPTER I

PENAL METHODS OF THE MIDDLE AGES

PRISONS as places of detention are very ancient institutions. As soon as men had learned the way to build, in stone, as in Egypt, or with bricks, as in Mesopotamia, when kings had many-towered fortresses, and the great barons castles on the crags, there would be cells and dungeons in the citadels.¹ But prisons as places for the reception of "ordinary" (as distinct from state or political) criminals for definite terms only evolved in England many centuries afterwards²; whilst imprisonment as a punishment in

¹ "In the early cuneiform writing . . . the symbol for a prison is a combination of the symbols for 'house' and 'darkness.'"—Isaac Taylor, *History of the Alphabet*, p. 21. London, 1899.

² It has been said that imprisonment is not mentioned in Anglo-Saxon laws as a punishment; it is, however, referred to in the laws of Æthelstan thus: "For murder let a man forfeit his

itself,¹ to be endured under rules made expressly punitive and distressful, may be described as essentially modern, and reached its worst phase in the nineteenth century.²

The Teutonic Tribes of the bays and forests were fierce and free. They exemplified, in fact, the theory of Nietzsche, that liberty cannot be granted but must be taken.³ They had not cowered before Oriental superstitions,⁴ and as they lived in widely scattered hordes a central

life, if he will deny it and appear guilty at the threefold ordeal let him be 120 nights in prison; afterwards let his relations take him out and pay the king 120 shillings and to his relatives the price of his blood. . . ." See J. Johnson, *Ecclesiastical Laws*. London, 1720. The same king ordained that "If a thief be brought into prison that he be 40 days in prison and then let him be released thereout with cxx. shillings and let his kindred enter into borh for him that he will ever more desist."—B. Thorpe, *Ancient Laws and Institutions of England*, fol. ed. p. 85. London, 1840.

¹ "In the reign of Henry III. imprisonment for a definite period was an unknown punishment."—G. J. Turner, *Select Pleas of the Forest*, p. lxxv. London, 1901.

² "Imprisonment occurs in the Anglo-Saxon Laws only as a means of temporary security."—Pollock and Maitland, *Hist. Eng. Law*, vol. i. p. 26. Cambridge, 1895.

³ "In the nature of the Saxons in the most ancient times there existed neither a knowledge of the most high and heavenly King . . . nor any dignity of honour of any earthly king. . . ."—W. Stubbs, *Const. Hist.* p. 49. Oxford, 1880.

⁴ *Ibid.* p. 75.

government could not impose its yoke upon the savage warriors. With the wild clansmen of the fierce Norse nations, where every man was always ready armed¹ and boys received their weapons at fifteen,² the great desideratum was the maintenance of peace.

The instinct of retaliation throbs in all men, and vengeance swift and bloody would be sought for, which, where the kindred ties were close and strong, might spread a feud through villages and clans, such that the very children might be born devoted to the duty of a family revenge. The Teutonic nations, like the free peoples they were, always assumed that for a crime to have been committed, an individual must have suffered injury.³ And they conceived the aggrieved

¹ "Nihil neque publicae neque privatae rei nisi armati agunt."
—Tac. *Germ.* xiii.

² Among the Jutes, etc., see J. M. Lappenberg, *Hist. of Eng. under the Anglo-Saxon Kings*, i. p. 97. London, 1845. The Anglo-Saxon lad came of age at twelve; see work just quoted, p. 173, and J. Thrupp, *The Anglo-Saxon Home*, p. 108. London, 1862.

³ The exceptions to this wise though primitive rule are to be found where occasionally "God" and even "Nature" would be cited as injured third parties, upon theological grounds. See, for instance, N. Marshall, *Penitential Discipline of the Primitive Church*, pp. 49, 190, Oxford, 1844; and the thirteenth-century *Mirror of Justice*, chap. xiv.

plaintiff as no cowed weakling (or he would not have counted), but as a fighting freeman with spear and shield, who would repay a wrong with interest, and whom, if slain, his kinsmen would avenge.

Thus the placation¹ of the injured party was the objective of the oldest laws. Allowance was made for human feelings² and impulses. Some ancient codes³ permitted him like for like ; an eye for an eye, and a tooth for a tooth, in the sense of so much, and no more.⁴ But the Teutonic laws offered him compensation,⁵ and,

¹ "To keep the peace is the legislator's first object, and it is not easy. To force the injured man or the slain man's kinsfolk to accept a money compensation instead of resorting to reprisals is the main aim of the law-giver."—F. W. Maitland, *Constitutional History of England*, p. 4. Cambridge, 1908.

² Thus in the Laws of the XII. Tables the manifest thief would be killed if a slave, or if free become the bondman of the person robbed ; if, however, he were captured later, he had to refund double the value of what he had taken. By the Germanic codes a thief might be instantly chased and then hanged or decapitated, but fines for homicide would be imposed if he were slain after an interval. Henry Maine, *Ancient Law*, ed. of 1906, pp. 387, 388.

³ For instance, Exodus xxi. 23, 24, 25.

⁴ See E. Westermarck, *Moral Ideas*, vol. i. p. 178. London, 1906.

⁵ At first it was not always necessary to accept the blood-fine. See E. W. Robertson, *Scotland under her Early Kings*, p. 287,

when it was possible, compelled him to accept it.¹ Thus crimes were met by restitution, not by punishment.²

Every sort of injury which one freeman could do to another was first of all atonable by bōt (a money compensation paid to the injured man or his relations).³ What this fine was depended firstly upon the nature and extent of the damage done, and secondly upon the rank and importance of the person injured.⁴ For every man had his

Edinburgh, 1862, on this point; and as to the treatment of female relatives, see J. Thrupp, *Anglo-Saxon Home*, p. 151.

¹ In the seventh century a law of Ine ordained that "If any one takes revenge before he demands justice, let him give up what he has taken to himself and pay the damage done and make bōt with xxx. shillings."—Thorpe, *Ancient Laws and Institutions*, fol. ed. p. 48.

² "The penal law of ancient communities is not a law of crimes; it is a law of wrongs, or, to use the English technical word, of torts. The person injured proceeds against the wrongdoer by an ordinary civil action, and recovers compensation in the shape of money damages if he succeeds."—Maine, *Ancient Law*, p. 379.

³ "It is curious to observe how little the men of primitive times were troubled with these scruples (as to the degree of moral guilt to be ascribed to the wrongdoer), how completely they were persuaded that the impulses of the wronged person were the proper measure of the vengeance he was entitled to exact, and how literally they imitated the rise and fall of his passions in fixing their scale of punishment."—Maine, *Ancient Law*, p. 389.

⁴ "Every man's life had its value, and according to that

class and value; and every form of aggression against a freeman, from a wound which killed him outright to a blow which deprived him of a single tooth,¹ as well as the theft of anything he possessed, had its appointed fine according to his wer.²

The tariffs varied with the different tribes,³ but the main principle—of compensation—extends through all. In Mercia the wer-gild of a king was fixed at 7200 shillings or 120 Mercian pounds of silver,⁴ to which great sum was added the cynebot of a similar amount which was payable to his people.⁵ The wer-gild of a thane (*i.e.* county magnate) came to valuation the value of his oath in a court of justice varied, and offences against his person and protection were atoned for.”—Stubbs, *Const. Hist.* i. p. 188.

¹ A front tooth usually cost six shillings; in Alfred's time, eight.

² Laws of Æthelbert. If a freeman rob the king let him pay a forfeiture ninefold. If a freeman rob a freeman let him make threefold satisfaction.—J. Johnson, *Ecc. Laws*.

³ For a collection of the various codes and for examples of their amazing minuteness as to all possible injuries, see F. Lindenbrog, *Codex legum antiquarum*, pp. 474, 498, etc. Frankfort, 1613.

⁴ The Mercian pound was equal to 60 scillings, the Wessex to 48; see H. A. Grueber, *Handbook of the Coins*, p. ix. London, 1899.

⁵ Stubbs, *Const. Hist.* i. p. 109.

1200 shillings, that of a ceorl (labourer) was 200 shillings.¹

These murder-fines, however, were much heavier than they look;² those of the kings,³ numerous as they were, would in most cases have been hopelessly unpayable by private people, and those of the thanes by humble families. Even the wer-gild of the ceorl, or labourer, which was 200 scillings, or about four pounds, was not inconsiderable when we remember that in Æthelstan's time one scilling would buy a sheep, and six scillings (or thirty pence)⁴ an ox—the cost would be the price of a small herd.⁵

So that frequently the man-fines⁶ were never

¹ Thorpe, fol. ed. p. 80.

² W. S. Holdsworth, *History of English Law*, p. 13. London, 1903.

³ J. M. Kemble, *The Saxons in England*, i. p. 149. London, 1876.

⁴ R. Ruding, *Annals of the Coinage*, p. 110. London, 1840.

⁵ F. W. Maitland, *Domesday Book*, p. 44. Cambridge, 1897.

⁶ "It was at least theoretically possible down to the middle of the tenth century for a man-slayer to elect to bear the feud of the kindred. His own kindred, however, might avoid any share in the feud by disclaiming him; any of them who maintained him after this, as well as any of the avenging kinsfolk who meddled with any but the actual wrongdoer, was deemed a foe to the king."—Pollock and Maitland, *Hist.* ed. of 1898, i. 48.

paid, and then we perceive that the wise compensation system of the codes arose more out of the fear of the vendetta than from humane principles; ¹ if they were not paid, vengeance would be let loose.

If the offender were not slain or abused, ² if he did not escape and live as an outlaw and a "wolf's head" ³ (which was frequently done, ⁴ for there were some ten men outlawed ⁵ to every one hanged ⁶), he might be sold ⁷ as a wite theow ⁸ into penal slavery. ⁹ For there were slaves as a class in Christendom and in Eng-

¹ When a ceorl had been frequently accused, if afterwards he were apprehended he might lose a hand or a foot.—Laws of Ine. R. Schmidt, *Gesetze*, p. 29. Leipzig, 1858.

² See Laws of Ine, sect, 12. Thorpe, fol. ed. p. 49.

³ Pollock and Maitland, *Hist.* i. 476 and ii. 451, ed. of 1898.

⁴ J. Thrupp, *Anglo-Saxon Home*, p. 145.

⁵ G. G. Coulton, *Chaucer and His England*, p. 293. London, 1908.

⁶ Pollock and Maitland, i. 478, ii. 450.

⁷ And see *Early Assize Rolls for the County of Northumberland*, pp. xviii., xix., etc. Durham, Surtees Society, 1891.

⁸ Stubbs, *Const. Hist.* p. 89.

⁹ Dooms of Alfred, sect. 24. "If any one steal another's ox and slay or sell it, let him give two for it, and four sheep for one. If he have not what he may give be he himself sold for the cattle."—Thorpe, *Laws*, fol. ed. p. 23. Compare Exodus xxii. 3; Pollock and Maitland, *Hist.*, ed. 1895, vol. ii. 514.

land up to the twelfth century,¹ and they being helpless, like our "submerged" masses, were of little account at all in the community.

Derived mainly from the conquered taken in wars and raids,² their ranks were recruited by men sold for their offences, and likewise, it is said, from those who sold themselves in times of starvation;³ many were sent as slaves beyond the seas,⁴ and the fact that we find this custom repeatedly prohibited⁵ testifies also to its prevalence.⁶

From the poor slaves there need be no fear of

¹ Pollock and Maitland, ii. p. 11.

² The intertribal wars at one time "filled the foreign markets with English slaves," says J. R. Green, relating the well-known story of Pope Gregory.—*Hist. Eng. People*, i. 37. London, 1881.

³ Hovenden. H. T. Riley's ed. i. p. 143. London, 1853.

⁴ A vigorous slave trade was carried on just prior to the Conquest.—Thrupp, *Anglo-Saxon Home*, p. 130.

⁵ Pollock and Maitland, *Hist.* i. p. 12. Cambridge, 1895.

⁶ Law of Ine, seventh century. "If any one sell his countryman bound or free, though he be guilty, over sea, let him pay for him according to his wer."—Stubbs, *Charters*, p. 61. Oxford, 1884.

Law of Æthelred. "Christian men and condemned persons are not to be sold out of the country, at least not into heathen nations."—Thorpe, fol. ed. p. 135.

A law of William I. was to the same effect.—R. Schmidt, *Gesetze*, p. 347.

vengeance or retaliation; they were a voteless minority amidst Saxon freemen. If a slave were slain only eight shillings were payable to his kinsfolk,¹ while a man-bōt of thirty shillings was claimed by his master.² And that, it would seem, was all on the part of the State.³ The Church, however, to its credit, imposed a penance, a two years' fast.⁴ Other injuries to the theow (slave) were treated with proportional mildness,⁵ but of Church laws and discipline I shall have to speak presently.⁶

For the damage done by his slave the master was liable,⁷ as for a trespass by his cattle.⁸ For the more serious offences the theow would be

¹ F. W. Maitland, *Domesday Book*, p. 31.

² Æthelbert. "If any one slay a ceorl's hlf-æta, let him make bōt with vi. shillings."—Thorpe, fol. ed. p. 3.

³ Thorpe, 8vo ed. i. p. 626.

⁴ Thrupp, *Anglo-Saxon Home*, p. 127.

⁵ See *Theodori liber poenitentialis*. Thorpe, fol. ed. p. 288. *Poenitentiale Ecberti*, lib. ii. 3. Thorpe, p. 368.

⁶ Compare Exodus xxi. 20, 21: "And if a man smite his servant, or his maid, with a rod, and he die under his hand; he shall be surely punished.

"Notwithstanding, if he continue a day or two, he shall not be punished: for he is his money."

⁷ Stubbs, *Const. Hist.* p. 89.

⁸ Omne damnum quod servus fecerit, dominus emendet.—Thorpe, fol. ed. p. 11.

handed over to the kinsfolk of the injured party, unless perchance his master should redeem him by payment.¹ If upon accusation he failed at the ordeal, he was to be forthwith branded the first time;² but the second conviction would be capital, “*secunda vice non compenset aliquid nisi caput.*”³

Apart from legal or revengeful penalties for wrongs done to any freeman,⁴ the theow was absolutely at the mercy of his master.⁵ If he were not allowed to “redeem his hide” by such small compensation or atonement of which he was capable, he might have one leg fastened by a ring to a stake, round which he would be lashed with a three-thonged whip.⁶ It was composed of cords knotted at the ends.⁷ If a

¹ Maitland, *Domesday Book*, p. 32.

² Or he might be scourged thrice, *temp.* Æthelstan. See Thorpe, fol. ed. p. 88.

³ Laws of Æthelred. D. Wilkins, *Leges Anglo-Saxonicae*, p. 103. London, 1721.

⁴ By Alfred's Doms rape on a ceorl's female slave was punished by a five-shilling bōt to the ceorl; if a theow committed the offence, he might be emasculated.—Thorpe, fol. ed. p. 35.

⁵ Stubbs, *Const. Hist.* i. p. 25.

⁶ Thrupp, *Anglo-Saxon Home*, p. 131.

⁷ William Andrews, *Old-Time Punishments*, p. 146. Hull, 1890.

ceorl were goaded into homicide, vengeance might then be taken upon six of his kinsfolk¹ (upon the principle that the thane had six times his value,² see wer-gilds, *ante*, and Maitland, *Domesday Book*, p. 53). If a theow killed his lord³ he was to perish in torments;⁴ for revenge was sweet,⁵ and the strong took it without stint.⁶

Clearly, then, from the nature of early Saxon society, elaborate penal machinery had no place. The freemen atoned for their transgressions with fines when possible, and by slavery, mutilation, outlawry, or death when they could not pay. Cruelly as the slaves might be flogged or slaughtered, there were no prisons in the land even for them.⁷ "The villages were mere groups of wooden homesteads with barns and cattle sheds

¹ Thrupp, *Anglo-Saxon Home*, p. 144.

² E. W. Robertson, *Scotland*, ii. p. 450.

³ Pollock and Maitland, *Hist.* ed. 1898, ii. p. 450.

⁴ See Thorpe, 8vo ed. vol. i. p. 579: "Si quis dominum suum occidet," etc.

⁵ F. Lindenbrog, *Codex legum antiquarum*, p. 498.

⁶ For similar laws in ancient Wales and eighteenth-century America, etc., see Westermarck, *Moral Ideas*, i. p. 518.

⁷ "Imprisonment," say Pollock and Maitland, "would have been regarded in those old times as a useless punishment; it does not" (as it was then employed and understood) "satisfy revenge, it keeps the criminal idle, and do what we may it is costly."—*Hist. Eng. Law*, ed. of 1895, vol. ii. p. 514.

surrounded by rough stockades and destitute of roads or communications. Even the palace of the king was a long wooden hall with numerous outhouses, for the English built no stone houses and burnt down those of their Roman predecessors.”¹

The Teutons, according to Tacitus, abhorred walled towns as the defences of slavery and the graves of freedom. The Frisians forbade the construction of any walls more than 12 feet high.² In the course of time the crown, or central government, grew in power; the king, and even the great lords, spiritual and temporal, were able to enforce obedience and order, at any rate upon those in their neighbourhood.³ The royal authority could defy the vendetta, and from very early times had claimed a share in the compensation,⁴ so that, along with the wer-gild, payable to the injured party, the wite,

¹ Grant Allen, *Anglo-Saxon Britain*, p. 47.

² E. W. Robertson, *Scotland*, p. 295.

³ Laws of Ine. To fight in the king's house rendered the offender liable to be put to death.—J. Johnson.

Laws of Alfred. To fight in the presence of an archbishop meant a fine of 150 shillings.—Thorpe, p. 32.

To fight in the house of a common man meant a mulct of thirty shillings, and six shillings to the ceorl.—J. Johnson.

⁴ Thrupp, *Anglo-Saxon Home*, p. 148.

or additional fine, had to be paid to the sovereign (or overlord) for the disturbance of his peace.¹

Sometimes he would take vengeance for the State or for an aggrieved person.² Thus in the reign of Æthelstan a man might forfeit his hand for coining, and have it nailed over the door of the mint;³ and in the reign of Cnut a woman might lose her nose and ears if she committed adultery. In the early period these mutilations appear to have often been intended to be mortal, for in the laws of Alfred and Guthrum we read that "If a malefactor, having forfeited himself, has had a limb cut off, and, being left to himself, survive the third night; afterwards he that is willing to take care of his sore and soul may help him with the Bishop's leave."⁴

But the maimed criminals were also allowed at large to be a living warning to others. That the Saxons could be cruel enough when *bōt* was not made, and to habitual criminals and slaves, we have seen already; how barbarous the amputations were may be gleaned from the words of our Danish monarch: ". . . At the second

¹ See example, *temp.* Cnut. Thorpe, fol. ed. p. 174.

² J. Johnson, *Ecc. Laws*.

³ Thorpe, fol. ed. p. 174.

⁴ J. Johnson, *Ecc. Laws*.

time let there be no other bōt if he be foul" (at the ordeal) "than that his hands be cut off or his feet, or both according as the deed may be, and if then he have wrought yet greater wrong, then let his eyes be put out, or his nose and his ears and the upper lip be cut off; or let him be scalped . . . so that punishment be inflicted and also the soul preserved." ¹

William the Norman enjoined that offenders should not be slain outright, but hacked about.² "Interdicimus," he commands, "eciam ne quis occidatur vel suspendatur pro aliqua culpa sed enerventur oculi, et abscindantur pedes vel testiculi, vel manus ita quod truncus remaneat vivus in signum prodicionis et nequicie sue." ³

About the tenth century, after the ending of the Danish troubles, and in the eleventh under the Norman rule, the king was strong enough to extend his power and protection.⁴ In the twelfth the old system of bōt and wer, designed to compensate the injured and keep the peace among a fierce and warlike race of freemen,⁵ began to give place to one under which the king

¹ Thorpe, *Laws of Cnut*, fol. ed. p. 169.

² *Ibid.* p. 213.

³ See *Saxon Chronicle*, J. Ingram's ed. p. 295. London, 1823.

⁴ Stubbs, *Const. Hist.* i. p. 204.

⁵ Maitland, *Domesday Book*, p. 33.

exacted punishment and tribute,¹ which he administered and collected through itinerant judges, sheriffs, and other officers.²

The heavy fines imposed on places and people³ became an important source of revenue to the crown⁴ and to the barons and the lords of manors⁵ when they held rights of private jurisdiction⁶ (Sake and Soke, Courts Leet,⁷ etc.), which were frequently delegated.⁸

¹ Often of death for serious offences, but the prisoner's goods were forfeited for felony; hence it was to the profit of the government to have many felonies. See F. W. Maitland, *Const. Hist. Eng.* p. 111, and J. Britton, Nichols' ed. p. 35. Oxford, 1855.

² "To them" (the subject people) "a new tribunal seemed only a new torment."—L. O. Pike, *Hist. Crime*, i. 134. London, 1873.

³ The hundreds were liable to be fined for undetected murders—as villages now are in India—and also officers for neglect of duty; see T. Madox, *History and Antiquities of the Exchequer*, chap. xiv. p. 539, etc. London, 1769. J. Britton, F. M. Nichols' ed. p. 138. This liability was abolished in the reign of Edward III.; see W. S. Holdsworth, *Hist.* p. 8.

⁴ T. Madox, *Hist. Exch.* i. p. 425, etc.

⁵ Maitland, *Domesday Book*, p. 52.

⁶ *Infangthef*, the right to hang a thief, "hand having and back bearing." *Utfangthef*, the right to punish a thief beyond the particular boundary.

⁷ Holdsworth, *Hist.* p. ii.; and see Stubbs, *Const. Hist.* i. 452, 453, etc.

⁸ "The lord exercised . . . jurisdiction in civil and criminal

The State was growing strong enough to take vengeance; the common man was no longer feared as had been the well-armed Saxon citizen of old, and to the "common" criminal was extended the ruthless severity once reserved for the slaves.¹ Then likewise Glanville and the lawyers,² under the influence of Rome and Constantinople, drew a sharp and arbitrary distinction between the criminal and the civil pleas, and the idea of compensation began to wane before the revenge instinct now backed by power. If there was money obtainable, the king's judges would seize it;³ the idea of damage done to the individual was merged and lost in the greater trespass⁴ alleged to have been

suits which, with all the profits—for in early times the pecuniary interests of justice formed no small part of the advantages of judicial power—was conferred on him by the original gift."—Stubbs, *Const. Hist.* i. p. 102, and Holdsworth, 13, 14.

¹ See Maitland, *Domesday Book*, p. 33. ² *Ibid.* p. 83.

³ "So intimate is the connection of judicature with finance under the Norman kings, that we scarcely need the comment of the historian to guide us to the conclusion that it was mainly for the sake of the profits that justice was administered at all."—Stubbs, *Const. Hist.* i. p. 438.

⁴ After Henry II. "a crime is no longer regarded as a matter merely between the criminal and those who have directly suffered by his crime; it is a wrong against the nation."—Maitland, *Const. Hist.* p. 109, ed. of 1898.

committed by the offender against the peace, against the code and king.

Up to the middle of the twelfth century¹ some counties were without public gaols or prisoners' cages,² and Henry II. commanded their construction at the Assize of Clarendon, 1166. By the seventh article³ gaols were to be made in the walled towns or erected within royal castles⁴ with the king's timber or other wood that might be available.⁵ They were evidently light improvised structures⁶—sheds knocked up beneath massive walls of city or castle. The king's strong places or the larger monasteries would be prisonous enough with little alteration. These early prisons of the Angevin kings were collecting depots or remand prisons for the safe custody of persons accused. Bracton, who died

¹ L. O. Pike, *History of Crime in England*, i. p. 130.

² In the period of the Civil War, however, the barons had made their castles robbers' caves, from which they rained the unhappy English. Vide *The Saxon Chronicle* for the year 1137.

³ See Stubbs, *Charters*, p. 143.

⁴ The expenses for gaols at Canterbury, Rochester, Huntingdon, Cambridge, Salisbury, Malmesbury, Aylesbury, and Oxford are detailed in the Roll of 1166.

⁵ See John Lingard, *Hist. Eng.* ii. p. 619. London, 1849.

⁶ Pike, *Hist.* i. p. 130.

in 1268, expressly wrote that prison was to confine and not to punish.¹

Bishop Britton² (thirteenth century) says that only those accused of felony were to be kept in irons, and none were to be ill-treated except according to sentence. In the *Mirror of Justice* we read that "every common prison³ is a gaol, and only the king has the keeping of it⁴; every other man's prison is private, etc.; and because it is forbidden that any one be tormented before judgment, the law wills that no one be placed among vermin and putrefaction, or in any horrible or dangerous place, or in the water, or in the dark, or any other torment; but it is lawful for gaolers to put fetters upon those whom they suspect of trying to escape, but the fetters must not weigh more than 12 oz. . . ."⁵

The captives having been collected together

¹ "Carcer ad continendos et non ad puniendos habere debeat."
—*De Legibus*, lib. iii. cap. vi. f. 105.

² F. M. Nichols' ed. p. 44.

³ And see 5 Hen. IV. c. 10.

⁴ In 1295 a law was passed by which a man should no longer suffer death or mutilation for prison-breaking alone, unless his crime would have been so punished upon conviction. See statute, *De Fragentibus Prisonam*, 23 Edward I., Record Commission. *Statutes of the Realm*, vol. i. London, 1810.

⁵ W. J. Whittaker's ed. p. 52.

within the gaols would have to wait till the next assize. It might be a long time—months (as even now) or years¹—for the king's judges were dreaded—and of those who could not get mainpernors (bail),² many would die of want or disease before the justices were ready to try them.

Meanwhile the prisoners and their families were to be kept at their own expense; according to Bishop Britton³ the gaoler was required to take nothing from the poor—who would in general possess nothing to be taken—and not more than fourpence for the keep of any prisoner.⁴ None were to be detained from inability to pay the

¹ In the reign of Henry III. the judges set forth every seven years.—Pike, *Hist. Crime*, p. 135; and see G. J. Turner, *Pleas of the Forest*, p. xv. By 13 Ed. I. assizes were to be held three times a year at most. In the early part of the nineteenth century the gaols in the provinces were delivered only twice a year. See Blackstone, *Commentaries*, bk. iv. chap. xix.; J. Stewart's ed. p. 352. London, 1854. W. Crawford's remarks in his *Penitentiaries of the United States*, p. 37. London, printed for the House of Commons, 1834.

² The gaol was his pledge or security that could find (or was allowed) none.—Glanville, J. Beames' ed. pp. 346, 348. London, 1812. For details as to who were or who were not replevisable in the thirteenth century, see 3 Ed. I. c. 15 and 27 Ed. I. c. 3.

³ F. M. Nichols' ed. p. 46.

