THE

NATURAL AND ARTIFICIAL

RIGHT OF PROPERTY

CONTRASTED.

A SERIES OF LETTERS, ADDRESSED WITHOUT PERMISSION, TO H. BROUGHAM, Esq. M.P. F.R.S. &c. (NOW THE LORD CHANCELLOR.) BY THE AUTHOR OF

"LABOUR DEFENDED AGAINST THE CLAIMS OF CAPITAL."

To discover errors in axioms, or first principles grounded in facts, is like the breaking of a charm. The enchanted castle, the steepy rock, the burning lake, disappear; and the paths that lead to truth, which we imagined to be so long, so embarrassed, and so difficult, shew as they are—short, open, and easy.

Bolingbroke.

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ADVERTISEMENT.

The present letters, except verbal alterations, were written in the year 1829, and consequently in ignorance of those political convulsions which have led the author to think that this is a proper time to publish them. In his opinion, the contest now going on in society, the preternatural throes and heavings which frightfully convulse it from one end to the other, arise exclusively and altogether from the right of property, and can be neither understood nor relieved, but by attending to the great distinction he has endeavoured to establish between the natural and the legal right of property. Whether his voice be listened to or not is of trifling moment; but it is of infinite importance to every man to listen to the voice of nature, let who will be its interpreter.

To elucidate some of the following remarks, it is right to add, that the present is only an episode in a larger work relating to criminal law. Legislators are yet completely ignorant of the first elements of criminal legislation, and the correct and philosophic answer to the meaning question, "What is crime?" throws down at one blow the whole theoretical structure of penal enactments. By a deduction from principles not here enunciated, the author has satisfied himself that all law-making, except gradually and quietly to repeal all existing laws, is arrant humbug. Such being his well weighed and long cherished conviction, he cannot possibly feel any respect for titles, dignities, offices, individuals, or acts which have and can have no other possible claim to approbation, than the supposition

that legislation and its consequences are of vital importance to the welfare of society. He mentions this circumstance, to account for some, perhaps, strong expressions and peculiar opinions, while he hopes by demonstrating, that even property is not regulated and determined by human laws, to prepare the mind of the reader to admit the general principle, that society can exist and prosper without the lawmaker, and consequently without the taxgatherer. He is quite aware that such a conclusion, generally adopted, must be the work of time, and of a mightier artist than ever wrote with pen, but he is not without hope, that the present and his meditated work, should he find leisure and encouragement to undertake the publication, may contribute to what he thinks so desirable a result.

He is aware also, that speculations of this kind have no charm for the multitude. He has learnt, by experience, that books of this description are not and cannot be much read. Popular displays of popular errors, or of those truths which have been long enough known to form a part of the general creed, pretended illustrations of the progress of society, drawn up in the form of novels, pictures of individual life, biographies, as it were, of any particular state or condition, may have a strong charm for many readers, and sell so extensively, as to procure an ample remuneration for author, publisher, and bookseller. But works unfolding a dawning truth, which is afterwards to become a part of the general stock of knowledge, which lay claim to increase the extent of abstract moral science, which announce a discovery, and because it is a discovery, or an extension of knowledge, it cannot be immediately understood, much less immediately popular—works of this kind cannot be much read; and therefore, with the prudence of a tradesman and the calculation of a poor man, he has put a large price on this book, and printed only a small number of copies, in order that he may not lose a great

sum by his speculation. The book will, undoubtedly, be compared, as to size and price, with numerous popular books of the classes just mentioned, and will be tried by the price of those which are expected to sell to the extent of several thousand copies. Compared, therefore, to volumes of the "Library of Entertaining Knowledge, or of the "Family Library," it must appear outrageously high priced. This will, however, shew that it is not intended for the poor. It is not likely, indeed, to be popular with any class. It flatters no passions. It neither proves that the wealth of the rich is in the order of the nature, nor justifies the desire of spoliation in the poor. It encourages no hopes of finding a speedy remedy for present evils, and seems destined to find no favour with any one class, because all look only to the law either for protection or improvement. Flattering no popular prejudice, and basing itself on no popular creed, it appeals to reason; and the author knows the judges in that court are few, and too indolent to inquire diligently into the causes which are brought before it. Such as the book is, conscious of meaning well, however the execution may have fallen short, or gone wide of his intentions, the author commits his production to the mercy of the law and the justice of his countrymen.

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To H. BROUGHAM, Esq. M.P. F.R.S. &c.

SIR,

The only circumstance I can allege as an excuse for addressing you, is the conspicuous manner in which you some time ago stepped forward as a reformer of the law. Every such attempt involves the safety of our property and the security of our persons, and gives every man in the kingdom a title to canvass your proceedings. If they are right, we are bound to aid, and if wrong, to oppose you. He who has not access to your ear, may adopt this method of reaching your understanding, and pleading in face of the public, he cannot be met by a nonsuit. Your power rests on your reputation, and having assumed the character of a leader to conduct us out of the quagmire of law, you can neither reject our assistance, nor escape from our opposition. I do not confront you however as an antagonist, I am merely an

inquirer, who wish, having at heart, like yourself--the welfare of man—to point out some of the obstacles in your path, and to suggest that it does not lead to the firm ground and pleasant fields we desire to reach. That I may add to the confusion—many voices now vociferating different counsel—is not improbable; but I have set before me a grand object which conceals every thing else from my view, and makes me indifferent whether I promote your views or lessen your fame.

I find, with astonishment, on looking back at dates, that it was so long ago as February 7th, 1828, that you made your celebrated speech on the present state of the law. You then moved "That an humble address be presented to His Majesty, praying that he will be graciously pleased to issue a commission for inquiring into the *defects occasioned by time and otherwise in the laws* of this realm, and into the measures necessary for removing the same." Your motion was only half granted, because those who have more power than you have, are opposed to improvement: but if you thought that it would produce any good, except, as your speech justifies, the general disrepute into which the law has fallen, you are no doubt by this time satisfied that you were mistaken. Your motion was founded in error. It implies, contrary even to the tenor of some of your arguments, that the law was once appropriate and excellent. Ill-adapted as it is to the present state of society, the law never was abstractedly so good nor so well administered as in the reign of George IV. It has been carried forward by the progress of society. Time has not occasioned defects, but improvements, in the laws, though the legislator who always aims at preserving the institutions of a past age, has not suffered the laws to keep pace with society. The latter has extended and improved more rapidly than

the former, suggesting the important truth that your laws have not regulated its course, and do not preserve social order. It has out-run and out-grown all the cunning political devices of men, teaching us that the institutions which are now supposed to be wise and which the lawgiver struggles to make consistent, will, ere long, like those that have already passed away—like monachism and the trial by ordeal—become the mockery and scorn of mankind. Sir, the vital principle of society which distinguishes it from every other part of the earthly creation, that of steady progression in improvement, carrying with it all that pertains to it, prevents *time* from corrupting laws as it destroys neglected buildings. Either your motion was founded on a mistake, or you wished, like other law makers and law interpreters, to mystify mankind and cherish their veneration for the ignorant legislator, by ascribing follies, of which he alone is the author, to a pure abstraction. A motion founded on such an error can be of no benefit except to the commissioners appointed to inquire and report. Should their recommendations be useful, they will hardly be carried into effect for two or three generations; and in the mean time such pompous investigations into evils of which men have a practical conviction, merely substitute the hope of improvement for impatience under legal vexations. They serve to foil public indignation, turning it aside, and blunting the appetite for reform. That they will lead to any substantial good, can only be believed by those who deny the authority of experience, and conceive the law, which has *always* been acknowlegedly mischievous in practice to be admirable in principle.

