

THE ARTICLE

LIBERTY OF THE PRESS,

REPRINTED FROM

THE SUPPLEMENT

TO THE

ENCYCLOPÆDIA BRITANNICA.

Printed by J. Innes, 61, Wells-street, Oxford-street, London.

LIBERTY OF THE PRESS.

I.

Nature and Objects of the Inquiry.

THE task of pointing out which of the acts, capable of being committed by the press, it would be expedient to prohibit under penalties, we trust will be found to be greatly diminished, by what we have already established in the articles **GOVERNMENT** and **JURISPRUDENCE**.

There is scarcely a right, for the violation of which, scarcely an operation of government, for the disturbance of which the press may not be employed as an instrument. The offences capable of being committed by the press are indeed nearly co-extensive with the whole field of delinquency.

It is not, however, necessary to give a separate definition of every such violation or disturbance, when committed by the press; for that would be to write the penal code a second time; first describing each offence as it appears in ordinary cases; and then describing it anew for the case in which the press is the particular instrument.

If, for the prevention of the violation of rights, it were necessary to give a separate definition, on account of every instrument which might be employed as a means of producing the several violations, the penal code would be endless. In general, the instrument or means is an immaterial circumstance. The violation itself, and the degree of alarm which may attend it, are the principal objects of consideration. If a man is put in fear of his life, and robbed of his purse, it is of no consequence, whether he is threatened with a pistol or with a sword. In the definition of a theft, of a fraud, or a murder, it is not necessary to include an account of all the sorts of means by which these injuries may be perpetrated. It is sufficient if the injury itself is accurately described. The object is to prevent the injury, not merely when produced by one sort of means or another sort of means, but by any means.

From these illustrations, it sufficiently appears, that, if an accurate penal code were composed, defining the violations of rights, and the dis-

turbances of the operations of government, to which penalties were to be annexed, every offence, capable of being committed by the press, would be defined without mentioning the press. It is no less evident, that if we include in the term *libel*, as, to the great encouragement of confusion, is generally done, all the offences capable of being committed by the press, we include in the definition of libel all the definitions of the penal code.

As far as Persons and Property are concerned, the general definition of the acts by which rights are liable to be violated, has always been held sufficient; and has been regarded as including not less the cases in which the instrumentality of the press has been employed, than those in which any other means have been employed to the same end. Nobody ever thought of a particular law for restraining the press on account of the cases in which it may have been rendered subservient to the perpetration of a murder or a theft. It is enough that a law is made to punish him who has been guilty of the murder or theft, whether he has employed the press or any thing else as the means for accomplishing his end.

There can be no doubt, however, that the press is an instrument peculiarly adapted for the commission of injuries against Reputation, and for effecting disturbance to the operations of Government, while it has no peculiar adaptation for the commission of other offences. Here, too, there is the greatest disposition to restrain the press within improper limits. It is demanded of us, therefore, upon this part of the subject, to enter into greater detail.

We are then to inquire, in the first place, What are the acts of the press with respect to *private reputation*: and next, What are the acts with respect to *government*, which it is desirable that punishment should be employed to restrain.

II.

Offences of the Press with respect to Private Rights.

Agreeably to the principles which have been already considered in the article JURISPRUDENCE, no act can be regarded as an offence with respect to an individual, which is not a violation of some of his rights.*

In considering the rights which ought to be established with respect to reputation, one proposition may be assumed; That every man should be considered as having a right to the character which he deserves; that is, to be spoken of according to his actions.

Such Offences should be defined.

In what manner the definition of this right, which would form a part

* In the description which follows of that violation of rights which is most liable to be committed by the press, and of the mode in which it ought to be treated, the developments presented in the article JURISPRUDENCE are understood to be present to the mind of the reader; if they are not, the very brief exposition here given will not be understood.

of the civil code, should be expressed, is not now the question; it is evident there is no peculiar difficulty in the matter. As words, not thoughts, are the object of legal cognizance, the right can only have respect to security against certain words; words, imputing to the individual, actions which he has not performed, or a disposition to certain actions, without evidence that such a disposition exists.

Suppose that one man has instituted a suit against another, for the offence of having violated, through the press, his right to some part of the reputation which he deserves. In his ground of complaint he must affirm that the man has imputed to him either the performance of actions which he did not commit, or a disposition to certain actions, where no evidence of such disposition can be given.

The words are produced; and the first question is, whether they do or do not impute the actions which, in the complaint, or bill of accusation, they are alleged to impute?

It is to be observed, that they who oppose the attempt to define the offences, which, for shortness, we call the offences of the press, make use of such occasions, as this, to raise their objections. How, they ask, can all the forms of expression be defined, by which the imputation of such and such actions may be, either more openly, or more covertly, conveyed?

It is very evident that the question, on such an occasion, whether the words do or do not impute such or such actions, is a question of fact. The law says, that such and such actions shall not be imputed, defining the actions. Whether such and such a man has imputed such actions, and whether by one set of words, or another set of words, are questions of fact.

The law, when it said that such and such acts should not be imputed to a man, could not determine whether A, who is accused by B, of having imputed to him one of those acts, did so, or not. That is to be determined by evidence, bearing upon the point. One, and in general the main article of that evidence, are the words which have been used. What is the import of these words; or, which comes to the same thing, what is the degree of proof involved in them, is to be determined, as all questions respecting the weight of evidence are, in each instance, to be determined, by the tribunal before which the accusation is brought. The interpretation of words rests upon the same footing in this, as in all other cases, that, for example, of a Will. The law determines, that whatsoever disposition a man has made with respect to his property, shall take effect after his death. But whether A has left his manor of Dale to B, is a matter of fact to be determined by evidence applying to that particular point; principally by that arising from the words of the will.

It may still be argued, by persons who do not easily renounce an opinion to which they have once given their support, that the actions, the imputation of which, the legislature means to prohibit, cannot be defined.

But this is a position which cannot long be maintained.

It is hurtful to a man, if he is believed to have committed some

actions, or to have a disposition to commit them; it is not hurtful in the case of others. Evidently it is by imputation of the first sort alone, that any right with respect to reputation can be infringed.

The acts, which a man receives injury from being believed to have committed, or to be disposed to commit, are either those to which the law has annexed penalties, or those to which the penalties of public disrepute and dislike are annexed.

With respect to those acts to which the law has annexed penalties, as theft, murder, perjury, and so on, it will not be pretended that there is any difficulty; the law has already defined them, or ought to define them, and they may be marked with perfect precision by a few words.

Those acts which it is hurtful to a man, solely on account of the disrepute and dislike which they produce, to have it believed that he has committed them, may also be with sufficient accuracy determined.

Compensation should be made to the individual for injuries sustained by Offences of the Press.

The ends to be attained by punishment are, Reparation to the individual to whom injury has been done, and Prevention of similar acts in future.

In the idea of all punishment, effectual reparation to the injured individual is a necessary and essential ingredient. Suppose, then, it were declared by the legislature, that every imputation to a man of acts which bring the evil of dislike and disrepute upon him who has committed them, that is, every false imputation, shall be punished at least by reparation to be made to the party injured; the term *evil* is to this purpose perfectly precise. It would remain with the complainant to show what kind and degree of injury he had received; which is a matter of fact, to be estimated, in each instance, from the evidence adduced, by the tribunal before which the question is brought. If the injury sustained is a pecuniary injury, the question coincides exactly with the question of damages, decided regularly, in English courts, as a question of fact, by the jury.

Injuries of the kind which we are now considering can affect a man only in two ways; either, by lessening the pecuniary value which he might otherwise have enjoyed; or, by lessening the marks of respect and affection which he would otherwise have received. What the loss is, in this latter instance, is also evidently a question of fact. It has nothing, therefore, to do with the legal definition of the offence, the business of the legislature. It is a question, which, like all other questions of fact, must of necessity be determined upon evidence by the tribunal before which it is brought. It is no doubt a question of delicacy, and considerable difficulty, because the evidence must often consist of very fine and minute circumstances, which can seldom be precisely ascertained. But this is not the only class of judicial questions, the determination of which depends upon such evidence as it is very difficult accurately to collect and to weigh. What is of greatest importance, on this occasion, to remark is, that all the difficulty lies in the matter of fact. There is no

doubt or obscurity in the law; which says, that whatsoever hurt a man has sustained through actions or dispositions falsely imputed to him, he shall receive compensation for. Difficulties, however, arising either from the complexity of the matter of fact, or the obscurity of the evidence, no legislative enactments can prevent. These are confided to the skill and integrity of the judge.

The compensation which ought to be made to a man for the diminution of those marks of respect and affection which he would otherwise have received, is a question for the legislature. Let us suppose that a soldier has been accused of cowardice, in such a manner as to create a general belief of the truth of the accusation; that a man of honour has been accused of mendacity, or of some of those irregular propensities to which the horror of the public is attached; it is evident that money is not, in such cases, an appropriate compensation.