⁴ Fourpence is mentioned as the gaoler's fee in the *Liber Albus* (early fifteenth century), H. T. Riley's ed. p. 448. London, 1861.

fees. Such were the rules approved by Edward I. In practice, it appears probable that, for the next five hundred years or so, the prisoners would be well fed if they had means, and might be starved to death if they had not.¹

Those who survived until the opening of the court would be brought up, according to Bracton,² with their hands free, though sometimes in leg-irons. We find the description amplified by Britton;³ they were to be "barefooted, uncoifed and bareheaded, in their coat only, without irons of any kind,⁴ so that they might not be deprived of reason by pain, nor be constrained to answer by force."⁵ But thus far no punishments had been meted out; these followed upon conviction, and were of a physical and sanguinary character.

According to Bracton an offender might be broken on the wheel for treason, a crime so great

¹ On this point see F. A. Gasquet, *Henry VIII. and the English Monasteries*, p. 4. London, 1906.

² Lib. iii. f. 137.

³ Nichols' ed. p. 35.

⁴ See illustration given in Besant, *Medieval London*, p. 349. 1906.

⁵ "If, however, they refused to plead, they would be pinioned down on the bare ground and fed upon bread and dirty water; but they were not to eat on the day they drank, or drink on the day they ate, etc."—Nichols' ed. p. 26.

that it was scarcely to be permitted that the relations should live.¹ For the "common" criminal there was hanging,² and the ghastly mutilations enjoined by the Norman kings were continued; indeed they were made more savage for many offences after 1176.³ Up to the reign of Henry III. the penalty for poaching in the king's forests was death or the loss of eyesight.⁴ Rape up to the reign of Edward I. might also involve loss of eyes and emasculation.⁵

Stealing from a dwelling appears to have met with the same barbarous punishment. A glimpse of the gentle ways of twelfth-century "justice" is revealed in an account of a supposed

¹ "Vix permittitur heredibus quod vivant."—*De Legibus*, lib. iii. f. 118.

² *Temp.* Henry I., see W. Dugdale, *Origines Juridicales*. London, 1680.

Richard, see J. F. Stephen, *Hist. Crim. Law*, i. p. 458. London, 1883.

Henry III., see W. Page, *Early Assize Rolls*, p. xviii. etc.

³ By the Assize of Northampton. See Stubbs, *Const. Hist.* i. p. 545.

⁴ 2 Hen. III., Carta de Foresta; and also 9 Hen. III. c. 10: "No man henceforth shall lose either life or member for killing our deer."

⁵ *Sax. Chron.*, Ingram's ed. p. 266.

Ibid. p. 295.

Mirror of Justice, Whittaker's ed. p. 141.

miracle. A certain Ailward, being accused of housebreaking (committed apparently under considerable provocation to recover a debt), was lodged for some time in Bedford Prison.¹ After having failed in the water ordeal and being convicted, he was taken out to the usual place of punishment, where his eyes were blinded, he was mutilated, and the parts were buried in the ground. He is said to have been restored through St. Thomas of Canterbury.

By the time of Edward I. we begin to arrive at sentences of imprisonment, and read of such penalties as one year and then a fine, or two years in default of fine, in the first Statutes of Westminster. For such offences as carrying off a nun, allowing a prisoner to evade prison, or stealing tame beasts out of parks, a sentence of three years might be awarded besides the customary fine. As we have seen, the profits of "justice" were highly regarded; the fines were precious perquisites of the Crown (and sometimes of subordinate administrators and officials as well). The prisons were used as

¹ J. C. Robertson, *Materials for the History of Thomas Becket*, vol. i. p. 156. London, 1875. Referred to by Stephen, *Hist. Crim. Law*, i. p. 79.

“squeezers” to extort them. “Imprisonment,” say Pollock and Maitland,¹ “was, as a general rule, but preparatory to a fine. After a year or two the wrongdoer might make fine; if he had no money he was detained for a while longer. In the thirteenth century the king’s justices wield a wide ‘common law’ power of ordering that an offender be kept in custody. They have an equally wide power of discharging him upon his making a fine with the king.”

In Henry III.’s reign “The wrongdoer but rarely goes to prison, even for a moment.² On the plea roll the *custodiatur* which sends him to gaol is followed at once by ‘Finem fecit per unam markam’ (or whatever the sum might be), and then come the names of those who are pledges for the payment. The justices do not wish to keep him in prison; they wish to make him pay money.” The authors just quoted say that the fines were generally light, and give several instances³—it doubtless depended much upon the judges and the reign. But wherever there are enclosing walls, there are certain to be

¹ *Hist. Eng. Law*, ii. p. 515.

² *Ibid.* ii. p. 516.

³ For example, a fine of one mark (13s. 4d.) for rape.

abuses behind them.¹ Judicial and administrative scandals kept on occurring.²

In the fourteenth century many persons are said to have perished of hunger and thirst,³ and many died in prison about the time of the Black Death (1349).⁴ Into the fifteenth century the complaints continue; we read the following in the *Liber Albus*:⁵ "Whereas great outcry has been made heretofore as to many wrongs and misprisons done by the gaolers of Newgate and Ludgate and their officers and servants, . . ." and new regulations were made (and no doubt broken, as the others had been) respecting fees the prisoners should pay.

The sixteenth century showed no advance in the matter of humanity.⁶ Torture, which, legally or illegally, has always been a ready trick of

¹ See *Mirror of Justice*, Whittaker's ed., Introduction, pp. xxiv., xxxv., and 1st ed. iii. c. 7.

Holdsworth, *Hist. Eng. Law*, p. 39.

W. Page, *Early Assize Rolls*, p. xx.

² Of robbery by the judges, see Lingard, *Hist.* ii. p. 217.

³ For instance, at Northampton in 1323; see Coulton, *Chaucer and his England*, p. 284.

⁴ Pike, *Hist. Crime*, i. p. 288.

⁵ Riley's ed. p. 448.

⁶ See Pike, *Hist. Crime*, i. p. 427.

statesmen, developed after 1468,¹ and under the Tudor sovereigns the rack was ever creaking to extort confessions. The "common" criminals were treated with the utmost severity; in 1530 an Act was passed by which all poisoners were to be boiled alive.² Burning was the penalty appointed for heresy, high and petty treason³ (*i.e.* murder of a husband by a wife, murder of a master or mistress by a servant,⁴ and several offences against the coin), and, unlike the punishment of boiling, continued legal until 1790.⁵ The right hand might be taken off before hanging for aggravated murder, or a man might be hung in chains and left to perish.⁶ There was the drawing and quartering in some executions, and ordinary hangings were exceedingly numerous.⁷ Men lost their hands for exporting sheep and for libel,⁸ and there was

¹ Maitland, *Const. Hist.* p. 221, ed. 1908.

² 22 Hen. VIII. c. 9.

³ W. Besant, *Tudors*, p. 380. London, 1904; and see 25 Hen. VIII. c. 14.

⁴ Stephen, *Hist. Crim. Law*, p. 477.

⁵ A man was boiled to death in 1531; a woman was burnt in 1571, and in 1575.—Holinshed, *Chron.* pp. 926, 1226, 1262.

⁶ Besant, *Tudors*, p. 379.

⁷ Stephen, *Hist. Crim. Law*, p. 468.

⁸ Besant, *Tudors*, p. 380.

branding, etc., for perjury, and sometimes for persistent vagrancy.¹

A picture of the prisons has been left us in a work of 1545. "I see," observes the monk whose complaint² is given, "also a pytyful abuse for presoners. O Lord God, their lodging is to bad for hoggys, and as for their meat it is euil enough for doggys, and yet, the Lord knoweth, thei haue not enough thereof. Consyder, all ye that be kyngs and lordys of presons, that inas-moch as ye shut up any man from his meate, ye be bound to giue him sufficyant fode for a man and not for a dogge." He further declares that the charges were greater than any at the "dearest inn in England," and says that men lay six and seven years in prison before the oncoming of their case.

About the year 1552 the City authorities selected what had been a palace at Bridewell³ (given by Edward VI.) for (among other purposes) locking up, employing, and (as heretofore,

¹ W. Andrews, *Old-Time Punishments*, p. 92.

² Henry Brinklow's *Complaynt of Roderwyck Mors*, J. M. Cowper's ed. London, E.E.T. Society, 1874.

³ See Holinshed, *Chronicles*, pp. 1081, 1082.

J. Wilkes, *Enc. Londinensis*, iii. p. 891. London, 1810.

E. C. S. Gibson, *Life of John Howard*, p. 47. London, 1901.

according to Holinshed) whipping beggars, prostitutes, and night-walkers of all sorts.¹ Later on similar detention places were also called Bridewells, after the first one at Blackfriars just alluded to. In 1597 they planned Houses of Correction,² and in 1609 it was ordered that they should be builded in every county.³ Though they became, in practice, one with the common gaols, they lasted at least in name till 1865.⁴ But to resume our survey of ordinary prisons. The seventeenth century affords the usual evidence of what walls can hide. The gaolers, as of old, appear to have been all powerful ;⁵ sometimes friendly, often the reverse, always extortionate. John Bunyan, during his twelve years' incarceration, was allowed to work for his family—for a large part of the time in tolerable surroundings ; but while in the Gate House prison he was charged huge fees.⁶ The prisoners hung

¹ See Besant, *Tudors*, p. 387.

² 39 Eliz. 4 and 5.

³ 7 Jac. I. c. 4.

⁴ Departmental Committee on Prisons. *Minutes of Evidence*, Appendix ii. p. 457. London, 1895.

⁵ As very early in the sixteenth century ; see 19 Hen. VII. c. 10.

⁶ See John Brown, *John Bunyan, His Life and Times*, pp. 169, 182, etc.

collecting bags out of their windows on Sunday mornings.

George Fox,¹ the Quaker, agreed with the keeper and his wife for meat and drink, chamber, and other accommodation at a certain rate. But he refers to one of their party being put “down in the Doomesdale² amongst the felons, and this, it appears, was a “noysome, filthy, stinking hole, where was a puddle of . . . and filth over their shoes and the . . . of the felons, and straw almost broken to chaffe with their long lying thereon and full of vermin, wherein is neither chimney nor easing house.” Confirmatory evidence as to how felons fared in 1667 may be deduced out of a Statute of Charles II.³ “Whereas,” it says, “there is not yet any sufficient provision made for the relief and setting to work of poor and needy persons committed to the common gaol for felony and other misdemeanours, who many times perish before their trial, and the poor there living idly and unemployed become debauched and come forth

¹ *The West answering the North: Relation of the Sufferings of George Fox, Edw. Pyot, and William Salt*, p. 34. Printed 1657.

² As to the pits and dungeons of an old English prison, see Charles Creighton, *History of the Epidemics in Britain*, p. 386. Cambridge, 1891.

³ 19 Car. II. c. 4.

instructed in the practice of thievery and lewdness," etc.

The excellent plan was proposed that the profits of the prisoners' labour should be placed to their relief. But to find useful labour within prison walls has always been a most difficult problem, and the world outside was always far too busy to see to it. The prisons of the eighteenth century were very much like those that had been before, but perhaps we know more about them through the great work of John Howard, *The State of the Prisons*. It is a matter of history how that grim, conscientious Puritan went where the ruling classes neither cared nor dared to venture.¹ For, besides the dreadful stench which stuck to his notes and garments, deep in the windowless (window tax), airless rooms and dungeons through which he went, down in the stale, cramped yards²—when there were any—without space or sun, and in which even the supply of water was mostly beyond the bounds and so inaccessible,³ rising amidst

¹ *The State of the Prisons*, pp. 8 and 9. Warrington, 1780.

² Many prisons had no yards or courts of any kind. See J. B. Bailey, *The Condition of the Gaols as described by John Howard*, chap. ii. London, 1884.

³ *Ibid.* p. 16.

the putrefaction of those places, there lurked the dreaded typhus or gaol fever.

It had always been about since prisons were used, and sometimes proved the Nemesis of neglect.¹ In 1522, at the assize in the castle at Cambridge,² many of the knights and gentlemen attending caught the infection from the "sauor of the prisoners or the filthe of the house." Writing of the year 1577, we read in *Baker's Chronicle*:³ "About this time when the judges sate at the Assize in Oxford, and one Rowland Jenks, a bookseller, was questioned for speaking opprobrious words against the queen, suddenly they were surprised with a pestilent savour, whether rising from the noisome smell of the prisoners or from the damp of the ground is uncertain; but all that were present, almost every one, within forty hours died." Much the same happened at Exeter in 1586⁴ and at Taunton in 1730, and some hundreds perished at both these places.

¹ See E. F. Du Cane, *Punishment and Prevention of Crime*, chap. iii. p. 43, etc. London, 1885.

² *Hall's Chronicle*, p. 632, ed. of 1809.

³ P. 353. London, 1730.

⁴ Creighton, *Epidemics*, chap. vii. p. 383.

Thomas Allen, in his *History of London*,¹ relates that in 1750 "The Lord Mayor, some of the aldermen, two of the judges, the under sheriff, many lawyers, and a number of lookers-on, died of the gaol distemper." The prison was afterwards cleansed! Howard asserts that in 1773-4 more people died from the gaol fever than were executed in the kingdom;² we lost 2000 sailors (criminals were often given the choice between punishment and the services) with the fleet in the war with America.³ He quotes Lord Bacon as saying that the most pernicious infection next to the plague is the smell of the jail.⁴ Such were the mephitic dens into which were cast men, women, and children of all sorts; and there they would rot away or survive, as the case might be, until the expiration of their (generally short) sentences of imprisonment, if they could pay the fees charged on their coming out; or until they ultimately came up for trial, after which they would either be acquitted and discharged (again when they paid

¹ Vol. ii. p. 48. London, 1827.

² *State of the Prisons*, p. 10, ed. of 1780.

³ *Ibid.* p. 13.

⁴ *Ibid.* p. 12.

the fees), or they would be convicted and transported or executed.¹

The number of capital offences was truly enormous. Onward from 1688 they steadily increased,² owing, as has been well remarked, to the "unhappy facility afforded to legislation by Parliamentary government."³ Members who could not become ministers, and who yet wanted to do something, often had interest enough to hang somebody, or at least to get a law passed creating a new capital felony.⁴

¹ There were always a few poor creatures who, although sentenced to transportation, were left behind to remain in prison, a fate worse than exile and perhaps worse than death. See Dept. Com., 1895, Appendix, p. 459.

² ". . . Of the 160 offences referred to by Blackstone as punishable by death, four-fifths had been made so during the reigns of the first three Georges."—J. A. M. Irvine, *Chambers's Encyclopædia*, ii. p. 743, art. "Capital Punishment." London, 1888.

³ James Mackintosh, *Miscellaneous Works*, p. 718. Speech on the state of the Criminal Law, House of Commons, 2nd March 1819. London, 1851.

⁴ "The anecdotes which I have heard of this shameful and injurious facility I am almost ashamed to repeat. Mr. Burke once told me that on a certain occasion when he was leaving the House one of the messengers called him back, and, on his saying that he was going on urgent business, replied: 'Oh, it will not keep you a single moment; it is only a capital felony without benefit of clergy.'"—Mackintosh, *Miscellaneous Works*, p. 718.

Thus through the ambitions of private members and the general callousness of the ruling class, the number of capital offences kept ever growing, until, in theory, there were more than two hundred of them.¹ The law, however, had overreached; rough and often most brutal as the people of that day were, they would not enforce the penalties provided,² so that the hangman's ministrations were invoked for only twenty-five classes of offences in London,³ and for not more than thirty throughout England.⁴ In fact, it was found that conscientious people refused to prosecute for the lesser crimes, dreading to have a share in taking life. But actually the gallows load was heavy; an instance appeared in a *Times*⁵ paragraph—18th January 1801—which tells how a certain Andrew Branning, a luckless urchin aged only thirteen, had broken into a house and carried off a spoon. Others were

¹ Mackintosh, *Miscellaneous Works*, p. 718.

² There grew up, as an eminent judge of those days has declared, "a general confederacy of prosecutors, witnesses, counsel, juries, judges, and the advisers of the Crown, to prevent the execution of the criminal law."—Sir William Grant, quoted by Mackintosh, p. 719.

³ Irvine in *Chambers's Encyclopædia*, ii. p. 743.

⁴ Mackintosh, p. 718.

⁵ Reprinted in the *Times*, 18th January 1901.

with him, but they ran away, and only he was captured and brought to trial. His story ended in two words, which were short and customary: Guilty—Death. Thus transportation and the extreme penalty kept clearing the prisons, but those within them were the while exploited, being entirely the prey and property of warders, keepers, and assistant gaolers, all of whom made the most of their positions—which might be given out like pensions or be purchased¹—to wring out fees² and make their places pay;³ and having what amounted to unlimited power, and being, by the nature of their office, used and inured to witnessing suffering, the gaolers,⁴ from the beginning and right into the eighteenth century, shrank from no means, however mediæval, by which they could extract their fees and charges.⁵ Thumbscrews and iron skull-caps were some-

¹ Du Cane, *Crime*, pp. 35, 36.

² Howard, *State of the Prisons*, p. 22.

³ See 8 & 9 Will. III. c. 27, A.D. 1697.

⁴ See, for instance, the removal of Governor Bambridge by 2 Geo. II. c. 32.

T. Bird, *Letters from the Shades*. London, 1729.

Re Governor Huggins, etc., see *Report of a Committee of the House of Commons*, pp. 25, 26, 27. London, 1729.

⁵ Gaol fees were abolished in 1774 by 14 Geo. III. c. 20.

times used,¹ and were produced in court as evidence.²

Prisoners might be loaded with heavy irons unless they would pay to be allowed lighter ones.³ They were liable to be flogged with ropes or whips or anything that came handy,⁴ the common instrument of flagellation, however, being the formidable *membrum tauri*.⁵ They might be kept in damp dungeons and darkness; the living were sometimes locked up with the dead. They could be set apart and purposely exposed to utter starvation,⁶ gaol fever, and small-pox, or actually done to death by their keepers' violence.⁷

The prisoners were robbed for room, squeezed for food,⁸ and dealt with for drink of all kinds,

¹ J. M. D. Meiklejohn, *Hist. Eng.* ii. p. 276. London, 1890.

² See *The Tryal of William Acton, Deputy-Keeper of the Marshalsea Prison*, p. 4, etc. London, 1729.

And also *Cases in Parliament, 1684-1737*. *British Museum*, 515, l. 5 (39), *re* Bambridge, etc.

³ Howard, p. 17.

⁴ *Tryal of Acton*, p. 5.

⁵ See Murray, *English Dictionary*, under "Bull," iv. B.

⁶ See *Report of the Committee of 1729*, p. 9. *Brit. Mus. Cat.* 522, m. 9 (28).

⁷ There were seven trials for murder in 1730.—Du Cane, p. 36.

⁸ The old-time prisoners depended mainly upon their

spirits, and tobacco, in which the officials did a roaring trade.¹ Lastly, the new arrivals at a prison were fleeced and pillaged by their fellow gaol-birds for "chummage" or "garnish" money,² and failing this, they were frequently stripped of their very clothing, a process termed "letting the black dog walk."³

And in all these vile places there was generally no production of anything. The prisons and Bridewells were supposed originally to set rogues to work,⁴ but the authorities took no trouble to organise it, and throughout the detention-places useful employment (if we except occasional work done for the gaoler, or permitted

friends and upon outside charity for their sustenance (*vide* Britton; Bracton, lib. iii., etc.). After the reign of Elizabeth they were supposed to receive 1d. or 2d. a day, or seven to eight ounces of bread. (Du Cane, p. 40.)

From 1759, by 32 Geo. II. c. 28, each debtor was ordered to receive 2s. 4d. a week from his detaining creditor, but Howard found (p. 6) that, in practice, they could not get it, and numbers actually starved.

¹ By an Act passed in 1784 (24 Geo. III. c. 54) the gaolers were to receive payment as compensation for the loss of their former profits made out of alcohol, which they were thereby forbidden to sell to prisoners from the year 1785.

² Howard, p. 16.

³ *Report of the Committee of 1729*, p. 2.

⁴ Howard, p. 5.

in particular instances) was impossible. It was found in 1818,¹ that, out of the 518 prisons in the United Kingdom, in 445 there was no employment, and that in the remaining 73 it was of the slightest possible description. Such were the bad old prisons of the past. Their faults were many, glaring, and obvious, but they had yet a human side, too, and a better one. Though the idiot might be laughed at and the new-comer despoiled, though the keepers might be brutal and the atmosphere poisonous, still in the midst of evil there would be individual acts of kindness and self-sacrifice. If the captives were in chains and rags,² they were not cut off from the outside world or striped and spotted in a livery of shame.³ If gaols were hotbeds of infection and cesspools of corruption,⁴ at least they were not the ghastly whited sepulchres which were built in the nineteenth century.

¹ Mayhew and Binny, "Criminal Prisons of London" (quoting from the *Fifth Annual Report of the Prison Discipline Society*), p. 97. London, 1862.

² Du Cane, p. 43.

³ London prisons (*British Museum Catalogue*, 6056, b. 74), bound pamphlets, p. x. London, 1789.

⁴ Du Cane, p. 41, etc.

MITIGATIONS AND PECULIARITIES

So far we have endeavoured to trace the course of the usual punishments inflicted in various ages on the "common" criminals when they were brought up charged with the graver crimes. There were, however, ways of escape open, which are sufficiently general and important to be dealt with separately.

The Ordeals.—The invocation of miraculous guidance, to determine the guilt or innocence of a person accused, has been resorted to from time immemorial by all manner of methods throughout the four continents.

There were many ordeals in mediæval England. There was the corsned, or consecrated barley-cake, which was supposed to choke a perjurer if he tried to swallow it; when mouth and throat were dry from fear or excitement this was quite possible. There was a test by immersion, in which the accused had to sink two ells deep—over seven feet. A rope was attached round the body, and it is interesting to notice that Archbishop Hincmar (ninth century) gave express directions for the rescuing of those who, by thus sinking, were declared to be innocent.¹

¹ E. B. Tylor in *Ency. Brit.* ninth ed. art. "Ordeal."

There was a test tried with hot water, in which a stone had to be picked up out of boiling liquid without the arm being scalded. There was a test, to pass which the hand had to be inserted into a glove of hot iron without being burned by it. There was a test in which the suspected person must walk through flames without being scorched. There was a test which consisted in having to walk over nine red-hot ploughshares, blindfolded and unseared.¹

Perhaps, however, the best-known ordeal was that which was worked out with a heated iron bar or ring.² This generally weighed three pounds, and had to be carried—they were always personal and picturesque in the middle ages—for a distance of nine times the length of the bearer's foot.³ His hand was then bound up and left alone for three days.⁴ At the end of these it was examined, and if found clean and free from suppuration⁵ the accused was acquitted.

¹ For account of the elaborate ritual, see W. Besant, *Mediæval London*, vol. ii. chap. vi.

W. Dugdale, *Origines Juridiciales*, chap. xxix.

² Stubbs, *Charters*, p. 71.

³ Besant, *Mediæval London*, ii. p. 193.

⁴ Thorpe, fol. ed. p. 517.

⁵ Glanville, J. Beames' ed. p. 350, note.

Doubtless, in deeply superstitious times the ordeals, with their solemn prayers and incantations, were fairly effective. But yet they do not seem to have been altogether trusted, at any-rate in the later period,¹ since even those who passed successfully through them were obliged to quit the country within forty days.² Most people, however, who underwent ordeals had been arraigned by twelve knights of the county (who thus resembled a Grand Jury) and were already under grave suspicion ;³ the ordeal, then, could only say not proven. Moreover, it would appear from various sources that the tests and trials were frequently tampered with,⁴ the elaborate ritual giving plenty of opportunity ;⁵ at least one king scoffed at priestly acquittals.⁶

After incurring the disapproval of many Popes, the ordeals were condemned at the fourth Council of Lateran in 1215, and by the eighteenth canon priests were forbidden to pronounce their

¹ Maitland, *Const. Hist.* p. 128.

² Reeves, *Hist. Eng. Law*, i. p. 234. London, 1860.

³ Pike, *Hist. Crime*, p. 131.

⁴ Madox, *Hist. Exchequer*, i. p. 546.

⁵ *Ency. Brit.* art. "Ordeal," p. 820, ninth ed.

⁶ E. A. Freeman, *History of the Reign of William Rufus*, i. pp. 156, 157. London, 1882.

blessing upon them.¹ The ordeals were abolished in England in the reign of Henry III. and the juries took their place.²

Another species of ordeal, and certainly another means of escape from the criminal law, was the wager of battle. This very ancient mode of trial³ was introduced into England by the Normans under William I. If a man made a charge against another, and proofs of guilt were not obvious and overwhelming, the latter could demand trial by battle,⁴ unless the complainant were over sixty years old or were sick and infirm,⁵ or laboured under some physical disability,⁶ in which case he might choose the ordeal.⁷

¹ P. Labbé, *Sacrorum Conciliorum*, tom. xxii. p. 1007. Venice, 1778.

² Stubbs, *Charters*, p. 25.

³ Stubbs, *Const. Hist.* i. 314.

⁴ Unless he went to the ordeal, or, in a later period, to a jury. See W. Forsyth, *History of Trial by Jury*, p. 202. London, 1852. Twiss's *Bracton*, ii. 403.

⁵ Peers, on account of their position, and citizens of London, on account of their supposably peaceful avocations and by charter, were exempt from having to accept a challenge.—Blackstone, *Commentaries*, lib. iv.

⁶ The loss of certain teeth was looked upon as a handicap—the peasant fighters made a horrible use of them. *Vide* H. C. Lea, *Superstition and Force*, p. 131. Philadelphia, 1878.

⁷ Lingard, *Hist. Eng.* ii. p. 224.

Priests, infirm persons, and women might have champions to represent them.¹ The knights fought with their usual weapons,² the plebeians with staves forty-five inches long, which were tipped with iron heads shaped like rams' horns.³ They were to be bareheaded, barefooted, and close-shaven; and so they fought till death or surrender,⁴ at first with the clubs, and afterwards, failing them, in hideous grapple, killing as best they could. If the accuser were defeated he could be committed to gaol as a calumniator,⁵ but was not to lose life or limb; he was, however, fined sixty shillings and lost civil rights.⁶

If the person who was accused—were he knight or peasant—yielded, he was then forthwith hanged or beheaded as being guilty.⁷ If, however, he prevailed in the combat or defended himself till the stars came out,⁸ he might leave

¹ Reeves, *Hist.* i. p. 61.

² Lingard, ii. p. 222.

³ Beasant, *Medieval London*, ii. p. 198.

⁴ *Ibid.* p. 196.

⁵ Twiss's Bracton, ii. p. 405. London, 1879.

⁶ Lingard, ii. p. 223.