I am disposed to think that the inquiries and recommendations of your commissioners are more likely to do harm than good; and I shall explain

why I think so. Your late friend and preceptor, Mr. Stewart, whose bland manners, eloquent language, and humane disposition, obtained for him a greater reputation as a philosopher than he deserved, turning away dismayed, as he frequently, did from the search after truth, because he was afraid, like many other purblind, timid mortals, of its consequences;—Mr. Dugald Stewart remarks that "in order to lay a solid foundation for the science of politics, the *first step* ought to be, to ascertain that form of society which is perfectly agreeable to nature and to justice, and what are the principles of legislation necessary for maintaining it." He had previously said that "it is easy for the statesman to form to himself a distinct and steady idea of *the ultimate objects at which a wise legislator* ought to aim, and to foresee that modification of the social order to which human affairs have of themselves a tendency to approach."* He adds that "they are to be the most (the only) successful statesmen who paying all due regard to past experience, search for the rules of their conduct chiefly in the peculiar circumstances of their own times, and in an enlightened anticipation of the *future* history of mankind."† You admit, Sir, that society has a course of its own‡ which legislation is compelled to follow, and every statesman, every law maker, every law promoter, must do mischief who does not frame his enactments by an "enlightened anticipation" of that course in future. Every new law must of necessity be injurious which is not adapted to "that form of society which is per-

* Elements of the Philosophy of the Human Mind, by Mr. Stewart. *Vol. I, page* 251, 2nd ed.

† Ibid.

‡ Mr. Brougham's speech on the present state of the Law.—*Authentic edition*, p 109.

fectly agreeable to nature and justice." Every one of your commissioners then must work evil if he have not a distinct and steady idea of the "ultimate objects at which a wise legislator ought to aim." Among these gentlemen I do not recognize one who has made the principles which regulate the progress of society the object of his study. They are, I believe, men of detail, men profoundly versed in all the technicalities of conveyancing, profoundly attached even, it is to be apprehended, to those technicalities which are to them a means of attaining reputation and wealth, but among them there is not I believe one philosopher.* Their recommendations I take it, will only go to amend some of these technicalities, —some trifling discrepancies of detail —and they will assume as correct that principle which science teaches to be an error. As far as their authority can go, they will recommend the continuance of error, and they will contribute to perpetuate it, by pruning away some of its most revolting consequences.

There is one means indeed by which they may do good. All men are instinctively obedient to public opinion. The force of circumstances operates upon all mankind. It influences the sentiments, and even fashions the minds, of the most dignified members of the Bench and the Bar, as well of the meanest of our species. Under the influence of circumstances, and in obedience to public opinion, your commissioners, forgetting the details of their profession, may perchance endeavour to bring our anomalous law into accord with the prevalent feelings of the age: but their respect for it will not allow them to go so far as even present cimcumstances dictate,

* Mr. John Campbell is reported to have said of Lord Eldon, and this may be said of all lawyers, that they are so well acquainted with what the law is, that they have no conception of what it ought to be.

and still less will their recommendations be guided by an enlightened anticipation of the future. The laws enacted by their advice, will only be so many additional noxious statutes imposed on mankind by authority, to be swept out of existence at the first convenient opportunity.*

I might quote many other authorities besides your own and that of Mr. Stewart, to prove that society has a course of its own, and that it is the highest duty of the legislator to study that course, and ascertain the laws which guide it, before he frames new statutes; but I am convinced by the passage of your speech, which I have just referred to, that you are already satisfied of this important truth, and I know that you have a high respect for the authority of your late venerable teacher. But being convinced of this important fact, have you ever examined the first principles of legislation, in relation to the natural laws which give birth to society and carry it onward to perfection. "Have you," to use the language of Lord Bolingbroke, "and deceive neither yourself nor me, have you in the course of these thirty years once examined the first principles, and fundamental facts on which all these questions depend, with an absolute indifference of judgment and with a scrupulous exactness? With the same that you have employed in dealing with the various consequences drawn from them, and the different opinions about them? Have you not taken principles for granted in the whole course of your proceedings? Or if you have looked now and then

* Since the observations of the text were written, the commissioners have published two reports, and you are well aware—though you have praised them—that they do not falsify my predictions. They recommend the tinkering up of some of the defects of the law, but they throw no light on its principles. These, the commissioners—good easy men—take for granted.

on the state of the proofs brought to maintain them, have you not done it as a mathematician looks over a demonstration formerly made, to refresh his memory, not to satisfy any doubt?* If, as I am afraid, from your multifarious pursuits, though you have sometimes left politics and law to court philosophy, your answer must be in the negative—what assurance can even you supply, that another costly commission, and other remedies for legal errors, will not in a few months or years be required? What guarantee can you give us that all this expense, all this fretfulness and feverishness of change, will not be suffered in vain?

But if you have not studied the natural principles which regulate society, do you believe that the bankers and merchants, whose lives are passed in a counting-house—that country gentlemen, who are minutely acquainted with horses and dogs, with good living, and the duty of punishing poachers—that treasury clerks, who by performing sundry mechanical evolutions, come at length to sit on the treasury benches—that captains and colonels who are great at manœuvring a ship or a regiment—that lords of the bed-chamber, whose lives are passed amidst the frivolous dissipation of London and Paris—do you believe that the members of the motley group, which, when collected at Westminster, the public honours as the legislature of this country, have meditated night and day on these principles, and on the great interests they continually try to model after their own image of perfection? With one or two exceptions, they are so ignorant that they have yet to learn the existence of any natural laws regulating society. They believe that it is held together by the

* "Of the true use of Retirement and Study," with one or two verbal alterations.

statutes at large; and they know no other laws which influence its destiny than those decreed by themselves and interpreted by the judges. If the legislature have not examined these principles, have they been examined by the practical lawyers engaged in the commission, whose whole soul is engrossed by the details of their profession? Has this work been done even by the public, who eagerly call for new regulations and who worship an idol under the name of law, more extensively mischievous than the Moloch of antiquity? For the public there is much excuse. Continually occupied in providing for their own animal wants, and the craving wants of the state, they have no time for deep investigation; and they are only to blame for relying implicitly on others, who, though, at least, as ignorant as themselves, arrogantly claim to govern and instruct them. If neither the public nor the legislature be acquainted with the ultimate objects at which the latter ought to aim, how is it possible that our tinkering mode of making laws, merely fastening together the links which time is continually snapping, can adapt our corroded and worn-out system to the future form and condition of society? Never were the discrepancies between the state of the law and the condition of society greater than at present. Never was the conviction so general that the laws must now be extensively altered and amended. Rapidly therefore as the gentlemen at Westminster work, making three or four hundred laws per year, repeating their tasks session after session—actively as they multiply restraints, or add patch after patch, they invariably find that the call for their labours is continually renewed. The more they botch and mend, the more numerous are the holes. Knowing nothing of natural principles, they seem to fancy that society—the most glorious part of creation, if individual man be the noblest

of animals—derives its life and strength only from them. They regard it as a baby, whom they must dandle and foster into healthy existence; but while they are scheming how to breed and clothe their pretty fondling—lo! it has become a giant, whom they can only control as far as he consents to wear their fetters.