When a man, through the offence of another, has been deprived of a certain amount of money, or of money's worth, we say that he has received compensation, when he is placed in the same situation in which he would have been, if the offence had never taken place.

According to this idea of compensation, a man, against whom an unfavourable opinion has been created, by the act of another man, has received compensation, when he is placed in the same situation with regard to the opinion of those with whom he is connected, as if that act had not taken place. This, therefore, is the object which it ought to be the endeavour of the legislature to effect.

One expedient is perfectly appropriate. It is, that the man who has falsely propagated an unfavourable opinion with respect to another, should be made to do whatever is in his power to remove the impression he has made. To this end, he should publish the sentence of the judge, declaring that the action, or disposition which he had imputed to the individual injured, he had imputed to him falsely. He should at least be made to publish it in every way in which he had published the imputation. Frequently a more extensive publication might be required.

In most cases, it will be allowed, that thus much would suffice. It may, however, be affirmed, that often the impression would be too profoundly struck, to be effaced by a mere knowledge of the sentence of the judge. In such cases, something more in the way of compensation would be required. On this, it is of importance to be observed, that if the impression produced by an imputation, which, after solemn inquiry, the judge has declared to be false, should not, by that declaration, be completely effaced, it implies necessarily one of two things; either that the public have evidence of the truth of the accusation, which was not adduced to the judge, and then the remaining impression is not owing to the imputation which the judge has condemned, but to the evidence; or, secondly, that the public mind is in a state of gross ignorance and imbecility, capable of forming opinions, even on the clearest subjects; not only not according to evidence, but in opposition to it. If the public mind, however, is in such a deplorable condition, it is the fault

of the legislature ; and for the rectification of this evil, the best course undoubtedly is, to take effectual measures for the instruction of the people, which instruction would soon place them beyond the danger of such delusions. In the mean time, if something more than the publication of the sentence of the judge were necessary to restore a man to that degree of consideration, of which the false imputation had deprived him, governments have numerous ways of raising the consequence of individuals ; and no legislature would be at a loss for a gradation of expedients suited to the scale of demand.

*Means which should be used for preventing the violation of Rights
by the Press.*

We have now illustrated that part of this question which regards compensation to the injured individual. It remains to inquire what is best to be done in this case, for the attainment of the other object of punishment, namely, the prevention of similar offences in time to come.

To devise a punishment sufficient to prevent an offence, is to provide a motive sufficient to counteract the motive which leads to the offence. We have hence to consider what are the motives by which men are incited to make false imputations on the characters of others.

These motives may be of three different sorts. A man may derive *pecuniary profit*, he may derive *comparative distinction*, or he may satisfy his desire of *vengeance*, by blackening the character of his neighbour.

In the case in which a man has by calumny wrongfully intercepted the pecuniary receipts of his neighbour, the obligation of making satisfaction to the party injured would, it is obvious, alone suffice, provided the machinery of the laws were sufficiently perfect, to render the execution of them certain. Seldom would any man calumniate his neighbour, for the sake of placing £20 in his own pocket, if he were sure that, next day, or next week, he would have to restore it, with all the profit which might have been made by the use of it, and with the disgrace besides of having committed an action which other men abhor.

Sometimes, however, a man may derive pecuniary profit from calumniating persons whom he has not by that means deprived of any pecuniary advantage ; by the sale, for example, of a slanderous publication ; when the satisfaction due to the individual may not be of a nature to counteract the motive which leads to the offence. The expedient in this case, also, is sufficiently obvious, and sufficiently simple. It is necessary to ascertain the whole of the gain which has been made by the offender, and to take it away from him. This, together with the satisfaction which he ought to make to the injured individual, would, if it were certain, create a surplus of motive to abstain from the injurious act.

In both of these cases, if the execution of the law is uncertain, an additional punishment may be necessary, sufficient to compensate for the chance of escape. The allowance to be made on this score must depend upon the imperfection of the laws ; while one important fact is to be kept

in remembrance, that as severity of punishment, beyond a certain point, is increased, certainty of execution is diminished. The true expedient, therefore, is to render the machinery of the laws so perfect, that the penalties which they denounce may always be sure of execution; and, then, hardly any thing, beyond compensation to the individual, and the abstraction of any additional gain which might have been made by the propagation of slander, would be necessary to repress all offences against the reputation of others, to which the motive was constituted by pecuniary gain.

The two remaining cases are still more simple. If a man propagates a falsehood, for the sake of injuring the character of a man by whom his own consideration is eclipsed, it is only when he expects to obtain by that means a permanent advantage. If he knows that immediately the law will take its hold upon him; that he will be compelled to re-elevate the character of his neighbour, and to proclaim his own disgrace, he will see that, to attempt depressing the character of another man by calumny, is the very worst of all expedients, for giving a comparative elevation to his own. The same is the result in the case where vengeance constitutes the motive to injure the reputation of another. To render this proposition manifest, the most obvious illustration will suffice. No man, to gratify his malignity to another person, would kill his ox or his ass, provided he were sure that immediately he would be obliged to make him full satisfaction; and instead of injuring the man whom he hated, to injure only himself. No, the rudeness and inefficacy of the law, holding out a chance of escaping the duty of making reparation, is the sole origin and cause of all offences of this description; and if the law were placed in a state but approaching to perfection, hardly any thing beside the obligation of making satisfaction would be necessary to repress the whole of this order of crimes.

Whether any Imputation by which Truth is not violated, should be considered an Offence by the Press.

We have now made considerable progress in this important inquiry. We have ascertained, we think, with sufficient evidence, all that is necessary to be done for preventing injuries to the reputation of individuals; provided the rights of reputation are not, by the civil code, made to extend beyond the boundaries of truth. Whether or not they ought to extend farther, and individuals ought to be protected from the disclosure of acts which they may have committed, is, we confess, a question highly worthy of solution; upon which, therefore, before we proceed to any of the subsequent topics, we shall offer the following reflections.

There can be no doubt that the feelings of the individual may be as painful, where actions of a disreputable nature are, truly, as where they are falsely, imputed to him. It is equally certain, that no painful feelings ought to be wilfully excited in any man, where no good, sufficient to overbalance that evil, is its natural consequence.

We have already shown, that reputation is injured by the imputation of acts of two different descriptions; first, those to which the law annexes penalties; secondly, those to which disrepute and the dislike of others are annexed.

With respect to those acts to which the law annexes penalties, there is no room for uncertainty or dispute. Unless the law is a bad law, which ought to be repealed (this, we confess, constitutes an exception, and one, which, in very imperfect codes, extends a great way), the law ought not to be disappointed of its execution. The man who gives information against a murderer, or a thief, by the press, or without the press, renders a public service, and deserves not punishment but reward.

It appears, therefore, that the question, whether a man ought to be protected from the imputation of actions which he has really committed, refers solely to those acts which, without being punishable by the law, are attended with disrepute; acts, in other words, which the members of the society disapprove and dislike.

The prospect of the immediate and public exposure of all acts of this description, would be a most effectual expedient to prevent their being committed. Men would obtain the habit of abstaining from them, and would feel it as little painful to abstain, as at present it is to any well educated person to keep from theft, or those acts which constitute the ill manners of the vulgar. The fable of Momus has always been understood to carry an important moral. He found grievous fault that a window had not been placed in the breast of every man, by which, not his actions alone, but his thoughts, might have been known. The magnanimity of that Roman has been highly applauded, who not only placed his residence in such a situation that his fellow-citizens might see as much as possible of his actions, but declared a wish that he could open to all eyes his breast as well as his house.

If the hatred and contempt of the people, therefore, were always rightly directed, and rightly proportioned; if they never operated against any actions but those which were hurtful, either to the individual himself, or to others, and never, but in the degree in which they were hurtful, the case would be clear; the advantage which would be derived from the true exposure of any man's actions of any sort, would exceed beyond calculation the attendant evil. The great difficulty of insuring the practice of morality, in those numerous and highly important cases, to which the legal sanction, or the *security of pains and penalties*, does not extend, consists in the want of a motive always present, and powerful enough to counteract the instant motive which urges to the instant offence. That motive almost every man would derive from the knowledge that he had the eyes upon him of all those, the good opinion of whom it was his interest to preserve; that no immoral act of his would escape their observation, and a proportionate share of their hatred and contempt. It is in this view that the aid of religion has been sometimes regarded as of importance to morality; suggesting the idea of a high and constant observer. All motives, however, are feeble, in proportion as the pains and pleasures

upon which they depend are distant, vague, or uncertain. Divines agree with all other men in complaining of the trifling effect of religious motives upon the lives of the greater number of men. From the nature of the prospect on which these motives depend, they could not be less feeble than they have been thus described. The case is not the same with the motives arising from the sentiments which we know we shall inspire in the breasts of our fellow-creatures. It is a matter of daily and incontrovertible experience, that these are among the most powerful which operate upon the human mind. The soldier rushes upon death, and endures all the hardships and toils of his cruel profession, that he may enjoy the admiration, and escape the contempt of his fellow-men. On what else is founded the greater part of all human pursuits? How few, even of those who toil at the meanest occupations, but exert themselves to have something for show, something to make an impression upon the eyes of those who surround them? The very subject of the present inquiry derives from this source the whole of its importance. The value of reputation is, indeed, but another name for the value which we attach to the favourable and unfavourable sentiments of our fellow-men.

