

statements. The rite of ordination, it says, has not been abolished. All that the Legislature has done is to take away from the Company of Pastors the power of conferring it officially; but as a matter of fact, candidates for the Ministry receive the rite voluntarily. In other words, ordination is optional, and the practice, as often happens in analogous cases, survives the law. We never suggested that pastors, if it so please them, may not submit to this or any other rite any more than that they may not, if they think fit, have a belief; but as the law now requires from candidates no other qualification than the possession of a university degree, whereas it formerly insisted on ordination and acceptance of the Christian verities, creeds and ordination, so far as the law is concerned, are in effect abolished. The *Semaine Religieuse* demurs also to our statement that nearly every minister elected since 1874 is either an avowed agnostic or an open opponent of Christianity. Since the date in question, it says, "There have been elected eleven new pastors, of whom seven were Evangelicals and four Liberals. Some of the former belong without doubt to an orthodox less Conservative than that of previous pastors; but the latter do not represent a Rationalism more Radical than that of the Liberal ministers elected before 1874." This is a virtual admission of our contention. The Evangelists are becoming less orthodox, and if the Liberals are not becoming more heterodox, it is because they have no more beliefs to lose. When professed teachers of Christianity define religion as being nothing more than a vague sentiment, it is doing them no injustice to affirm that they have reached the utmost limits of rationalism, and that this is the opinion of the Liberals of the Genevan Church they would probably be the last to deny. In a recent article in the *Alliance Liberal* (September 15th), a writer, who signs himself "Jean L., Docteur en Théologie," thus sums up the matter:—"Religion in effect presupposes no doctrine; it is outside doctrine, because its essence is a sentiment, an impulsion, a state inherent to the inmost essence of the human soul. All other objects of theology and of worship to which religion gives rise, and about which men and Christians so desperately and incessantly contend, are only of trifling importance." In the pulpit, Liberal pastors, descending from the abstract to the concrete, stigmatised as fables the verities that form the basis of Christianity, and without which it would become even less than the shadowy thing which Dr. Jean says it ought to be. Not long ago, one of the most able and influential of the liberal Ministers, after reading as his text St. Matthew's account of the Annunciation, shut up the Bible with a bang, folded his arms, and spoke somewhat as follows:—"I ask every person here, every person possessing the least vestige of sense, education, or intelligence, if the history I have just read is not to the last degree improbable, a tissue of absurdities, and a palpable fiction;" and this thesis, in a long and elaborate sermon, he essayed to prove.

What does it matter, in the face of facts like these, that seven mildly orthodox ministers have been elected since 1874, that ministers are "installed" by the Consistory "in a solemn ceremony, and in default of dogmatic engagements enter into religious and moral engagements which are not without value," and that for certain offences the Consistory has power, with the consent of the State, to suspend a rebellious pastor? It is in the very nature of things that the bane should surely, if slowly, prevail over the antidote, and that orthodox ministers should be unable to check the evils which they admit and deplore. While objecting to some of our conclusions, the *Semaine Religieuse* is constrained, "with humiliation," to acknowledge the general truth of our verdict. "Yes," it says, "it is true that during the last twenty or thirty years indifferentism and incredulity have made in our little country frightful progress. It is equally true that the dogmatic anarchy which prevails in our national Protestant Church has contributed in part to hasten and support this spiritual decay." And then our contemporary goes on to say, what we should be the last to dispute, that other causes are making for this end, and that in the "Huguenot Sion there are thousands of men and women who have not bowed the knee to Baal." Yet, while confessing all this, while acknowledging in so many words that the National Establishment is a chaotic and creedless institution, some of whose ministers openly flout the faith which their brethren defend, an institution which has contributed, and is still contributing, to the decay of religion and the increase of nationalism, the organ of Evangelical Protestantism and the party whom it represents

continue to support the system they condemn. They recognise the malady and refuse the cure,—emancipation of the Church from the control of the State. The expediency of an Establishment is an open question, but there can be no question that a State Church should be what it purports to be, and not a sham. It should not, while calling itself National and Protestant, be converted into a platform for the propagation of views destructive not alone of Protestantism, but of Christianity itself,—views for which none of its ministers, however orthodox they may be, can divest themselves of responsibility; and which, while they remain in the Church, they cannot effectually combat. This responsibility is all the greater, inasmuch as the Church (if Church it can be called) exists only by virtue of an alliance between the dominant political party, who maintain it for political purposes, and the Evangelical party, whose reverence for an Establishment founded by Calvin (and reformed by Carteret) seems to blind them alike to the demands of duty and the meaning of facts. When this alliance comes to an end, as come to an end it must, the National Church of Geneva will be a thing of the past.