Look for a moment at the consequences of the legislature being ignorant of the principles by which it ought to make laws. I merely turn to the heads of your speech, and I find "the courts are in conflict with each other, that one is overloaded with business while another has nothing to do, that there are different laws for different persons, that principles and practices are in opposition, that pleadings are inconsistent and incomprehensible," and as the sum of a mass of incongruities, "that justice can rarely or never be attained." Because we have continually altered our laws piecemeal, paying no regard to principles, or setting out from an erroneous one, that has never since been revised, we are now lost in a vast wilderness of fictions and absurdities. The law, instead of being "the staff of honesty and the shield of innocence, is a two-edged sword of craft and oppression,"* which, but for the large shield of the public press which the law has in vain endeavoured to break, would hack society asunder. To remedy these monstrous evils, vitiating the whole social compact we must begin at first principles. To stop the flowing of the volcanic and sulphureous stream, which, though shining and sparkling with promise, like the fertilizing waters of the earth, withers the heart of the land, we must go to the fountain head. Convinced, by the every day practices of our legistators, that

* Mr. Brougham's Speech on the Present State of the Law, delivered February 7th, 1828.

they never study first principles, though they continually and vainly try to modify results, and convinced by the present state of the law that they cannot begin the study too soon, I propose to call your attention to one of those principles, THE RIGHT OF PROPERTY—some of the consequences of which are now undergoing investigation by two sets of commissioners.

I am aware, indeed, that nothing is more irksome to legislators than to stop them short in their career, by any demands for previous investigation.—It is so much easier and shorter to decree than inquire, and so much more flattering to self-love to dictate than examine, that both indolence and vanity combine to make the law-giver act before he understands. He takes no comprehensive view of society; he grubs forward under the influence of his passions and animal instincts, like the mole, and is quite as blind. If any of those instincts had for their object the welfare of society, I should join the crowd and huzza him on. Unfortunately for his pretentions, his instincts, his passions, his desires—like those of all animals—have no other object than the preservation and welfare of the individual. Till, therefore, some incarnation of social instincts be made manifest, I, for one, must insist that the legislator is bound to inquire into the natural laws which regulate society, before he tries to bind society down to his own short-sighted views. Self-interest, too, should now dictate inquiry: for mankind are every where becoming the critics of his actions; and he will command their respect and obedience, no longer than he guides his conduct by the natural principles to which society owes its rise, progress, and continued existence.

The legislator is probably afraid that inquiry might lessen his authority. He would blush to ap-

pear ignorant of any thing before other men. He may be too apprehensive of learning that his power is not quite so beneficial as he wishes to believe it. He may be aware that inquiry would strike at its root. A philosopher, indeed, might say, inquire into what? Into the past condition of society? Legislators would not surely make laws for that. Into the future condition of society? There are no means for conducting the inquiry with success The progress of the past may cast its shadow before, so that you may have a rough notion that society is to go on increasing in people, in wealth, and in knowledge, as it has increased in past time; but what shape that increase is to take, how rapid is to be the progress, and what are to be the new relations, both among individuals and among nations, it will call into existence—what new trades, what new arts, may arise—what new habits, manners, customs, and opinions, will be formed—what is the precise outline society will assume, with all the fillings-in of the picture to the most minute touches;—all these things, to which laws ought to be adapted, cannot possibly be known: and inquiry into them, with a view of making laws to accord with them, must necessarily make the whole business of legislation appear in its true character to mankind—a mockery of their interests, and a fraud on their understandings. Will legislators inquire, then, into the present? It is a line without breadth—the negation both of the past and the future—one of which passes into the other, while you are talking of inquiring, and before you can make your laws to catch it. Inquiry either into the past, the future, or the present, is adverse to the principles of legislation; and it is not, therefore, extraordinary that legislators should decree, as they always have done, without previous investigation.

Although I am convinced that all legislation

must be injurious, till all the natural principles which govern society be investigated, yet I have no intention, on this occasion, of extending my researches so far. I aim not at laying "a solid foundation for the *art* of politics," by ascertaining all the principles of legislation necessary to maintain "that form of society which is most agreeable to nature;" I am contented with a far humbler task, and mean to confine my remarks to one only of these natural principles, and to one only of the branches of legislation. That one, however, you are aware, is of vital importance. Political organization depends very much on the mode in which property is distributed. Wherever the right of property is placed on a proper foundation, slavery, with all its hateful consequences, is unknown:—wherever this foundation is rotten, freedom cannot exist, nor justice be administered.—Moreover, we have Mr. Locke's authority for saying —others, as Cicero,* having said the same thing before—"That the great and chief end of *men's uniting into commonwealths, and putting themselves under government, is the preservation of their property*, to which, in the state of nature, there are many things wanting.† A yet living writer, for whose authority you also profess great respect,‡ Mr. Bentham, tells M. Dumont to express his opinion in these words—"Pour mieux sentir le bienfait de la loi, cherchons à nous faire une idée nette de la propriété. Nous verrons qu'il n'y a point de propriéte naturelle, qu'elle est uniquement l'ouvrage des lois."—"L'idee de la propriété consiste dans une attente établie, dans la persuasion de pouvoir retirer tel ou tel avantage de la chose selon la nature du cas.

* De Offic. Lib. ii. cap. 21.
† On Civil Government, *p* 124.
‡ See Mr. Brougham's Speech.—*Note to page* 84.

Or, cette attente, cette persuasion ne peuvent être que l'ouvrage de la loi. Je ne puis compter sur la jouissance de ce que je regarde comme mien, que sur la promesse de la loi qui me le garantit." *"La propriété et la loi sont nées ensemble et mouront en semble. Avant les lois, point de propriété. Otez les lois toute propriété cesse"**

The vast importance of the right of property, in Mr. Bentham's opinion, is also expressed in this passage. "C'est ce droit qui a vaincu l'aversion naturelle du travail, qui a donné à l'homme l'empire de la terre, qui a fait cesser la vie errante des peuples, *qui a formé l'amour de la patrie et celui de la posterité.* Jouir promptement, jouir sans peine, voilá le desir universel des hommes. C'est ce desir qui est terrible, puisqu' il armeroit tous ceux qui n'ont rien contre ceux qui ont quelque chose. Mais le droit qui restreint ce desir est le plus beau triomphe de l'humanité sur elle même."†

The benefits here ascribed to the right of property as created by law, are much exaggerated; but the passage, which has been adopted by several authors of distinction, as well as the one I shall now quote from Mr. Mill's writings, shews distinctly that in their opinion the right of property is the key-stone of society. *"The end, says Mr. Mill, to be obtained through government as the means, is to make that distribution of the scanty materials of happiness,* which would ensure the greatest sum of it to the members of the community, taken altogether, preventing every individual or combination of individuals from interfering with that distribution, or

* Traités de Legislation—*Tom.* I, *page* 179, *2nd ed.*—M. Dumont's "Je regarde comme mien" obviously applies to that which he now regards as his, which is, probably, not naturally his own.

† Ibid, *page* 182.

making any man to have *less than his share.*"* You will find in the article "Jurisprudence," also written by this gentleman for the Supplement to the Encyclopædia Brittanica, that he like Mr. Locke, says that the object of the social union is "to secure to the weak their share of the good things of life;" and he actually describes all rights as consisting in "the shares of good things allotted by the legislator." If we were to adopt his opinions to the fullest extent, in discussing the right of property we should discuss all the principles of society; but though we go not this length, we cannot doubt the general accuracy of his views as to the importance, but only as to the importance, of the great principle I call on you to examine.

The slightest observation too must satisfy you, that in practice, as well as in theory, this right is now of pre-eminent importance. Throughout Europe there is a contest between governments and their subjects; and what, I would ask, is its object? The growth of humanity, the general love of liberty, and the general hatred of oppression, prevent the existence of any odious and revolting cruelty in any part of Europe; but avarice and profusion are yet unchecked; and the contest, a very ignoble one, is simply who shall have most riches. There are no heroes on the thrones of Europe, but many extortioners. Great generals or great inventors, no longer take, as in the olden times, the lead in the affairs of government: but money-scriveners. Our leaders invent nothing but new taxes, and conquer nothing but the pockets of their subjects.