It is, however, true, that their unfavourable sentiments do not always fall where they ought, and this, we confess, is a consideration of the highest importance. It very often happens that men's antipathies are excited to actions from which no evil ensues, either to him who performs them, or to any body else. If any man derives a pleasure from such actions, it is to limit his sphere of innocent enjoyment, to debar him from them. And if the press exposes him to the antipathies, the hatred, and contempt of his fellow-creatures, on account of those actions, it produces an evil, uncompensated by the smallest portion of good. To an Indian Brahmen, if he were known to have eaten, even when starving, a morsel of food which had been prepared by a Christian, the consequences would be dreadful. Where the Roman Catholic religion is in vigour, a man who should indulge himself in animal food on forbidden days would be regarded with horror. The use of wine, however moderate, would render a Mahomedan execrable to the whole of his tribe.

This misdirection of the favourable and unfavourable sentiments of mankind; in other words, this perversion and corruption of their moral sentiments, has, in by far the greater number of instances, been the work of priests, contriving the means of increasing their influence. In some very important instances, such, for example, as the prejudices of birth, at one time in Europe so powerful as to make men of low birth objects of the greatest contempt, men of elevated birth objects of the highest veneration; the perversion of the moral sentiments is evidently the work of the aristocratical class, securing to themselves a more easy dominion over the rest of their fellow-creatures.

It is, therefore, evident, that where antipathies, religious or aristocratical, should prevail, the press would be hurtfully employed in giving notoriety to the facts which would expose a man to the operation of either.

We have now ascertained the cases in which it would *not* be good that men should be protected from the declaration of truth by the press, and also the cases in which it *would* be good that they should be so protected.

What, upon this view of the subject, would be desirable, is sufficiently clear. It would be desirable that, in the one set of cases, the declaration should be allowed, in the other it should not be allowed. Are the two sets of cases, however; capable of being accurately distinguished?

If the comparison is made with any attention, it will not be difficult to determine that the evil to be incurred by the loss of truth in the set of cases in which the declaration of it would be useful, is much greater than that which would arise from permitting the declaration in the cases in which it would be hurtful.

In the first place, the set of cases in which the declaration would be useful are much more numerous, and much more important, than those in which, in any tolerably civilized state of society, it would be hurtful. Those in which it would be useful embrace the whole field of morality, all those acts, the performance of which, on account of their singular importance, has been elevated to the rank of virtues. Every body believes and proclaims, that the universal practice of the moral virtues would ensure the highest measure of human happiness; no one doubts that the misery which, to so deplorable a degree, overspreads the globe, while men injure men, and instead of helping and benefiting, supplant, defraud, mislead, pillage, and oppress, one another, would thus be nearly exterminated, and something better than the dreams of the golden age would be realized upon earth. Toward the attainment of this most desirable state of things, nothing in the world is capable of contributing so much as the full exercise of truth upon all immoral actions,—all actions, the practice of which is calculated to lessen the amount of human happiness. According to this view, the justice of which it is impossible to dispute, the evil incurred by forbidding the declaration of truth upon all immoral actions is incalculable. That which would be incurred by the antipathies of misguided minds against actions innocent in themselves, nobody, we should imagine, would so much as think of placing in comparison.

In our own country, for example, the classes of actions which, though they injure nobody, expose a man to the unfavourable sentiments of others, are not numerous. The number of persons who would be exposed to inconvenience on account of the declaration of truth, in regard to them, would be small in comparison with those who would benefit by its declaration in the case of all really hurtful acts.

It is, indeed, important to be observed, that a comparative smallness of number is necessarily implied in the supposition of injury from any unfounded antipathy. Those who share in the antipathy, of course, abstain from the action. And unless the antipathy were so general as to include almost the whole of the society, it would lose its injurious effect. Besides, all the injury which can be done to the individuals against whom

truth would in this manner operate injuriously, would be, to make them abstain from the acts which were thus condemned.

Another thing to be considered is, that the whole of the evil arising from the exercise of truth is dependent upon an accidental circumstance, capable of being removed; upon a mental disease, requiring to be cured, which, the legislature ought to be constantly endeavouring to cure, and toward the cure of which truth is likely to operate as the most effectual of all expedients. If any considerable inconvenience were experienced from exposure to unfounded antipathies, in consequence of the publication of truth, the groundlessness of these antipathies could not fail in this case to be so often canvassed, and made to appear, that at last it would become familiar to the multitude, and the antipathies would expire.

It clearly, therefore, appears, that, if the cases in which the declaration of truth would expose to unfounded prejudices could not be clearly defined, and separated from the cases in which the declaration would be salutary, the rule of permitting truth ought to be universal. But, though we perceive, that, to a considerable extent, there are cases, in respect to which it would be vain to hope for agreement in drawing the line of distinction between what is hurtful and what is not, we are persuaded that principles might be laid down in which all would agree, and which would serve to mark out certain cases for exception with sufficient exactness. If any such cases could be separated, either of actions, which, though injurious to nobody, excited antipathies, or of facts, as those of birth, for which, though a man was in no respect worse, he might be regarded as worse; the exercise of truth, with regard to them, might, on the express ground that they were actions innoxious, or facts which ought to be of no importance in the estimate of human worth, be forbidden, when injurious, under the penalty of at least making reparation for all the injury of which it had been the cause.

III.

Offences of the Press with respect to Government.

We have now explained, we trust with sufficient clearness for the present occasion, the principles upon which laws should be constructed for protecting the *rights of individuals* against violations committed by the press. The first part of this inquiry, therefore, we must consider as completed. In the second part we have to explain the principles upon which they should be constructed for protecting *the operations of government*.

Exhortations to obstruct the operations of Government in detail, should; Exhortations to resist all the powers of Government at once should not, be considered offences.

Unless a door is left open to resistance of the government, in the largest sense of the word, the doctrine of passive obedience is

adopted; and the consequence is, the universal prevalence of misgovernment, ensuring the misery and degradation of the people. On the other hand, unless the operations of government, instituted for the protection of rights, are secured from obstruction, the security of rights, and all the advantages dependent upon the existence of government, are at an end. Between these two securities, both necessary to obtain the benefits of good government, there appears to be such a contrariety, that the one can only be obtained by the sacrifice of the other.

As this difficulty, however, arises chiefly from the extent of the terms, a close inspection of the cases which they involve, and which they have a tendency to confuse, will enable us to discover the course which it belongs to practical wisdom to pursue.

It is necessary, first of all, to ascertain what sort of obstructions are inconsistent, and what are not inconsistent, with those operations of government, which are necessary for the protection of rights.

The application of physical force, to resist the government in applying to the execution of the laws the physical power placed at its disposal by the law, is such an obstruction of the operations of government, as would, if frequent, render it inadequate to the ends which it is provided to secure. This application of force, therefore, must be treated as an offence; and any thing proceeding from the press, tending directly to produce it, as a similar offence.

This proposition requires to be illustrated. The application of physical force which is here described, and treated as an evil, is clearly distinguishable from that resistance of government which is the last security of the many against the misconduct of the few. This is an application of physical force to obstruct the operations of government in detail; the proceedings, for example, of a court of justice; the proceedings of the legislative organ, or the proceedings of any of the administrative functionaries, in the execution of the duties with which they are charged. This is not that species of resistance which is necessary, in the last resort, to secure the people against the abuse of the powers of government. This last is not a resistance to the operations of government in detail. It is a resistance to all the powers of government at once, either to withdraw them from the hands in which they have hitherto been deposited, or greatly to modify the terms upon which they are held.

Even this last species of resistance it may be necessary to punish, at least in a certain degree, whenever it is not successful; that society may not be disturbed by commotions which the majority of the people disapprove. This, however, is a question which belongs to the penal code in general, and does not concern the inquiry into the offences capable of being committed by the press: because we think it may be satisfactorily shown, that no operation of the press, however directly exhorting to this species of resistance, ought to be treated as an offence.