THE MISLEADING CHARACTER OF LAW AS AN  
INDEX TO MORALS.

THE interesting treatise on Natural Religion to which we have recently adverted, in taking its start from the assumption that the most important subjects of human contemplation are not matters of controversy, affords an illustration of a strong and increasing tendency of our day,—a tendency to take refuge from the avowed diversities of belief as to all that is ultimate on the nature and destiny of man, in that agreement as to the duties of this present world which the course of ordinary life, it is supposed, shows to be an unquestionable fact. When we come to practical matters, it is said every day, by believers every creed and believers in none, we find no difficulty in agreeing as to our bad men and our good men, whatever our difference of view as to everything beyond. No opinion equally common seems to us so erroneous. The world of aspiration is surely as various as the world of conviction, and men's sympathies are not less divergent in their influence than their creeds are. But it is easy to see how such an opinion arises, and very instructive to trace to its origin the element of truth which it contains. Morals, so far as they are reflected in Laws, do really possess that objectiveness, that simplicity which is so often attributed to all morals. When men are employed in the construction of a penal code, they never ask what actions are wrong, in the same way that, if truth were their aim, they would ask what opinions are false. Nothing bears a stronger witness to this virtual agreement than the minute portion of our law which appears to ignore it,—we do still punish insults to religion, but what we punish is an offence against decency, not against truth. A blasphemy law must now be defended by arguments that an Atheist can use. And wherever a difference of theory seems to emerge as to the business of the legislator, it will in like manner be discovered that this difference only brings out more distinctly the substantial agreement among educated men (using that epithet in a very broad sense) as to that part of his work which is penal. The Legislature, no doubt, reflects a great and probably a growing difference of opinion as to the rights of property; but this difference touches only the relation of the *State* towards property, the relation of the only persons of whom a penal code takes cognizance towards it is a matter concerning which everybody is of one mind. And the questions which are thus answered cannot be dismissed as self-evident. A country solicitor was asked by a village schoolmistress—quite as intelligent as most village schoolmistresses were some years ago—whether, as A. B. spent his money chiefly for immoral purposes, “some part of it might not be taken away from him, and given to his brother.” If this person availed himself of that admirable opportunity for enlightening the infant minds of a country village, through the medium of their instructress, as to the first principles of legislation, and tried to convince the good woman that it was a wise as well as an unchangeable arrangement which ordained that we should all spend our money as badly as ever we chose, we may be sure that he found himself embarked in a set of statements which were by no means obvious. The fact that they never have to be repeated in Parliament shows that there are important moral problems, which the common-sense of mankind has settled once for all,—in other words, that there is a part of morality which belongs as much to the region of ascertained fact, which is a

little dependent on any of the questions as to which thinking men are divided, as the Copernican astronomy is. These are the problems which form the basis of corporate national action, and the corporate action of a nation is something so impressive, so resonant, that it seems almost as impossible to remember as to deny that its moral limits are rigidly fixed, and, with regard to the vast and varied differences of human conduct, may even be called narrow.

Not that its relation to morality is a slight thing, not that it might be regarded merely as a guardian of public safety and comfort, and the aspect under which it condemns what is wrong be left out of account. At the most important moment of its exercise, the Law bears emphatic testimony to its own moral character. The distinction between murder and manslaughter is wholly a moral question. When a State in preparing to deprive its subject of life inquires not only concerning what has been done, but what has been intended, it enters on ground as spiritual as that of the Confessional. And perhaps its other aims would be better attained, if its moral aims were sometimes more prominent. "We do not enough consider," said once an experienced lawyer, when discussing the faulty state of our law of homicide, "that the business of the law is to protect people under strong temptation." That elevated and spiritual definition of the function of law has always dwelt in the mind of the present writer as a protest against some of the tendencies of modern thought which law, perhaps, is most apt to foster. The speaker did not mean that we thought too much of innocent people, and too little of guilty people. He meant that we thought too much of one actual criminal, and too little of many possible criminals; that the law would guard public safety better, if it bore in mind that it was also guarding something that is more precious than even public safety. It is one of the many cases in which the lesser object would be achieved more successfully, if the greater object were always kept in view. But the actual decision of legislators, the actual pleadings of lawyers, are quite enough to testify that what the law undertakes to punish is, on the whole, wrong, and not injury. When the State refuses to hang a homicide because he is also a furious maniac, it does not deny that the best thing for him, possibly, and for everybody connected with him, might be that he should be put out of this world. But it proclaims that unless he can be proved to have done wrong, a number of people acting together have no more right to put him out of their way than one person has,—that the ideal being we call the State does not, any more than any one of the individuals whose conduct it undertakes to regulate, stand above Morality, that it acknowledges moral obligations just as absolute as those which bind every one of its subjects. It vindicates, with unmistakeable distinctness, its position on moral ground.