⁷ Lingard, *Hist.* p. 224.

⁸ Blackstone, bk. iv., Sharswood's ed. ii. p. 348. Philadelphia, 1878.

the field as being acquitted,¹ unless, perchance, the justices desired to put him on trial for something else, which they occasionally did.

The custom of trial by battle, along with all other kinds of ordeals,² dropped out of practical usage during the thirteenth century,³ but continued the law for five hundred years afterwards. In 1818 it was recalled into action.⁴ One Abraham Thornton was strongly suspected of having outraged and murdered a girl, Mary Ashford. Although he was acquitted when tried by a jury, he was immediately accused by her brother and heir-at-law, and claimed to defend by the wager of battle. The fight was refused

¹ Bracton, Twiss's ed. p. 405.

² It grew to be condemned by the Church. See, for instance, *C. Valentinum*, iii. c. 12, held A.D. 855.

³ Unhappily to be succeeded by a dreadful revival of torture all over Europe, where it was in full blast in the fourteenth century, and in England from 1468. Having abandoned supernatural means of extracting men's secrets, Church and State made ruthless and pitiless use of more material methods. The Inquisition took up torture, and the custom spread to the lay courts towards the end of the thirteenth century. Consult, for instances, Lea, *Superstition and Force*, pp. 421, 458; Maitland, *Const. Hist.* p. 221; Lea, *History of the Inquisition in the Middle Ages*, i. p. 423, etc. New York, 1906.

⁴ Barnewall and Alderson, *Report of Cases*, i. pp. 405, 426, etc. London, 1818.

by the plaintiff, and shortly afterwards there was passed "An Act to abolish Appeals of Murder, Treason, Felony, or other Offences . . . and Wager of Battel,"¹ so it could not be claimed again.

Another haven of refuge from the clutches of the State was found within the pale of SANCTUARY. Although, like prayer or sacrifice,² existing round the globe from the beginning, we may confine ourselves to Christian shelters, as they alone affected our laws.

The early Church doubtless afforded refuge as soon as it possessed the power to do so, and gave asylum from the reign of Constantine.³ Laws were made on the right of refuge by Theodosius in 392,⁴ and the boundaries of sanctuary were extended by Theodosius junior in the fifth century,⁵ while many kinds of offenders were debarred from it under Justinian (483-565).⁶

The saving power of sanctuary⁷ would seem

¹ 59 Geo. III. c. 46.

² See, for instance, Westermarck, *Moral Ideas*, ii. 628 seq.

³ J. Bingham, *Antiquities of the Christian Church*, iii. p. 203. Oxford, 1855.

⁴ *Ibid.* p. 204.

⁵ *Ibid.* pp. 205, 217.

⁶ *Ibid.* p. 213.

⁷ H. H. Milman, *History of Latin Christianity*, ii. p. 59. London, 1864.

to have been but feeble and tentative in the earlier period, since debtors to the State, Jewish converts who were debtors, heretics and apostates, the slaves of orthodox masters (the slaves of heretics and heathens obtained their freedom¹), and persons guilty of the more serious offences, were refused privilege.²

But the protection of the mighty Roman Church was to be something more than a mere respite for the lesser grades of offenders. In the year 511 a Council of Orleans³ ordered that criminals who sought refuge in a church or house of a bishop should not be dragged forth from it. Even the slave given up to his master was not to be hurt by him. About a century later Pope Boniface V. (619-625)⁴ commanded that none

¹ Bingham, iii. pp. 209, 211.

² By the Dooms of Alfred there was but a three days' sanctuary in a mynster-ham. A fugitive was not to be dragged from a church for seven days, though none were to bring him any food the while.—Thorpe, fol. ed. pp. 27, 28, 29. If he delivered up his weapons, however, it appears he might dwell in safety for thirty days, while his relations were got together to ransom him.—Thorpe, p. 29 ; Reeves, i. p. 32. On this thirty days' refuge allowed in the early Church, see Bingham, iii. p. 207. A deliberate murderer might be plucked from the altar, just as by Hebrew law.—Thorpe, p. 27.

³ *Concilium Aurelianse*, Labbé, tom. viii. p. 350.

⁴ J. L. Mosheim, *Ecc. Hist.* i. p. 461. London, 1863.

who had taken refuge should be abandoned. The same spirit is found in the *Decretum Gratiani* compiled in 1151. Pope Innocent III., in a letter written in 1200,¹ ordered that only night robbers, bandits, and persons doing violence within the church should be given up.² And this we find reaffirmed by Gregory IX. in the year 1234.³ In 1261 Boniface, Archbishop of Canterbury, in his Constitutions⁴ expressly forbade that any obstacle should be placed in the way of food being brought to such as were in a sanctuary—so much had the Church increased in power since Alfred's time—and that any should be molested who, having taken it, had forsworn the country.⁵

The exiles to whom this thirteenth-century archbishop alludes were persons who had fled into churches, where they could then claim refuge for forty days.⁶ The buildings were watched that no one should escape, and if a

¹ Migne, *Patrologiae*, tom. 216 ; "Regni Carraclae," p. 1255.

² Bingham, iii. p. 214.

³ A. Friedberg (*Decretal Gregor. IX. lib. iii. tit. xlix. cap. vi.*), *Decretalium Collectiones*, ii. pp. 655, 656. Leipzig, 1881.

⁴ John Johnson, *Ecc. Laws*, quoting Spelman, ii. p. 305.

⁵ The Statute 9 Ed. II. c. 10 (1315) is also to this effect.

⁶ Besant, *Mediæval London*, p. 201.

man got away the parish was fined. At the end of this period the refugees must surrender,¹ but they might make an oath before the coroner admitting their guilt, and also promising to quit the realm. A road and port of destination were then assigned them,² and they might travel thither "with a wooden cross in their hands, barefooted, ungirded, and bareheaded, in their coats only."³ And," said the king, "we forbid any one under peril of life and limb to kill them so long as they are on their road pursuing their journey."⁴ But they would forfeit goods and chattels if they had any.⁵

Under the masterful tyranny of Henry VIII. it was held that too many British subjects escaped this wise, and it was enacted in 1530⁶ that those who had taken sanctuary should not leave the realm, but should be sent to one of the

¹ Besant, *Mediæval London*, p. 212.

² Frequently Dover, where numbers congregated awaiting shipment. See Pike, *Hist. Crime*, i. p. 232.

³ Britton, lib. i. ch. xvii.

⁴ And see 9 Ed. II. c. 10: "They that abjure the realm shall be in Peace so long as they be in Church or Highway."

Blackstone, *Commentaries*, bk. iv., Sharswood's ed. ii. p. 332. Philadelphia, 1878.

⁶ 22 Hen. VIII. c. 14.

privileged places (if it were not full, which at that time meant if it contained not more than twenty people), there to remain as sanctuary persons for the rest of their lives; and they were also to be branded on the thumb.¹

The great sanctuaries comprised Westminster Abbey, and at least thirty other celebrated monasteries,² amongst which were St. Martin-le-Grand, Beverley, Hexham, Durham, and Beaulieu, which possessed special charters and immunities.³ Though traitors, Jews, infidels, and those guilty of sacrilege were not to be received, and though even the peace of a minster might, in the strifes of State, be broken through as in 1398, or evaded as in 1483, yet those within were generally safe from all men. A follower of Jack Cade⁴ was protected against the king, and even one of the murderers⁵ of the little princes in the Tower found refuge in St. Martin's Sanctuary.⁶

There were whole colonies of these fugitives

¹ As to branding, *vide* 21 Hen. VIII. c. 2.

² A. P. Stanley, *Westminster Abbey*, p. 346. London, 1882

³ Besant, *Medieval London*, p. 202.

⁴ *Ibid.* p. 206.

⁵ Bingham, iii. p. 215.

⁶ Besant, p. 208.

round the great abbeys already mentioned. "The right of asylum," says Dean Stanley,¹ "rendered the whole precinct a vast Cave of Adullam for all the distressed and discontented in the metropolis who desired, according to the phrase of the time, to take Westminster." But the power of the State increased more and more, and the dominion of the Church was sapped away.² In 1483 King Henry VII. obtained a Bull from Innocent VIII. which allowed malefactors to be taken from the sanctuaries if it were proved that they had sallied out from them to commit crimes. In 1504 he procured a Bull allowing him to take out persons suspected of treason. In 1534 King Henry VIII. said that lese-majesty was treason, and deprived those guilty of privilege.³ In 1535 sanctuary persons were forbidden to carry weapons or to go out between sunset and sunrise.⁴ In 1540 many sanctuaries were extinguished, and several offences, such as wilful murder, rape, burglary, and arson, were excluded from privilege.⁵

¹ Stanley, p. 346.

² Besant, *Mediæval London*, p. 212.

³ 26 Hen. VIII. c. 13.

⁴ 27 Hen. VIII. c. 19.

⁵ 32 Hen. VIII. c. 12.

The sanctuary at the Abbey was broken up in 1566,¹ and doubtless all the others came to a sudden end upon the dissolution of the monasteries. In 1604 the old rules and laws about sanctuaries were repealed.² In the year 1623 all rights of refuge were taken away.³ The idea lingered in the popular imagination, however, and in 1697 it had to be pointed out by statute that arrests for debt could be made in "pretended privileged places."⁴ These districts (such as the Mint, Suffolk Place, etc.) were alluded to again in 1722,⁵ and likewise in 1724⁶ as regards Wapping, Stepney, in Middlesex—more than a century after legal abolition.

Yet another way was open to people of good position or repute by which they could extricate themselves from the ordinary course of law⁷ (but not against the suit of the king, and there were also other limitations), and that was by means of formal COMPURGATION. We have seen that

¹ Stanley, p. 352.

² 1 Jac. I. c. 25, s. 34.

³ 21 Jac. I. c. 28, s. 7.

⁴ 8 & 9 Will. III. c. 27, s. 15.

⁵ 9 Geo. I. c. 28.

⁶ 11 Geo. I. c. 22.

⁷ *Ency. Brit.* art. "Wager of Law."

in Teutonic communities the oath of a slave had no legal value, while the oath of a thane was worth those of six labourers. Thus kings and bishops might sometimes rebut accusations by means of their word alone.¹ The Visigoths allowed an accused person (of credit) to reply in this manner,² but the practice was condemned by the Church as inciting to perjury.³

The usual course⁴ was for the accused to obtain eleven or twelve compurgators⁵—relations, neighbours, or fellow-craftsmen who would swear with him to the justice of his cause.⁶ Perjury was indeed often suspected in these compurgations, and if a man of bad character got his co-witnesses⁷ (and if he could not he was generally sent to the ordeal) he was frequently banished in spite of their testimony.⁸

In the beginning of the thirteenth century Pope Innocent III. modified the oath,⁹ and after-

¹ Lea, *Superstition and Force*, p. 23.

² *Ibid.* p. 21.

³ *C. Valentinum*, iii. c. xi., A.D. 855.

⁴ Forsyth, p. 76.

⁵ Reeves, *Hist.* i. p. 33.

⁶ Holdsworth, *Hist.* i. p. 138.

⁷ Reeves, p. 33.

⁸ Holdsworth, p. 139.

⁹ Lea, *Superstition*, pp. 66, 81.

wards witnesses swore only to character, to their belief in the accused's credibility. Compurgation appealed especially to the clergy,¹ and was even called the *Purgatio Canonica*.² Cut off by their calling from all lay connections, they could rely the more upon their own brethren. It was by solemnly swearing with twelve priests as compurgators that Pope Leo III. elected to clear himself from certain accusations, in the presence of Charlemagne (in A.D. 800);³ and in 803 that emperor ordered priests to defend themselves by taking an oath with three, five, or seven compurgators. The practice began to decline towards the close of the twelfth century,⁴ but still lingered on into the sixteenth century in England, and in isolated cases to later times. The Wager of Law was not formally repealed till 1833.⁵

THE RULE OF THE CHURCH

The Christians had always been an exclusive body of people, at first from fear, and after-

¹ Holdsworth, *Hist.* i. p. 138.

² Lea, p. 35.

³ *Ibid.* p. 33.

⁴ *Ibid.* p. 64.

⁵ 3 & 4 Will. IV. c. 42, s. 13.

wards from fanaticism. They excommunicated all offending members, thus not only cutting them off from fellowship, but also depriving them of those rites which in their creed were necessary for salvation. This custom of excluding from communion was from the first a formidable spiritual weapon among believers; what it became when the Christians could also wield the sword of temporal power we shall see in the course of time. In the early days they were a world within the world—vehement in convictions, stimulated by persecutions, and extremely well organised.

Their bishops arbitrated and ruled in ecclesiastical matters,¹ and also in civil suits between individuals who were unwilling to go to law before unbelievers, and doubtless they sat in judgment on their own followers before the advent of the regular Ecclesiastical Courts of subsequent ages.² From the Apostolic times they had resented resort to external tribunals,³ and, in a series of Councils,⁴ the Church had

¹ S. Cheetham, *History of the Christian Church during the First Six Centuries*, p. 171. London, 1894.

² Stubbs, *Const. Hist.* i. p. 267.

³ 1 Corinthians vi.

⁴ In A.D. 341 by the eleventh and twelfth Canons of the

forbidden appeal to the civil powers against the decisions of Christian Courts; by the eighty-seventh Canon of the Fourth Council of Carthage (A.D. 398) no Catholic was to bring any cause, whether just or unjust, before an heretical judge.

The time came when the State accepted Christianity, and when that religion influenced the laws.¹ Under Constantine the civil officers were obliged to carry out the decrees of the Christian bishops, who exercised a wide jurisdiction. In 376 their Courts were given the same status as belonged to those of the imperial magistrates.² From the beginning, and under the Theodosian and Justinian Codes, the bishops possessed great disciplinary powers; and after the death of Charlemagne, in the midst of a period of violence and disruption, the Ecclesiastical Courts were firmly established and gained in power as the centuries went by.³ They had their own rules and codes to determine cases,⁴ Council of Antioch; in 397 by the ninth Canon of the Third Council of Carthage; and in 451 by the ninth Canon of the Council of Chalcedon.

¹ Lingard, *Hist.* ii. p. 120.

² Cheetham, p. 171.

³ H. C. Lea, *History of the Inquisition in the Middle Ages*, i. p. 309. New York, 1906.

⁴ Canons of Councils, Papal Decrees, and the many Collections.

and came to adjudicate upon many things which do not concern us, such as tithes, breaches of covenant, births, marriages, and wills.¹

After the appearance of the Collection of Ivo of Chartres (*b.* 1035, *d.* 1115),² and still more upon the compilation of Gratian's Decretals (A.D. 1151), they began to rival, if not surpass, the Secular Courts in reputation and influence.³ The Courts Christian were the defenders of dogma; in those times, without right believing nothing else profited. The Church Courts also enforced Christian morality. "The bishops," says Archdeacon Cheetham,⁴ "took cognizance, as was natural, of matters which were rather offences against the moral law than against the State, and sometimes succeeded in overawing even high-placed offenders." "The doctrine of penance," says Mr. Thrupp, "dealt with a series of immoralities which the laws disregarded."⁵

It used to be a custom in ancient times for

¹ See Lingard, ii. 126.

J. Johnson, *Laws and Canons*, ii. p. 189, note F., ed. 1851.

N. Marshall, *Penitential Discipline*, p. 136.

² Stubbs, *Charters*, p. 136.

³ Lingard, *Hist.* ii. p. 126.

⁴ *History of the Christian Church*, p. 171.

⁵ *Anglo-Saxon Home*, p. 254.

the bishop to go journeying through his diocese. As he entered each parish he would be met by the inhabitants, from amongst whom he would select seven men of mature age and strait character,¹ who were then sworn on holy relics to relate all they knew, or possibly imagined, about their neighbours and their shortcomings. The bishop or his archdeacon² would then investigate and summon suspected persons before them for examination and sentence.³

It would appear that these inquisitions with the *Testes Synodales* could be extremely punitive when undertaken by a vigilant and censorious Christian moralist. We find that an energetic Bishop of Lincoln so harried his diocese,⁴ and with amazing and minutely personal examina-

¹ Lea, *Inquisition in the Middle Ages*, i. p. 312.

² They would be brought before the Court by its apparitors, of whom there were many; citations were not to be made through the vicars, rectors, or parish priests, lest the secrecy of the confessional should become mistrusted and the people cease to confess their sins.—*Vide* Archbishop Stratford, A.D. 1342, *C. Lond. Can.* 8. J. Johnson, *Laws and Canons*, ii. p. 371. Chaucer has given us a specimen of one of those “moral” agents in his account of the *sumptnour* or *summoner*.

³ As usual, blackmailing was not infrequently resorted to. *Vide* H. W. C. Davis, *England under Normans and Angevins*, p. 209. London, 1909.

⁴ See S. Pegge, *Life of Bishop Grosseteste*, p. 183.

tions¹ unearthed so many scandals among all ranks of the people,² that he was checked by Henry III.³

Although the nations and the laws of Europe ceased to be pagan, and became Christianised, the Church, with its haughty claims and well-learned rulers, sought for autonomy. Had not the Apostle Paul said that they should judge angels,⁴ and that the saints some day should judge the world?⁵ After such a text it was easy to claim that the Emperor Constantine had declared at the great Council of Nicaea⁶ (in A.D. 325) that priests could be judged by God, but not by men. The clergy wanted to be tried by their peers, and looked askance at the other Courts; the times were given over to violence,

¹ S. Pegge, *Life of Bishop Grosseteste*, p. 46.

² Some years later Archbishop Boniface, in his Constitutions, declared (17) that the State must not interfere with moral inquisitions. *Vide* J. Johnson, *Laws and Canons*, ii. p. 205, ed. 1851; and observe "Note on Anselm's Canons," p. 28 of the same volume.

³ The visitations of the archdeacons were highly unpopular, creating any number of spies and informers; see *Ecclesiastical Courts Commission*, p. xxiv. London, 1883.

⁴ 1 Cor. vi. 3.

⁵ *Ibid.* 2.

⁶ Rufinus, *Hist. Ecc.* lib. i. cap. ii. p. 184, ed. of Basel. 1611.

the punishments were always sanguinary, and the lay lords and judges were exceedingly rapacious.¹ If there were no more open pagans in high places, there came along various heretics certain to be abhorred at least equally.

So the Church started on a long contention, in which there were many struggles, with local victories and defeats in different countries. In the earlier period the State was the stronger; a law of Gratian² (fourth century) reserved to the Secular Court all but the slight offences of the clergy. It was laid down at the Council of Agde in 506,³ and again at the Council of Epaone in 517,⁴ that while the clergy should not appeal to the civil power as plaintiffs,⁵ they were to attend if summoned to the Secular Courts. At a Council of Macon in 581⁶ it is

¹ On the packing and intimidating of juries until, as Wolsey observed, "they would find Abel guilty for the murder of Cain," see W. Eden (Lord Auckland), *Principles of Penal Law*, p. 176. London, 1771.

² H. C. Lea, *Studies in Church History*, p. 171. Philadelphia, 1869.

³ *C. Agathense*, c. 32.

⁴ *C. Epaonense*, c. 11.

⁵ The same was also referred to by the eighteenth Canon of the Council of Verneuil about 755.

⁶ *C. Matisconense*, i. c. 7.

implied that criminal cases were to be conceded to them. At the same time the clergy were forbidden to accuse one another before civil magistrates.¹

The fear and jealousy of the Secular Courts persisted; by a Canon of the Third Council of Orleans (A.D. 538),² the bishop's permission was to be given before a cleric could attend as plaintiff or defendant. By the fourth Canon of the Fifth Council of Paris (A.D. 615),³ no judge was to try any ecclesiastic without first giving notice to his ordinary; this order is repeated in a Capitulary of Charlemagne of A.D. 769. Pope Gregory the Great (540-604)⁴ had contended for the principle that a clerical defendant was entitled to be tried by his own Court, and this was established by Welsh Canons of the seventh century.⁵

A Capitulary of Charlemagne gave the bishops criminal jurisdiction over the clergy,⁶

¹ *C. Matisconense*, i. c. 8.

² *C. Aurelian*, iii. c. 32.

³ *C. Parisiense*, v. c. 4.

⁴ *Gregor. I.* lib. vi. Epis. xi.

⁵ Haddan and Stubbs, *Councils and Ecclesiastical Documents*, i. p. 133. *Canones Wallici*, c. 40 (37). Oxford, 1869.

⁶ Lea, *Studies*, p. 178.

though the emperor reserved to himself the right of final decision in all cases.¹ By the year 853 his grandson, the superstitious Charles the Bald, was appealing to the bishops at Soissons against the person of a humble clerk who was accused of forging the royal signature.² In A.D. 866³ Pope Nicholas I., in his advice to the Bulgarians, declared that laymen had no right to scrutinise or condemn any priests, who were to be left to the control of their prelates. The Council of Ravenna in 877⁴ ordered that none who were under the bishops' guardianship should be seized by the seculars.

The two systems drifted farther and farther apart;⁵ clerks were forbidden under pains and penalties to attend secular summonses. The Emperor Frederic II.⁶ decreed in 1220 that no one might drag a clerk before a secular tribunal;

¹ Lea, *Studies*, p. 179.

² *Ibid.* p. 182.

³ Epis. xcvi. 70. Migne, *Patrologiae*, tom. 119, p. 1006.

⁴ *C. Ravennense*, c. 4.

⁵ For instance, by Charlemagne in 789 and at the Synod of Bamberg A.D. 1491; *vide* Lea, *Studies*, pp. 178, 192, 196.

⁶ *Privilegia Clericorum, Constitutio Frederici Imperitoris*, p. iii. *B. M. Cat.* i. a. 6515, *Constitutio Caroli*, 1498.

any lay judge who convicted one was to forfeit his place, besides incurring spiritual penalties.¹ The Emperor Charles IV. made similar laws in 1359 (*Constit. Caroli IV.* 5), and punished the imprisonment of a clerk with outlawry and loss of possessions.² This was confirmed by Pope Martin V. in 1418. The right to clerical immunity³ was reasserted at the twenty-fifth session (20) of the General Council of Trent in 1563.⁴

The Church, as we have already seen, had been allowed and appointed to regulate the faith and morals of all men. It also claimed, and, in the long-run, secured, the right to demand all clerics accused of crimes,⁵ except in cases of high treason, highway marauding,⁶ and deliberate house burning,⁷ offences against the laws of the

¹ G. H. Pertz, *Monumenta Germaniae Legum*, tom. ii. p. 244. Hanover, 1837.

Lea, *Studies*, pp. 191, 196.

² *Ibid.* pp. 191, 192.

³ P. F. Lecourayer, *Histoire du Concile de Trente*, tom. ii. p. 658 ; and see p. 585, etc. 1736.

⁴ For post-Tridentine claims, *vide* Lea, *Studies*, p. 216, etc.

⁵ Holdsworth, *Hist. Eng. Law*, iii. p. 253.

⁶ Even *insidiatores viarum et depopulatores agrorum* were ultimately allowed clergy by 4 Hen. IV. c. 2, A.D. 1402.

⁷ Matthew Hale, *Pleas of the Crown*, ii. p. 333. London, 1800.

forest (that is hunting the king's deer, etc.),¹ and misdemeanours (*i.e.* slight offences).² In time all clerks claimed privilege of clergy, and these consisted not only of those in priests' orders³ (of minor orders there were four degrees below subdeacons⁴), but of all those who were tonsured and had their hair cut in the clerical fashion.⁵

All anywise connected with Church work, such as the readers, acolytes, and door-keepers, could claim clergy.⁶ So that the state of clerkship was frequently claimed,⁷ both justly and fraudulently, by extremely humble people, and the existence of the tonsure, and also its genuineness, were very important in criminal cases, for it was sometimes assumed as a claim to immunity,⁸ and occasionally the accused would have their heads shaved by the prosecutors in order to obliterate it.⁹

¹ Lingard, *Hist.* ii. p. 192, etc.

² Holdsworth, i. p. 382.

³ Lea, *Studies*, pp. 213, 218.

⁴ Lingard, ii. p. 127.

⁵ D. Rock, *The Church of Our Fathers*, i. p. 144. London, 1903.

⁶ J. F. Stephen, *Hist. Crim. Law.*, i. p. 461.

⁷ A. S. Green, *Henry II.*, p. 85. London, 1903.

⁸ Lea, *Studies*, pp. 178, 203.

⁹ Johnson, *Laws and Canons*, ii. p. 194.

By the statute *Pro Clero* of 1350,¹ "all manner of clerks, as well secular as religious, which shall be from henceforth convicted before the secular justices aforesaid for any treasons or felonies touching other persons than the King himself or his royal majesty, shall from henceforth freely have and enjoy the privilege of Holy Church, and shall be, without any impeachment or delay, delivered to the ordinaries demanding them." This came to mean immunity for all who could read.²

A man who claimed clergy was examined as to his scholarship, being required to read a passage,³ usually from the 51st Psalm, which was called his "neck verse."⁴ Then said the lay Court to the bishop's representative, "Legit ut clericus?" and the examiner replied, "Legit," or "Non legit";⁵ and the person would either be remitted to the ordinary or sentenced by the judge, although it was forbidden to teach an

¹ 25 Ed. III. c. 4.

² Stephen, *Hist. Crim. Law*, i. p. 461.

³ Meiklejohn, *Hist. Eng.* vol. i. p. 165. London, 1895.

⁴ Lord Auckland, *Principles*, p. 173.

⁵ Thomas Smith, *De Republica Anglorum*, Alston's ed. p. 103. Cambridge, 1906.

accused person his letters¹ while he awaited trial (and he might have to lie five or six years in the bishop's prison until he could be presented at the assizes—Pollock and Maitland, *Hist. Eng. Law*, p. 442); yet foreigners might read from books in their own language,² and the blind could claim clerkship if they could speak in the Latin tongue.

Clearly, to be tried by the Ecclesiastical Courts was looked upon as being a privilege and an advantage by the person accused.³ He had every chance of acquitting himself⁴ by means of the Canonical Purgation (see Compurgation, *ante*);⁵ and even if he happened to be condemned by bishop or abbot,⁶ in case he failed to obtain the necessary compurgators, or were delivered over *absque purgatione* (*i.e.* not allowed to make his purgation),⁷ or even if, from religious fears, he refused to swear innocence,⁸ the

¹ D. Barrington, *Observations on the More Ancient Statutes*, p. 443.

² Hale, *Pleas of the Crown*, ii. p. 372.

³ Stephen, *Hist. Crim. Law*, i. p. 460.

⁴ Pollock and Maitland, *Hist. Eng. Law*, i. p. 426.

⁵ W. Stanford, *Pleas de Coron.*, lib. ii. cap. 48. London, 1560.