The reason is, that no such exhortation can have any immediate, or

formidable effect; can, indeed, have any effect at all, except through such mediums as ought to be at all times perfectly free. Suppose, that a work is published, exhorting the people in general to take arms against the government, for the purpose of altering it against the consent of its rulers. The people cannot take arms against the government without the certainty of being immediately crushed, unless there has been already created a general consent. If this consent exists in such perfection as to want nothing to begin action but an exhortation, nothing can prevent the exhortation; and forbidding it is useless. If the consent does not exist in nearly the last degree of perfection, a mere exhortation, read in print, can have no effect which is worth regarding. In all circumstances, therefore, it is useless, and consequently absurd, to treat this species of exhortation as an offence. If, on the other hand, it were clearly recognized, that every man had a licence to exhort the people to the general resistance of the government, all such exhortations would become ridiculous, unless on those rare and extreme occasions, on which no prohibitions, and no penalties, can or ought to prevent them. The doctrine of this paragraph, which will appear somewhat startling and paradoxical to minds accustomed only to a certain train of ideas, will receive illustration, and we trust will be amply confirmed, as we proceed.

Having mentioned this as a grand exception, we now return to the cases in which not only physical force applied to obstruct the operations of government, but the publishing of exhortations to that obstruction, ought to be treated as an offence. These relate solely, as above remarked, to the operations of government in detail. Obstructions it is evident, may be offered to the operations in detail of a government which possesses and deserves the fullest confidence of the community at large; and the press may be employed in directly and efficiently exciting to these obstructions. A hand-bill, for example, distributed at a critical moment, and operating upon an inflamed state of mind, in a narrow district, may excite a mob to disturb the proceedings of a court of justice, to obstruct public officers in the execution of their duties, or even to disturb, on this or that occasion, the deliberations of the legislature itself.

These are clearly hurtful acts; they may be very accurately defined; and penalties, of moderate severity, would be sufficient to deter from the performance of them. Satisfaction by the party offending to the party injured, would often, in offences of this description, be out of the question; because there would be no definite party to whom an injury would be occasioned. It would only be necessary to ascertain the sorts of motives by which such offences would be liable to be produced, and to apply skilfully, as in other cases, motives of an opposite tendency, sufficient to counteract them. This would not be more difficult in this than in other cases, and it is not, therefore, necessary to explain at any length the mode of performing it.

One principle is to be carefully and most religiously observed, that of not imposing an atom of punishment for the purposes of *vengeance*.

This is a principle, the justness and importance of which are so completely recognized, that we might have expected to be relieved ere now from the necessity of recommending attention to it. The fact, however, is, that so long as there are abuses in governments, so long will the men, who have the means of profiting by those abuses, exert themselves to multiply the list of offences against government, and to apply to them punishments of the greatest severity.

Punishments for contempt of court; punishments to vindicate the honour of the court, of the government, of the magistracy; punishments for the support of dignity; punishments severe in proportion as the dignity of the party offended is supposed to be high, and so on; are punishments almost always applied for purposes of vengeance, or the protection of the instruments of abuse. They are punishments, therefore, which will be rigidly excluded from a code which wisely and steadily pursues the general good.

Of Exhortations to obstruct the Operations of Government, in detail, there are two Sorts: 1. The Direct, 2. The Implied, or Constructive.

What the *sort of acts* are, to which the exhortations of the press ought not to be applied, has been so far ascertained. The next point is, to determine with accuracy what *sort of exhortation* it is that ought to be forbidden.

To all those who profit by the abuses of government, that is, more especially, to all those who, in a defective government, wield any of its powers, it is of great importance to leave as undefined as possible the sort of exhortation that ought to be forbidden. The point of greatest importance to them is, to keep the people at large from complaining, or from knowing or thinking that they have any ground of complaint. If this object is fully attained, they may then, without anxiety, and without trouble, riot in the pleasures of misrule: there is no limit to the degree in which the few may pursue their own advantage at the expence of the many.

There can be nothing therefore, in which they have a greater interest, than preventing the press from being employed in any such way, as will lead the people to think that they have any thing, on the part of their rulers, of which to complain. All artifices possible will be sure to be employed to effect that prevention. And if it is enacted, that exhortations to acts which obstruct the operations of government in detail should be punished, *without defining accurately what sort of exhortations*, they will easily find expedients; which will, to a great extent, accomplish their purpose.

Under the sort of constructions which it will be their interest to apply, every thing which can be done by the press, to make the people know or believe that there is any thing in the system of their government, or the conduct of their rulers, of which they have to complain, may be treated as an exhortation to obstruct the operations of government. Of these

constructions, our experience affords innumerable examples. Does not the imputing of defects to the government, or misconduct to those who wield the powers of government, tend to bring both "into hatred and contempt?" And if the people hate and condemn the institutions and rulers of their country, will they not oppose their operations? The imputing of these faults, therefore, is it not, in essence and effect, an exhortation to oppose the operations of government? And are we to be governed, in our legislature, by the mere forms in which a set of words may appear, and not by our knowledge of their nature and consequences?

This is not only exceedingly plausible, but almost all the propositions which it involves are true. It is thus, therefore, the more easy to establish such a mode of interpreting an indefinite law of the press, as will prevent, or where the people cannot yet bear a total prevention, will go far towards preventing, whatever can lead the people to believe that any thing is amiss in the manner in which they are ruled.

There are two species of exhortations, the one explicit and direct, the other implied and constructive. In the one, a particular act is pointed out, and the party, or parties, addressed, are called upon to perform it. In the other, certain grounds are only laid, from which the opinion of the addresser, that the act ought to be performed, may, with more or less certainty, be inferred.

With respect to the first, there is no occasion for doubt. A direct and explicit exhortation to commit one of those acts, described above as obstructing the operations of government in detail, should be treated as an offence. The precise question is, whether any exhortation, which is only implied and constructive, should be considered an offence? In the answer to this question, almost every thing which relates to the use of the press in matters of government, will be found to be involved.

Exhortations which are Implied and Constructive, ought not to be punished.

We have already divided the subject of resistance to government into two parts; first, that general resistance, the object of which is some great change in the government at large; and, secondly, resistance to this or that of its operations in detail.

We have already adduced an argument, which appears to us to be conclusive, to show, that no exhortation, whether explicit or implied, direct or indirect, the object or tendency of which is to produce the first species of resistance, ought to be subject to legal restraint.

It is necessary here to enter a little more fully into the grounds of that opinion.

We think it will appear, with sufficient evidence, that in the way of indirect exhortation to resistance, that is, in laying the grounds of dissatisfaction with the government, there is no medium between allowing every thing, and allowing nothing; that the end, in short, which is sought to be gained, by allowing any thing to be published in censure of

the government, cannot be obtained, without leaving it perfectly free to publish every thing.

The end which is sought to be obtained, by allowing any thing to be said in censure of the government, is, to ensure the goodness of the government; the most important of all the objects to the attainment of which the wisdom of man can be applied. If the goodness of government could be ensured by any preferable means, it is evident that all censure of the government ought to be prohibited. All discontent with the government is only good, in so far as it is a means of removing real cause of discontent. If there is no cause, or if there is better means of removing the cause, the discontent is, of course, an evil, and that which produces it an evil.

So true it is, however, that the discontent of the people is the only means of removing the defects of vicious governments, that the freedom of the press, the main instrument of creating discontent, is, in all civilized countries, among all but the advocates of misgovernment, regarded as an indispensable security, and the greatest safeguard of the interests of mankind.

For what is meant by a vicious government? or wherein do the defects of government consist? Most assuredly they all consist in sacrificing the interests of the many to the interests of the few. The small number, in whose hands the powers of government are, in part directly, in part indirectly, placed, cannot fail, like other men, to have a greater regard for what is advantageous to themselves, than what is advantageous to other men. They pursue, therefore, their own advantage, in preference to that of the rest of the community. That is enough. Where there is nothing to check that propensity, all the evils of misgovernment, that is, in one word, the worst evils by which human nature is afflicted, are the inevitable consequence. (See the article GOVERNMENT.)

There can be no adequate check without the freedom of the press. The evidence of this is irresistible. In all countries, the people either have a power legally and peaceably of removing their governors, or they have not that power. If they have not that power, they can only obtain any considerable ameliorations of their governments by resistance, by applying physical force to their rulers, or, at least, by threats so likely to be followed by performance, as may frighten their rulers into compliance. But resistance, to have this effect, must be general. To be general, it must spring from a general conformity of opinion, and a general knowledge of that conformity. How is this effect to be produced, but by some means, fully enjoyed by the people, of communicating their sentiments to one another? Unless where the people can all meet in general assembly, there is no other means of attaining this object, to be compared with the freedom of the press.

It is, no doubt, true, that in countries where the liberty of the press is unknown, bad governments are frequently overthrown. This is almost always accomplished by the military force, revenging some grievance of

their own, or falling in with some heat and animosity of the people. But does it ever enable them to make a new government, in which any greater security is provided for their interests than there was before? In such cases, the people get rid of one set of rulers, whom they hate, only to obtain another set, with equal powers of doing them injury.