* Article Government in the Supplement to the Encyclopædia Britannica.—"His share," I take it, implies that a man has a share without the government making the distribution, and with reference to that gentleman's opinions this remark you will find to be important.

The contest now raging, whether it break out into open rebellion or glide into notice, in the form of a smuggler, on the frontiers and shores of kingdoms—whether it be simply heard in a demand for a reduction of taxation, or come in the thunder of popular indignation, hurling princes from their thrones, is merely a contest to obtain wealth. When this is the case between governments and their subjects, you will readily believe that it is also the case between different classes of the people. The peasant hates the noble, and the noble fleeces the peasant, because the one desires to keep and the other to get wealth. The priest grasps at and thinks of it alone, while he holds up his idol-god; for the God of our priests is not the God of nature—not that great Being, who fills and sustains all, who spreads life and happiness throughout creation—but a malicious and revengeful being, born of the barbarous fancies of a cruel and barbarous people; and while the priest holds up the idol-god of a foreign and a despised race, to terrify the vulgar, he makes searching demands on our pockets. If he did not, if there were no tithes, no hierarchy, no splendid colleges to be sustained, no man would trouble himself either to uphold or gainsay the dogmas, in the name of which the priest fleeces the people. As the contests between individuals, between classes, and between subjects and their rulers, all relate to wealth, you may be sure, that no topic can in practise, be pregnant with more important results—The right of property, which is now arming the land-owner and the capitalist against the peasant and the artizan, will, in truth, be the one great subject of contention for this and the next generation; before which, it needs no prophetic vision to foretel, the squabbles of party politicians, and the ravings of intolerant fanatics will die away unnoticed and unheard.

But though the Westminster philosophers, and you also, agree with Mr. Locke, in attributing to the right of property the utmost importance, making it the basis of the political edifice, they differ from him, fundamentally and totally, as to the origin of this right. Mr. Locke lays it down, that the preservation of property is the object for which men unite into a commonwealth. For this purpose, they put themselves under government. Property therefore, according to Mr. Locke, existed antecedently to government, and government was established for the protection of an antecedently existing right of property. On the contrary, both Mr. Mill and M. Dumont, describe the right of property to be the offspring of law. Mr. Mill says, "the end of government is *to make* a distribution of wealth," or create such a right. M. Dumont expressly says, that the right of property is altogether the work or creation of the legislator, or the law. This difference of opinion is pregnant with momentous consequences. If a right of property be a natural right, not created by legislation, if it be a principle of society, derived immediately and directly from the laws of the universe, all its results will be determined, at all times, by those laws; and the legislator ought to ascertain these results, before he dreams of making decrees, to enforce them. Before he takes any steps to protect the right of property, he must, on Mr. Locke's principles, find out in what it consists. If, on the other hand, a right of property be altogether the creature and work of laws, as the legislator seems to suppose, he may at all times determine all its consequences. He will have no occasion to inquire into any circumstances foreign to his own enactments; he will only have to frame his decrees with logical accuracy from the principles he lays down. One system looks on the legislator as an ally, in enforcing the laws of

nature, to do which he must know them; the other denies that there are any such laws, which in fact its authors do in express terms,* and they look on enactments as determining the welfare and destiny of mankind. A more important difference of opinion cannot exist. Either principle lies at the very foundation of the whole political edifice. Mr. Locke's view is, in my opinion, more correct than Mr. Bentham's, though at present among legislators, and those who aspire to be legislators, the latter is by far the most prevalent. Practical men universally adopt it; for they always decree, and never inquire into the laws of nature. The prevalence of Mr. Bentham's opinion, makes it necessary to illustrate and enforce that of Mr. Locke, in so far as it is limited to asserting that a right of property is not the offspring of legislation.

I cannot, however, pass by the opinion, that all the rights of man are derived from the legislator, without noticing its absurdity. This is the main principle---the incorrect and insecure foundation of all the logical consequences, called the system of Mr. Bentham, of which I am afraid neither you nor the world in general is aware,—and which being removed, the whole of that unsightly fabric tumbles valueless to the ground. The materials of this vast building, its crabbed deductions from false premises—are of such a rude and uncouth description, that no other edifice can be constructed out of them; and when once the foundation is removed, there they will lie till time sweeps them away, encumbering a portion of the mind of society which might, but for these errors, have borne the choicest fruits, or served for the erection of a splendid temple of truth.

* See both Mr. Bentham's "Introduction to Morals and Legislation" and M. Dumont's "Traités."

Without attempting to describe the vast number of rights, such as those said to be dictated by humanity, and acknowledged to exist in the negroes, and in all men, which have obviously not been decreed by any legislator,—such as those we call domestic, and which, with their corresponding duties, are mutually recognised by parents and children, by wives and husbands, by friends and neighbours, and even by strangers and enemies, and which no law-giver has ever yet thought of dictating:---without attempting to notice numberless decrees issued by him, such as those prohibiting certain branches of traffic, those protecting game and granting tithes; which, though he has enforced them by all the means at his command, have completely failed to create in men any corresponding ideas of rights and duties, these decrees being only obeyed of necessity, and violated without the least remorse, whenever that can be done;---without now insisting on the well-known fact, that the ideas men have of rights and duties,---as, for example, of the right of one man to personal freedom, and of the duty of another not to make him a slave,—which have at all times over-ruled the decrees of the law-giver, shewing distinctly that he does not create, and has not created, the great stream of our rights and duties, which springs from a higher source than his decrees, carrying with it the little rivulet of *legal* rights he in vain endeavours to force in a different direction:---without referring to authorities to show "that the law on which right and wrong depend is older than the ages of nations, and is contemporary with the very eternity of God,"—I shall confine myself to briefly proving, by some of the deductions from Mr. Bentham's favourite dogma, that no principle, ever embraced by a thinking man, was, than this, more monstrously absurd.

Other philosophers have wisely represented *government* and *law* as necessary evils, imposing—for some imagined, though incomprehensible, general good—restrictions on the natural rights and natural freedom of individuals, which they might dispense with as they grew enlightened and wise: but Messrs. Bentham and Mill, both being eager to exercise the power of legislation, represent it as a beneficent deity which curbs our naturally evil passions and desires (they adopting the doctrine of the priests, that the desires and passions of man are naturally evil)—which checks ambition, sees justice done, and encourages virtue. Delightful characteristics! which have the single fault of being contradicted by every page of history. Hitherto, it has been generally supposed that the whole world was given to the human race, with dominion over all other created things, for them to use and enjoy in every way, abstaining from nothing—restricted in nothing consistent with their own happiness—bound mutually to share the blessings provided for them, because mutual assistance begets mutual love—supplies physical wants easier and better, and promotes moral and intellectual improvement;—that the rights and duties of men grow out of the great scheme of creation, which is sometimes misinterpreted, and rarely understood, by human sagacity, —sometimes marred, and never mended, by human wisdom. But, now, in compliment to political power, and to Mr. Bentham's theory, that we may find an apology for our own infirm and base submission, we must believe that men had naturally no right to pick up cockles on the beach, or gather berries from the hedge—no right to cultivate the earth, to invent and make comfortable clothing, to use instruments to provide more easily for their enjoyments—no right to improve and adorn their habitations—nay, no right to have habitations—no right to buy or sell, or move from place