But the State abdicates with equal distinctness its jurisdiction over the larger portion of the region it enters. The relation of Law to Morality is doubly incomplete. It is an expression of only a part of the national disapproval, and it is not an expression of any part of the national approval. The antithesis between what is right and wrong is quite unlike the antithesis between what is legal and illegal. Right actions, everybody would agree, must have some positive quality, whether we call that absolute rightness, or something else; they do not include all the actions that are not wrong. But any random group of legal actions shows us that they have no quality in common, except that of not leading the agent towards the gaol or the gallows. It is legal to save the life of one's enemy, to eat one's dinner, to slander one's benefactor. Both the heroic and the hateful action are found in the same category with that which has no moral quality whatever. The actions which the legislator decides to leave unpunished may be as dishonest as a burglary, more cruel than a murder. It is legal for a wealthy heir to dismiss without a penny the worn-out servant whose devotion has prolonged his father's life, or the young *protégé* whose luxurious nurture has been an implicit promise of life-long support. The law does not suppose that either of these actions is less wrong than for the father of a starving child to steal a loaf of bread. It abdicates all pretension to follow the gradation of wrong. Its sphere is not concentric with that of the moralist; their common segment is marked out by considerations that for the moralist are quite arbitrary. The experience of generations has taught us that of all the wrong actions which men commit, there are a few, and only a few, which their fellow-men can interfere to prevent in their corporate capacity (or, indeed,

in any other, for that matter), without doing more harm than good. It is not any moral reflection which teaches us this lesson, except so far as the duty of following the dictates of good-sense may be called moral. Penal legislation stops not where indignation slackens, but where it is silenced by a sense that, in this form, its expression is useless. In other words, Law can be regarded as not only an incomplete index to morality, but, if its incompleteness be forgotten, even a misleading one.

This is sometimes forgotten. The principle we are urging does not appear to us too obvious to dwell upon. It was, it is true, put into vivid and telling words nearly half a century ago, by a writer whose popularity depends on the fact that he expressed in brilliant language, and illustrated from the resources of a knowledge as accurate as it was extensive, ideas that had no originality whatever. Macaulay's review of Mr. Gladstone's treatise on Church and State seems to us, in some ways, the most interesting, though the least characteristic of his writings; we think it the only one which will possess any interest for the historian of thought. The great man whose early theories supplied his arguments with an aim is still the most prominent figure in public life, but the only person to whom, *as arguments*, they could now be addressed would be some such disputant as the ignorant woman to whom we have taken the liberty of introducing the reader, in recalling an incident from humble life, and we pay a great compliment to a man of letters in saying that the reasoning which he employed against a great statesman would, in a slightly different dialect, have been the very best answer to a village schoolmistress. But a theory does not become unimportant when it ceases to be denied. No legislator needs to be warned off the moral region which law disclaims, but the moralist needs sometimes to be reminded that he is bound to enter upon it,—nay, that it is just here that his most important business lies. Ethics is a doctrine of right and wrong; Law is founded on a doctrine of wrong exclusively. It ignores not only a part of one hemisphere of the moral world, but all the other. The word "merit" has no legal meaning; the national approval leaves no trace on the national code. This man has taken a life; the State declares his own to be forfeit to the law. That man has saved a dozen lives; the State has nothing whatever to say to him. Here is a thief whose dishonesty has deprived a rich man of a few pounds; we proceed to shut him up in prison. Here is a giver whose judicious and self-denying generosity has rescued many poor men from misery; we let him alone. We do not, on the one hand, give any legal expression to the whole of our opinion about wrong actions; to our opinion about right actions, we give no expression at all. That, it may be said, is no exclusive characteristic of law, and we allow that it is only *more* true of Law than it is of all action that expresses moral judgment. We cannot, in this world, express our approval either as often, or as forcibly, as we express our disapproval. If a wise parent will seldom punish his children, he will still more seldom reward them; and in any other relation of life, almost every practical expression of a moral judgment has to be of a penal nature, because there is hardly anything else that it can be. But still it remains true that approbation is a real influence in practical life. We surely look upon the failings of some one whom we discover to be slippery in money matters with a very different eye if we also discover him to be very generous. Now, within the scope of Law there is no compensation of this kind. We recall an instance which brought out this fact very curiously. It appeared, in the case we refer to, that the money gained by fraud had been spent, in great part, in relieving the needs of the deserving poor, often without their knowledge of the quarter from which their relief came, so that the money seems to have exercised the best qualities which money can exercise, in everything but its mode of acquirement. The fact was noted at the time as worthy of remark, but we do not remember that the faintest reference was made to it in mitigation of punishment. It surely must have had some effect in softening disapproval, but it would have been felt by every one as out of place in any plea for a lenient sentence. The object of Law being merely to prevent some actions, no one could demand that a judicial investigation should take cognisance of those which we all wish to encourage. Law has done its work when it has finished its threats; those actions which it never wishes to hinder, remain for ever beyond the bounds of its cognisance.