There are, however, we believe, some people who say, that though the liberty of the press is a necessary instrument to attain good government, yet, if it is fairly attained, and if legal and peaceable means are in the hands of the people of removing their governors for misconduct;—if the people of England, for example, really chose the members of the House of Commons, and renewed their choice so frequently, as to have the power of removal after a short experience of misconduct, the freedom of the press would be unnecessary.

So far is this from being true, that it is doubtful whether a power in the people of choosing their own rulers, without the liberty of the press, would be an advantage.

Freedom of Censure on the Conduct of their Rulers, is necessary for the good of the People.

It is perfectly clear, that all chance of advantage to the people, from having the choice of their rulers, depends upon their making a good choice. If they make a bad choice—if they elect people either incapable, or disinclined, to use well the power entrusted to them, they incur the same evils to which they are doomed when they are deprived of the due control over those by whom their affairs are administered.

We may then ask, if there are any possible means by which the people can make a good choice, besides the *liberty of the press*? The very foundation of a good choice is knowledge. The fuller and more perfect the knowledge, the better the chance, where all sinister interest is absent, of a good choice. How can the people receive the most perfect knowledge relative to the characters of those who present themselves to their choice, but by information conveyed freely, and without reserve, from one to another?

There is another use of the freedom of the press, no less deserving the most profound attention, that of making known the conduct of the individuals who have been chosen. This latter service is of so much importance, that upon it the whole value of the former depends.

This is capable of being rigidly demonstrated. No benefit is obtained by making choice of a man who is well qualified to serve the people, and also well inclined to serve them, if you place him in a situation in which he will have preponderant motives to serve himself at their expence.

If any set of men are chosen to wield the powers of government, while the people have not the means of knowing in what manner they discharge their duties, they will have the means of serving themselves at the expence of the people; and all the miseries of evil government are the certain consequence.

Suppose the people to choose the members of the Legislative Assembly, with power of rechoosing, or dismissing them, at short intervals;

To what desirable end could these powers be exercised, without the liberty of the press? Suppose that any one of those whom they have chosen has misconducted himself, or promoted, as far as depended upon him, the ends of misgovernment; how are the people to know that the powers with which they had entrusted him had been treacherously employed?

If they do not know, they will rechoose him, and that as cordially as the man who has served them with the greatest fidelity. This they are under a deplorable necessity of doing, even to be just; for, as they know no difference between him and the best, it would be on their part iniquity to make any. The consequences would be fatal. If one man saw that he might promote misrule for his own advantage, so would another; so, of course, would they all. In these circumstances, we see laid the foundation on which, in every country, bad government is reared. On this foundation it is impossible that it should not be reared. When the causes are the same, who can expect that the effects will be different? It is unnecessary to dwell upon these fundamental truths, because they have already been developed in the article, GOVERNMENT.

Without the knowledge, then, of what is done by their representatives, in the use of the powers entrusted to them, the people cannot profit by the power of choosing them, and the advantages of good government are unattainable. It will not surely cost many words to satisfy all classes of readers that, without the free and unrestrained use of the press, the requisite knowledge cannot be obtained.

That an accurate report of what is done by each of the representatives, a transcript of his speeches, and a statement of his propositions and votes, is necessary to be laid before the people, to enable them to judge of his conduct, nobody, we presume, will deny. This requires the use of the cheapest means of communication, and, we add, the free use of those means. Unless every man has the liberty of publishing the proceedings of the Legislative Assembly, the people can have no security that they are fairly published. If it is in the power of their rulers to permit one person, and forbid another, the people may be sure that a false report,—a report calculated to make them believe that they are well governed, when they are ill governed, will be often presented to them.

One thing more is necessary, and so necessary, that, if it is wanting, the other might as well be wanting also. The publication of the proceedings tells what is done. This, however, is useless, unless a correct judgment is passed upon what is done.

We have brought this inquiry, then, to an important point. In the article GOVERNMENT, we have seen that, unless the people hold in their own hands an effectual power of control on the acts of their government, the government will be inevitably vicious: We have now seen, that they cannot exercise this control to any beneficial purpose without the means of forming a correct judgment upon the conduct of their representatives: We have likewise seen, that one of the means necessary to enable them to judge correctly of the conduct of their representatives, is the liberty to every body of publishing reports of

what they do : It remains to inquire, by what other acts the press can be made to contribute to the same desirable end.

What is wanted is, that all the people, or as many of them as possible, should estimate correctly the consequences of the acts proposed or done by their representatives, and also that they should know what acts might have been proposed, if the best were not proposed, from which better consequences would have followed. This end would be accomplished most effectually, if those who are sufficiently enlightened would point out to those who are in danger of mistakes, the true conclusions; and, showing the weight of evidence to be in their favour, should obtain for them the universal assent.

How is this to be accomplished? In what manner are those wise men to be chosen? And who are to be the choosers? Directly the object cannot be attained. There are no distinct and indubitable marks by which wisdom, and less by which integrity, is to be known. And who is to be trusted with the privilege of pointing them out? They whose judgment requires to be directed are not well qualified to determine who shall direct them. And if the rulers are to choose, they will employ none but those who will act in conformity to their views, and enable them to benefit themselves by the pillage and oppression of the people.

As there is no possible organ of choice, no choice whatever ought to be made. If no choice is to be made, every man that pleases ought to be allowed. All this is indubitable. The consequences of denying any part of it are so obvious, that hardly any man, we suppose, will risk the imputations to which such a denial would justly expose him.

They who say that no choice ought to be made, say, in effect, that no limit whatsoever ought to be imposed upon the liberty of the press. The one of these propositions is involved in the other. To impose any restraint upon the liberty of the press, is undoubtedly to make a choice. If the restraint is imposed by the government, it is the government that chooses the directors of the public mind. If any government chooses the directors of the public mind, that government is despotic.

Suppose that, by the restraint imposed upon the liberty of the press, all censure of the government is forbidden, here is undoubtedly a choice. The government, in this case, virtually says, The people who might attempt the task of directing the public mind are of two sorts; one, those who would censure; another, those who would not censure; I choose the latter.

Suppose that not every censure, but only such and such kinds of censure, are forbidden; here, again, is still a choice, while confessedly there is no party to whom the power of choosing for the rest can with safety be given.

If not every censure, but only some censures, are to be forbidden, what are those to which the prohibition should extend? The answer to this question will elucidate nearly all that yet remains in any degree obscure, of the doctrine of the liberty of the press.

It will not be said that any censure which is just should be forbidden; because that would undoubtedly be to detract from the means of enabling the people to form correct judgments; and we have, we trust, rendered it indisputable that no source of benefit to society is at all to be compared with that of correct judgments, on their government and its functionaries, formed by the people, and determining their actions.

But what censures are just and what are unjust; in other words, what are the conclusions which ought to be formed respecting the properties and the acts of the government, is exactly the point to be determined. If you say that no man is to pass an unjust censure upon the government, who is to judge? It is surely unnecessary to repeat the proof of the proposition, that there is nobody who can safely be permitted to judge. The path of practical wisdom is as clear as day: All censures must be permitted, equally; just, and unjust.

Where various conclusions are formed among a number of men, upon a subject on which it would be unsafe, and therefore improper, to give any minor portion of them a power of determining for the rest, only one expedient remains. Fortunately, that is an expedient, the operation of which is powerful, and its effects beneficial in the highest degree. All the conclusions which have formed themselves in the minds of different individuals, should be openly adduced; and the power of comparison and choice should be granted to all. Where there is no motive to attach a man to error, it is natural to him to embrace the truth; especially if pains are taken to adapt the explanation to his capacity. Every man, possessed of reason, is accustomed to weigh evidence, and to be guided and determined by its preponderance. When various conclusions are, with their evidence, presented with equal care and with equal skill, there is a moral certainty, though some few may be misguided, that the greater number will judge right, and that the greatest force of evidence, wherever it is, will produce the greatest impression.