to place—till the benevolent and wise law-giver conferred all these rights on them. If the principle be true in one case it must be universally true; and, according to it, parents had no right to the love and respect of their offspring, and infants no right to draw nourishment from the breasts of their mothers, until the legislator—foreseeing, fore-calcula ing the immense advantages to the human race of establishing the long list of rights and duties which grow out of our affections, and constitute our happiness—had established them by his decrees. With an extraordinary species of quaker-like humility, these reasoners assume, as the basis of their system, the principle which all spirited men, and even other philosophers, contemptuously reject—not merely "questioning," as Mr. Burke says, marking it with his detestation—"whether man has any rights by nature," but broadly and boldly asserting that he has none; and "that all the property he enjoys is the alms of government, and life itself derived from its favor and indulgence."* "La loi," says M. Dumont, in the true spirit of these doctrines, "*me defend-elle de vous tuer? Elle m' impose l'obligation de ne pas vous tuer; elle vous accorde le droit de n'etre pas tué par moi.*"† Men, therefore, according to the system which affirms that there are no natural laws and natural rights, had no right even to life—that blessed gift of a bounteous Creator!—and no one was under an obligation not to kill another till the legislator created this right, and imposed this duty.—Mothers, according to the same dogma, might devour their offspring, and children, if their parents would allow them to grow to n a'ui y, might eat up their parents—if he should, unhappily, forget to prohibit

* Letter on the Affairs of America.
† Traités de Legislation—pr. edit.

so unhallowed a feast! Poor human beings! How were you cast away--thrust out from the protection of Divine Providence, which extends its fostering care to the meanest things of creation, till that better divinity, a decree-manufacturer, took you under his charge! Such deductions would be shocking, if they were not eminently absurd; and yet, Sir, you, who know on what principles Mr. Bentham reasons, must admit that they are the legitimate results of a system denominated, from the seat and centre of civilization, the Philosophy of Westminster.

To me, this system appears as mischievous as it is absurd. The doctrines accord too well with the practice of law-givers, they cut too securely all the gordian knots of legislation, not to be readily adopted by all those who, however discontented they may be with a distribution of power, in which no share falls to them, are anxious to become the tutelary guardians of the happiness of mankind. They lift legislation beyond our reach, and secure it from censure. Man, having naturally no rights, may be experimented on, imprisoned, expatriated or even exterminated, as the legislator pleases. Life and property being his gift, he may resume them at pleasure; and hence he never classes the executions and wholesale slaughters, he continually commands, with murder—nor the forcible appropriation of property he sanctions, under the name of taxes, tithes, &c., with larceny or high-way robbery. Filmer's doctrine of the divine right of kings was rational benevolence, compared to the monstrous assertion that "all right is factitious, and only exists by the will of the law-maker."* But though this may be comfortable doctrine for legislators, it will not satisfy the people; and in spite

* See Mr. Mill's article on Jurisprudence: Supp. to the Ency. Brit.

of false theories and unreasonable practices, events are now teaching mankind to place a just value on law-making. Day does not follow day, without increasing our knowlege of the consequences of actions; and it is fast becoming apparent, that the wise men, such as Cicero and Seneca, as Bacon and Locke, and as Burke and Smith, who have advocated a totally different system from that of Messrs. Bentham and Mill and their arrogant disciples, have not cast the seeds of their faith in nature, on a barren and ungrateful soil.*

Your obedient servant,

A LABOURER.

* Much has of late been very needlessly written about the greatest happiness principle, the basis of all Mr. Bentham's philosophy. There can be no doubt that the Deity wills the greatest happiness—no doubt that the legislator, whenever he speaks of the good of the country, pretends to mean the greatest happiness of the greatest number of inhabitants; and no doubt that the faculties of individuals, admirably adapted to secure their own preservation, are not competent to measure the happiness of nations Admitting therefore that the legislator ought to look at the general good, the impossibility that any individual can ascertain that which will promote it, leads directly to the conclusion that there ought to be no legislation. If the greatest happiness principle, be the only one that justifies law-making, and if that principle be suitable only to Omniscience—man, having no means of measuring it, there can be no justification of all Mr. Bentham's nicely adapted contrivances, which he calls civil and penal laws.

LETTER THE SECOND.

THE NATURAL RIGHT OF PROPERTY ILLUSTRATED.

Mr. Locke's opinion of this right adopted and confirmed—Proofs of its existence at all times and places—Proof that M. Dumont is wrong in ascribing a sense of security to legislation.

To H. BROUGHAM, Esq. M.P. F.R.S. &c.

SIR,

As the right of property includes many other rights, being connected with some of our strongest emotions, and the source of some most inveterate prejudices, it requires to be handled with great discretion. If it were not the very foundation of systems of government, and of theories of political philosophy—and if there were any rational hope, that the former could be amended, and the latter constructed on correct principles, without digging down to the very bottom—I, for one, should carefully avoid meddling with so great and, perhaps, dangerous a

work. But after much and anxious deliberation, I am satisfied that it is not possible to meliorate our political condition, or even to save society from convulsions, more terrible perhaps than have ever been known, unless all classes attain correct notions of the natural right of property, and endeavour gradually to adapt their conduct and social institutions to what nature decrees. Allow me, however, at once to declare (as there have been in almost every age individuals, such as Beccaria and Rousseau—and sects, some existing at present, such as Mr. Owen's co-operative societies, the Saint Simonians in France, and the Moravians, who have asserted that all the evils of society arise from *a* right of property, the utility of which they have accordingly and utterly denied) allow me to separate myself entirely from them, by declaring that I look on *a right* of property—on the right of individuals, to have and to own, for their own separate and selfish use and enjoyment, the produce of their own industry, with power freely to dispose of the whole of that in the manner most agreeable to themselves, as essential to the welfare and even to the continued existence of society. If, therefore, I did not suppose, with Mr. Locke, that nature establishes such a right—if I were not prepared to shew that she not merely establishes, but also protects and preserves it, so far as never to suffer it to be violated with impunity---I should at once take refuge in Mr. Bentham's impious theory, and admit that the legislator who established and preserved a right of property, deserved little less adoration than the Divinity himself. Believing, however, that nature establishes such a right, I can neither join those who vituperate it as the source of all our social misery, nor those who claim for the legislator the high honour of being "the author of the finest triumph of humanity over itself."

I heartily and cordially concur with Mr. Locke, in his view of the origin and foundation of a right of property. "Every man," he says, "has a property in his own person that nobody has any right to but himself. The labour of his body and the work of his hand are his property. Whatsoever, then, he removes out of the state that nature hath provided and left it in, he hath mixed his labour with it and joined to something that is his own, and thereby makes it his property. It being by him removed from the common state nature hath placed it in, it hath by this labour something annexed to it that excludes the common right of other men. For *the labour being the unquestionable property of the labourer, no man but he can have a right to what that is joined to*—at least, where there is enough and as good left in common for others."