⁶ Holdsworth, *Hist. Eng. Law*, i. p. 382.

⁷ Stephen, *Hist. Crim. Law*, i. p. 461.

⁸ See Bingham, *Antiquities of the Christian Church*, v. p. 459.

ecclesiastical punishments were generally merciful, except for such deadly sins as heresy or witchcraft.

The clergy were forbidden by the Canons to impose sentences of death or mutilation;¹ the injunction was repeated by Archbishop Ecgberht.² "We threaten anathema," wrote Archbishop Richard in the year 1175,³ "to that priest who takes the office of sheriff or reeve." Again in 1215 were the clergy forbidden the judgment of blood.⁴ They were not, said a Council of Toledo,⁵ to sit as judges, even at the command of a ruler, in cases of treason, unless he first promised to remit the red penalties. At the Council of Auxerre⁶ the clergy were prohibited from witnessing the usual torturing, of the prisoners, or from lingering round the trepalium when it was in progress. In fact, except for acts or thoughts which it considered to be high

¹ *Concilium Tarragonense*, c. 4, A.D. 516.

C. Autissiodorensis, c. 34, A.D. 578.

C. Toletanum, xi. c. 6, A.D. 675.

² *Excerptiones Ecgberti*, Arch. Ebor. 156.

³ Johnson, *Laws and Canons*, ii. p. 60.

⁴ *C. Lat.* iv. c. 18.

⁵ *C. Toletanum*, iv. c. 31, A.D. 633.

⁶ *C. Autissiodorensis*, c. 33, A.D. 578.

crimes against the soul, the Church was milder than the mediæval State.

The Church being debarred from the employment of the swift and sanguinary penalties of those times, had to resort to other methods of disapproval, and it evolved the penitential discipline. At first it wielded only spiritual weapons—none the less terrible in those days because they were ghostly—and by refusing access to Church or Communion, and thereby (as all concerned fully believed) closing on kings the everlasting doors, it sometimes brought the mightiest to their knees to implore pardon from the priests of God.¹ On confessing a crime, or upon being condemned, all manner of tasks and toils were laid upon the penitent. Sometimes they were capricious and poetic; thus if a man had slain his near kindred,² the weapon with which the deed was committed could then be forged into a penal chain, and, bound therewith, arrayed in the sclavinia,³ or, it might be, naked, he would have to trudge away, staff in hand, to his

¹ As, for instance, Theodosius, fourth century; Emperor Henry IV, eleventh century; Henry II., twelfth century.

² Thrupp, *Anglo-Saxon Home*, p. 238.

³ *Ibid.* p. 243.

destination, which might be some local shrine, or that of St. Thomas of Canterbury; but which might be far off, across and beyond the seas, to Compostella, Rome, or Palestine.¹ The ordinary penitent wore no chains, but he was usually required to go unarmed, to eat no flesh, to take no strong drink, and to abstain from warm baths, and sometimes he had to fulfil weird and painful conditions particularly imposed by his penitentiary;² as, for instance, when Robert, called the Devil, was ordered by a certain hermit³ to eat only bones and scraps which had been thrown to dogs, and to be dumb and act like one insane. Our own King Edgar⁴ was condemned not to wear his crown for seven years. Examples could be multiplied indefinitely. A much-employed form of correction consisted in imposing peni-

¹ King Æthelwulf, in the ninth century, obtained an ordinance from the Pope that no Englishman was to be condemned to make a pilgrimage in irons outside his own country.—Lappenburg, *Saxon Kings*, ii. 26. A pilgrim from Canterbury would be recognised by his carrying back a bottle or a bell; a shell if he had arrived from Santiago de Compostella (Spain), and a palm from the Eastern Land.—R. F. Littledale, *Ency. Brit.*

² Thrupp, *Anglo-Saxon Home*, p. 256.

³ See W. J. Thoms, *Early English Prose Romances*, i. p. 31, etc. London, 1858.

⁴ Johnson, *Laws and Canons*, ii. p. 449.

tential fasts,¹ during which the offender was to subsist upon bread and water,² and was subject to many disabilities and restrictions.³ These sentences might be for any period ranging from a single day to twenty years, and even longer, and all the while the penitent was supposed to drag out his existence in shame and disgrace, making prayers for deliverance.⁴

The Church allowed class distinctions in several ways;⁵ offences might be punished according to the rank of the aggrieved party,

¹ So much would depend upon the view taken by the penitentiary. See, for instance, Charles Reade's historical story, *The Cloister and the Hearth*.

² Usually for half the time, and often for three days in a week for the second half. Vide *Pen. Ecgberti, Arch. Ebor.* etc.

³ Lea, *Studies in Church History*, p. 245.

⁴ Thorpe, fol. ed. pp. 280, 315.

⁵ See the Penitential of Archbishop Theodore of Canterbury (A.D. 673), Thorpe, p. 278.

In the year 1139 a Council of Lateran condemned murderers of the clergy to excommunication, removable by the Pope alone (Labbé, tom. xxi. p. 530). Nevertheless we find Archbishop Richard complaining of want of protection (Petrus Blesensis, *Opera*, Epistola 73, Giles's ed. i. p. 217, Oxford, 1847; also Hook, *Lives of the Archbishops of Canterbury*, ii. p. 577, London, 1862); and Henry II. provided lay penalties (Reeves, *Hist. Eng. Law*, i. p. 133; Lingard, *Hist.* ii. p. 193; Carte, *Hist.* i. p. 689; C. H. Pearson, *History of England during the Early and Middle Ages*, p. 511. London, 1867).

so that the penance for the murder of a bishop was for twelve or fourteen years, or longer, upon bread and water, while the slaying of a deacon could be atoned for by seven or ten years', and of a layman by four, five, or seven years' discipline.

On the other hand, people, and especially the clergy, were liable to be sentenced more severely in proportion to their rank.¹ Thus for homicide, where a layman would get four or five years' penance from the ordinary,² a clerk would receive six years, a priest ten, and a bishop as much as twelve years (seven on bread and water).³ These long-enduring penances sound severe, and doubtless were for devout believers. But the Roman Church, always a marvel of organisation, allowed its bishops very great latitude, both in imposing and removing penances. "I require not the continuance of time," said Chrysostom, "but the correction of the soul ;

¹ *Vide* Penitential of Theodore, *De Temperantia Poenitentium*, etc.

² Penitential of Ecgberht, Archbishop of York (eighth century), Thorpe, p. 377.

"The common penance for murder" (ninth century) was seven to ten years.

³ J. Johnson, *Laws and Canons*, note E, ii. p. 11.

demonstrate your contrition, demonstrate your reformation, and all is done." By the authority of the Councils¹ they could increase or mitigate sentences,² so that the infirm and the over-sensitive might have their tasks modified.³

But they dealt gently with the men of might;⁴ the wind was tempered to the woolly lamb.⁵ In spite of Cuthbert's Canons at Cloves-Hoo in the eighth century,⁶ the rich were generally enabled to perform their pilgrimages vicariously (whereby there had arisen a class of professional pilgrims; Thrupp, p. 239, etc.), and to atone for sins by almsgiving and payment.⁷

¹ *C. Ancyranum*, c. 5, A.D. 314.

C. Nicaeni, c. 12, A.D. 325.

C. Chalcedonense, c. 16, A.D. 451.

C. Ilerdense, c. 5, A.D. 524.

² For England, see Thorpe, i. p. 278; Johnson, *Laws and Canons*, ii. pp. 10, 11, note D.

³ Johnson, p. 446.

⁴ Marshall, *Penitential Discipline*, pp. 109, 110.

⁵ The king's familiar friends and associates were to be received into the communion of the Church and were not to be cast out, decreed a Council of Toledo.—*C. Toletanum*, xii. c. 3, A.D. 681; Labbé, tom. xi. p. 1030; Marshall, *Penitential Discipline*, p. 126.

⁶ *C. Clovenhonense*, cc. 26, 27, A.D. 747.

⁷ Maitland, *Domesday Book*, p. 281.

“Thou hast money, buy off thy sin, Ambrose had written in the fourth century.¹ “The Lord is not for sale, but thou thyself art for sale. Restore thee by thy works. Buy thyself back by thy money.”

This exhortation was followed and given the lowest possible interpretation in the Canons made (by Dunstan, probably) in the reign of King Edgar in the year 963.² When a great man had been condemned to fast, say seven years, he was to lay aside his weapons, and take his staff in his hand and walk barefoot, clad in wool or haircloth, and he was not to go to bed or banquet for three days.

He was to take to his assistance twelve men, and they were to fast three days on bread, raw herbs, and water: thus thirty-six fasts were kept. He was to get together seven times 120 men and set them to fast three days; thus he secured $7 \times 120 \times 3 + 36$ fasts, or 2556, which meant as many fasts as there were days in seven years, counting a leap year!

¹ St. Ambrose, *De Elia et Jejunio*, c. xx. ; Migne, *Patrologiae*, tom. xiv. p. 724.

² See J. Johnson and B. Thorpe; also Lea, *Middle Ages*, i. pp. 464, 473.

And thus his penance was done, or rather evaded.¹

But the Church did not usually allow its penalties to be disregarded; against heretics there were, even in England, severe statutes,² and they would be seized by the civil forces and burned alive. Any one who had offended against the Canons, and who refused to do penance, could be excommunicated, and then he became liable to arrest.³ In this country if the offender ignored it for forty days,⁴ the King's Court, on the request of the bishop,⁵ issued a Writ of Significavit,⁶ or some similar injunction, ordering

¹ Carte, *Hist.* i. p. 581. I think it was Herbert Spencer who remarked how completely mere outward material performance or conformity could generally satisfy the mediæval claims.

² 5 Rich. II. c. 5, A.D. 1382.

² Hen. IV. c. 15, A.D. 1400.

² Hen. V. c. 7, A.D. 1414.

³ *C. Triburiense*, c. 3, A.D. 895.

Lea, *Studies*, p. 384.

Stubbs, in Appendix II. *Ecc. Courts Comm.*, 1883, pp. 55, 56.

⁴ He might even be proceeded against on suspicion of heresy if he continued contumelious. See twenty-fifth session of the Council of Trent, Lecourayer, tom. ii. pp. 648, 653.

⁵ Stubbs, *Const. Hist.* iii. p. 374.

⁶ Chaucer, John Saunders' ed. p. 83. London, 1889.

"Significavit is a Writ which issues out of the Chancery pon a Certificate given by the Ordinary of a man that stands

the sheriff to imprison him until he had satisfied the claims of the Church.¹

The hierarchy, although, as we have seen, debarred from directly inflicting such penalties as death or amputation of members, resorted to many forms of corporal punishment. Floggings for penance or discipline were administered frequently ;² the younger monks in the monasteries commonly received thirty-nine stripes.³

But the bishops had other and worse penalties in reserve, and, unlike the secular rulers, they employed imprisonment as a means of punishment in itself. The Catholic Church, with its ideals of cloistral life and ascetic seclusion, sought to

obstinately excommunicate by the space of forty days, for the laying him up in prison without Bail or Mainprice, until he submit himself to the Authority of the Church." "And it is so called because Significavit is an emphatical word in the Writ." —T. Blount, *Law Dictionary*. London, 1717.

¹ See A. Abram, *Social England in the Fifteenth Century*, p. 111 (London, 1909) ; also *Chancery Warrants for Issue, The Patent Rolls*, etc. ; J. Johnson, *Laws and Canons*, ii. p. 192, *De Excommunicato Capiendo*, and p. 399 ; Holdsworth, *Hist.* i. pp. 358, 433.

² Henry II. of England was severely scourged by eighty ecclesiastics ; the bishops present gave each five strokes, and every monk gave three. The king's penance brought on illness. —Lea, *Middle Ages*, p. 464 ; Meiklejohn, *Hist.* i. p. 102.

³ Bingham, *Antiquities of the Christian Church*, vi. p. 172.

produce remorse through mental affliction, and in its high-walled abbeys and gloomy courts had buildings ready to immure any one. The first cells were among the *exedrae* round churches and bishops' houses and were called the *decanica*,¹ while refractory monks were freely imprisoned in the great monasteries.²

Though the ecclesiastical punishments³ were accounted generally merciful—as we shall see presently from English comments on them—they could be pitiless enough on occasions, especially against heretics. The secret and dreadful Inquisition had its own prisons,⁴ in

¹ Bingham, ii. p. 128.

I once saw a cell belonging to a Spanish prelate at Majorca ; it was a little dark lock-up and was untenanted.

² For instance, Tinmouth Priory was employed as a prison by the abbots of St. Albans. See W. Dugdale, *Monasticum Anglicanum*, iii. p. 309. London, 1846.

Bingham, vii. p. 43.

Ingulph's *Chronicle of the Abbey of Croyland*. Riley's ed. p. 98.

³ Lea, *Middle Ages*, i. p. 488.

⁴ *Ibid.* p. 490.

Charles Molinier, *L'Inquisition au XIII^e et au XIV^e siècle*, pp. 435, 440, etc. Paris, 1880.

Concilium Albiense, c. 24, A.D. 1254.

Lea, *Superstition and Force*, p. 426.

Findings of the Commission of Cardinals sent by Pope Clement V. in 1306 ; see Molinier, p. 450, and B. Hauréau, Bernard Delicieux, p. 134, etc. Paris, 1877.

which it tortured its victims by every means that subtlety could suggest, and in which the mind-wrecking results of solitary confinement were probably first discovered, and at any rate utilised.

Already back in the thirteenth century the authorities had frowned on prison association.¹ In 1229 a Council of Toulouse ordered that the "converted" heretics (*i.e.* those who had recanted from the fear of execution, and who were even then sentenced to imprisonment for life; *vide* Lea, on Laws of Frederic II., Bull of Gregory IX., etc., in his *Middle Ages*, i. pp. 321, 484) should be kept from corrupting others. The new prisons built for the Church and the Inquisition² were ordered to have small dark dungeons for solitary confinement. In 1246 a Council of Beziers³ ordered that the captives should be kept separate in secret cells, so that no one might corrupt another. It speaks of the "enormis rigor carceris."

The prisoners of the Church⁴ were subjected to

¹ *C. Tolosani*, c. 11.

² Lea, *Middle Ages*, i. p. 491.

³ *C. Biterrense*, c. 23, et *C. Biterrense*, A.D. 1233; *De Custodia Claustris*, Labbé, tom. xxiii. p. 275.

⁴ Lea, *Middle Ages*, i. p. 487.

various kinds of incarceration. There was the *Murus Largus*, under which they were allowed about the place;¹ the *Murus Strictus*, *Durus*, or *Arctus*, by which they were supposed to be confined in separate cells upon bread and water;² and the *Murus Strictissimus*, where they were kept in dungeons and in heavy irons.³ The Inquisition employed, besides, innumerable torments, and could learn little from the imaginings of Dante; but that dread organisation has a history of its own.

Apart from it, the bishops⁴ possessed their

¹ Lea, *Middle Ages*, p. 486.

² In 1234 a Council of Albi decreed that the holders of confiscated property of heretics should make provision for the imprisonment and maintenance of its former owners.

³ For instance, in A.D. 1300 we find certain prisoners at Albi condemned "Ad perpetuum carcerem stricti muri ubi panis doloris in cibum et aqua tribulationis in potum, in vinculis et cathenis ferreis solummodo ministrentur."—Molinier, p. 94, quoting Doat, tom. xxxv.

⁴ "We do with special injunction ordain that every bishop have one or two prisons in his bishopric; he is to take care of the sufficient largeness and security thereof for the safe keeping of clerks according to canonical customs that are flagitious, that is, caught in a crime or convicted thereof. And if any clerk be so incorrigibly wicked that he must have suffered capital punishment if he had been a layman, we adjure such an one to perpetual imprisonment. . . ."—J. Johnson, ii. pp. 207, 208; *Constitutions of Archbishop Boniface*, A.D. 1261.

prisons, and the great convents had penal cells,¹ and these they would use to inflict penance or punishment.² Thus at Canossa, in 1077, Pope Gregory VII.³ consigned the rebellious German prelates to solitary cells with bread and water dietary.

Again we may read of another example occurring in the year 1283. A certain Brother John had, it appears, bitten his prior's finger "like a dog," it was said; and for this we find the bishop ordering the outraged prior⁴ "to keep the said Brother John in prison under iron chains, in which he shall be content with bread, indifferent ale, pottage, and a pittance of meat or fish (which on the sixth day he shall do without) until he is penitent." A worse fate befell Alexander de Langley in the same century.⁵ This unfortunate creature was a man of great culture and was the keeper of the abbot's

¹ Dugdale, *Monasticum Anglicanum*, vi. p. 238.

² Lea, *Middle Ages*, p. 487.

³ James Stephen, *Studies in Ecclesiastical Biography*, p. 38. London, 1907.

⁴ J. W. Willis Bund, *Episcopal Registers*, ii. p. 182. Oxford, 1902.

⁵ H. T. Riley, *Gesta Abbatum Monasterii Sancti Albani*, i. p. 266. London, 1867.

seal. Either from approaching general paralysis, or from some other form of insanity, he passed into a state of extreme exaltation, perhaps to the extent of being, as they would take it, mutinous or blasphemous. A severe flogging having failed to restore his sense of proportion, he was consigned in fetters to a cell in which he ultimately died, and was buried, the corpse still chained.

There had also existed within the monasteries the dreadful punishment of solitary confinement known as *In Pace*. "Those subjected to it" says Dr. Lea,¹ "died in all the agonies of despair. In 1350 the Archbishop of Toulouse appealed to King John to interfere for its mitigation, and he issued an ordinance that the superior of the convent should, twice a month, visit and console the prisoners, who, moreover, should have the right, twice a month, to ask for the company of one of the monks. Even this slender innovation incurred the bitterest resistance of the Dominicans and Franciscans, who appealed to Pope Clement VI., but in vain."

¹ *History of the Inquisition in the Middle Ages*, i. p. 487 and note; and see H. R. Luard, *Annales Monastici*, t. ii. p. 296, t. iii. p. 76; F. W. Maitland, *Law Quarterly Review*, ii. p. 159.

There could indeed be abuses and cruelties in ecclesiastical prisons, as there always are where high walls conceal. For instance, we may read¹ that in A.D. 1283 certain monks were seized by the Abbot of Westminster, "and so greatly beaten that one of them has miserably expired." There were cases where the Church took the extreme step of degrading from orders. In the very early period this often meant that degraded clerics would be immediately claimed by the secular authorities and set servile tasks²—after which they could not be reinstated. Very often they were shut up in the monasteries,³ a course which the bishops preferred to remitting them to lay punishment.⁴ Innocent III. (1198-1216), however, directed that clergy who had been degraded should then be handed over to the secular powers.⁵

But in actual practice clerks were not often totally degraded.⁶ To be deprived of orders was

¹ Bund, *Epis. Registers of the Diocese of Worcester*, ii. p. 189.

² Bingham, *Antiquities of the Christian Church*, vii. p. 18.

³ *Ibid.* p. 12.

⁴ Addis and Arnold, *Cath. Dict.* p. 276.

⁵ S. Lugio, *Cath. Ency.* iv. p. 678. New York, 1908.

⁶ Coulton, *Chaucer and His England*, p. 288.

Lea, *Studies in Church History*, p. 189.

"Degradation was a penalty rarely inflicted, since the Church

looked upon as a terrible punishment;¹ it was the final casting from the fold and was inflicted with great difficulty.² Three bishops were required to degrade even a deacon; six were necessary to unfrock a priest; and it took twelve prelates to adjudicate upon a bishop.³

When any were degraded, excommunicated, and sent to the seculars, the sanguinary lay penalties took their course.⁴ The chief offence for which the Church withdrew all protection was obstinate or repeated heresy. In the earlier period those found guilty were branded on the forehead⁵ and cast out⁶ (as once from Oxford,

was reluctant to admit that the sacred office once conferred could be taken away for any offence short of heresy."—Davis, *Normans and Angevins*, p. 207.

¹ Degraded clerks were forbidden to live in the world as laymen by a Council of Rouen.—*C. Rothomagense*, c. 12, A.D. 1074.

Those who threw off their habit were not to be admitted into the army or into any convent of clerks, but were to be esteemed excommunicate.—Lanfranc's *Canons*, c. 12, A.D. 1071; J. J. ii. 9.

² Lecourayer, *Concile du Trente*, tom. i. p. 543.

³ Stubbs, *Ecc. Courts Comm.*, 1883, Appendix ii. p. 57.

⁴ A lay officer was supposed to be present to take over the fallen cleric into his custody.—*Cath. Ency.* iv. p. 678.

⁵ *C. Remense*, A.D. 1157.

⁶ *C. Oxoniense*, A.D. 1166.

to die of cold and starvation) excommunicate, or they might be imprisoned and have their property confiscated.¹ But with the rise and multiplication of militant sectaries, the Church urged the State to proceed to extremities.

Heretics were ruthlessly burned alive by popular custom² (and were sometimes "lynched" like negro criminals in the United States; *vide* Lea, *Middle Ages*, i. pp. 219, 222, 308), and in time this became formally recognised.³ Pedro

¹ *C. Turonense*, A.D. 1163.

² Lea, *Hist. Inq. Middle Ages*, i. p. 222.

A deacon was burned at Oxford in 1222, having been tried before Archbishop Langton for embracing Judaism in order to marry a Jewess.* From that time until 1400 no one is said to have been burned to death for heresy in England.—Maitland, *Law Quarterly Review*, ii. p. 153. London, 1886.

³ Lea, *Middle Ages*, i. pp. 220, 221, etc.

* Professor E. P. Evans throws an interesting side-light on this offence. "It seems rather odd," he observes, "that the Christian lawgivers should have adopted the Jewish code against sexual intercourse with beasts, and then enlarged it so as to include the Jews themselves. The question was gravely discussed by jurists whether cohabitation of a Christian with a Jewess, or *vice versa*, constitutes sodomy. Damhouder (*Prax. rer. crim.* c. 96, n. 48) is of the opinion that it does, and Nicolaus Boër (*Decis*, 136, n. 5) cites the case of a certain Johannes Alardus or Jean Alard who kept a Jewess in his house in Paris and had several children by her; he was convicted of sodomy on account of this relation and burned, together with his paramour, 'since coition with a Jewess is precisely the same as if a man should copulate with a dog' (*Döpl. Theat.* ii. p. 157). Damhouder includes Turks and Saracens in the same category."—*The Criminal Prosecution and Capital Punishment of Animals*, p. 152. London, 1906.

of Aragon in 1197, the Emperor Frederic II. by the *Edict of Cremona* in 1238, Louis IX. of France by his *Établissements* in 1270, and Henry IV.¹ of England in 1400, made burning at the stake the legitimate punishment of persistent or relapsed heretics.²

But it was not the severities of the Church that kept arousing the jealousy and opposition of the secular power. It was the immunity it afforded to those under its protection³ which moved the State to attack clerical privileges, and, in the course of ages, to remove them entirely. In Saxon times lay and episcopal authorities acted closely together, but William of Normandy, doubtless continuing the Continental movement already alluded to, separated the ecclesiastical from the secular courts.

King Henry II. had succeeded to the throne after a period of civil war and devastating brigandage, in which the Church had fortified its position and extended its jurisdiction,⁴ and

¹ 2 Hen. IV. c. 15.

² A pious old lady left a bequest to the city of London to defray the expenses of incinerating misbelievers.—Meiklejohn, *Hist.* i. 223.

³ W. Stubbs, *Charters*, p. 136.

⁴ G. B. Adams, *Political History*, p. 279. London, 1905.

was bent upon reasserting the power of the central government. He found that the clergy and the clerks¹ were outside his control, and in the middle ages they were a numerous body,² as many people were received into orders who had little or nothing to do in their own profession, and who were debarred by rule from obtaining a livelihood otherwise.³ So the king employed all his efforts to place the clerks under his justices.

A crucial case arose in 1163. A certain Philip de Broi or de Brois,⁴ who was probably an Archdeacon of Bedford and a Canon of Lincoln, had previously escaped personal punishment on a charge of manslaughter, but was afterwards denounced as a murderer by Simon FitzPeter, who

¹ It was represented to him that in the nine years through which he had reigned innumerable offences and one hundred murders had been committed by clerks who had escaped all punishments save the light sentences of fine and imprisonment inflicted by their own courts.—W. R. W. Stephens, *The English Church*, p. 165. London, 1901. *William of Newburgh*, lib. ii. p. 130, H. C. Hamilton's ed. London, 1856.

² In the thirteenth century there were, for instance, twelve clerks in the village of Rougham.—Augustus Jessopp, *Coming of the Friars*, p. 84. London, 1889. See also J. E. Thorold Rogers, *Six Centuries of Work and Wages*, i. pp. 24, 160, 161.

³ Carte, *Hist.* i. p. 581.

⁴ Eirikr Magnusson, *Thomas' Saga Erkibyskup*, i. p. 144, note.

was one of the king's justices. On this he protested vehemently and abused the judge. There had been several other cases about that time, including a bad one of murder and rape by a cleric from Worcester,¹ and another of homicide out of Salisbury,² in which the offender escaped with imprisonment, and King Henry took action with great fury.³ He claimed to have been insulted in the person of his delegate, and ordered that de Broi should be brought to trial, not only for this, but for the original manslaughter; he wished, in fact, to send him to the gallows. But the archbishop refused to reopen the matter already tried and decided, but for having insulted the king's officer the rebellious priest was severely dealt with,⁴ as he was stripped and flogged before the angry judge, and lost his

¹ William FitzStephen; J. C. Robertson's *Materials for the History of Thomas Becket*, iii. p. 45. London, 1881.

David Hume, *Hist. Eng.* i. p. 391. London, 1818.

² See Herbertus de Boseham; Robertson, *Materials*, iii. pp. 264, 265.

³ Magnusson, *Thomas' Saga Erkibyskup*, i. p. 145.

⁴ William of Canterbury; Robertson's *Materials*, i. pp. 12, 13. Edward Grim; Robertson, ii. p. 375.

Anonymous; Robertson, iv. p. 24.

K. Norgate, *England under the Angevin Kings*, ii. p. 21. London, 1887.

office and stipend on being banished for two years.¹ The king was dissatisfied, desiring nothing less than the death of the canon, and vigorously proceeded towards the subjugation of the clergy.

In 1164 he promulgated the *Constitutions of Clarendon*, by which he desired that criminous clerks should incur the lay penalties. The offender was first to be accused in the temporal court;² then tried, convicted, and degraded by the ecclesiastical tribunal; thence sent back for sentence to the secular court, to receive the customary draconic punishments. But Archbishop Becket and the English hierarchy declared that to degrade a clerk and then remit him to the secular judges was to punish him twice for the same offence.³ "Affliction," they said, quoting a Hebrew prophet,⁴ "shall not rise up a second time." All they would concede was that if a clerk after being degraded⁵ committed the

¹ R. de Diceto, *Works*, Stubbs's ed. i. p. 313. London, 1876.