We have said that the Law never refuses so distinctly to take

cognisance of religious truth as when it steps in to protect religion, and we may add another illustration of the same principle, in asserting that its negative attitude with regard to Virtue is made most clear by observing the circumstances under which it insists that men shall be virtuous. The law of bribery seems to us to occupy just this exceptional position. There are a hundred ways in which men may do harm with their money, vast and deplorable harm; but as long as it is *their* money, the law lets them alone. To investigate any monetary transaction between sane beings, the State, as a rule, requires that there should be an aggrieved party. It may be the aggrieved party itself, but it must appear, in ordinary cases, in the concrete form of some officer of its own, whose just claim has been defrauded. Only in one single case does it step in and say that what one man is willing to give, and another anxious to take, shall not pass from giver to receiver; that a poor man, who knows quite well what he is selling, shall not sell his vote; that a rich man, who knows quite well what he is buying, shall not buy it. The legitimacy of the claim is as unquestionable as its peculiarity; to many persons, it would appear much more unquestionable. The State is here insisting on the conditions of its own existence, the Law is guarding the fountains of law from pollution, a representative body is insisting that what it represents shall be the nation it is to govern. Law must keep pure the source of law, at any cost; it must hold before men's eyes the ideal of this purity, even if it can do little more; it must keep the aim as an aspiration, even if it continually fail to punish its infringement as a misdemeanour. But the difficulties which beset its course in this direction are a sufficient proof that it is doing something exceptional in trying to prevent any transaction which satisfies both parties. Parliament does not really *want* to stop bribery, we hear it said again and again. Rich men do not really want to cut down the list of things that may be bought. Poor men do not really want to cut down the list of things that may be sold. In dealing with an offence in which agent and patient conspire to break the law, law is in an exceptional position. When robbery, murder, or theft takes place, it is not only the sense of duty which is enlisted on the side of the law, but the sense of injury. The victim is not anxious to give the pickpocket or the burglar a chance of repeating his offence; he may be trusted to give the law all the help he can in making it impossible. The solitary case in which the Law aims at carrying out a prohibition in which it has no help of this kind, surely exhibits very clearly the wisdom of the rule which it infringes. The importance of the exception is great. But what we would now point out is that it is not its importance which forms its justification. If political honour is the only thing the Law guards from traffic, it is not because even political honour is the thing most sacred, in the eyes of righteous men. The very specialisation of the term "immoral" (however mistaken be its exclusiveness of appellation), is a protest against the notion that moral purity is less of an object than electoral purity. Nor, in our opinion, would the attempt to prevent advances as to which both parties are agreed, be attended with greater difficulty in the last case than in the first. But the one wrong is illegal, and not the other, because the State is properly a teacher of political virtue, and is not properly a teacher of any other.