As this is a proposition upon which every thing depends, it is happy that the evidence of it should be so very clear and striking. There is, indeed, hardly any law of human nature more generally recognized, wherever there is not a motive to deny its existence. "To the position of Tully, that if Virtue could be seen, she must be loved, may be added," says Dr. Johnson, "that if Truth could be heard, she must be obeyed." (*Rambler*, No. 87.)—"Je vous plains, mes Pères," says Mons. Pascal to the Jesuits, "d'avoir recours à de tels remèdes. Vous croyez avoir la force et l'impunité: mais je crois avoir la vérité, et l'innocence. C'est une étrange et longue guerre que celle où la violence essaie d'opprimer la vérité. Tous les efforts de la violence ne peuvent affaiblir la vérité, et ne servent qu'à la relever davantage: toutes les lumières de la vérité ne peuvent rien pour arrêter la violence, et ne font que l'irriter encore plus. Quand la force combat la force, la plus puissante détruit la moindre: quand l'on expose les discours aux discours, ceux qui sont véritables et convainquants confondent et dissipent ceux qui n'ont que la vanité et le mensonge." (*Lett. Provinc.*

12.)—"Reason," says Burke, "clearly and manfully delivered, has in itself a mighty force; but reason, in the mouth of legal authority, is, I may fairly say, irresistible." (*Lett. on Regicide Peace.*)

It is of importance to show how many of the greatest men, of all ages and countries, have borne testimony to the prevalence of true over false conclusions, when both are fairly offered to the human mind. "Truth," says Mr. Locke, "certainly would do well enough, if she were once left to shift for herself. She seldom has received, and I fear never will receive, much assistance from the power of great men, to whom she is but rarely known, and more rarely welcome. She is not taught by laws, nor has she any need of force to procure her entrance into the minds of men." (*Letter on Toleration.*) The following is the emphatical language of Montesquieu: "La raison a un empire naturel; elle a même un empire tyrannique: on lui resiste, mais cette resistance est son triomphe, encore un peu de temps, et l'on sera forcé de revenir à elle." (*Esp. de Loix*, l. 28, ch. 38.)—"It is noted out of Cicero, by Machiavel, that the people, though they are not so prone to find out truth of themselves, as to follow custom, or run into error; yet if they be shown truth, they not only acknowledge and embrace it very suddenly, but are the most constant and faithful guardians and conservators of it." (*Harrington.*)—"The labour of a confutation," says Chillingworth, "I have not in any place found such labour or difficulty, but that it was undertakeable by a man of very mean abilities; and the reason is, because it is *Truth* I plead for; which is so strong an argument for itself, that it needs only light to discover it." (*Religion of Protestants.*)—"About things on which the public thinks long," says Dr. Johnson, "it commonly attains to think right." (*Life of Addison.*)—"The adversary," says Dr. Campbell, "is both subtile and powerful. With such an adversary, I should on very unequal terms enter the lists, had I not the advantage of being on the side of truth. And an eminent advantage this doubtless is. It requires but moderate abilities to speak in defence of a good cause. A good cause demands but a distinct exposition, and a fair hearing; and we may say, with great propriety, it will speak for itself." (*Campbell on Miracles*, Introd.)

We have then arrived at the following important conclusions,—that there is no safety to the people in allowing any body to choose opinions for them; that there are no marks by which it can be decided beforehand, what opinions are true and what are false; that there must, therefore, be equal freedom of declaring all opinions, both true and false; and that, when all opinions, true and false, are equally declared, the assent of the greater number, when their interests are not opposed to them, may always be expected to be given to the true. These principles, the foundation of which appears to be impregnable, suffice for the speedy determination of every practical question.

All censure thrown upon the government, all censure thrown either

upon the institutions of the government, or upon the conduct of any of the functionaries of government, supreme or subordinate, has a tendency to produce resistance to the government.

Of the censures thrown upon government, some may have a tendency to produce resistance to the operations of government in detail; others that general resistance which has in view some great alteration in the government.

Of the first sort would be any such accusation of the conduct and disposition of a judge, as might excite the people, whose sympathies were roused in favour of the individual against whom his sentence was to operate, to rescue him from the officers of justice. We have already shown that such a rescue ought to be punished, and any direct exhortation to it ought to be punished. It will now be evident, we trust, that no censure on the judge, though capable of being treated as an indirect exhortation, ought to be punished.

The reason is conclusive. The people ought to know, if possible, the real qualities of the actions of those who are entrusted with any share in the management of their affairs. This they have no chance of knowing, without the unlimited power of censure upon those actions, both in gross and detail. To see the full force of these propositions, it is only necessary to apply the principles which have been already established.

If the people have not the means of knowing the actions of all public functionaries, they have no security for the good conduct even of their representatives. Suppose it is the duty of their representatives to watch the conduct of the judges, and secure the perfection of judicature, the people cannot know whether their representatives perform this duty, unless they know what the conduct of the judges is. Ignorance of this would of itself suffice to vitiate the government. A door would be left open, through which the rulers might benefit themselves at the expence of the people. All the profit to be made by an abuse of the power of justice, would thus become the profit of the representatives, by whom it would be allowed, and encouraged, as far as the knowledge which they could not withhold from the people, would permit.

That the people ought, therefore, to know the conduct of their judges, and when we say judges we mean every other functionary, and the more perfectly the better, may be laid down as indubitable. They are deprived of all trust-worthy means of knowing, if any limit whatsoever is placed to the power of censure.

All censure consists in the delivery of an unfavourable opinion, with or without the grounds of it. This is the essence of censure. But if the conduct of the judge deserves that an unfavourable opinion should be entertained of it, the more perfectly that is known to the people, the better.

The conduct of the judge, on this occasion, says a defender, does not deserve an unfavourable opinion: A public expression of such an opinion ought, therefore, to be prohibited. But there are occasions

on which the conduct of judges deserves an unfavourable opinion. When it is deserved, there is no security for good government, unless it is allowed to be made known. How can you allow an unfavourable opinion to be delivered in the one case, and not delivered in the other? To have the benefit of it in the one case, you must submit to the evil of it in the other.

In matters of Government, undeserved praise as mischievous as undeserved Blame.

As the real point of importance is, to establish correct opinions in the minds of the people, it is as mischievous to inculcate a favourable opinion, when an unfavourable is deserved, as an unfavourable when a favourable is deserved; and, in the eye of reason, it is incontrovertible, that, if the one deserves to be prevented by punishment, so does the other.

But, if an unfavourable opinion is pronounced of any public functionary; of a judge, for example, would you have it left uncontradicted? Would you not grant the liberty of calling in question the truth of the allegations, and of supporting a different opinion? If not, the character of no public functionary would be safe, and any man, however deserving, might be made to appear the proper object of the most unfavourable sentiments. Why should not the two cases be treated equally? Why should not the favourable, as well as the unfavourable opinion be open to contradiction?

It is perfectly certain, that it is not in the power of law to mark out, by antecedent definition, any sort of men, of whom it can say, all opinions favourable to such men shall be punished. It can never be affirmed of any men beforehand, that they will certainly perform such and such injurious actions. If they do perform them, all declarations conformable with the matter of fact are good. But the question is, whether they have performed them? One man affirms that they have. Is that to be taken for granted? And is no man to be allowed to affirm the contrary, and to sift the grounds upon which the allegations of the other man are supported? It is by weighing well the evidence on both sides, that a well-founded opinion is capable of being formed. And it is certain, that the best security for having the evidence on both sides fully adduced, and the strength and weakness of it perfectly disclosed, is by permitting all those who are attached to different opinions to do what they can for the support of them.

If it is evident that it ought not to be permitted to speak evil of public functionaries without limit, while any limit is put to the power of speaking well of them; it is equally evident that, for the purpose of forming a correct opinion of their conduct, it ought not to be permitted to speak well of them, and oppose any limit whatsoever to the power of speaking ill of them.

It ought not to be permitted to speak evil of them without an equal liberty of speaking well; because, in that case, the evidence against

them might be made to appear much stronger than it was. It ought not to be permitted to speak well of them without an equal liberty of speaking ill; because, in that case, the evidence in favour of them might be made to appear much greater than it really was. In either case, the people would be misguided, and defrauded of that moral knowledge of the conduct of their rulers, the paramount importance of which has so fully appeared.

It may be said (as by the short-sighted, if we did not anticipate them, it would be said), that if, by limiting the power of censure, the people are made to judge more favourably of their rulers than they deserve, the evil is small; but if they are permitted to form a very unfavourable opinion, the consequences are alarming.

We believe it may be rigidly demonstrated, that no evils are greater than those which result from a more favourable opinion of their rulers, on the part of the people, than their rulers deserve; because just as far as that undue favour extends, bad government is secured. By an opinion of their rulers more favourable than they deserve, is implied an ignorance on the part of the people of certain acts of their rulers by which the people suffer. All acts by which the rulers have any motive to make the people suffer, are acts by which the rulers profit. When the ignorance of the people extends to material points, all the evils of bad government are secured. These are the greatest of all possible evils. To this it will not be said that the ignorance of the people ought to extend. On all material points, it is admitted, then, that the freedom of censure ought to be complete. But if it is to be allowed on great points, on those where it is calculated to excite the greatest disapprobation; what can be thought of their consistency, who would restrain it on those where it is only calculated to excite a small? If it is proper to protect the people from great injuries at the hands of their rulers, by exciting a strong, it is good to protect them against small injuries, by exciting a weak disapprobation.

To public functionaries may be imputed either acts which they have not performed, or a want of certain qualifications, moral or intellectual, which they ought to possess.