"He that is nourished by the acorn he picked up under an oak, or the apple he gathered from the trees in the wood, has certainly appropriated them to himself. Nobody can deny but the nourishment is his. I ask, then, when they began to be his? When he digested? Or when he eat, or when he boiled? Or when he brought them home? Or when he picked them up? And it is plain, that if the first gathering made them not his, nothing else could. That labour put a distinction between them and common, that added something to them more than nature—the common mother of all—had done, and so they became his private right."*

"Thus the law of reason makes the deer that Indian's who hath killed it; it is allowed to be his goods who hath bestowed his labour upon it, though before it was the common right of every one. And

* Of Civil Government—*Book* II, *Chap.* 5, *sec.* 28.

amongst those who are accounted the civilized part of mankind—who have made and multiplied laws to determine property—*this original law of nature for the beginning of property in what was before common, still takes place; and by virtue thereof, what fish any one catches in the ocean—that great and still remaining common of mankind,—or what ambergris any one takes up here, is, by the labour that removes it out of the common state nature left it, made his property who takes that pains about it.*"*

"But the chief matter of property being now," he goes on, "not the fruits of the earth and the beasts that subsist on it, but the *earth itself as that which takes and carries with it all the rest,* I think it plain that property in that too is (ought to be?) acquired as the former. As much land *as a man tills, plants, cultivates, and can use the products of, so much is his property.* He, by his labour, does, as it were, inclose it from the common."†

Thus the principle Mr. Locke lays down is, that nature gives to each individual his body and his labour; and what he can make or obtain by his labour naturally belongs to him. Though I cannot make this principle any clearer by repeating the statement in my own way, yet as different minds are affected by different means, the object I have in view may, perhaps, be promoted, by putting it in a somewhat different, even if it be not so clear a form. The power to labour is the gift of nature to each individual; and the power which belongs to each, cannot

* Of Civil Government—*Book* II, *Chap.* 5, *sec.* 30.

† Ibid—*sec.* 32. It is not a little extraordinary that every writer of any authority, since the days of Mr. Locke, has theoretically adopted this view of the origin of the right of property, and has, at the same time, in defending the present right of property in practice, continually denied it. This is the logical consistence of literary logicians.

be confounded with that which belongs to another: The natural wants of man, particularly of food and clothing, are the natural stimulus to exert this power; and the means of gratifying them, which it provides, is the natural reward of the exertion. The power to labour and the natural wants which stimulate labour, are generally found together; thus we see that the motive to labour—the power to labour—and the produce of labour—all exist exclusive of all legislation.

Nature, not the legislator, creates man with these wants, and conjoins with them the power to gratify them. The unpleasant feeling of hunger may be properly called a command or admonition to labour. Nature gives also to each individual: and her separate gifts—as, for example, the fish she bestows on him who baits a hook and watches the line—can no more be confounded with those she gives to another, than the distinct and separate wants they are intended to gratify. The commodities which labour, acting in obedience to this command, creates or obtains, nature—or God, (for it is better to use the latter term than the former)—bestows on labour; and He gives to labour, if violence and wrong interfere not, whatever it can make. On the naked savage, and on him alone, the Almighty primarily bestows the wild fruits he gathers, and the game he kills; to him, exclusively, the Creator gives the branch he rends from the parent stem, and confirms it in his possession, while he fashions it into a club, by the stone hatchet he has previously made, and therefore calls his: as well as guarantees its use to him by the wish and power He continually engenders to retain and use it. A savage, stronger than the labourer or more cunning, may undoubtedly take the fruit of his industry from him by force or fraud; but antecedently to the use of force or fraud, and antece-

dently to all legislation, nature bestows on every individual what his labour produces, just as she gives him his own body. She bestows the wish and the power to produce, she couples them with the expectation of enjoying that which is produced, and she confirms in the labourer's possession, if no wrong be practised, as long as he wishes to possess, whatever he makes or produces. All these are natural circumstances—the existence of any other person than the labourer not being necessary to the full accomplishment of them. The enjoyment is secured by the individual's own means. No contract, no legislation, is required. Whatever is made by human industry, is naturally appropriated as made, and belongs to the maker. In substance, I would feign hope, there is no difference between this statement and that of Mr. Locke; but I wish to mark, stronger than I think he has done, the fact, that, antecedently to all legislation, and to any possible interference by the legislator, nature establishes a law of appropriation by bestowing, as she creates individuality, the produce of labour on the labourer.

Mr. Locke says, that every man has a property in his own person; in fact, individuality—which is signified by the word *own*—cannot be disjoined from the person. Each individual learns his own shape and form, and even the existence of his limbs and body, from seeing and feeling them.* These constitute his notion of *personal* identity, both for himself and others; and it is impossible to conceive—it is in fact a contradiction to say—that a man's limbs and body do not belong to himself: for the words him, self, and his body, signify the same material thing.

As we learn the existence of our own bodies from seeing and feeling them, and as we see and feel the

* Brown's Lectures on the Human Mind.

bodies of others, we have precisely similar grounds for believing in the individuality or identity of other persons, as for believing in our own identity. The ideas expressed by the words *mine* and *thine*, as applied to the produce of labour, are simply then an extended form of the ideas of personal identity and individuality. We readily spread them from our hands and other limbs, to the things the hands seize, or fashion, or create, or the legs hunt down and overtake. Nor is this extension limited to material objects. Were it not the practice to despise the sententious wisdom of proverbs, I might quote several : such as this---"As you make your bed, so you must lie in it"---to shew that these ideas are generally extended to the immaterial consequences of our actions. In the popular creed, the pleasure or pain that results from an individual's conduct, his hopes or his despair, his remorse or his self approbation, are properly deemed to belong to him, equally with the book he writes or the game he kills. In fact, the material objects are only sought after for the immaterial pleasure they bestow.

By the operations of nature, then, it being, indeed, the necessary consequence of existence, there arises in every individual, unwilled by any lawgiver, a distinct notion of his own individuality and of the individuality of others. By the same operations, we extend this idea, first for ourselves and afterwards for others, to the things we make or create, or have given to us, including the pleasure or pain resulting from our own conduct. Thus, the natural idea of property is a mere extension of that of individuality; and it embraces all the mental as well as all the physical consequences of muscular exertion. As nature gives to labour whatever it produces—as we extend the idea of personal individuality to what is produced by every individual—not merely is a right of property

established by nature, we see also that she takes means to make known the existence of that right. It is as impossible for men not to have a notion of a right of property, as it is for them to want the idea of personal identity. When either is totally absent man is insane.

Nature, or God—for I use these terms as one—having thus established a right of property, and having effectually provided for our attaining a knowledge of its existence, we must ask, has she, independently of all human legislation, provided men with motives mutually to respect this right, and mutually to abstain from any actions that would weaken or destroy the sense of security? She has. As far as we know, the great mass of mankind seem to have been created nearly equal to each other: at least, the members of every single community are so nearly equal in capacity and skill, that it must be at all times more difficult for one man to take, by force, from another what the latter has already made, than to make something similar for himself. In the latter case, he has only to overcome the resistance of nature, who invites rather than repels his exertions; in the former, he must surmount all the opposition of an equal, who, if openly conquered, may secretly find a means of revenge. Nature creates the majority of individuals nearly equal in bodily strength, skill, and capacity, and gives to all nearly the same facilities for acquiring knowlege; and thus, making it generally more difficult and dangerous to take from another, than for each, by his labour, to provide for himself, she creates in all men motives to respect that right of property which she, by bestowing on labour all its produce, every where establishes, and every where makes known.