² F. W. Maitland, *Eng. Hist. Rev.* vii. p. 226. London, 1892.

³ Stephens, *Hist. Eng. Church*, p. 166.

⁴ Nahum, i. 9.

⁵ Norgate, *Angevin Kings*, ii. p. 23.

offence again he might be handed over as an ordinary layman.¹

The death of Archbishop Thomas stayed all Henry's plans as regards the Church. "The temporal courts maintained their claim to bring the criminous clerk before them ; they abandoned their claim to punish the degraded clerk."² In the thirteenth century it had become the custom that the clerk³ should first be indicted and inquired upon before he could claim his clergy ;⁴ by the reign of Henry VI.—1422-1461—he must first be convicted⁵ before being passed into the hands of his bishop.⁶

In 1261 Archbishop Boniface⁷ ordered that

¹ Stephens, *Hist. Eng. Church*, p. 166.

² Holdsworth, *Hist.* i. p. 382.

³ Pollock and Maitland, *Hist.* i. p. 442, and note 2, ed. of 1898.

⁴ James Gairdner, *The English Church*, p. 42. London, 1902.

⁵ Reeves, *Hist. Eng. Law*, iii. p. 41.

⁶ If a clerk were accused, the Crown got his goods till he had completed purgation, after which they were usually returned (Hale, *Pleas of the Crown*, ii. p. 384). If, however, he was delivered over *absque purgatione*, or if he had first pleaded guilty, the king retained them, and had the produce of his lands for the prisoner's life.—A. T. Carter, *History of English Legal Institutions*, p. 255. London, 1906.

⁷ Johnson, *Laws and Canons*, ii. p. 208.

the clerks in their bishops' custody for capital crimes should suffer perpetual imprisonment. In 1275 Edward I. expressly ordered that the bishops were to allow no clerks to depart without purgation.¹ In 1276,² the *Bigami*, i.e. the persons who had been twice married or those who had married widows³ (highly respectable acts at the present time), were excluded from claiming clergy.⁴ In 1279 Archbishop Peckham decreed in his *Constitutions*:⁵ "Let not clerks that are in prison for their crimes, and afterwards delivered to the Church as convicts, be easily enlarged, or admitted to purgation upon too slight pretence, but with all solemnity of law and with such provident deliberation that it may not offend against the king's majesty or any that have a regard to equity."

In 1350 there came the statute *Pro Clero*.⁶ Many persons had, it appears, been seized by the seculars. By this Act the Church's privileges were

¹ 2 Ed. I. c. 2.

² 4 Ed. I. c. 5.

³ Following a Canon of the Council of Lyons, A.D. 1274. *C. Lugd.* c. 6.

⁴ For other instances of the dislike to remarriage, see Westermarck, *Moral Ideas*, ii. pp. 450, 451; and E. S. Hartland, *Primitive Paternity*, i. p. 134.

⁵ Johnson, *Laws and Canons*, ii. p. 267.

⁶ 25 Ed. III. c. 4.

reaffirmed,¹ and the offending clerks were ordered to be handed over to the spiritual courts. But for this grant the king demanded that the clerical convicts should thenceforth be safely kept and duly punished, "so that no clerk shall take courage to offend for default of correction." Thus urged by the Crown, and perhaps fearful of other enactments, Simon Islip, Archbishop of Canterbury, endeavoured to make things harder for the Church's prisoners. "They are," he complains, "with so much backwardness and favour committed to gaol, and are so deliciously fed there, that the prison intended for a punishment for their crimes is turned into a refreshment and delicious solace, and they are pampered in their vices by ease and such inducements and yet make their escape out of custody as injurious to them. . . . And some notoriously infamous criminals, that are in truth wholly without excuse, are yet so easily admitted to their purgations, that every clerk thus delivered (by the secular judge) hath sure hopes of returning to his former evil life by one means or other. . . . Therefore we have thought fit thus to

¹ See, for instance, a law passed in 1378 (1 Ric. II. c. 15) against arresting priests during divine service.

ordain concerning the imprisoned clerks¹ . . . (they are) to be closely imprisoned with all proper care and expedition according to the quality of their persons and the heinousness of their crimes, that they may not to the scandal of the Church return to their former way of life from an imprisonment intended for a punishment." Clerks guilty of bad offences are, on Wednesday, Friday, and Sabbath day, to have bread and water; on the other days, bread and small beer; "but on the Lord's day, bread, beer, and pulse, for the honour and eminence of that day. And let nothing else be given them by way of alms or gratuity from their acquaintance and friends, or for any pretence or reason whatsoever; nor let any purgation be granted them." These severe rules, which, coming from the archbishop,² were, of course, repeated by all the prelates, resembled the penal systems of discipline which reached their maximum of cruelty in the nineteenth century.

But there seems good reason to believe that

¹ Archbishop Islip's *Constitutions*, A.D. 1351. Johnson, *Laws and Canons*, ii. p. 414, etc.

² See, for instance, F. C. Hingeston-Randolph, *Register of John de Grandisson, Bishop of Exeter*, Part ii. p. 1118. London, 1897.

the Church's treatment of its prisoners remained, on the whole, mild and humane. The clergy were not hardened prison officials; their calling was spiritual rather than military. They were dealing with men belonging more or less to their own order, and were prone to class loyalty.¹

In the light of subsequent criticism and legislation,² it seems that even after Islip's ordinance the Church's convicts were much better treated than were the laymen in the common gaols. Moreover, either (or both) from a sense of humanity,³ or because the bishops disliked having to pay for the keep of their prisoners,⁴

¹ For instance, they could not be accused by disreputable persons; *vide C. Carthag.* A.D. 390; Labbé, tom. iii. pp. 694, 870; *C. Chalced.* c. 21, A.D. 451; Labbé, tom. vi. p. 1229; *C. Trident.* Ses. 13, c. 7, A.D. 1551. It was complained that the clergy could not be accused by the laity and would not accuse each other.—Lea, *Studies in Church History*, pp. 208, 211.

² For instance, Simon Fish in his *Supplicacyon of Beggars*, written about 1529, J. M. Couper's ed. p. 12. London, 1871.

Shakespeare, writing of the fifteenth century, refers to the matter:

. . . You know our king
Is prisoner to the bishop here, at whose hands
He hath good usage and great liberty.

Third Part of King Henry VI. iv. 5.

See also Hook, *Archbishops of Canterbury*, ii. p. 398.

³ J. C. Robertson, *Materials*, iv. p. 49; *Epist. Nicolaus de Monte*.

⁴ Coulton, *Chaucer*, p. 288.

long sentences were avoided and life sentences were inflicted as rarely as possible; the prisoners would be pardoned¹ on jubilees and special occasions, and sometimes released on their friends paying ransom (apparently of such sums as £20 or £40; *vide* Lea, *Studies in Church History*, p. 202, and the statute 23 Hen. VIII. c. 1). The State all along appeared on the side of severity, and, from the thirteenth century, was in the habit of sending clerks to their bishop *absque purgatione*, who, in theory at least, were to be life prisoners. Indeed, if the ordinary should attempt to release such persons, he could be restrained from doing so by a writ out of the Chancery.²

So early as 1238 a Bishop of Exeter³ was in trouble for having sent a certain clerk to purgation. Later on an Abbot of St. Albans⁴ was accused of allowing some prisoners to escape; and there are doubtless other instances. But evidently the prisoners of the bishops were continually being released, for we find a special

¹ Lea, *Studies in Church History*, p. 196.

² Hale, *Pleas of the Crown*, ii. p. 384.

³ Pollock and Maitland, p. 444, ed. 1898.

Ibid. pp. 427, ed. 1895.

⁴ Riley, *Chronica Monasterii S. Albani*, iii. p. 48. See also Britton, Nichols' ed. p. 27.

statute¹ passed in the year 1402 forbidding that clerks found guilty of treason (of less degree than plotting against the king himself), or who were known to be common thieves, should be allowed any sort of purgation. In 1485 an Act² was passed by which the bishops might commit priests, clerks, and religious men to ward and prison for advowtry (*i.e.* adultery), fornication, incest, or any other fleshly incontinence, and they were not to be liable for actions for wrongful imprisonment.

In 1487 a severe blow was aimed at immunity. By this Act,³ clerks (*i.e.* such as could read, but who were not actually within orders) were to enjoy their privilege only once; and to ensure that they should no longer be "continually admitted as oft as they did offend," it was ordained that clerks not within orders, who should hereafter be convicted of murder, should be forthwith branded⁴ by the gaoler in open court with the letter M upon the brawn of the left thumb, and, if found guilty of theft,⁵ with

¹ 4 Hen. IV. c. 3.

² 1 Hen. VII. c. 4.

³ 4 Hen. VII. c. 13.

⁴ Stephen, *Hist. Crim. Law*, i. p. 463.

⁵ Holdsworth, *Hist.* i. p. 382.

the letter T, before being handed over to the ordinary's officer.

An ordained priest could appeal to his Church again, but if he should claim his clergy a second (or other) time, he was to have his letters of ordination ready at hand, though he might be allowed one day's grace in which to obtain them—or equivalent evidence from the nearest bishop—and if they were not forthcoming he forfeited all clerical privileges.¹ In 1496 lay persons who should murder their lord, master, or sovereign immediate were deprived of their clergy; and in the fourth year of the following reign more exceptions were made, and clergy was taken from all, not actually within orders, who committed a felony in a church, or upon the king's highway, or who slew anybody in his own house.²

We have already seen with what exceeding difficulty a clerk, and more especially a priest, could be degraded and cast out of orders. To remedy this, Cardinal Wolsey, Archbishop of York, obtained a Bull³ (as regarded England) from Pope Clement VII. in 1528, by which a

¹ 12 Hen. VII. c. 7.

² 4 Hen. VIII. c. 2, A.D. 1512.

³ T. Rymer, *Foedera*, tom. xiv. p. 239. London, 1712.

single bishop, assisted by two abbots or other high dignitaries, could perform the ceremony.¹

The statute 23 Hen. VIII. c. 1 (1531) alludes to the monition of Edward I. (1275), to the effect that no Church prisoners should depart without strict purgation, on which Henry VIII. observes that, nevertheless, they were released very easily. It cites the statute of Henry IV. (1402), which ordered that notorious criminals should make no purgation, and goes on to say that the ordinaries kept releasing offenders speedily and hastily "for corruption and lucre," or because the clergy will in no wise consent to take charge of prisoners. The law then proceeds to take away the benefit of clergy from the various petit treasons previously referred to, and also for arson, from all clerks—subdeacons and the grades above them still excepted. The clergy within orders were to have lifelong imprisonment for these crimes,

¹ Lea, *Studies in Church History*, p. 189.

By the fourth Canon at the thirteenth session of the Council of Trent in 1551, it was decreed that a bishop or his vicar-general could condemn, and even degrade criminous clergy, with the assistance of as many mitred abbots, or, in default of them, as many high ecclesiastics as there would have been bishops under the old system. Lecourayer, i. p. 550 ; Luzio, *Cath. Ency.* iv. p. 678.

unless they could find guarantees for good conduct—the accused to the extent of £40, with two substantial sureties in £20 apiece. By this statute it was also intended to relieve the bishops of the burden of maintaining their prisoners, and they were empowered to degrade such offending clerks, and to hand them over “in sure and safe keeping into the King’s Bench,” with a certificate certifying their degradation—now so much easier—upon which the king’s judges were to pass such sentences (usually of death) as would have been passed upon the convicted if, at the time of their accusation, they had been laymen and not clerks of any kind.

Nor was this all, for in the same year (1531) an Act¹ was passed by which escapes from the bishop’s prison were made felony for the clerks; those within orders were to be sent back to their prison, to abide there without release. In 1533² clergy was taken away from all who refused to plead, or who challenged above twenty jurymen peremptorily. In 1536³ clergymen within orders were to be placed on the same

¹ 23 Hen. VIII. c. 11.

² 25 Hen. VIII. c. 3.

³ 28 Hen. VIII. c. 1, s. 7.

footing with other clerks, but this law only lasted about a decade. But now the immunity of the clergy began to be taken away by a long series of statutes exempting particular crimes from any indulgence.¹

In 1576 convicted clerks ceased to be handed over to the bishops to make purgation.² For all "clergyable" felonies, Lords of Parliament³ (even when they could not read) and the clergy in orders were immediately released. The rest who could read were discharged for a first offence upon being branded, but the Court might also order their detention in prison for not more than a year; the captives who could not read were speedily hanged.⁴

¹ "In 1533 unnatural offences, in 1541 witchcraft, were made felonies. In 1603 bigamy was made a felony."—Holdsworth, *Hist.* i. p. 388.

² 18 Eliz. c. 7.

³ Special, and moral, prosecutions were carried out through the Court of Star Chamber (3 Hen. VII. c. 1) (*vide* Lingard, *Hist.* vii. p. 377; Carter, *Outlines of English Legal History*, p. 101; Hudson, *Treatise on the Star Chamber*) and by the hated Court of High Commission (1 Eliz. c. 1) (see Hale, *Precedents and Proceedings in Criminal Cases*, p. 1., and *Ecc. Courts Comm.*, 1883, p. xxxviii.), which imposed some enormous fines and inflicted various painful penalties, till they, with the ecclesiastical courts, were overthrown in the year 1640 (16 Car. I. c. 10 and 11).

⁴ Blackstone, iv. p. 28.

As the privilege of clergy became less worth having it was extended: to the *bigami*, or twice married, in 1547, and to women¹ (professed nuns had always lived under the Church's rule) in 1692. Upon conviction they were to be treated in the same way as the men in similar cases, that is, branded upon the hand, and then discharged, either at once or after imprisonment not exceeding one year.

In 1699² it was ordered that the branding should be done upon the face, but this cruel marking was found to prevent the victims from obtaining employment and to render them desperate, and the law was repealed six years afterwards in the reign of Anne.³ In 1705 the reading test was abandoned. The distinction had come to lie between offences, not offenders,⁴ and all were admitted to "clergy" who had been convicted of any of these minor felonies which still remained clergyable.⁵ The Act of 1705 also provided that such convicts should be liable to

¹ Women received certain allowances by 21 Jac. I. c. 6 in 1623.

² 10 & 11 Will. III. c. 23.

³ 5 Anne c. 6.

⁴ Carter, *Hist. Eng. Legal Inst.* p. 247, ed. 1902.

⁵ Stephen, *Hist. Crim. Law*, i. 463.

be sent to houses of correction or to public work-houses, for periods of not less than six months or exceeding two years, at the discretion of the magistrates.

In 1717¹ it was enacted that persons (other than peers or clerks in orders) guilty of clergy-able offences might be transported for seven years² (the usual sentence was for fourteen), instead of being branded or whipped.³ In 1779⁴ persons liable to be burned in the hand might escape with a fine, or they might be whipped in public or private, not more than three times; women were to be flogged in the presence of females. By this Act the branding was abolished in practice; and about half a century later all that remained of the old privilege was done away with in the reign of George IV.⁵

It has been customary to condemn all these old rights for so many years accorded to clerkship, because they are supposed to have constituted infringements of the principle that all

¹ 4 Geo. I. c. 11.

² Holdsworth, *Hist.* p. 383.

³ Stephen, *Hist. Crim. Law*, p. 463.

⁴ 19 Geo. III. c. 74, s. 3.

⁵ 7 & 8 Geo. IV. c. 28, s. 6, A.D. 1827.

men should be equal before the law.¹ But when we consider the barbarities they prevented, and after we have examined and ascertained the aimlessness and inutility of mere punishments, we may be forced to think that they were not an unmixed evil, and that, perhaps, they rather made for good.

SUMMARY AND "POETIC" PUNISHMENTS

Since the poor human body has always been sensitive, so at the promptings of the revenge instinct it has always been assailable and most readily beaten. Naturally enough the Duke of Gloster exclaims—in that most subtle second act of *Henry VI.*—"Have you not beadles in your town and things called whips?" Of course they had. The serf, the varlet, the vagabond, the lunatic, and the petty offender were all whipped with uncertain severity;² most likely until the victim was bloody and until the operator was tired and felt he had earned his fee. Doubtless the whips were of all sorts and sizes. They are

¹ Yet as Professor Menger expressed it, "Nothing can be so unequal as the equal treatment of unequals."

² Stephen, *Hist. Crim. Law*, iii. p. 27.

frequently represented as having three thongs;¹ Titus Oates was flogged with a whip of six.² I have seen and handled a lash of transportation times, which had a thick leather thong bound with wire.³ The cat-o'-nine-tails is alluded to in the eighteenth century.⁴

Both men and women⁵ (the latter up to 1817⁶) were flagellated in public, being either tied up to a post, or fastened behind a cart and so thrashed along the road. Perhaps the most obvious thing to do, next to flogging an offender, was to exhibit him to the populace. The country was immeasurably more parochial than it is now in these times of travel, and to be rendered infamous in one's village or neighbourhood was no trifling penalty; and so we find the

¹ William Andrews, *Old-Time Punishments*, p. 153.

² *Dictionary of National Biography*. There was an Act of Henry VIII. which has been called the whip with six strings, which may have some reference to the hangman's usual weapon.

³ On the old convict ship *Success*.

⁴ See Murray, *Dictionary*, vol. iv.

⁵ "Hangman, I charge you to pay particular attention to this lady. Scourge her soundly, man; scourge her till the blood runs down. It is Christmas—a cold time for madam to strip. See that you warm her shoulders thoroughly."—Mr. Justice Jeffreys, quoted in Andrews, *Old-Time Punishments*, p. 154.

⁶ 57 Geo. III. c. 75.

stocks set up in the towns and hamlets,¹ and, for more serious misdemeanours, there was the lofty pillory or neck-catcher (the *healsfang*).

This well-known instrument² was made of all shapes and sizes, and varied from a forked post or a slit pillar³ to what must have looked like a penal dovecote made to hold several prisoners.⁴ The convicted were sometimes drawn thither on hurdles, and might be accompanied by minstrels on the way.⁵ The hair of the head and beard was shaved off, and sometimes the victims were secured by being nailed through the ears to the framework, and might also be branded.⁶ With faces protruding through the strong beams, and with hands through two holes, secured and helpless, they were made to stand defenceless before the crowd as targets for any missiles that might be thrown. To those who were hated this was a serious ordeal, for they would be so pelted and

¹ See Statute of Labourers, 25 Ed. III. c. 2.

² L. Jewitt, "The Pillory and who they put in it," *The Reliquary*, i. p. 210, April 1861.

³ Besant, *Tudors*, p. 381.

⁴ Andrews, *Old-Time Punishments*, p. 68.

⁵ Jewitt, p. 213.

⁶ *Ibid.* p. 221.

knocked about by the mob as to be badly wounded, if not actually done to death. At length those who had stood their time were released, and those who had had their ears nailed would be cut free, and then they might slink away from the scene of shame, or be carried back to prison to endure additional punishment. The pillory was abolished for all offences except perjury and subornation in 1816,¹ and altogether in the year 1837.²

Before leaving the middle ages we must examine what I have classed as the poetic punishments. These were the spontaneous reprisals with which the community strove to repay the criminals in kind, and by which, if strict taliation were seldom attainable, our ancestors succeeded in contriving many chastisements that were, at any rate, associable equivalents. Of these a few examples may be given. For instance, a baker who sold loaves which were short of weight was shown with the bread tied round his neck.³ A fishmonger who had been selling bad fish was paraded with a collar

¹ 56 Geo. III. c. 138.

² 7 Will. IV. and 1 Vict. c. 23.

³ Pike, *Hist.* i. p. 237.

of stinking smelts slung over his shoulders.¹ A grocer who had been selling much-adulterated spices was placed in the pillory and had the powders burned beneath his nose (A.D. 1395).² A heretic who had advocated strict Judaism was sentenced to prison and to be fed entirely upon pork.³ The Inquisition attached two pieces of red cloth in the shape of tongues to the breast, and two more upon the shoulders of a false witness, which were to be worn for life.⁴ Indeed, badges and crosses were often imposed, and were in these times a dreadful mark of Cain.⁵ In 1505 two men were sentenced by the archbishop to wear a faggot (or a badge representing one) upon the left shoulder, to show that they stood in danger of the flames.⁶ It would seem they did, for they were burned alive in 1511.

Louis IX. ordered that those who had spoken indecently should have their tongues pierced and their upper lips cut away.⁷ Pope Innocent IV.

¹ Besant, *Mediæval London*, p. 354.

² J. A. Rees, *The Grocery Trade*, p. 57. London, 1910.

³ W. Hudson, *Treatise on the Court of Star Chamber*, ii. p. 225.

⁴ Lea, *Hist. Inq. Middle Ages*, i. p. 441.

⁵ Hudson, *Treatise on the Court of Star Chamber*, p. 225.

⁶ James Gairdner, *English Church*, p. 53.

⁷ Barrington, *Ancient Statutes*, p. 422.

remonstrated with the king against this barbarity. The mutilation of the tongue was a punishment known and inflicted in England for blasphemy. In 1656 one James Nayler, "the mad Quaker," had his tongue pierced with a hot iron for claiming to be the Messiah.¹ He was also whipped at the cart's tail, and kept in prison for two years. A drunkard was sometimes walked about in a barrel, his head protruding from the top and his hands from two holes made in its sides.²

For the village scold³ they kept the brank or bridle of iron, which contained a flat (and for the unfortunate witches⁴ occasionally a spiked and painful) gag that went into the mouth and pressed down the tongue. They might also be placed in the local ducking chair⁵ and immersed in water. A remarkable illustration⁶ of the intensely individual and personal aspect of

¹ Andrews, *Old-Time Punishments*, p. 152.

² *Ibid.* p. 140.

³ Jewitt, "Scolds and how they cured them," *Reliquary*, October 1860.

⁴ Andrews, *Old-Time Punishments*, p. 45.

⁵ See Jewitt, "A few Notes on Ducking Stools," *Reliquary*, January 1861.

⁶ Andrews, *Old-Time Punishments*, etc., etc.

primitive penalties¹ is furnished where—as it sometimes happened—the prosecutor had himself to execute his convict assailant, “or dwelle in prison with the felon unto the time that he wyll do that office or else find a hangman.”²

¹ Holdsworth, *Hist.* ii. p. 327.

² At some of the American lynchings the injured woman applies a match to the wood upon which the offending negro is to be burned to death.

CHAPTER II

THE WITCH TRIALS

TOWARDS the middle of the seventeenth century there lived at Manningtree a certain Matthew Hopkins, whose name deserves perhaps to be recorded. Not that he stands by any means apart, a veritable Lucifer among the devils. Sprenger in Germany, Torquemada in Spain, Grillandus in Italy, de l'Ancre in France, and other persecutors over Christendom, were better known and had killed more people. But Hopkins went to work on English ground. The people were then professing the same creed that the majority do now. Shakespeare had been in his grave more than a generation, and trees may have been standing as bushes in the fields and lanes of Essex which will yet renew leaves and branches at the kiss of coming spring. Hopkins reveals the spirit of his time, for it has been

wisely observed that every society has the criminals it deserves. His kind remain with us still as spies and blackmailers, traitors and "friendly natives" of the tribe of Judas generally. But they derive their power to harm from the community in which they live. Parasites need a proper "host" to flourish in. A dark and superstitious age it must have been to countenance this man; for he was a professional "discoverer," or, as he was sometimes called and styled, Witch-Finder General. He began with the destruction of some half-dozen persons in his native hamlet. We cannot determine what had marked them down—perhaps they were his private enemies—moral reform has always been a ready pretext to work vengeance with, and has been much employed in these latter days. They may have been old, eccentric, isolated, or insane; in any case, once seized they had to die, and in their torments implicated others, most likely any names conveniently suggested to them. The fame of the new discoverer spread far and wide. Towns and hundreds in the eastern county, and even places far outside its boundaries, sent to this fell apostle, saying, "Come over and help us," and on the track of blood the monster went.

It was his wont to ride upon these expeditions accompanied by another man, and by a female searcher, whose services would be required in the minute personal examinations which were carried out, especially on women. He made an open charge of twenty shillings for each village visited, but no doubt in this nefarious calling there were other and more profitable ways of extorting money. Can we not well imagine what sums may have been paid to him (as they are to the "sex" blackmailers of to-day) to avoid accusation? How many may have yielded their little all to save some one who was dear to them from common ill-usage, probable death, and certain disgrace, which such a charge involved? Who knows how extorted gold might influence the ordeals enforced? Who shall say what may have come by stealth to the witch-finders to bring ruin upon some enemy, perhaps upon some rival? Who, indeed? From place to place swooped this bird of prey, descending on peaceful homesteads and capturing whom he chose. Woe to the man, and still more to the woman, who lived alone, who kept a black cat, or who was found to carry birthmarks on her body, or to be the least out of the normal

in physical structure! Woe to the person who was eccentric, subject to fits or trances, or who might be in any way deranged or of weak intellect! Woe, in fact, to the unhappy creature who by any means came in for accusation! The Pishogue mark would thenceforth be upon them; relations would drop away as from contamination with the plague¹; and the most brutal rabble of that time would jostle round, intent upon the chase, with their fierce lust for blood not the less keen from the idea that there was something Christian in their cruelty. The victim would then be seized and carried off to further interrogation, ill-treatment, and torture. Parents and children, comrades and lovers, might weep in secret, and the boldest might even venture to denounce the senseless iniquity of the proceedings—at which they would incur no little danger. But they would speak unheeded, and have to linger around the gallows till the final act, when something swayed and dangled from a cord.

But somehow good Master Matthew began to

¹ "They died alone and unpitied," says Lecky; "... their very kinsmen shrank from them as tainted and accursed."—*History of Rationalism*, p. 149. London, 1865.

be unpopular, and many reasons might account for it. Perhaps he had been unwise in the selection of his "subjects"—it looks like it, for one was an old clergyman—and lived to find out that some of them had not been quite so friendless as he may have counted on. Perhaps the supply of lonely or defenceless folk had given out, or that in pushing his profession so far afield he could not estimate the new material. "Discoveries," of course, had to be made to keep up his reputation and his income, and as he pursued his way through a wide area it may be that quite a large number of people began to feel themselves open to accusation, and so were ready to consider it suspicious that he alone had such an eye for witches. And then a whispering rose up amongst them, until it reached the persecutor's ears: For sure this man is aided by the Devil, or else he would not ferret out so many. And he may well have started when he saw the anger-light in the fierce eyes around him, and when he felt at last the frightful superstitions, which he had kindled and well thriven on, were out of hand, turned hard against himself. So he produced a little book which bears the date of 1647, printed,

he tells us, "For the benefit of the whole Kingdome." It has upon the title-page the somewhat troublesome quotation, "Thou shalt not suffer a witch to live," Exodus xxii. 18. We cannot do better than glance through its pages and at the "Certain queries answered which have been and which are likely to be objected against Matthew Hopkins, in his way of finding out witches."