With respect to acts, and even dispositions, which do not, either directly or indirectly, concern their public function, the same protection may be safely extended to them as to private men.

Acts in their public capacity which they have not performed, may be imputed to them either by mere forgery, and without any appearance of ground, or they may be imputed with some appearance of ground. From permitting the former, no good can be derived. They ought, therefore, to be prevented, in the same way as false imputations, injurious to individuals in their private capacity. That there should be no restraint in imputing actions to any public functionary which he may appear to have done, flows immediately from the principles already established, and requires not that any thing should here be added to its proof. Any appearance sufficient to lay the foundation of the slightest

suspicion, renders it useful to call the attention of the public to the suspected part, which can only be done by making the suspicion known. A man may, indeed, publish, as a matter of fact, what is supported by appearances which would only justify the slightest suspicion. In that case, he is sure of incurring the disgrace of temerity, if not of malignity; and this is all the penalty which needs or can safely be inflicted upon him.

In imputing inaptitude to a public functionary, on the score either of intellectual or moral qualities, scarcely any limitation would be safe. Every man ought to have liberty to declare upon this subject any opinion which he pleases, and support it by any evidence which he may think adapted to the end. If, in supporting his opinion of the inaptitude of any public functionary, he imputes to him actions which there is not even an appearance of his having performed, that limited prohibition, the propriety of which we have just recognized, will strictly apply. With this exception, freedom should be unimpaired.

We have now, therefore, explained, we hope sufficiently, in what manner the principles which we have established require, that the use of the press should be regulated in speaking of the actions of public functionaries, and of their fitness for the duties which they are appointed to discharge, whether those functionaries are the immediate representatives of the people, or others whom it is the business of those representatives to control.

*Freedom of Censure on the Institutions of Government is necessary
for the good of the People.*

We have next to inquire in what manner those principles require that the use of the press should be regulated in speaking of the *institutions* of government. The illustrations already adduced will supersede the use of many words upon this part of the subject.

Institutions of government are good in proportion as they save the people from evil. Institutions of government are bad in proportion as they are the cause of evil to the people, either by what they create, or what they fail in preventing.

According to this statement, which it is impossible to controvert, institutions of government may, in strict propriety of speech, be said to be the cause of all the evil which they do not save the people from, and from which the people would be saved by any other institutions.

It is therefore of the highest importance that the people should know what are the institutions which save from the greatest quantity of evil, and how much their own institutions want of being those best institutions.

Institutions of government are bad, either because those in whose hands the powers of government are placed do not know that they are bad, and though willing, cannot improve them; or they are bad, because those who have in their hands the powers of government do not wish that they should be improved.

Where the rulers are willing, but do not know how to improve the institutions of government; every thing which leads to a knowledge of their defects is desirable to both rulers and people. That which most certainly leads to such knowledge is, that every man who thinks he understands any thing of the subject, should produce his opinions, with the evidence on which they are supported, and that every man who disapproves of these opinions should state his objections. All the knowledge which all the individuals in the society possess upon the subject is thus brought, as it were, to a common stock or treasury; while every thing which has the appearance of being knowledge, but is only a counterfeit of knowledge, is assayed and rejected. Every subject has the best chance of becoming thoroughly understood, when, by the delivery of all opinions, it is presented in all points of view; when all the evidence upon both sides is brought forward, and all those who are most interested in showing the weakness of what is weak in it, and the strength of what is strong, are, by the freedom of the press, permitted, and by the warmth of discussion excited, to devote to it the keenest application of their faculties. False opinions will then be delivered. True; but when are we most secure against the influence of false opinions? Most assuredly when the grounds of these opinions are the most thoroughly searched. When are the grounds of opinions most thoroughly searched? When discussion upon the subject is the most general and the most intense; when the greatest number of qualified persons engage in the discussion, and are excited by all the warmth of competition, and all the interest of important consequences, to study the subject with the deepest attention. To give a body of rulers, or any other body of men, a power of choosing, for the rest, opinions upon government, without discussion, we have already seen, upon good evidence, is the way to secure the prevalence of the most destructive errors.

When institutions are bad, and the rulers would gladly change them if they knew they were bad, discussion, it will not be disputed, would be good for both parties, rulers, and ruled. There is, however, another case, and that by far the most common, where the rulers are attached to the bad institutions, and are disposed to do all in their power to prevent any alteration. This is the case with all institutions which leave it in the power of the men who are entrusted with the powers of government, to make use of them for their own advantage, to the detriment of the people; in other words, which enable them to do injury to the people, or prevent the people from good. This is the case with by far the greater number of those institutions by which the people suffer. They are institutions contrived for benefiting the few at the cost of the many.

With respect, therefore, to the greater number of defective institutions, it is the interest of the rulers that true opinions should not prevail. But with respect to those institutions, it is of still greater importance to the people that discussion should be free. Such institutions as the rulers would improve, if they knew that they were defective, will be improved as the rulers themselves become sensible of their defects. Such defective

institutions as the rulers would not wish to see improved, will never be improved, unless the knowledge of those defects is diffused among the people, and excites among them a disapprobation which the rulers do not think it prudent to disregard.

That the prevalence of true opinions among the people, relative to those defects in their political institutions, by which the rulers profit at their expence, is of the utmost importance to the people, is therefore a proposition, which no improbity will dare openly to controvert. That freedom of discussion is the only security which the people can have for the prevalence of true opinions has already been proved. It is therefore proved, that freedom of discussion, in its utmost perfection, they ought to enjoy.

What is included in the term *freedom of discussion*, is evident from what has already been said.

Freedom of discussion means the power of presenting all opinions equally, relative to the subject of discussion; and of recommending them by any medium of persuasion which the author may think proper to employ. If any obstruction is given to the delivering of one sort of opinions, not given to the delivering of another; if any advantage is attached to the delivering of one sort of opinions, not attached to the delivery of another; so far equality of treatment is destroyed, and so far the freedom of discussion is infringed; so far truth is not left to the support of her own evidence; and so far, if the advantages are attached to the side of error, truth is deprived of her chance of prevailing.

To attach advantage to the delivering of one set of opinions, disadvantage to the delivering of another, is to make a choice. But we have already seen, that it is not safe for the people to let any body choose opinions for them. If it be said, that the people themselves might be the authors of this preference, what is this but to say, that the people can choose better before discussion than after; before they have obtained information than after it? No, if the people choose before discussion; before information, they cannot choose for themselves. They must follow blindly the impulse of certain individuals, who, therefore, choose for them. This is, therefore, a pretence, for the purpose of disguising the truth, and cheating the people of that choice, upon which all their security for good government depends.

If these deductions are as clear and incontrovertible as to us they appear to be, the inquiry respecting the principles which ought to regulate the use of the press is drawn pretty nearly to its close. We have shown, that, as far as regards the violation of the rights of individuals, in respect to both persons and things, no definition on account of the press is required. We have shown in what manner the rights of individuals, in regard to reputation, should be defined by the civil code, and the violation of them prevented by the penal. We next proceeded to what may be considered as the main branch of the inquiry, namely, the use of the press in speaking of the institutions and functionaries of government. We have found, that in this respect the freedom of the

press is of such importance, that there is no security for good government without it. We have also found, that the use of it, in respect to those subjects, admits but of two useful restrictions;—that of a direct exhortation to obstruct any of the operations of government in detail, and that of imputing to a functionary of government a criminal act, which there was no ground, nor even any appearance of ground, to impute to him. These restrictions, of course, it would be very easy to define in the criminal code, and to find appropriate motives to sanction. In all other respects, we have seen that the press ought to be free; that if there is any limit to the power of delivering unfavourable opinions, respecting either the functionaries, or the institutions of government, and of recommending those opinions by any media, with the single exception of false facts, under the circumstances mentioned above, the benefits which may be derived from the freedom of the press are so greatly infringed, that hardly any security for good government can remain.

IV.

Limitations to Freedom of Discussion, which involve its destruction.

In the administration of English law, or rather of what is called law, upon this subject, without being any thing better than the arbitrary will of the judges, it is said, that though discussion should be free, it should be “decent;” and that all “indecent” in discussion should be punished as a libel. It is not our object in this discourse to give an exposition of the manifold deformities of the English law of libel. If we have been successful in developing the true principles which ought to regulate the freedom of the press, every reader may, by an application of those principles, determine what he ought to think of the several particulars which there may attract his attention. We shall confine ourselves to a short notice of those *dicta*, or doctrines, which seem most likely to be pleaded in opposition to the principles which we have endeavoured to establish.

The question is, whether *indecent* discussion should be prohibited? To answer this question, we must, of course, inquire what is meant by indecent.

In English libel law, where this term holds so distinguished a place, is it not defined?