Moreover, you will observe, as a general rule, that the inequality of productive power in indi-

viduals, by which one might obtain greater wealth than another, exciting, as is supposed, the cupidity of those who are comparatively destitute is almost always accompanied by corresponding means of defending its acquisitions. The same strength or skill which enables one man to catch more game or fish, or create more wealth, than his less skilful or weaker compatriot, will enable him to defend his acquisitions. This rule also holds good with nations, the most wealthy being the most skilful, the most ingenious, and the most powerful. By tracing analogies and harmonies of this description in the moral world, we acquire a strong conviction of the folly of setting up our wisdom in opposition to the benevolent decrees by which every part of creation appears to be equally regulated. When we cannot, as in this case, easily trace such regulations, we may infer them. "We see," says Lord Bolingbroke, "in so many instances, a just proportion of things, according to their several relations to one another, that philosophy should lead us to conclude this proportion preserved, even where we cannot discern it."*

By some persons it seems to be supposed that motives, like those I have just alluded to can only exist in savage life, that they disappear in the progress of society, and that it has become, at present, more easy, generally speaking, to take from another, than to produce for one's self. One object I propose is to shew that this supposition is incorrect, and that the principles just mentioned are so powerful in their operation that they have silently overcome the greatest obstacles thrown in their way by legislation. With reference to the source of the error fallen into by these persons, it may not be premature, even at

* Of the true Use of Retirement and Study.

present, to remark, that the right of property, which they call natural, and which they can perceive no motives to respect, is merely legal, and is established and sanctioned by the law-giver only. That there are natural motives to respect the legal right, I do not contend: I even deny it, and cannot believe, that the right is founded on justice. The power of making laws was long vested in those—and still is vested in their descendants—who followed no trade but war, and knew no handicraft but robbery and plunder. I make no exception to this assertion: for even those who, under the influence of a wish to share the power of legislation, fight their way, by honest industry, into the rank of legislators, have adopted the principles of their former masters and despoilers. The present legislators of Europe are the descendants of men—cherishing their opinions and habits, and acting on their principles—who were unacquainted with any wealth-creating arts, and who lived by appropriating the produce of others. On them nature bestowed no property; all which they possessed they took, by force, from those on whom she had bestowed it. Even to this day, in many countries of Europe, a nobleman or legislator loses caste if he engage in any useful, wealth-creating business, or endeavour to gain his own livelihood by his own labour. I state these facts now, in order, at once, to account for the origin of the supposition, that the motives to respect the natural right of property, which are acknowleged to prevail in the infancy of society, do not exist in its advanced stages. They do exist: but they are so overgrown with legislation that we can only detect them by their operation through long periods of time. They are like the precession of the equinox, which must be observed for ages before it can be ascertained. They, of course, do not apply to the legal right of property, for which nature inspires no respect.

M. Dumont, indeed, says, and, of course, he is only the expounder of Mr. Bentham's theories, that "the conviction or persuasion, that we shall be able to derive appropriate advantages from the things we make, can only be the work of human laws;" but such a persuasion or conviction is obviously as much the natural and necessary result of individual organization, as our notion of personal identity, or the want which prompts to exertion. It is the spontaneous growth of every mind, antecedent to all legislation. The savage never suspects, till his game has been once taken from him, that he shall not be allowed to enjoy it. Men never would have made any thing—not even laws—unless a persuasion had naturally arisen, that they should be enabled to enjoy the advantages of what they make. In fact, this conviction is a component part of the idea of individual production. The making, with which the expectation of enjoyment is combined, is effected by individuals, and the expectation exists as universally as the wants which excite labour. Doubt or fear of not enjoying, is the offspring of wrong doing in others, and could not have existed till the expectation had been frustrated and the enjoyment unjustly disturbed. The persuasion or expectation then is natural and necessary—the doubt or suspicion is incidental—and is, very generally, the result of wrong done by those who have afterwards made laws to protect their usurpations.

On the principle that property is altogether the creature of the law, we could not know what is ours and what is another's, unless we were benevolently informed of it by a parliament or a king. I know that literary men, by whom such an opinion is generally countenanced, are capable of making any false statement look like truth; but their ingenuity could scarcely persuade the smith, or the carpenter, that his right to own the horse-shoe, or the gate, he

makes, has been conferred on him by the statutes and the judges. Poor simple man! he never supposes that his right is even guaranteed by the law; though in case it were infringed, he would appeal to the law as a last, but still ruinous, resource to compel those who infringed his right to make him a compensation. Ideas of property are truly instinctive, and are acquired by children long before they ever hear of law. If they do not belong to the mind, as the legs and the tongue belong to the body, like the habit of walking or speaking, they are so early acquired, and so continually present to us that they appear innate. The continual possession and use by one person of any one thing, generates in another the idea that it belongs to the former. The manner in which each individual acquires what he possesses, leaving him free or not from apprehension in the enjoyment of it, informs him whether or not it properly belongs to him or to another. Such ideas are neither created nor confirmed by decrees; but, as the source of apprehension is always the opposition of those whom we have injured, the enjoyment of that which is acquired according to law being free from such apprehension, because there is no one powerful enough to overturn the law, is also free, though it be unjustly acquired, from any notion of wrong. The general consent, then, when expressed in laws, does not establish right, but being the chief means of informing individuals what is regarded as right, it may and does, when wrong itself, prevent them from knowing what is right, and it makes injustice legal.

These quotations from Mr. Locke, and these remarks, have probably established the following truths. Without the intervention of any law, contract, or agreement between individuals, as to what shall belong to each, Nature produces in each the idea of individuality, which she extends to ownership, by bestow-

ing on each individual, and exclusively, whatever he produces.* She provides a principle of general security, by making it easier for all men to obtain from her, than to plunder from one another. And she begets antecedently to all law an expectation in every one that he shall be able to enjoy what he produces. All the fruits of industry she bestows on industry, and bestows them in proportion commensurate to the labour and skill employed. All these truths show the foundation of a natural right of property. It is the right of each individual to own for his separate and selfish use whatever he can make.

You do not require to be informed, though I may state the fact for the benefit of less enlightened persons, that all the wealth of the world, the whole means of subsistence, whatever contributes to clothe and to feed man, is the produce of labour, and is annually created and annually consumed. Even those useful instruments, such as ships, houses, &c. which last for several years, require to be continually kept in repair by the hand of labour, which is tantamount to continual production. The field that has been once cleared and ploughed, is soon overrun with useless weeds, if it be

* Should an objection be raised to this statement, on the ground that at present, owing to the great extent of division of labour, no individual completes any one thing of himself, I shall reply, that the mutual shares of any two persons engaged in producing an article, as for example, cotton-cloth, is settled by contract or bargain between them, the weaver buying the yarn from the spinner, as the spinner buys the raw material from the merchant importer. If any question be raised, as to the share of any two or more workmen engaged in the same work, or as to their wages respectively, I shall answer, that this too must be settled by the parties themselves, and is not now in any case the subject of legal enactment.

not continually cultivated. There is no other wealth in the world but what is created by labour, and by it continually renewed. This principle, now universally acknowledged, makes the right of property appear more absolute and definite than it was in Mr. Locke's comprehension, because the right to own land is in fact only the right to own what agricultural or other labour produces. The natural law of appropriation, therefore, exists in full force at all times and places; and at this moment constitutes a rule for appropriating every part of the wealth which is continually created. The wants which can only be gratified by labour always exist, or are always renewed, the necessity to gratify them by labour is never suspended; and now, as at the beginning, nature bestows on the labour intended to gratify these wants whatever it can produce. Thus a right of property is founded on principles that are universal, and always in operation; and even at this day in our very artificial communities, by extending observation over long periods, we shall be convinced that they continue in force, and continually subvert the institutions of the human lawgiver.

If this view be correct, a right of property ought to be known and established among all mankind; and it may, I believe, be affirmed that no people, however rude, have yet been discovered, or ever were known, among whom a right of property, in the things they had made by their industry, was not established. Major Collins says, in his work on New South Wales, a country in which there is the nearest approach to the absence of a right of property I have ever read of, "that the savages left their spears and things of that kind lying about, but they had a strong notion of ownership, and resisted the appropriation of these things by the people of Captain Phillips' vessel." They comprehended the right of property which springs from labour; but agri-

culture not being known amongst them, and they not having vested any labour in the soil, they had not established a right of property in land.