Querie I.—That he must needs be the greatest witch, sorcerer, and wizzard himself, else hee could not doe it.

Answer.—If Satan's Kingdome be divided against itself how shall it stand?

The next paragraph is interesting as once more emphasising the crude and absolutely material notions conceived of the spiritual world.

Querie II.—If he never went so farre as is before stated, yet for certaine he met with the devill and cheated him of his booke, wherein were written all the witches' names in England, and if he looks at any witch he can tell by her countenance what she is; so by this his helpe is from the devill.

Answer.—If he had been too hard for the devill and got his booke it had been to his great commendation and no disgrace at all.

It will be noticed that he does not exactly deny even this report, or appear to consider it at all unusual to meet the devil walking about casually. "We must needs argue," he continues later, "he is of long standing, above 6000 years, then he must needs be the best scholar in all knowledge of Arts and tongues, and so have the best skill in Physicke, etc." Mr. Hopkins' own skill, he pleads, was really forced on him. "This discoverer never travelled for it," he writes in reply to *Querie V.*, "but in March 1644 he had some seven or eight of that horrible sect of witches living in the towne where he lived . . . who every six weeks, in the night (being always on a Friday night), had their meetings¹ close by his house, and had their severall solemne sacrifices there offered to the devill, one of which this discoverer heard speaking to her imps one night and bid them go to another witch, who was thereupon apprehended and searched by women who had for many years known the devill's marks, and found to have three teats about her, which

¹ Meetings of a more or less bacchanalian character really took place in Europe through the middle ages, survivals of old rites and nature-worship. See Professor Karl Pearson's long and learned account of these in *The Chances of Death*. London, 1897.

honest women have not. So upon command from the Justice they were to keep her from sleep two or three nights, expecting in that time to see her familiars, which the fourth night she called by their severall names,¹ and told them in what shape a quarter of an hour before they came in, there being ten of us in the roome.²

“The first she called was (1) Holt, who came in like a white Kitling. (2) Jamara, who came in like a fat Spaniel without any legs at all. . . . (3) Vinegar Tom, who was like a long legged grey hound with a head like an Oxe with a long taile and broad eyes, who, when this discoverer spoke to and bade him go to the place provided for him and his angels, immediately transformed himself into the shape of a child foure years old without a head and gave half a dozen turns about the

¹ These were often domestic pets or animals about the yard. Even feeding the sparrows on the winter snow would have been dangerous for a suspected person. See kind of evidence sought for by R. Bernard in his *Guide to Grand Jurymen*, p. 235. London, 1627, etc. The miserable witches, in the agony of sleeplessness and torment, ultimately doing or saying anything that was already expected of them. See, for instance, F. Hutchinson, *An Historical Essay concerning Witchcraft*, pp. 37, 57. London, 1718.

² On the power of suggestion and imagination, see, for instance, G. le Bon, *Revue scientifique*, March 26 and April 2, 1910.

house and vanished at the doore. (4) Sacke and Sugar, like a black rabbet. (5) Newes, like a Polcat. All these vanished away in a little while. Immediately after this witch confessed severall other witches from whom she had her imps and named to diverse women where their marks were . . . and imps' names such as Eli-manzer Pyewacket, Peck-in-the-crown, Grizzell Greedigut, etc. ; which no mortall could invent. . . . Twenty-nine were condemned at once, four brought twenty-five miles to be hanged where their discoverer lives, for sending the devill like a beare to kill him in his garden ; so by seeing diverse of the men's papps and trying various wayes with hundreds of them, he gained the experience."

Although his dealings must be described as mild compared with the ghastly inconceivable tortures in vogue with the inquisitors upon the Continent,¹

¹ The whole hideous and devilish procedure is given by J. Sprenger and H. Institor in their *Malleus Malificarum*, about 1485-89. Frankfort ed., 1580.

Paulus Grillandus, *De sortilegiis*, lib. 4, *De questionibus et tortura*. Lyons, 1533.

J. Bodin, *De la démonomanie des sorciers*. Paris, 1580.

R. Scot, *The Discoverie of Witch-craft*. London, 1584.

B. Nicholson's edition. London, 1886.

H. Boguet, *Discours des sorciers*. Lyons, 1608.

his victims were yet baited and handled with the grossest cruelty. They were supposed not to weep,¹ being witches, though indeed cause enough was given them. It is remarkable in this connection that Shelley,² with how much accuracy I am not aware, alludes to "the dry fixed eyeball" of the tortured. Hutchinson³ held this phenomenon to have been due to prolonged deprivation of sleep and exhaustion. Doubtless the weary length of the investigations, and often the age and senile desiccation of the victims, might easily explain a state of tearlessness whenever it was really prevalent.

They were supposed to possess an insensible part in their bodies,⁴ and the examiners would prick over them to try to find it out.

¹ Esquirol gives this as a symptom in some forms of insanity. See E. K. Hunt's translation of *Mental Maladies*, p. 245. Philadelphia, 1845.

R. Scot, *Discoverie Booke*, ii. chaps. v.-viii.

Bodin, *Démonomanie*, p. 170.

James I., *Daemonologie*, p. 81.

H. Boguet, chap. xlvi.

² *The Cenci*.

³ *Historical Essay*, p. 139.

⁴ See J. P. Migne, *Encyclopédie théologique*, vol. xlix. tome seconde, p. 72. Paris, 1848.

Charles Mackay has observed: "It was no unusual thing

Especially, a witch was affirmed to have somewhere upon her person the "Devil's mark." "Some bigg or place upon their body where he" (the familiar, imp, or spirit) "sucketh them."¹ This alleged "mark" might be almost anything or nothing; from an abnormal, and perhaps atavic, teat, down to a birthmark, mole, old scar, or even a tiny vein under an eyelid. They were supposed also to float upon being "swum."

They were, for the most part, wizen, old creatures, clad in long-used, greasy garments.² Such skirts would retain much air; they might be bound so as to favour this, or spread, as with Ophelia, widely inflated. It was quite likely they should thus be upborne (and also, for they were then, nor is it now, that in aged persons there should be some spot on the body totally devoid of feeling," p. 137. In Scotland there were a number of witch-finders who were known as "common prickers," p. 146.—*Popular Delusions*, London, 1869.

¹ Michael Dalton, *The Countrey Justice*, p. 242. London, 1618.

James I., *Daemonologie*, p. 80.

Matthew Hopkins quoted, p. 33, *ante*.

Sinistrari of Ameno Demoniality, p. 27. J. Liseux, trans. Paris, 1879.

D. Neal, *History of New England*, p. 137. London, 1747.

² Hutchinson, *Essay*, p. 138.

mostly poor and thin, that the heavy, sometimes chained, Bible should outweigh them in the ordeal with scales). But ordeals are uncertain and dangerous unless they can be carefully manipulated. Mr. Hopkins had been keen on the water test; it was the finishing touch and proof at the end of a long series of torments and examinations.

But a day came, it is said, on which a few brave Englishmen, who had perhaps lost some one near and dear to them at his hands, laid hold upon the witch-finder himself, and binding him in a sack, cast him into a pool. It was a bold act, in those savage days, to interfere with any kind of inquisition, Catholic or Puritan, and was no doubt attended with great risk. But only for a moment in this case, for there before them bobbed the dread discoverer of witches, floating upon the surface of the water; and all declared the devil got his own. But such an end was altogether unexpected and unusual; it was downright bad luck and misfortune, from Mr. Hopkins' point of view. His position appeared unassailable, and indeed probably would have been, if he had kept to the right sort of people, and practised on the isolated or

unpopular, who could have been legitimately sacrificed. All he had done was quite lawful and regular.

Witchcraft, like many acts against religion and morality, had always been an ecclesiastical offence, and had been punished in the secular courts as leading to murder and personal injury,¹ and it was made a felony in 1541.² But it was the (then) recent law of 1603 that was much in force,³ by which, in the quaint language of the statute, it was forbidden, upon pain of death, to "employ, feed, or reward an evil and wicked spirit."⁴ And since the High Court of Parliament had recognised witches,⁵ it became necessary to investigate accusations and probe for "spirits" through the forms of law. Thus Hopkins could claim to be a moral reformer, putting in force the statute of the

¹ T. Wright, *Dame Alice Kyteler*, London, Camden Society, vol. xxiv., 1843.

² H. L. Stephen, *State Trials*, vol. i. p. 211. London, 1899.

³ Hutchinson, p. 34.

⁴ See long and interesting essay on witchcraft in the *Ency. Brit.* ninth ed.

⁵ The Act is quoted at length in R. Royston's *Advertisement to Jurymen of England*, in which he criticises del Rio's and Perkins' "proofs."

realm ; he could quote Scripture clearly to his purpose, the justices and gaolers obeyed his call, assizes waited to condemn his prisoners. And if his method seemed superstitious or barbarous, he could perhaps cite Mr. Perkins' way,¹ or could refer to Mr. Kincaid's custom in these matters,² and could quote standard works with precedent on his side.³

So he seemed truly to have a safe task and a paying one, built up upon the prejudices of the people. But as by their superstitions he rose, so also by them he fell—utterly, and unpitied.⁴ It was not his monstrous cruelties, but “God's ordeal,” which showed him up, delivered to the devil ; and, in the caustic words of Samuel Butler, as one “who after proved himself a witch, and made a rod for his own breech.”⁵

¹ Alluded to by Cotton Mather, *The Wonders of the Invisible World*. Boston, 1693.

² James Williams, *Ency. Brit.* ninth ed. vol. xxiv. p. 622. Kincaid was one of the “common prickers” or professional finders, who in those superstitious times were numerous.

³ For instance, Michael Dalton, *The Countrey Justice*, p. 242 ; Richard Bernard, *A Guide to Grand Jurymen*, p. 240.

⁴ Whether the story of his immersion is true or not, he undoubtedly died despised and discredited.

⁵ *Hudibras*, Part iii. chap. iii.

But now, dismissing this particular parasite, we may review the course of thought upon the question. Belief in witchcraft is so ancient and so universal,¹ that the existing religions, and perhaps all religions whatsoever, must have arisen in its atmosphere.

From time to time the Christian Church dealt with the question,² and had elaborated quite a ritual of tests and remedies. And it was after nearly fifteen hundred years of Christianity that Pope Innocent VIII.³ issued a special Bull against all supposed witches (December 5, 1484), naming one Sprenger, a Dominican, and Krämar—whose name latinised to Institor—inquisitors to seek and punish them; and this they did with frightful cruelty.

¹ Coming down, may be, from the prehistoric mother cult. See Karl Pearson, *Woman as Witch* in his *Chances of Death*.

² Exorcism, etc. Paul Regnard, *Les Maladies épidémiques de l'esprit*, is full of engravings of old pictures illustrating the point. Paris, 1887.

³ Although the Popes, such as John XXII., Innocent VIII., Julius II., and Adrian VI., legislated on witches, the Protestants were quite as vindictive. See, for instance, J. Michelet, *Life of Luther*, bk. v. chap. vi.: "The crazed, the halt, the blind, and the dumb are all possessed with demons. Physicians who treat these infirmities as arising from natural causes are fools who know not the power of the devil." We shall deal later with the works of Puritan divines in England and America.

They wrote a text-book on their methods and discoveries about 1489, and kept the torture chambers busy and the faggots fiercely burning.

Their book was answered by John Wier, physician to the Duke of Cleves, in 1563.¹ He refuted many of the grosser superstitions prevailing, and also suggested that the devil deceived people and made many confess to impossible practices ;² likewise, that the witches did not really occasion the illnesses and calamities which they were accused of causing and even admitted having brought about.³

At first the work awakened only controversy and condemnation—a stage in advance, however, since the most wronged are generally undefended, and pass to their doom in silence and with no one to speak for them.

In 1580 Bodin, a French writer, published a

¹ Chapters xi., xiv., etc. ; French edition of 1579.

² This theory was advanced by George Gifford in *A discourse of the subtile practices of Devils by witches and sorcerers*, etc. London, 1587.

³ *A dialogue concerning witches and witchcraft. In which is laid open how craftily the Devill deceiveth not only the witches but many others.* London, 1603. And by John Webster, who was sceptical of the miraculous in his *Displaying of supposed Witchcraft*, 1677.

most furious attack on Dr. Wier, declaring him to have been the pupil of a sorcerer and that he wrote inspired by the devil. He reiterated all the old fantastic stories as being true, and in the hideous procedure of investigation which he set forth, applied such diverse and such agonising torments as could not have been surpassed by any of the earlier inquisitors.

Bodin in turn was answered, from England, by Reginald Scot, in 1584, who wrote a long and powerful review of the witch persecutions, in which he quotes extensively from Sprenger, Bodin, and the Continental tormentors. Full of wise saws and modern instances, he cast doubts on the rationale of the witchcraft tests and trials.

But although just a century had gone by since Innocent launched his Bull from the Papal throne, many poor people, some at that time unborn, were destined still to suffer trial and torture. And more than another century had to pass before the law would leave "witches" alone; before afflicted, half-mad, or unpopular old women could throw crumbs to the sparrows upon the snow, or keep a cat, without danger of death. King James, as a young man, fell foul of

both Scot and Wier in 1597. Speaking of them he said: "One called Scot, an Englishman, is not ashamed in publicke print to deny that there can be such a thing as witchcraft, and so he maintains the old error of the Sadducees in denying spirits. The other called Wierus, a German phisition, sets out a publick apologie for al these craftes-folkes—whereby procuring for their impunitie he plainly betrayes himselfe to have been one of their profession"; and six years later came his grotesque law already alluded to, sanctioned with all the weight of Parliament.¹ The trials in Germany were severely criticised in 1631 by Father Spee, who published his book at first anonymously,² and checked the ardour and the cruelty of the courts.

But they were defended again by Joseph Glanvil,³ chaplain to the king, in 1681. About

¹ In 1609 a terrible commission scourged the regions round Bordeaux and Labourt in Western France. See P. de l'Ancre, *Tableau de l'inconstance des Mauvais Anges*, 1612. Under Louis XIV. the lurid *Chambre Ardente* was set up in 1679, and lasted till 1682. La Reynie, the Lieutenant-General of Police, was an active inquisitor. See F. Funck-Brentano, *Princes and Poisoners*; G. Maidment, trans. London, 1901.

² *Cautio Criminalis*, 1631.

³ *Saducismus Triumphatus*, 1681.

this time Dr. Bekker, a clergyman, living in Holland, compiled four lengthy volumes about witchcraft,¹ in which he contended that neither devils nor spirits could act on mankind. In England, ten years later, wrote Richard Baxter,² author of *The Saints' Rest* and other evangelical works which were widely read, supporting the weird beliefs of the witchcraft schoolmen.

By this time the persecutions, which were waning in England, had broken out at Salem in America; and we find Cotton Mather (like Glanvil, a divine, and F.R.S.) writing a little book³ to justify their existence⁴ (and his own conduct, for many were sceptical), upon that continent where, as he quaintly says, the Pilgrim Fathers "imagined that they should leave their posterity in a place where they should never see the inroads of Profanity or Superstition." The records of the nineteen executions in this neighbourhood, of one poor

¹ In Dutch, 1681; French translation, *Le Monde enchanté*. Amsterdam, 1684.

² *The Certainty of the World of Spirits*. London, 1691.

³ *The Wonders of the Invisible World: Observations upon the Nature, the Number, and the Operations of the Devils*.

⁴ R. Calef, *More Wonders of the Invisible World*. London, 1700.

creature who was pressed to death, and of the crowd of unhappy suspects who were cast into the prison,¹ show how the frenzy of this murderous "revival" swept like an epidemic down upon the settlement,² so that for fifteen months the air seemed charged and laden with hysteria, and are a grim commentary. But evolution operates even on taboos and superstitions, and this was probably the last general persecution, and Bishop Hutchinson called his learned work *An Historical Essay*,³ for it was dealing mainly with the past. The law lagged behind, however, as it generally does, the statute of James I. (1603) being, when Hutchinson wrote, "now in force" in 1718.

And so it continued for eighteen years longer, until repealed in 1736.⁴ In Ireland the law

¹ D. Neal, *History of New England*.—"The prisons were hardly able to hold the number of the accused."

² As it did as late as 1861, round the little village of Morzines in Savoy; see A. Constans, *Une Relation sur une épidémie d'hystéro-démonopathie*. Paris, 1863.

Dr. R. Madden gives a long account of various historical outbreaks in his *Phantasmata*, chap. x. "Maniacal Epidemics, etc." London, 1857.

E. Pronier, *Étude sur la contagion de la Folie*. Lausanne, 1892.

L. F. Calmeil, *De la Folie*. Paris, 1845.

³ *An Historical Essay concerning Witchcraft*.

⁴ Lecky, *History of Rationalism*.

lasted until 1821. Witchcraft was clearly kept alive by theology. People who really believed in a personal devil (and even those who questioned the witch convictions assumed the devil to be very much alive), designing mischief and disguised everywhere, could easily accept tales of familiar spirits.¹

Those who received the Hebrew and Christian records as altogether inspired, could not ignore possession and sorcery.² "Après que Dieu a parlé," says de l'Ancre, "de sa propre bouche des magiciens et sorciers, qui est l'incrédule qui en peut justement douter?"³ And Sir Matthew Hale said in his summing up: "That there were such creatures as witches, he made no doubt at all. For, first, the Scriptures had affirmed so

¹ One mediæval writer was said to have estimated the exact number of the various devils, which he stated as 7,405,926; see Jules Garinet, *Histoire de la Magie*, p. xxviii. Paris, 1818. Another declared that there were six principal genera of demons; R. Madden, *Phantasmata*, p. 293. Another author puts the devils at 2,665,866,746,664; see P. Carus, *History of the Devil*, p. 346. London, 1900.

² "Quae quidam nefandissima opera si non vere fierent, sed delusoria, vane contra ea fuissent promulgatae leges et in legum ipsarum auctores, etiã in ipsum Deum, ista retorqueretur vanitas: quod extrema blasphemia est."—B. de Spina, *Quaestio de strigibus*, p. 8. Rome, 1576.

³ *Sortilège*, p. 599. Paris, 1622.

much; secondly, the wisdom of all nations had provided laws against such persons, which is an argument of their confidence of such a crime.”¹

Speaking of a particular case, Mr. H. L. Stephen² quotes Campbell as follows: “. . . During the trial the imposture practised by the prosecutors was detected and exposed. Hales’ motives were most laudable; but he furnished a memorable instance of the mischief originating from superstition. He was afraid of an acquittal or a pardon, lest countenance should be given to a disbelief in witchcraft, which he considered tantamount to disbelief in Christianity.” Glanvil³ follows on the same side, arguing with great ingenuity from the scriptural point of view (for instance, in dealing with certain doctrines as to the fate of unbaptized children, p. 22). “The question whether there are witches or not,” he begins in Part ii., “is not a matter of vain speculation or of indifferent moment, but an inquiry of very great and weighty importance. For on the resolution of it depends the authority

¹ *A Tryall of Witches, 10th March 1664*, Sir Matthew Hale, Kt. Appendix by C. Clark, p. 20. London, 1838.

² *State Trials*, i.

³ *Saducismus Triumphatus*.

of our laws, and, which is more, our religion, in its main doctrines, is nearly concerned.”

And what may be called the religious belief in witches¹—a very different thing from the torturing of them—outlived the penal laws concerning them.² The Rev. John Brown of Haddington (1703-1791)² complained of the repeal of King James’s Act,³ and even John Wesley (1722-1787) declared that giving up witchcraft is, in effect, giving up the Bible.⁴ On page 366 of the journal⁵ which he edited we read: “With my latest breath will I bear testimony against giving up to infidels one great proof of the invisible world. I mean that of witchcraft and apparitions, confirmed by the testimony of all

¹ The Roman Catholic view of sorcery and evil spirits is treated at length by R. R. Madden, *Phantasmata*, chap. ix.

² A. Chalmers, *Biographical Dict.* art. “Cotton Mather.” London, 1815.

³ “We cannot help lamenting that a sect among us looks upon the abolition of the penal statute against witchcraft not only as an evil but as a sin. . . . The Seceders published an Act . . . in 1743 (reprinted at Glasgow, 1766). In this Act is contained the annual confession of sins. . . . Among the sins national and personal there confessed are . . . (that) the penal statutes against witchcraft have been repealed by Parliament, contrary to the express law of God.”—H. Arnot, *Criminal Trials in Scotland*, p. 370. Edinburgh, 1785.

⁴ Lecky, *History of Rationalism*, p. 134.

⁵ *Arminian Magazine*, v. p. 366. London, 1782.

ages";¹ and Huxley² alluded to a contemporary clergyman who had been preaching diabolical agency. Nor did the actual persecutions cease altogether, and though the last legal trial in England took place in 1712³ (the last execution in Europe is given by Lecky⁴ as occurring in Switzerland in 1782; another authority mentions Posen,⁵ with date 1793), sporadic outrages continued in the country, and persist in a modified form to the present day.⁶ At Clonmel, Ireland, in 1895,⁷ a poor old woman was placed upon the kitchen fire by her own family and burned, so that she died from the effects.⁸ But what were once pious customs and duties had at length become crimes, and the chief mover in this latest witch trial got (to the best of my recollection) twenty years' penal servitude.

¹ Dr. H. More employed the same argument in his *Antidote against Atheism*, lib. iii. chap. ii. London, 1653.

² *Lay Sermons*. London, 1870.

³ H. L. Stephen, *State Trials*.

⁴ *History of Rationalism*, chap. i.

⁵ J. Williams, *Ency. Brit.* ninth ed. art. "Witchcraft."

⁶ Mackay, *Delusions*, pp. 184, 187, etc.

⁷ *History of Rationalism*, p. 4, etc.

⁸ See article on the case by E. F. Benson, *Nineteenth Century*, vol. xxxvii. June 1895. A somewhat similar case occurred at Tarbes in 1850.—*History of Rationalism*, p. 4.

A belief so universal as that in witchcraft must clearly be founded upon positive phenomena. It will not serve our purpose to discuss what yet unknown supernormal powers might be attained under special conditions, or how much more there may be to discover beyond X-rays and wireless telegraphy. For while old ideas as to imps and devils, brooms and black cats, were manifestly ridiculous, and although the abnormal powers, whatever they may have been, could work no rescue in the hour of need, there may be many things in heaven and earth undreamed of in our present state of knowledge. But ordinary witch cases appear to have been resolvable into the examination of—

(a) Hysterical subjects—sometimes crowds of them—who might imagine anything and accuse anybody, including themselves. Such people were (and are) often given to swallowing needles and other things, some of which found their way through the body and emerged from all parts of it.¹ This would have been considered strong evidence of diabolical agency. Many of these would be subject to epilepsy, catalepsy—

¹ "What sort of distemper 'tis shall stick the body full of pins?"—Quoted by Calef, *More Wonders*, p. 5.

accompanied sometimes by that strange insensibility to pain¹ which is a well-marked symptom in hysteria, and which was remarked on by the torturers—and to obscure nerve diseases generally.

(b) “Wise women,”² midwives, doctors good and bad, who may, according to the custom of the times in which, as among savages, magic³ and medicine were inextricably mingled, have resorted to charms⁴ (as are still employed by old women to cure warts), and sometimes, doubt-

¹ Scot quotes a ghastly passage from Grillandus, who writeth “that when witches sleepe and feel no paine upon the torture, *Domine labia mea aperies* should be said, and so, saith he, both the torment will be felt and the truth will be uttered.—*Discoverie of Witchcraft*, p. 17. And we find in del Rio: “Narravit mihi . . . anno 1599 captam puellulam strigatricem, quae nec pedum ustulationem saevissimam, nec flagra validissima sentiebat; donec Sacerdos cujusdam monitu illi Agni benedicti ceream imaginem in collum injecere, tum enim vi sacra amuleti daemonis praestigiosa ludibria depulsa et illa vim doloris coepit persentiscere.”—*Disquisitionum magicarum*, p. 184. Venice, 1616. See also E. Gurney, *Phantasms of the Living*, p. 181, who considers the insensibility to pain may have been due sometimes to auto-hypnotism.

² Mentioned, for instance, in *Twelfth Night*.

³ Les sorcières furent les sages-femmes et les sorciers les médecins du moyen âge.—P. Christian, *Histoire de la magie*, p. 400. Paris, ? 1871.

⁴ E. Gurney, *Phantasms of the Living*, p. 183.

less, to preparing and administering actual poisons;¹ and who, whenever anything remarkable occurred, were always liable to be accused of having in some way trafficked with the all-explaining devil.² They sometimes claimed to possess the powers of witches, and tried to gain support or protection from being feared, deceiving others and often themselves as well.³

(c) Private enemies,⁴ whom an accusation of witchcraft,⁵ or of any of the little group of offences⁶ which were always supposed to be

¹ Lecky, *History of Rationalism*, p. 77.

² R. Calef, the opponent of Cotton Mather, quotes an instance of this kind. One Margaret Rule, having been seized with fits, ". . . some of the neighbours were forward enough to suspect the rise of the mischief in a house hard by, where lived a Miserable Woman who had been formerly imprisoned on the suspicion of witchcraft, who had frequently cured very painful hurts by muttering over them certain charms which I [? C. M.] shall not endanger the Poysoning of my Reader by repeating." —*More Wonders of the Invisible World*, p. 3. Boston, 1700.

³ See O. M. Hueffer, *The Book of Witches*. London, 1908.

⁴ See action of Richard III.

⁵ The full indictment against Lord Hungerford, who was beheaded on Tower Hill along with Thomas Cromwell, by Henry VIII.

⁶ P. de l'Ancre, *Seconde Considération*. As to the kind of offences "qui se trouvent enveloppés dans le sortilège," *Tableau de l'inconstance des Mauvais Anges*. Paris, 1612.

closely allied with it,¹ was the readiest way to ruin.²

(d) People accused for the sake of gain by means of deliberate plots and conspiracies. Feigning to be bewitched, and naming some (known to be) innocent person as the cause of the mischief, was a mean crime that was by no means uncommon, and many flagrant instances are given of it by early criticisers.³

(e) The main body of the victims.⁴ Old women who had outlived family and friends, who were helpless and solitary,⁵ ugly from age, unclean from infirmities, eccentric in wisdom,

¹ J. Bodin, *Démonologie*, p. 60. Paris, 1580.

² Shamanism, etc. See, for instance, Elie Reclus, *Primitive Folk*, pp. 68, 70. London, 1889.