English legislators have not hitherto been good at defining; and English lawyers have always vehemently condemned, and grossly abused it. The word “indecent,” therefore, has always been a term under which it was not difficult, on each occasion, for the judge to include whatever he did not like. “Decent,” and “what the judge likes,” have been pretty nearly synonymous.

Indecency of discussion cannot mean the delivery either of true or of false opinions, because discussion implies both. In all discussion there

is supposed at least two parties, one who affirms, and one who denies. One of them must be in the wrong.

The delivery, though not of all true opinions, yet of some, may be said to be indecent. All opinions are either favourable or unfavourable. True opinions that are favourable to government and its functionaries will not be said to be indecent; nor will all opinions that are true and unfavourable be marked out for prohibition under that name. Opinions unfavourable may either be greatly unfavourable or slightly unfavourable. If any unfavourable opinions are exempted from the charge of indecency, it must be those which are slightly so. But observe what would be the consequence of prohibiting, as indecent, those which are greatly unfavourable. A true opinion, greatly unfavourable to a functionary, or institution of government, is an opinion that the functionary, or institution, is greatly hurtful to the people. You would permit the slight evil to be spoken of, and hence removed; you would not permit the great evil to be spoken of.

If no *true* opinion can be regarded as indecent, meaning by indecent, requiring *punishment*, we must inquire if any *false* opinion on matters of government ought to be treated as such. If all false opinions are indecent, all discussion is indecent. All false opinions, therefore, are not indecent. The English libel law does not treat any favourable opinions, how much soever false, as indecent. If all opinions that are false and unfavourable are said to be indecent, who is to judge if they are false? It has been already proved, that the people can confide the power of determining what opinions are true, what are false, to none but themselves. Nothing can resist the following argument. Either the people do know, or they do not know, that an opinion is false: if they do not know, they can permit nobody to judge for them, and must leave discussion its free course: if they do know, all infliction of evil for the delivery of an opinion which then can do no harm, would be purely mischievous and utterly absurd.

If all opinions, true and false, must be allowed to be delivered, so must all the media of proof. We need not examine minutely the truth of this inference, because it will probably be allowed. It will be said, however, that though all opinions may be delivered, and the grounds of them stated, it must be done in calm and gentle language. Vehement expressions, all-words and phrases calculated to inflame, may justly be regarded as indecent, because they have a tendency rather to pervert than rectify the judgment.

To examine this proposition, it must be taken out of that state of vagueness in which so many things are left by the English law, and made, if possible, to speak a language, the meaning of which may be ascertained.

We have just decided, and as it appeared, on very substantial grounds, that the statement of no opinion, favourable or unfavourable, true or false, with its media of proof, ought to be forbidden. No language, necessary for that purpose, can be indecent, meaning here, as before, nothing by

that term, as nothing can be meant, but simply *punishable*, or proper for punishment.

But the only difference between delivering an opinion one way and another way is, that in the one case it is simply delivered, in the other it is delivered with indications of passion: The meaning of the phrase in question then must be, that an opinion must not be delivered with indications of passion.

What! not even a favourable one?

“Oh, yes! a favourable one. Merited *praise* ought to be delivered with warmth.”

Here, then, is inequality, and therefore mischief, at once. An opinion, meaning here a true opinion, if it is favourable, you allow—if unfavourable, you do not allow—to be delivered in a certain way. Why? Because in that way, you say, it is calculated to make an undue impression. Opinions favourable, then, you wish to make an undue impression, and by that confess the wickedness of your intention. You desire that the people should think better of the institutions and functionaries of their government than they deserve; in other words, you wish the government to be bad.

If opinions, to what degree soever unfavourable, may be freely and fully delivered, there are two conclusive reasons why the terms in which they are delivered should not be liable to punishment. In the first place, the difference between one mode of delivery and another is of little consequence. In the second place, you cannot forbid the delivery in one set of terms, without giving a power of preventing it in almost all.

First, the difference is of little consequence. If I say barely that such a functionary of government, or such an institution of government, is the cause of great injury and suffering to the people, all that I can do more by any language is, to give intimation, that the conduct of such functionary, or the existence of such institution, excites in me great contempt, or great anger, or great hatred, and ought to excite them in others. But if I put this in the way of a direct proposition, I may do so, because then it will be a naked statement with regard to a matter of fact, and cannot be forbidden, without overthrowing the whole of the doctrine which we have already established.

If, then, I give indication of certain sentiments of mine, and of my opinion of what ought to be the sentiments of others *explicitly*, I ought, you say, to be held innocent; if *implicitly*, guilty. Implicitly, or explicitly, that is the difference, and the whole of the difference. If I say, that such a judge, on such an occasion, took a bribe, and pronounced an unjust decision, which ruined a meritorious man and his family, this is a simple declaration of opinion, and ought not, according to the doctrine already established, to meet with the smallest obstruction. If I also state the matter of fact with regard to myself, that this action has excited in me great compassion for the injured family, and great anger and hatred against the author of their wrongs, this must be fully

allowed. I must further be allowed to express freely my opinion, that this action ought to excite similar sentiments in other members of the community, and that the judge ought to receive an appropriate punishment. Much of all this, however, I may say in another manner. I may say it much more shortly by implication.—Here, I may cry, is an act for the indignation of mankind! Here is a villain, who, invested with the most sacred of trusts, has prostituted it to the vilest of purposes! Why is he not an object of public execration? Why are not the vials of wrath already poured forth upon his odious head?—All this means nothing, but that he has committed the act; that I hate him for it, and commiserate the sufferers; that I think he ought to be punished; and that other people ought to feel as I do. It cannot be pretended, that between these two modes of expression, the difference, in point of real and ultimate effect, can be considerable. For a momentary warmth, the passionate language may have considerable power. The permanent opinion formed of the character of the man, as well as the punishment, which, under a tolerable administration of law, he can sustain, must depend wholly upon the real state of the facts; any peculiarity in the language in which the facts may have been originally announced soon loses its effect. If that language has expressed no more indignation than what was really due, it has done nothing more than what the knowledge of the facts themselves would have done. If it has expressed more indignation than what was due, the knowledge of the facts operates immediately to extinguish it, and, what is more, to excite an unfavourable opinion of him who had thus displayed his intemperance. No evil then is produced; or none but what is very slight and momentary. If there should be a short-lived excess of unfavourable feeling, we have next to consider what is the proper remedy. Punishment should never be applied, where the end can be attained by more desirable means. To destroy any excess of unfavourable feeling, all that is necessary is, to show the precise state of the facts, and the real amount of the evil which they import. All excess of feeling arises from imputing to the facts a greater efficacy in the way of evil than belongs to them. Correct this opinion, and the remedy is complete.

Secondly, you cannot forbid the use of passionate language, without giving a power of obstructing the use of censorial language altogether. The reason exists in the very nature of language. You cannot speak of moral acts in language which does not imply approbation and disapprobation. All such language may be termed passionate language. How can you point out a line where passionate language begins, dispassionate ends? The effect of words upon the mind depends upon the associations which we have with them. But no two men have the same associations with the same words. A word which may excite strains of emotion in one breast, will excite none in another. A word may appear to one man a passionate word, which does not appear so to another. Suppose the legislature were to say, that all censure, conveyed in passionate language, shall be punished, hardly could the vices of either the functionaries or the

institutions of government be spoken of in any language which the judges might not condemn as passionate language, and which they would not have an interest, in league with other functionaries, to prohibit by their condemnation. The evil, therefore, which must of necessity be incurred by a power to punish language to which the name of *passionate* could be applied, would be immense. The evil which is incurred by leaving it exempt from punishment is too insignificant to allow that almost any thing should be risked for preventing it.

Religion, in some of its shapes, has, in most countries, been placed on the footing of an institution of the state. Ought the freedom of the press to be as complete, in regard to this, as we have seen that it ought to be, in regard to all other institutions of the state? If any one says that it ought not, it is incumbent upon him to show wherein the principles, which are applicable to the other institutions, fail in their application to this.

We have seen, that, in regard to all other institutions, it is unsafe for the people to permit any but themselves to choose opinions for them. Nothing can be more certain, than that it is unsafe for them to permit any but themselves to choose for them in religion.

If they part with the power of choosing their own religious opinions, they part with every power. It is well known with what ease religious opinions can be made to embrace every thing upon which the unlimited power of rulers, and the utmost degradation of the people, depend. The doctrine of *passive obedience* and non-resistance was a *religious doctrine*. Permit any man, or any set of men, to say what shall, and what shall not, be religious opinions, you make them despotic immediately.

This is so obvious, that it requires neither illustration nor proof.

But if the people here, too, must choose opinions for themselves, discussion must have its course; the same propositions which we have proved to be true in regard to other institutions, are true in regard to this; and no opinion ought to be impeded more than another, by any thing but the adduction of evidence on the opposite side.

(F. F.)