How far, then, does an agreement as to a penal code take us towards an agreement as to a moral standard? How far does our common consent as to the actions which it is desirable to prevent take us towards a common aspiration towards those actions which it is desirable to imitate? Only so far as the knowledge that two people have got into the express from Euston Square helps us towards a knowledge of their destination. We know that they must both wish to leave London. We know that they must both wish to go towards the north-west. But which of them may get out at the first stoppage and return to London in a few days, and which of them may take ship for America, never more to revisit his native land, we cannot do more than guess. And a common starting-point no more implies a common goal in the invisible world than it does in the visible. Law refuses to incorporate in its prohibitions any moral aim in which all sane and educated beings fail to unite. Therefore, it provides a common ground for action, and therefore it fails to provide a common ground for aspiration. Emphatic disapproval, we are apt to think, implies emphatic approval. In truth, this is just what it never can do. You can never admire the opposite of what we strongly condemn, you can never condemn the opposite of what

we strongly admire. You can no more praise a man for not being a criminal, than you can condemn him for not being a hero. As a rule of practice this is often forgotten, but as a principle of judgment it cannot be questioned. The inversion of our blame would often result, not in admiration, but in blame of a different kind. It is wrong to take another person's money, unless he wishes to give it us; and very often it is wrong to give another person our money, because he wishes us to give it him. It is wrong to tell a lie, and very often it is wrong also to tell the truth. The least valuable legacy that a great intellect ever bequeathed to its kind was that ethical framework (we do not mean the treatise containing it) which sets the virtues as means between two opposed vices. But an arrangement which should exhibit the virtues as a set of *antitheses* to the vices would be, we believe, even less durable than that odd Aristotelian system which always sandwiches a virtue between two vices. Nor is it only to the philosopher that such a theory would be dangerous, there seems to us no moral truth more important for the ordinary human being who is trying to do right, than that right is not the opposite of wrong. We can hardly make the statement without cumbersome explanations, because the very influence of law on morals has given a double meaning to the word "right," has suggested, in fact, that everything we have a right to do is right. But in every concrete illustration, it would be seen that the contrary is nearer the truth. The things we have a right to do are the last things which find place in the aspirations after perfect rightness.

Whenever men interfere with each other, whether in that corporate form which we call Law, or in any other, they have to base their action on a theory of wrong. But character is moulded not by disapproval, but by aspiration. On a penal code, aspiration never leaves any trace; it would be a fatal objection to any law that it implied a high ideal. It would mean the appearance of the armed belligerent on neutral territory. But the moral influences by which character is formed, though they belong to both hemispheres of the moral world, yet find their centre in that of admiration and reverence. We may be absolutely convinced of the wrong, even of the despicableness of some hidden resentment, we may refuse to give it an outlet in word or deed, and struggle against it with the whole moral energy of our nature, and at the end of the struggle find our efforts as futile as if we had been trying to move a rock. And then, perhaps, some glimpse into the recesses of a generous, self-forgetting character, some new perception of the beauty of that spirit which rises above memories of slight and wrong, suddenly comes upon us like a tidal wave of moral impulse, and lifts us into a region where all that is poor and self-centred seems below us. It need not be anything colossal which leaves this impression. It rarely is so, not only because heroism is rare, but because large and brilliant action is commonly capable of many interpretations. A sentence of hearty praise or discriminating justice given to an enemy, or it may be even a magnanimous silence, where we know what might have been said, may do more to deliver the spirit from the galling bondage of resentment than all that sense of its evil which is reflected from all the regulations of civilised society, and finds its focus in the law against murder. "The little, nameless, unremembered acts of kindness and of love" are building up in every heart sensible to their influence, a temple where, as in the Temple of Solomon, no sound of building is heard, but where the aspirations of our moral nature turn with an increasing intensity as to their permanent goal. Those who believe in the moral growth of humanity, and its final perfection, whether they place that second Eden in this world or in some other, believe that this goal will in the end be common to all, for they believe that the aspirations which are highest will be shared by all. But to say that it is so already,—to say that in turning from our speculations about what is true in the divine world to our theories about what is best in the human world, we leave doubt for certainty, is just as false as if any one were to say that while animal life exhibited a vast number of species, plant life was absolutely simple and uniform. It would be impossible to ignore divergence so obvious, if it were not that we are obliged by the constitution of this world to unite in a common attempt to defend interests that are absolutely common; and led by the perversion of Logic to forget that the decisions necessary in the world of evil are applicable to that domain alone, and involve no inference for that world whose eternity, we hope, the world of evil does not share.