It was a crime imputed with so much ease and repelled with so much difficulty, that the powerful, whenever they wanted to ruin the weak, . . . had only to accuse them of witchcraft to secure their destruction.—C. Mackay, *Popular Delusions*, p. 109. A certain G. Naudé, “late Library Keeper to Cardinal Mazarin,” wrote a book, entitled *The History of Magic*, “By way of apology for all the wise men who have unjustly been reputed magicians from the creation to the present age.” Englished by J. Davies. London, 1657.

³ The most tainted or prejudiced evidence was received in these kinds of cases. See *Concilium Biterrense* of A.D. 1246, c. 12. Labbé, tom. xxiii. p. 718.

⁴ Scot, *Discoverie*, bk. i. chap. iii.

⁵ Mostly poor, miserable old women, Glanvil admits.—*Saducismus*, p. 29.

crazy with delusions, palsied in limbs, or wandering in mind.¹ All these, or nearly half the old folks in the land, were always liable to accusation on account of their misfortunes.² They were the wretched scapegoats of those times, on whom was laid whatever might befall, from epileptic fits to summer hail.³

(*f*) The people denounced by prisoners under torture. As we have seen, accusation meant examination, and this had two objects: to extort a "confession" from the suspected witch, and to compel her to reveal accomplices. Some might confess at once, and did so in the hope of execution (the *kind* of confession required was already well known, and the more monstrous and elaborate it might be, the better would be the chance of escaping torture). Others would

¹ "None ever talked to themselves who were not witches," asserted one of the common prickers.—Mackay, *Delusions*, p. 147.

² Especially as they often pretended, or really believed in, powers and curses, and, being quite helpless on the material side, invoked the aid of supernatural terrors to get assistance and be looked upon with fear.

³ Various persons accused of witchcraft, says Boguet, "ont confessé qu'ils faisoient la gresle en Sabbat afin de gaster les fruicts de la terre."—*Discours des sorciers*, p. 144. Storms were supposed to be occasioned by the devils. "Telle est l'origine de l'habitude de sonner les cloches pendant les orages."—L. F. A. Maury, *La Magie*, p. 102. Paris, 1860.

naturally deny taking part in abominations in which they had not engaged, and most of which were beyond possibility. And no doubt nearly all would make a long and desperate struggle against incriminating their unfortunate friends, who might, however innocent of crime, be also other people's enemies. And so the accursed ingenuity of man was practised on these miserable victims of his ignorance and superstition. One hideous device¹ tried by a Frankish king was to drive sharp spikes underneath the nails;² this, he contended, always induced confession from the intense anguish. Very likely it did.

Other inquisitors went their own sweet way, and used all possible varieties of the question, that they might make out of the shrieks and ravings the sort of story they expected and prompted,³ and lash more suspects down upon the rack. No wonder, then, that persecution

¹ Bodin, *Démonologie*, p. 171.

² Scot, *Discoverie*, p. 17. And this was also practised on a prisoner accused of sorcery before James I.—Lecky, *History of Rationalism*, p. 114.

³ One of the early inquirers as to the witch trials took a friend in with him to witness a torturing. As an experiment, he asked the prisoner if his companion, an entire stranger, had not been one of her accomplices, and the poor creature moaned out that he had.

spread ;¹ the aged and the disordered were always there, and any one of these might be thought a witch,² or find herself denounced from the torture-room—perhaps by a lifelong friend.

The readiness with which all “evidence” was acclaimed and the appalling means by which it was got together placed any abnormal person in constant peril, and will account for the enormous numbers of the implicated. Tens of thousands of victims, says Lecky,³ perished by the most agonising and protracted torments without exciting the faintest compassion. In a single German city they used to burn 300 witches annually.⁴ In Nancy, 800 were put to death by a judge in the course of sixteen years.⁵ Zachary Gray,⁶ who edited an edition of *Hudibras*,

¹ “Le diable est si bon maistre que nous n’en pouvons envoyer si grand nombre au feu, que de leurs cendres il n’en renaisse de nouveau d’autres.”—Florimonde de Raemonde, *Antichrist*, p. 103. Lyons, 1597.

² It became a common prayer with women of the humbler class that they might not live to be old. It was sufficient to be aged, poor, or half-crazed to ensure death at the stake or on the scaffold.—Mackay, *Delusions*, p. 116.

³ *History of Rationalism*, p. 3.

⁴ Mackay, *Delusions*, p. 159.

⁵ Lecky, *History of Rationalism*, p. 4.

⁶ Quoted by W. B. Gerish, *A Hertfordshire Witch*. London, 1906.

claims that during the Long Parliament 500 witches were executed each year, and that he read through a list of no less than 3000 of them.¹ The total of Great Britain has been estimated at 30,000,² and it has been estimated that during the sixteenth and seventeenth centuries the witch death-roll for Europe³ reached 200,000 people.⁴

Perhaps the sidelights give a more graphic conception of what went on in those dark days of error. Listen to this complaint of a French writer⁵ who evidently thought he was approaching the "last days." "Was it [sorcery] ever so much in vogue as here in this unhappy [sixteenth] century? The benches of our courts are all blackened by them; there are not sufficient magistrates to hear the cases. Our prisons are gorged with witches, and not a day passes but our warrants are ensanguined with them, and

¹ Mackay, *Delusions*, p. 139.

² H. C. Lea, *History of the Inquisition in Spain*. New York, 1907.

³ W. F. Poole, *Salem Witchcraft*. Boston, 1869.

⁴ 300,000 women are said to have been slaughtered since Innocent's Bull of 1484. See an important article in *Chambers's Encyclopædia*, x. p. 698, ed. of 1901.

⁵ F. de Raemond, *L'Antichrist*, p. 102.

One writer estimated the number of sorcerers living in Europe at 1,800,000. See Calmeil, tom. i. p. 217.

we return saddened to our homes, shocked at the ghastly and appalling things that they confess." And in our own land, about fifty years later, we come upon a letter written to Sir Edmund Spencer in 1647: "Within the compass of two years near upon 300 witches were arraigned, and the greater part executed, in Essex and Suffolk only. Scotland swarms with them now more than ever, and persons of good quality executed daily."¹

It was in Scotland, likewise, that there used to be kept a chest "locked with three severall locks and opened every fifteenth daie,"² which might receive, as did the Lion's Mouth at Venice, denunciations slipped in secretly; and that in 1661 the justices were ordered to attend certain towns to hear cases of witchcraft at least once a week.³

The witch trials are ended. So far as *they* are concerned, we can look back from the heights of history over this vast red sea of superstition which has swallowed up such multitudes. And to think it was all so useless, so unnecessary!⁴

¹ James Howell, *Familiar Letters*, 1688.

² Scot, *Discoverie*, p. 16.

³ *Ency. Brit.* ninth ed. vol. xxiv. p. 622.

⁴ "On the enactment of the statute to repeal the law,

but yet by no means hard to be explained. The underlying and provocative phenomena had really been present in a huge number of cases (and when they were not, were fervently conceived, and so suggested, looked for, and enforced as to set up all kinds of hallucinations in the accusers and sometimes in the accused), and in default of tracing out their causes,¹ evident or recondite, clergy and jurists, and of course the populace, gave out a false and thaumaturgical account of them. They were correct in affirming many amazing facts and phenomena (and all these persist, for nature has not changed.² There are at least as many abnormal and half-mad people amongst us now as there ever were, only we treat the clearer cases kindly, and are no longer afraid of mythical influences), although these were magni-

vanished all those imaginary powers so absurdly attributed to old women oppressed with age and poverty."—H. Arnot, *Criminal Trials*, p. 369.

¹ The late Mr. Gurney, of the Psychological Research Society, found, after a most extensive investigation, "a total absence of respectable evidence, and an almost total absence of any first-hand evidence at all, for those phenomena of magic and witchcraft which cannot be accounted for as the results of diseased imagination, hysteria, hypnotism, and occasionally, perhaps, telepathy."—*Phantasms of the Living*, i. p. 172.

² See E. B. Tylor, *Primitive Culture*, ii. p. 130. ∴

fied and multiplied million-fold, for Superstition is a monster that grows by feeding. They were fantastic in their fabulous explanations of them. The rest—in those cruel times when torture was as common as is cross-examination—followed quite naturally. The doctors, theological and legal, erred in their diagnosis, mistaking diseases for devils and abnormality for magic. We shall come upon this again, crass and close at hand. May the Future condemn the Present, as we now deplore the Past.

CHAPTER III

TREATMENT OF THE INSANE

As the abnormal and the rationally eccentric were considered witches, and held to have been disciples of the devil, so the more obviously sense-bereft were thought to be controlled by the fiends within them. Both witches and lunatics were held to be beneath the sway of infernal powers, but the former as willing agents of the devil, and the latter as involuntary victims, who were deemed to be possessed. In ancient Egypt, by the Temple of Saturn,¹ in classic Greece with the Asclepieia, and by the laws of Pagan Rome,² the mentally afflicted were treated with humanity, and, if without the aid of our present science, at least upon the same broad principles which we adopt to-day.

¹ J. B. Tuke in the *Ency. Brit.*

² E. Westermarck, *The Origin and Development of the Moral Ideas*, i. p. 269.

In the warm sunlight of the Eastern lands the life of the population was spent in the open air. As we read in the Scriptures and in books of travel, the lunatic might dwell amidst the tombs. He could wander through the soothing cypress groves in the moonlight or lie under shading palm in the noontide heat. He dwelt apart, like the leper, cut off by his terrible infirmity from the kinship of reason, but free at least in the air and sunlight, and often allowed a quite especial licence¹ as being in the guardianship of God.² But the troublesome conduct into which lunatics were ever liable to be led³ would frequently rouse the instinct of retaliation, and bring down swift and heavy punishment upon them.⁴

In Europe also and in England the less-dangerous lunatics "were allowed to wander about the country,"⁵ beggars and vagabonds,

¹ Westermarck, *Moral Ideas*, i. p. 270.

² E. B. Tylor, *Primitive Culture*, ii. p. 117.

³ See, for instance, the story called "The Sleeper Awakened" in the *Arabian Nights*.

⁴ The severities to which the insane were subjected by various tribes are mentioned by Westermarck in *Moral Ideas*, i. p. 271.

⁵ John Conolly, *Treatment of the Insane*, p. 4. London, 1856.

affording sport¹ and mockery. We get a vivid glimpse from Shakespeare of that "poor Tom"² that eats the swimming frog, the toad, the tadpole, the wall newt and the water newt, that in the fury of his heart, when the foul fiend rages, eats cow-dung for sallets, swallows the old rat and the ditch dog, drinks the green mantle of the slimy pool;³ who is whipt from tything to tything, and stocked, punished, and imprisoned."⁴

This was the lot of sufferers in those times, and beyond doubt a certain number of them, unmindful or unheedful of savage laws, obeyed the obsessing suicidal impulse which is so common among mad people; and through this many of the most afflicted must have been taken, in the mercy of nature, out of the world of men in which they had no part. But if the half-witted poor were allowed to wander,⁵ those of the richer

¹ F. Beach, *Psychology in John Hunter's Time*; "they served as a sport to visitors at assizes, fairs, and other times," p. 4. Hunterian Oration. London, 1891.

² For an account of these wandering Tom o' Bedlams, see Isaac D'Israeli, *Curiosities of Literature*, ii. p. 343. London, 1849.

³ "Come, march to wakes and fairs and market-town. Poor Tom, thy horn is dry."—*Lear*, iii. 6. ⁴ *Lear*, iii. 4.

⁵ Walter Besant, *London in the Eighteenth Century*, p. 378. London, 1902.

class were less fortunate. Their families were shy and ashamed of them; they were concealed and locked in garrets and cellars, or penned apart, secured in sheds and outhouses—fastened up anywhere about the premises.¹

Medicines there were indeed for the insane patients, and some of them might have added to the witches' cauldron.² Among the less nauseous of these came wolf's and lion's flesh,³ and as our Saxon forefathers were skilled herbalists, we find the clovewort, polion, and peony recommended,⁴ also the mandrake, round which many stories were woven from its resemblance to the human form. They said: "For witlessness, that is, for devil sickness or demoniacal possession, take from the body of the same wort mandrake by weight of three pennies, administer to drink in warm water

¹ This lasted right into the nineteenth century; see D. H. Tuke, *Chapters in the History of the Insane*, p. 128. London, 1882.

² See, for instance, W. Besant, *London in the Time of the Stuarts*, p. 236. London, 1903. And for a particularly filthy mixture advised "For a man haunted by apparitions," Cockayne, i. p. 365.

³ Oswald Cockayne, *Leechdoms, Wort Cunning, and Starcraft*, pp. 361, 365. London, 1864.

⁴ Cockayne, pp. 101, 161, 169.

as he may find convenient; soon he will be healed.”¹

Doubtless in all civilisations the more acutely insane would have to be a care for the community.² The early Christians tended them in their churches, in which they stood in a special part,³ and where they were provided with food “while they abode in the church, which, it seems, was the chief place of their residence and habitation.”⁴

The monks to some extent looked after them in their monasteries.⁵ But whatever medicines or other remedies they may have employed, the main idea of those days about lunacy was that it came through demoniacal possession. The object was to drive the devils out. To accomplish this they seem to have resorted to all sorts of incongruous “cures,” both ghostly and physical.⁶ The great spiritual weapon has always been exorcism. This was the primal art of all re-

¹ Cockayne, i. p. 249.

² Tylor, *Primitive Culture*, ii. p. 127.

³ Joseph Bingham, *Antiquities of the Christian Church*, i. p. 322.

⁴ Bingham, p. 323.

⁵ F. A. Gasquet, *Henry VIII. and the English Monasteries*, p. 463.

⁶ There were, says Maury, “de véritables litanies d’anathèmes contre Satan.”—*La Magie*, p. 319.

ligions, and it was practised also by the early Christians.

In the third century the exorcists were formed into a special order.¹ "When an exorcist is ordained," we read, "he shall receive at the hands of the bishop a book wherein the forms of exorcism are written. These forms were certain passages together with adjurations in the name of Christ commanding the unclean spirit to depart out of the possessed person." This custom has continued through the centuries,² forming the subject of innumerable legends and pictures relating to saints and teachers in the middle ages; and though the practice seems to be in abeyance,³ the old idea of exorcism is not dead.

¹ J. Bingham, *Antiquities of the Christian Church*, i. p. 321. See also Paul Verdun, *Le Diable dans la vie des saints*, p. 2; *Ency. Brit.* ninth ed. vol. viii. p. 806.

² "The so-called Fourth Council of Carthage (anno 396) prescribes a form for the ordination of exorcists the same in substance as that given in the Roman Pontifical, and used at this day."—Addis and Arnold, *Catholic Dictionary*, art. "Exorcism." London, 1903.

A man who was said to have been possessed by seven devils was exorcised by seven clergymen at the Temple Church, Bristol, in 1788.—Tylor, *Primitive Culture*, ii. p. 128. See also L. A. Maury, *La Magie*, p. 331.

³ Already in the fifth century Pope Innocent I. forbade the exorcists from exercising their ministry without the

We must perceive this when we read,¹ for instance, "Water and salt are exorcised by the priest, and so withdrawn from the power of Satan, who, since the Fall, has corrupted and abused even inanimate things."² But besides the weapons, mystic and spiritual, employed by the Church, were others of a more corporeal character.

The patients were bound to venerated crosses at evening, to be released as cured in the morning.³ They were chained fast to stones in various churches; they were dipped into holy wells—this custom lasted in Cornwall to modern times; and they were sent as pilgrims to shrines,⁴ at some of which they underwent a regular course of treatment; music was often an important element.⁵ And remedies far more drastic might be provided, which relied not so

express permission of the bishop, and that order is in force. See also Louis Duchesne, *Christian Worship*, M. L. Maclure's trans. p. 349. London, 1904.

¹ Addis and Arnold, *Cath. Dict.* p. 444.

² Or this prayer of Pope Leo XIII.: "S. Michel Archange . . . repoussez en enfer par la vertu divine Satan, et les autres esprits mauvais, qui errent dans le monde cherchant des âmes à perdre." Quoted by P. Verdun, ii. p. 314.

³ D. H. Tuke, *Hist. Insane*, p. 14.

⁴ F. Beach, *Psychology in John Hunter's Time*, p. 2.

⁵ L. A. Maury, *La Magie*, p. 329.

much upon the power of the saints as on the human weakness of the devils.

Thus, scattered among the recipes for herbs and all the indescribable filthy mixtures which were advocated for insanity,¹ we come across the following prescription, the effects of which would prove anything but imaginary:—"In case a man be a lunatic, take skin of a mereswine or porpoise, work it into a whip, swinge the man well therewith, soon he will be well. Amen." At one monastery the lunatics in the charge of the monks are said to have received ten lashes every day.²

The insane have been flogged for various reasons:—(1) Superstitiously, to drive out the devil, and even to scare away a disease; (2) therapeutically, because pain and shock would often subdue the ravings of the patients, although only temporarily; (3) instinctively, as a relief to their keepers' feelings. The medical and the brutal whippings we shall meet again later on, long after devil-driving had been abandoned, though it prevailed through Christendom for

¹ Cockayne, *Leechdoms*, ii. bk. iii. p. 335.

² W. A. F. Browne, *What Asylums were, are, and ought to be*, p. 101. Edinburgh, 1837.

probably over sixteen hundred years. To understand it we must turn aside to savages.

Primitive peoples,¹ like children, *personified* everything. Disease appeared to be a sort of personal entity—like that deceitful dream² Zeus sent to Agamemnon—a “thing” “to be drawn out in an invisible form, and burnt in the fire or thrown into the water.” A foe invisible, but yet so human in its limitations as to be stopped by thorns placed in its path.³ And if all manner of physical ailments were looked upon as being, or, at anyrate, as emanating from personal demons, much more would such a fearful and mysterious affliction as insanity be held to indicate a devil’s presence and immediate handiwork.⁴ Moreover, to the primitive mind, the demons of all sorts were much too near, too vividly conceived, too

¹ See Tylor, *Primitive Culture*, i. p. 258.

R. Routledge, *Hist. Science*, p. 5. London, 1881.

Edward Carpenter, *The Art of Creation*, p. 36. London, 1904

² It may be interesting to compare 1 Kings xxii. 20.

John Lubbock (Lord Avebury), *Origin of Civilisation*, p. 32. London, 1889.

³ Certain savages mentioned by Tylor endeavoured to stay the progress of small-pox germs after this fashion.—*Primitive Culture*, ii. p. 115.

⁴ See, for instance, Abbot Richalmus, *Liber revelationum de insidiis et versutiis daemonum inversus homines*.

real, too commonplace, to be regarded as spiritual beings within the modern meaning of the word. They were conceived as obviously living and moving about,¹ and therefore as being human in their character. Thus among savages "the souls of the dead are thought susceptible of being beaten, hurt, and driven like any other living creatures,"² and demons could be hunted out of the houses and scared away to woods and outer darkness.³

The ideas of the profoundly superstitious middle ages resembled these. Even the great opponent or accuser, Satan, who was restored by Milton to the rôle of Ahriman,⁴ was but a wretched creature, a poor devil,⁵ in the popular imagination. "He" is continually outwitted like the pantomime policeman,⁶ and nonplussed by the shallowest

¹ ". . . but as I knew it was the Devil," wrote Luther, "I paid no attention to him and went to sleep."

² *Primitive Culture*, i. p. 409.

³ E. B. Tylor, *Ency. Brit.* ninth ed. vol. vii. p. 63, etc.

⁴ Cheyne and Black, *Ency. Bib.* art. "Satan," by Gray and Massie.

F. T. Hall, *The Pedigree of the Devil*. London, 1883.

J. Tulloch in *Ency. Brit.* ninth ed. art. "Devil."

⁵ Satan, said Tertullian, is God's ape. He was indeed supposed to possess a tail; this might be severed, but it would grow again.

⁶ A. Reville, *The Devil*, pp. 40, 42. London, 1871.

equivocations.¹ He beats a man² and is beaten and vanquished.³ He aims a stone at Dunstan and misses,⁴ and when seized by the nose with pincers, his bellowings are heard for three miles round.⁵ He howls when sprinkled with holy water,⁶ and Luther hurls an inkstand at his head.⁷ This man-like and material monster of course felt pain, and when he took up his abode in a human body he was supposed to feel the blows inflicted on the sufferer.⁸ It was the devil (or his representative) who might be driven out of man or woman ; the demons could be commanded to quit each portion of the invaded body, member by member.⁹ The fiends were supposed to writhe in anguish¹⁰ when the possessed cowered

¹ L. W. Cushman, *The Devil and the Vice*. London, 1897.

² Tylor, *Primitive Culture*, p. 77.

³ P. Verdun, *Le Diable dans la vie des saints*, p. 97.

⁴ S. Baring Gould, *Lives of the Saints*, v. p. 278. London, 1897.

⁵ P. Carus, *The History of the Devil*, pp. 255, 256. London, 1900.

⁶ John Ashton, *The Devil in Britain and America*, p. 87. London, 1896.

⁷ Carus, *The History of the Devil*, p. 343.

⁸ R. Burton, *Anatomy of Melancholy*, Pt. i. sec. ii. p. 57, ed. 1806.

⁹ Maury, *La Magie*, p. 310.

¹⁰ The same idea is found among many savages. In a certain

beneath salt water or the whip.¹ On *them* the curses and the stripes were meant to descend,² until at last, through unendurable torments, they fled the body by the nearest orifice.³

This crude and savage way of expelling "devils" was long continued; belief in it is probably by no means dead in the minds of some countryfolk. Hawthorne, writing of the seventeenth century Puritans,⁴ makes the gaoler say of his prisoner, "Verily she hath been like a possessed one, and there lacks but little that I should take in hand to drive Satan out of her with stripes." But there were times enough when exorcism failed and flogging proved unavailing. Then the insane would have to be restrained and subjected to some sort of treatment⁵—to say

tribe referred to by Dr. Tylor, "The dancing of women by demoniacal possession is treated . . . by the doctor thrashing them soundly with a stick, the demon, and not the patient, being considered to feel the blows."—*Primitive Culture*, ii. p. 124.

¹ See, for instance, Abbot Richalmus, capud xxvi. *De efficacia salis et aquae*.

² D. H. Tuke, *History of the Insane*, p. 21.

³ In many ancient drawings they are depicted blown from the mouth, little black monsters mingled in a cloud; there were other manners of egress.

⁴ *The Scarlet Letter*, chap. iv.

⁵ The people even of those early days, say Maury, "bien

some sort of *ill-treatment* were nearer the truth. Doubtless they always aimed at quieting the more troublesome patients, and bringing them into order, if not back to reason.

Says Andrew Boorde in his strange *Regyment of Health*:¹ "I do advertyse every mā the which is mad or lunaticke or freneticke or demoniacke, to be kept in save garde in some close house or chambre where there is lytell lyght. And that he have a keper the which the mad man do feare." The same idea we see expressed by Shakespeare:² "We'll have him in a dark room and bound," is the immediate cry towards the mad. Shut up and bound they were, in all manner of ways and places, by relatives, monks, and keepers. As we have seen, many were executed as witches or malefactors, and would be thrown into gatehouses and prisons,³ where they might furnish horrible diversion for the other prisoners,⁴ and where they were sometimes

qu'attribuant la folie à une cause imaginaire n'en avaient pas moins connu que c'était une véritable maladie."—*La Magie*, p. 309.

¹ Chap. xxxvii. London, 1542.

² *Twelfth Night*, Act iii. Sc. 4.

³ W. Besant, *London in the Eighteenth Century*, p. 536.

⁴ W. E. H. Lecky, *History of England in the Eighteenth Century*, vi. p. 257. London, 1887.

drugged to make them silent and to cease from raving.¹ Sometimes they were placed in such hospitals as there were,² along with fever and accident cases.³

In the course of time, as population spread and townships grew, the old resorts were found to be inadequate. The number of the lunatics was increasing, and the whole country was filling up and enclosing. Whipping from place to place became ineffective, and there had been no public institutions available but monasteries, gaols, and hospitals.⁴ In the year 1247 was founded by Bishopsgate the Priory of St. Mary of Bethlem,⁵ and here insane people were kept and tended, at any rate from 1403. Doubtless there came to be other places thus put to use, such as, for instance, one St. Katherine's by the Tower,⁶ where, we are told, "they used to keep the better sort of mad folks." But it was not until about the middle of the eighteenth century⁷

¹ Andrew Halliday, *Lunatic Asylums*, p. 10. London, 1828.

² W. A. F. Browne, *What Asylums were*, p. 105.

³ J. Conolly, *Treatment of the Insane*, p. 7.

⁴ See M. Esquirol, *Mémoire sur la Maison Royale de Charenton*, p. 10.

⁵ D. H. Tuke, *Hist.* p. 52.

⁶ W. Besant, *London in the Time of the Stuarts*, p. 237.

⁷ J. B. Tuke, art. "Insanity," *Ency. Brit.* ninth ed.

that grim and sombre circumvallate buildings began to be erected to intern the troublesome.¹ "They were," says Dr. Conolly,² "but prisons of the worst description. Small openings in the walls, unglazed, or whether glazed or not, guarded with strong iron bars, narrow corridors, dark cells, desolate courts, where no tree nor shrub nor flower nor blade of grass grew.³ Solitariness, or companionship so indiscriminate as to be worse than solitude; terrible attendants armed with whips . . . and free to impose manacles and chains and stripes at their own brutal will; uncleanness, semi-starvation, the garrotte, and unpunished murders—these were the characteristics of such buildings throughout Europe." What may be called the theoretical treatment was bad enough. Those who could not be cured must be subdued;⁴ the teaching of Boerhaave and Cullen admitted this, and the latter wrote: "Fear being the passion that

¹ Many asylums were built under the Act of 1808, but before that the pauper patients had been "crowded into the damp dungeons of our public workhouses, or shut up in houses of detention and ill-regulated prisons."—A. Halliday, *Lunatic Asylums*, p. 10.

² *Treatment of the Insane*.

³ Oscar Wilde, *Ballad of Reading Gaol*, p. 24.

⁴ Robert Jones, *An Inquiry into the Nature of Nervous Fevers*. London, 1785.

diminishes excitement, may therefore be opposed to the excess of it, and particularly to the angry and irascible excitement of maniacs; these being more susceptible of fear than might be expected, it appears to me to have been commonly useful.”¹

It was desired “to acquire some awe over them,”² and he declares that “sometimes it may be necessary to acquire it even by stripes and blows.”³ This was the therapeutic flogging already alluded to.⁴ Shock, terror, blistering, bleeding, purging, the use of chains and all manner of manacles⁵—these were the means employed and set down in the textbooks to heal the disordered mechanism of the brain.⁶

¹ W. Cullen, *First Lines of the Practice of Physic*, iv. p. 153. Edinburgh, 1789.

² Cullen, p. 171.

³ *Ibid.* p. 154.

See also R. Mead, *Monita et praecepta medica*, p. 67; he says, however, that fast binding is sufficient. London, 1751.

⁴ Page 149, *ante*. Dr. Haslam flogged lunatics at stated periods to avert outbreaks.—Conolly, p. 12.

⁵ D. H. Tuke, *Hist.* p. 107.

F. Beach, *Psychological Medicine*. He also alludes to John Wesley's *Prescriptions*, p. 6, etc.

Andrew Wynter, *The Borderland of Insanity*, J. M. Granville's ed. p. 70. London, 1877.

⁶ “The vagrant action of the limbs was suppressed, but the source of irritation in the brain was left out of consideration.”—Conolly.

In the *Gentleman's Magazine* of 1765¹ we read of the private asylums that "persons were taken forcibly to these houses without any authority, instantly seized by a set of inhuman ruffians trained up to this barbarous profession, stripped naked, and conveyed to a dark room." So ignorant were the doctors of those days as to the nature of insanity that the harsh cruelties practised on private patients were carried out even upon the king. Of the eighteenth-century practice Mr. Massie has written :² "Mental disease was at that time a branch of art little understood, and the specific treatment of lunatics was worthy of the barbarous age of medicine. The unhappy patient" (King George III.) "upon whom this most terrible visitation of Heaven had fallen, was no longer dealt with as a human being. His body was immediately enclosed in a machine, which left it no liberty of motion. He was sometimes chained to a staple. He was frequently beaten and starved, and at least he was kept in subjection by menacing and violent language."

¹ Quoted by Beach, *Hunterian Oration*, 1891.

² W. Massie, *A History of England during the Reign of George III.*, iii. p. 207. London, 1865.

See also J. M. D. Meiklejohn, *Hist. Eng.* Pt. ii. p. 330.

That, like most lunatics, he was very annoying is certain; he once talked for nineteen hours unceasing. But all his troubles were intensified by ill-treatment;¹ they left him to be knocked about by a German servant,² and the first doctors kept him even from his own children, at which the poor old man complained "very heavily."³ Such, then, was the orthodox treatment applied against the highest in the land. But the worst deeds were done behind thick walls. "Sane people," says Beach,⁴ writing of private establishments, "were frequently confined in these asylums, for persons frequently availed themselves of the facilities⁵ then in use in order to get rid of a troublesome relative or to obtain some selfish object."

And what of the really mad?⁶—irritable,

¹ Massie, *Hist.* p. 208.

² Wynter, *Insanity*, p. 80.

³ J. H. Jesse, *Memoirs of the Life of George III.*, iii. pp. 95 and 274. Later on he was placed in the better care of Dr. Willis, a clergyman who was much celebrated for his management of mad people; see Jesse, iii. p. 90, etc.

⁴ Hunterian Oration, p. 5.

⁵ Besant, *London in the Eighteenth Century*, p. 377. See also Charles Reade's book, *Hard Cash*.

⁶ See Conolly's description of the old-time reception of a private patient.—*Treatment of the Insane*, p. 138.

violent, irrational, helpless, often with as little control over the functions of the body as on the workings of the mind. We can imagine what their state became when left in the hands of ignorant practitioners and brutal attendants, with chains and instruments of restraint convenient and ready. Screened off from all kith and kin they writhed with sores and rotted in ordure.¹ Sometimes—mostly on Monday mornings after the Sabbath rest and accumulations—they might be carried out into a yard¹ to be mopped and soused from pails in the coldest weather.²

The condition of the living rooms and wards³ was often such that visitors grew physically sick from going into them;⁴ but they were rare within those private prisons,⁵ strangers are never welcome behind the walls. At York Asylum⁶

¹ D. H. Tuke, *Hist.* p. 171.

² R. Gardner Hill, *Lunacy; its Past and its Present*, p. 7. London, 1870.

³ R. Gardner Hill, p. 6.

⁴ J. B. Sharpe, *Report and Minutes of Evidence on the Madhouses of England*; evidence of G. Higgins, pp. 12 and 13; of R. Fowler, p. 308; and of H. Alabaster, p. 326. London, 1815.

⁵ *Edinburgh Review*, xxviii. p. 445. Edinburgh, 1817.

⁶ Jonathan Gray, *History of York Asylum*, p. 12. York, 1815.

—an especial plague spot opened in 1777 and burnt,¹ it is said, to avoid disclosures that might hang its keepers,² in 1814—a rule was adopted in 1813 “that no person³ shall be allowed to visit any of the patients without a special written order signed by the physician.” Official visitors were generally harmless.⁴ At York the worst rooms were not shown them.⁵ For most of the small asylums there were none at all.⁶

Even the larger public asylums during the eighteenth, and also far into the nineteenth century, were horrible monuments of cruelty and neglect. The miserable patients lay upon straw in cells,⁷ or upon wooden shelves to which they were fastened. Many were naked or decked

¹ See Conolly's amazing denunciation in his *Treatment of the Insane*.

² A female patient was got with child by the head keeper; he was subsequently given a piece of plate, and kept a private madhouse of his own; see Sharpe, *Report and Min. of Ev.* p. 14.

³ Gray, chap. iv.; *ibid.* p. 26; Beach, p. 4.

⁴ S. W. Nicoll, *An Enquiry into the Present State and Visitation of Asylums*, p. 10, etc. London, 1828.

⁵ Sharpe, p. 12; Gray, p. 23.

⁶ Sharpe, *Report and Min. of Ev.* pp. 277, 290, 297.

⁷ *Ibid.* p. 46.

over with one blanket.¹ In the wards they were frequently chained to the wall by wrist or ankle,² and occasionally by both. One patient at Bethlem,³ a fierce, powerful man whose name was Norris, after a fracas with a drunken keeper, had his arms and shoulders encased in a frame of iron obtained from Newgate.⁴ This instrument⁵ was attached by a twelve-inch chain to a collar round his neck, from a ring round a vertical iron bar which had been built into the wall by the head of his bed.⁶ His right leg was secured to the frame upon which he lay. The effect was that the patient could move up and down as far as the ring and short chain round the upright bar permitted, but he could not stir one foot from the wall, and could only rest lying upon his back. "In this thralldom," says Dr. Conolly,⁷ "he had lived for twelve years. During much of this time he

¹ For instance, at Bethnal Green Asylum.—Beach, p. 12.

² As late as 1837.—Tuke, *Hist.* p. 81.

³ Sharpe, p. 46.

⁴ *Ibid.* p. 85.

⁵ *Ibid.* p. 48.

⁶ See Besant, *London in the Eighteenth Century*, where a print is given of this prisoner in his cell at p. 375.

⁷ *Treatment of the Insane*, p. 28.

is reported to have been rational in his conversation. At length relief came, which he only lived about a year to enjoy. It is painful to add that this long-continued punishment had the recorded approbation of all the authorities of the hospital. Nothing can more forcibly illustrate the hardening effect of being habitual witnesses of cruelty, and the process which the heart of man undergoes when allowed to exercise irresponsible power."

The medical men were poorly paid and proportionately neglectful. At the time of which we are speaking—the end of the eighteenth and the beginning of the nineteenth century—the physician at Bedlam got only £100 a year.¹ However, he kept a private asylum, and sometimes left the public institution for months together.² One of the surgeons is described as having been "generally insane and mostly drunk," in spite of which he was retained there for ten years.³

With such shameful neglect and callousness on the part of the doctors—there appear to

¹ Sharpe, *Report and Min. of Ev.* p. 120.

² *Ibid.* p. 59.

³ Tuke, *Hist.* p. 153. 2

have been no chaplains in those days¹—it is not to be wondered that the unhappy patients fell entirely into the hands of their keepers and immediate attendants, and most of these were quite ignorant people, rendered impatient and brutal by the exasperating ways of the demented inmates, and by their boundless power over them. Instinctive and retaliative floggings (the third kind, alluded to on p. 149), assaults, and possibly even murders, were not uncommon, as well as the distressing and unlimited restraints already referred to.² One doctor invented and introduced a special instrument to prize open the patients' mouths at compulsory feeding. He mentions that, by the usual process, teeth were apt to be broken, and some were left "without a front tooth in either jaw."³

In the eighteenth century⁴—up to 1770—and in some places, doubtless, even to later times,

¹ Sharpe, *Report and Min. of Ev.* p. 68.

² For an account of some of these, especially as used in Portugal into later times, see G. A. Tucker, *Lunacy in Many Lands*, pp. 16, 1346, etc. Sydney, 1887.

³ John Haslam, *Observations on Madness*, p. 317. London, 1809.

⁴ Besant, *London in the Eighteenth Century*, p. 377. There is also a reproduction of Hogarth's "Scene in Bedlam" from the "Rake's Progress."

the mad people were reckoned among the "sights."¹ The public paid² to go round the asylums, as they do now to gaze upon wild beasts.³ The baser and more mischievous among them would irritate and purposely enrage the secured patients, as their descendants tease caged animals to this day;⁴ and thus reproduced for their ghastly diversion "exhibitions of madness which are no longer to be found, because they were not the simple product of malady, but of malady aggravated by mismanagement."

Such conduct appears to have been general in those times.⁵ At Geneva⁶ some lunatics would be given grass and horrible things to eat to amuse visitors. This also happened at the Bicêtre,⁷ in certain parts of Germany, etc.⁸ "Les

¹ R. Gardner Hill, *A Concise History of the Non-Restraint System*, p. 139. London, 1857.

² W. A. F. Browne, p. 119.

³ One large asylum is said to have made £400 a year from exhibiting lunatics, but this would probably not include the keepers' tips; see Tuke, *Hist.* p. 73.

⁴ Conolly, p. 33. See also P. Pinel, *Traité Médico-philosophique sur l'Aliénation Mentale*, p. 65. Paris, An IX.

J. B. Tuke, *Ency. Brit.* ninth ed. vol. xiii. p. 111.

⁵ See E. Westermarck, *Moral Ideas*, i. p. 274.

⁶ H. W. Carter, *Principal Hospitals*, p. 42. London, 1819.

⁷ P. Pinel, *Traité*, p. 64.

⁸ A. Halliday, *Lunatic Asylums*, p. 76.

Fous de Charenton " became, for a time, notorious for their plays,¹ which were presented with much sound and fury, attracting spectators from very grotesqueness. They were forbidden in 1811.

High walls kept things dark for years, but the light stole through in the end, as it always will.² In 1793 Pinel removed the chains from patients in the Bicêtre. At home, the York Asylum, already alluded to, began to bear an evil reputation. In 1788 it incurred the *Animadversions*³ of the Rev. William Mason.⁴ In the year 1791 some friends of a female patient desired to visit her, but were not allowed, upon the plea that she was not in a suitable condition to be seen by strangers (she probably was not!) A few weeks after this she was reported dead.⁵

¹ M. Esquirol, *Mémoires de Charenton*, pp. 46, 48.

² F. Beach, p. 11.

J. Conolly, p. 10.

R. Gardner Hill, *Concise Hist.* p. 141.

³ *Animadversions on the Present Government of York Asylum*. York, 1788. It deals mainly with the question of finance.

Edinburgh Review, vol. xxviii. p. 433.

These produced *A Letter from a Subscriber to the York Lunatic Asylum*. York, 1788, etc.

⁴ He died in 1797, and an inscription was erected to him in Westminster Abbey. See *Dict. Nat. Biog.*, and Jonathan Gray, *History of York Asylum*, p. 18.

⁵ Samuel Tuke, *Description of the Retreat*, p. 22. York, 1813.

The woman belonged to the Society of Friends, and the suspicious circumstances of her incarceration caused much resentment among the Quakers. Soon after, William Tuke resolved that they should have a hospital of their own. The Retreat was started in the year 1792, and its humane and enlightened methods were soon contrasted with the barbarous and secret administration prevailing at the older institution. But the years rolled by while patients languished and died. It was in 1813 that Samuel Tuke—a grandson of the founder of the Retreat—brought out a little work¹ describing the system there. It “excited universal interest, and, in fact, achieved what all the talents and public spirit of Mason and his friends had failed to accomplish. It had still better effects. A very inoffensive passage in this book roused, it seems, the animosity of the physician to York Lunatic Asylum, and a letter which this gentleman published in one of the York newspapers²

¹ The *Description of the Retreat* near York, already alluded to.

² To the *York Herald*, dated September 23, 1813. It was signed merely “Evigilator,” but had been written by Dr. Best, the head of the York Asylum.

See J. Gray, *Hist.* p. 28 ; also D. H. Tuke, *Hist.* pp. 129, 148.

became the origin of a controversy among the governors of that establishment, which terminated in August 1814, after a struggle of nearly two years, in the complete overthrow of the old system, and the dismissal of every officer of the asylum, except the physician himself.”¹

The conflict was taken up by others and carried on. Towards the close of that same year (1813), a case of alleged misconduct was brought forward by Mr. Godfrey Higgins, a magistrate for the West Riding. “Mr. Higgins’ statement was read” (before twenty-seven governors), “after which the accused servants of the house were called in and sworn. They denied upon oath the truth of the charges. No other evidence was called for; nor was any minute committed to writing of what had been sworn by the servants. The following resolution was passed:—The governors having taken into consideration the statements published in the York and other newspapers respecting the treatment of William Vicars, lately a patient in this asylum, . . . are unanimously of opinion that . . . he was treated with all possible care,

¹ *Edinburgh Review*, vol. xxviii. p. 433. Edinburgh, 1817.

attention, and humanity.”¹ It was of no avail; thirteen gentlemen of the county came forward with donations, in virtue of which they qualified as governors. These new men brought their votes to bear to force on an inquiry, and though the old gang of scoundrels never got their deserts, and, to conceal their guilt, are said to have set the premises on fire, yet they were driven out of their situations, and soon investigation became national.

In 1814 Mr. George Rose brought in a Bill to regulate asylums, which passed the House of Commons. But the authorities at Bedlam opposed the measure,² spending over £600 in so doing. They had good cause, as we shall see presently. The York Asylum governors—nineteen of them, including the archbishop—sent in a petition against it; and the intrepid Mr. Higgins sent one in its favour, signed by himself.³ The Bill was thrown out by the House of Lords,⁴ but a committee of the House of Commons was then appointed, and collected the

¹ S. W. Nicoll, *An Enquiry*, p. 11; and see Jonathan Gray, *Hist.* p. 31.

² D. H. Tuke, *Hist.*, p. 79.

³ J. Gray, *Hist.*, chap. vi.

⁴ D. H. Tuke, p. 161.

inconceivable and horrible evidence from which we have quoted. Its report was presented by Mr. Rose in 1815,¹ and though the committee at Bedlam formally exonerated its officials for all things they had done and neglected to do, including even the dreadful instrument placed round Norris,² the unofficial mind of the public had been roused to indignation, and many of the worst abuses were presently remedied.

Mr. Rose died in 1818, but in the following year Mr. Wynn brought forward another Bill, which was, however, opposed by Lord Eldon, who observed³ that "there could not be a more false humanity than over-humanity with regard to persons afflicted with insanity," a line of argument which we shall come on again. That Bill shared the fate of its predecessor. It was not until nine years afterwards that Mr. Gordon secured the passing of an Act⁴ to improve the asylums, in the year 1828. Though abuses continued into the middle of the nineteenth century,⁵

¹ D. H. Tuke, p. 157.

² Nicoll, p. 21.

³ D. H. Tuke, *Hist.* p. 162.

⁴ *Ibid.* p. 173.

⁵ J. B. Tuke, *Ency. Brit.* ninth ed. ; D. H. Tuke, *Hist.* p. 85 ; R. Gardner Hill, *Lunacy*, p. 5.

and many Acts of Parliament were subsequently brought in,¹ the monstrous evils of which we have spoken continued as crimes where previously they had been customs, and took place on a much diminished scale.

At Lincoln Asylum,² about 1838, Dr. Gardner Hill removed mechanical restraints, and Dr. Conolly³ followed at Hanwell in the succeeding year. In this they were, of course, opposed in the Profession,⁴ but new ideas and new conceptions were coming, which are still working in the treatment of insanity. All along, heretofore, the Mind and the Body had been conceived as two separate things. People had ceased to believe in the interference of devils, but they spoke vaguely of "a mind diseased." There being often no physical injury that could be detected, "the common opinion seemed to be confirmed that it" (mental disorder) "was an incomprehensible, and consequently an incurable, malady of the mind."⁵

¹ See, for instance, Hunterian Oration, 1891, etc.

² R. Gardner Hill, *Lunacy*, p. 42.

³ Andrew Wynter, p. 100.

⁴ Hill, pp. 87, 88.

⁵ Halliday, *Lunatic Asylums*, p. 2.

A medical writer¹ of the early nineteenth century could allude to lectures he had attended, at which the doctor had declared that treatment and physic were useless in a case of *furor uterinus*, because it was a disease of the mind, not of the body. No doubt there loomed the fear of Free Will and Theology. “. . . Many very able men,” says Dr. Halliday,² “led away by what appeared to be the general opinion of mankind, shrank from a strict investigation of a subject that seemed to lead to a doubt of the immateriality of mind, a truth so evident to their own feelings and so expressly established by divine revelation.” It is not for us to turn aside into labyrinths, or to attempt to settle what “mind” may mean. But we know that, to our present power of comprehension, the mind can only function through the body. How it first formed, and if it can yet rekindle, are vital questions which may never be answered; at any rate they lie beyond our range.

Gradually metaphysics and moral concepts were left behind as experts examined facts. “. . . Derangement,” says a nineteenth-century

¹ F. Willis, *A Treatise on Mental Derangement*, p. 6. London, 1823.

² *Lunatic Asylums*, p. 2.

writer,¹ "is no longer considered a disease of the understanding, but of the centre of the nervous system, upon the unimpaired condition of which the exercise of the understanding depends. The brain is at fault and not the mind."

"The old notion," says Dr. Wynter,² "that derangement of mind may happen without any lesion of the instrument of thought being the cause or consequence, has long been exploded."

The physical origin of insanity "became gradually accepted. Its mental phenomena were more carefully observed, and its relation was established to other mental conditions which had not hitherto been regarded as insane in the proper sense of the word. . . . Hitherto the criteria of insanity had been very rude, and the evidence was generally of a loose and popular character; but whenever it was fully recognised that insanity was a disease with which physicians who had studied the subject were peculiarly conversant, expert evidence obtained increased importance, and from that time became prominent in every case. The new medical views of insanity were thus brought into contact with the old

¹ W. A. F. Browne, p. 4.

² *Borderland of Insanity*, p. 11.

narrow conceptions of the law courts, and a controversy arose in the field of criminal law, which, in England at least, is not yet settled.”¹

The instinct of retaliation was not readily restrained by reasoning or proofs of irresponsibility. In postulating freedom of choice under all physical conditions; in assuming plenary responsibility in men and women under all circumstances; in refusing to recognise any abnormal state unless it were so extreme and obvious as to render the person before the court unconscious of his actions and surroundings, the judges were defending their own position. Thus the new theories² were disputed and sneered at, and arbitrary standards as to sanity were set up at variance with all facts and expert evidence.³

Some contended that the more subtle and amazing forms of madness or abnormality perceived by the specialists were but new names for

¹ Alexander Gibson, in *Ency. Brit.* ninth ed. art. “Insanity (Law).”

² “That” (kleptomania) “is one of the diseases I was sent here to cure,” a certain judge is said to have observed; but he did not cure it.

³ One of these legal tests had been a knowledge of the multiplication table. W. A. F. Browne, p. 3.

old perversities.¹ Others averred that nothing physical ought to exculpate. Smollett wished that all lunatics guilty of grave offences might be subjected "to the common penalties of the law." Upon this Mr. Tuke observes in comment that "The entire inability to distinguish between voluntary and involuntary acts, . . . between motives and consequences, is singularly well shown. Unfortunately it was not peculiar to Smollett."²

And I might add that this instinctive feeling continued—as everything instinctive generally does. Turning to the work of a writer still living (in 1908), we come upon the following: "Of late years a certain school of thinkers³ . . . have started some theories respecting the responsibility or irresponsibility of many dangerous criminals and murderers, which have very properly

¹ The "robust" attitude has been shown by Dickens. "That young Pitcher's had a fever." "No!" exclaimed Mr. Squeers. "Damn that boy, he's always at something of that sort." "Never was such a boy, I do believe," said Mrs. Squeers; "whatever he has is always catching too. I say it's obstinacy, and nothing shall ever convince me that it isn't. I'd beat it out of him."—*Nicholas Nickleby*, chap. vii.

² D. H. Tuke, *Hist.* p. 96.

³ W. Tallack, *Penological and Preventive Principles*, pp. 249, 250. London, 1896.

been objected to by more practical observers." And the writer continues with all the sweet simplicity of ignorance: "Even the inmates of lunatic asylums know well the distinction between right and wrong. And it is precisely upon this knowledge that the government and discipline of such establishments are based. Hence no theories of criminal irresponsibility should be permitted to relax the security and strictness of the detention of dangerous offenders, whether sane, or partially insane, or wholly mad. And it is important to observe that the treatment and condition even of mad murderers should not be made attractive to others outside." But the hard scientific facts persisted. Injustice and cruelty, practised upon the weak and helpless, do not, alas! and *pace* good Mrs. Stowe, bring down upon nations the visible wrath of God; but the manifest falseness of the old assumptions, and the continued failure of the mediæval methods, could not be hidden through unending years. Slowly the light of science began to penetrate into the dark places of punishment. The entirely mad were first rescued and treated as patients, and these now, happily, no longer concern us; their case belongs to Medicine, not to Criminology.

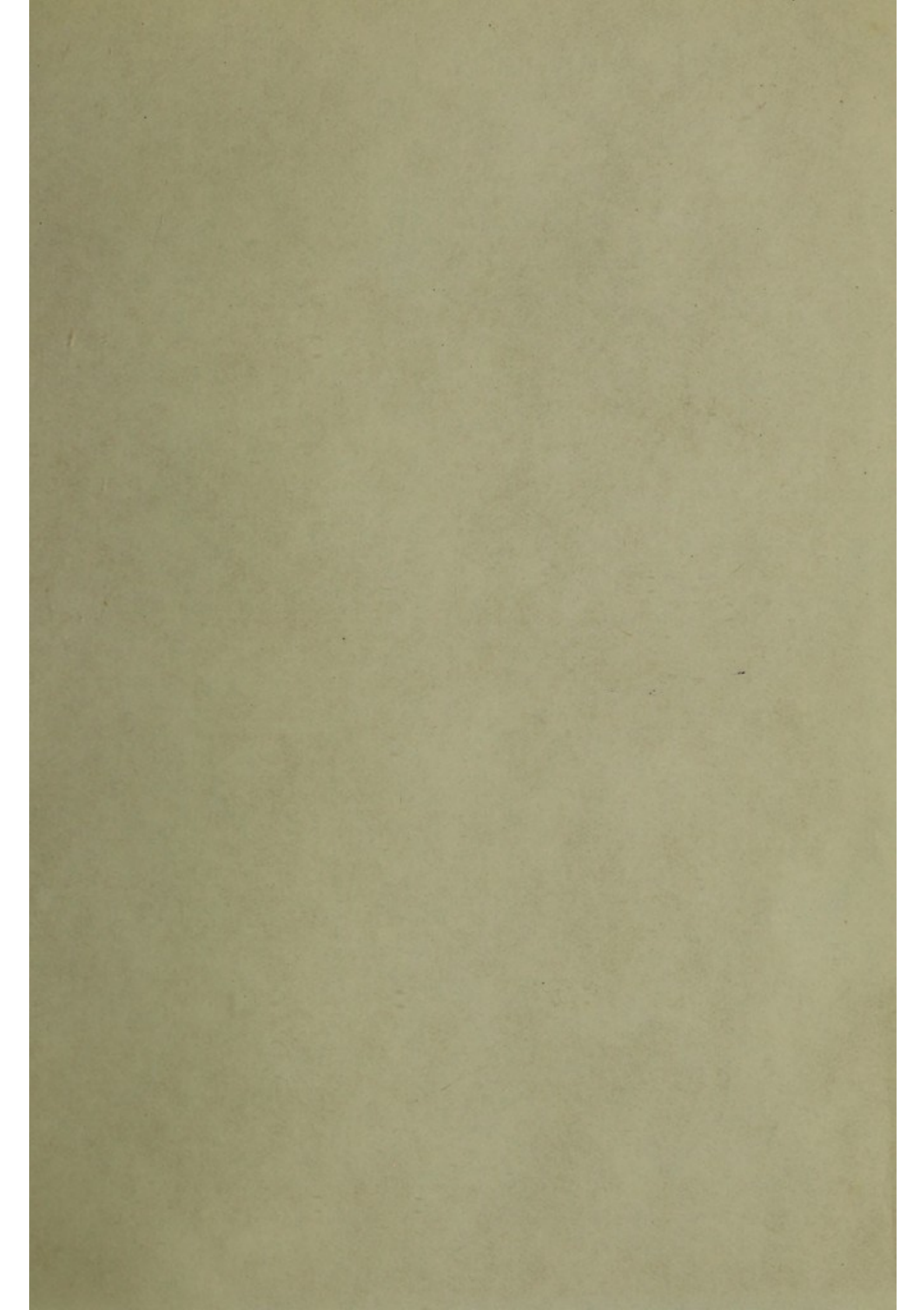
With regard to the half-mad we are in a state of slow change and transition. Their wrongs, long known to the alienists, are being brought before the law-makers. "Crime," says the Report of Mr. Secretary Gladstone's Committee,¹ "its causes and treatment, has been the subject of much profound and scientific inquiry. Many of the problems it presents are practically at the present time insoluble. It may be true that some criminals are irreclaimable, just as some diseases are incurable, and in such cases it is not unreasonable to acquiesce in the theory that criminality is a disease and the result of physical imperfection. But criminal anthropology as a science is in an embryo stage. . . ." With regard to the abnormal we are only on the threshold of justice; a multitude of causes, theological and instinctive, prevent the facts from being faced and known.

We may take comfort in the course of evolution; in that the violently mad (employing the word in a wide and general sense) are no longer exorcised and tormented; in that the eccentrically mad are no longer burned and tortured for

¹ *Departmental Committee on Prisons Report*, p. 8. London, 1895.

what was imagined against them ; in that the weak-minded and the partially deranged are being considered, with a view to their segregation in special places apart from healthy offenders ; in that innate and absolute abnormality of emotions has been established by the specialists upon overwhelming evidence ; and that the knowledge of this is quietly spreading, and being recognised and admitted among educated people, throughout the civilised world.

THE END



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