Savages have been discovered who had no ideas of religion or of God, or only such as were copied from their own wretched existence and untamed passions; but even of their community each member was as sensible that the stone hatchet he had made, the canoe he had hollowed out with it, or the bow he had bought with a hatchet of his own making, was his, as are the members of the most law-regulated community, that they have a right to enjoy what the law confirms in the possession of each person. So certain have voyagers and travellers been of this fact, that they have not thought inquiry concerning it necessary, any more than inquiry to ascertain if savages comprehended identity and individuality. They have asked if the savage had any knowledge of God, but that he had ideas of thine and mine they have always taken for granted. Even those tribes, like the people of Nootka Sound, who were so delighted with the possessions of the Europeans, that they furtively appropriated whatever they could lay their hands on, were sensible that they took what did not belong to them. They respected a right of property among themselves, and acknowledged, though they did not respect, that right in the strangers.

Similar to the people of Nootka the Esquimaux seem latterly to have thought that they might take the cargoes of one of Captain Franklin's boats;* but the manner in which they attempted it, intimated a clear conviction on their part that the things did not belong to them. A comparison between civilized and uncivilized men, as to the respect of each for a right of property,

* See the narrative of this intelligent voyager's second expedition.

cannot be established; but there is reason to believe that the respect among the latter for the property of each other, as far as the individuals of their own tribe are concerned,—though they may have no written law, and no regular establishments for the administration of law,—is stronger than the respect for the right of property among the former, which their lawgivers have endeavoured in vain for ages, by all the terrors at their command, to preserve from infraction. The inhabitants of Nootka Sound wished to appropriate the numberless useful instruments they saw in the possession of Captain Cook's people. The Esquimaux were perhaps unable to resist their desire to possess the glittering objects they beheld for the first time lying before them. The people of the Ladrone islands, dazzled by the novelty of the things their first European visitors displayed to their view, might greedily seize them; but it is not said that these people, though ready to plunder the strangers, were in the habit of thieving from each other. Without wishing to magnify the virtues of savage, and exaggerate the vices of civilized society, I must say that of the latter a continual violation both of the natural and artificial right of property seems the most wide spread and distinguishing evil.

To explain, not to excuse the conduct of those savages, who have been too eager to acquire the tempting possessions of European voyagers, to comport themselves according to our idea of justice, allow me to observe, that prior to the arrival of strangers among them, the great majority of the objects, either pleasing or useful, with which they were acquainted, had not been previously appropriated, and were therefore readily yielded to their exertions. They might hence, practically, but too rashly conclude, that the property of the strangers, like the gifts of nature, would become theirs by the trouble of putting forth their hands to take them. To appropriate whatever is pleasing is

natural, to refrain from seizing what has been already appropriated, implies knowledge, and restraint, and is a habit of action, formed by a continual apprehension of suffering, if we do not so refrain. Such a habit could not have been formed among the people just mentioned, in regard to the wealth of the Europeans; and coupling this with the fact, that every thing useful which they had before seen had been readily yielded to their wishes, we cannot be surprised that their desire to possess the new objects they beheld was stronger than their respect for property.

Originally whatever one man thought useful, such as wild-fowls and game, he might appropriate without wronging another; but by an act of appropriation the original relation of man to the spontaneous productions of nature is altered; and after they are appropriated, to take them would be to injure another. At present, the great mass of objects is appropriated, and the relation thus established must be learnt. As new arts, as new instruments are invented, new wealth is created; and as men are multiplied filling the whole earth, supplying their mutual wants by mutual exchange, the original relation gradually ceases, and disappears altogether. There is now hardly any thing about us on which the labour of man has not been employed, and of course hardly any thing except fish and game to appropriate. Between the original and present condition of mankind, the alteration—from all which existed, though scanty, being unappropriated, to all which exists, though abundant, being appropriated,—must have been gradual, and could not have been provided for before hand by the legislator. Not only was he necessarily ignorant that the alteration was to take place, but when it did occur he was mistrustful of its utility. New branches of industry, and the new wealth they create,—as for example—printing, have generally been looked on by him with great suspicion. He supposes

that social order and happiness depend upon his enactments, and what does not flow from them, must in his opinion be evil. All novelties lie beyond his previous statutes, and must necessarily form no part of the organization which springs from him. But we have just seen, that as new wealth is formed, and as labour multiplies the conveniences of life, mingling with all the things of creation, and modifying them so as to adapt them to the supply of our wants, a new relation between man and all surrounding objects is called into existence. As the legislator cannot before hand provide means to secure the enjoyment of this new relation, it is fair to presume that nature, who plans the whole frame work of society, and gives rise to new arts, and new wealth, provides such means. Indeed, it may be boldly asserted from this view of the legislator's limited knowledge, that if nature did not at all times provide motives for respecting the new relation of man to the work of his hands, as it is continually called into existence by the creation of new wealth, society could not hold together. On examining the subject we actually find, which is one of the many beautiful harmonies of the moral world, that as the relation alters between man and appropriated objects,—as the change takes place from savage to civilized life, (which, looking at its universality, we must regard as dependent on natural laws) so a powerful motive arises for forming a habit of restraint, and for respecting the new right of property, which is continually called into existence. As mankind are multiplied, the moral influence of the mass increases over individuals, and each one, feeling the impossibility of resisting a great many, is humbly submissive to the general voice, and therefore prone to respect that right of property, which is acknowledged by all.

There is then, I conclude, a natural right of property, founded on the fact that labour is necessary

to produce whatever bears the name of wealth, which right of property exists, with all its consequences, like the principles from which it flows, at all times and places. Men naturally and necessarily do, and for ever will extend the idea of individality which is derived from the human body to the things the hands make, thus constituting the idea of ownership. The operation of human laws is confined to short periods and limited spaces; they are suited to the usages of particular times and countries; and hence it is clear, as stated by Mr. Locke, though it be denied by M. Dumont and Mr. Bentham, that the right of property which exists universally, is not created by legislation. It is the result of the laws of the universe, the offspring of the will of our Creator, who made man such as he is. A complete community of goods, of food, clothing, dwellings, instruments, weapons, and utensils, or of all the produce of labour, never has existed, and never could exist, even in any family much less in any community. The use of such things, like the making of them, must be individual, not common, selfish, not general. The approximations to a community of goods among some religious, and some political societies, have always been the constrained and unhappy results of positive institutions, which have neither been of long duration, nor generally advantageous.

The relation between labour and its produce, or ownership or the right of property, as thus explained, seems to me as much a creation of the Deity,—if not immediate and perfect, yet continual and progressive,—as much a part of the universe as the great globe itself, or as the law regulating the course of the seasons. That it is essential to our happiness to regulate our conduct by the latter, clothing ourselves warmer in winter than in summer, and sowing in autumn the seed that is to ripen against the next harvest, no man doubts; and it must, I presume, be equally essential to our

happiness, to regulate our conduct by the relation which the Almighty has established between labour and its produce. To desire or enforce any other species of appropriation is a presumptuous interference with the laws of nature or of the Deity, not less absurd, or wicked in principle, than to decree a new course to the winds, or a different return of the seasons. To attempt even to enforce by laws that species of appropriation which nature decrees, seems unnecessary, and an improper intervention between our ideas of individuality, and those natural results of a man's conduct, which are its ordered and appropriate rewards or punishments. Such an attempt may perhaps be called even more absurd than an attempt to regulate the winds or the seasons, because we are continually admonished against it by the pain and misery which continually ensue.

Does legislation, Sir, that legislation which you, as a member of parliament, have sworn to uphold, proceed upon a study of the principles which determine the natural right of property? Is the latter—is the natural relation between labour and its produce recognised and acted on throughout society, as we acknowledge and act on the relation between seed time and sowing? Have all the laws of society said to be intended expressly to protect property, been framed with a view to preserve this relation entire and untouched? Has government, instituted, according to Mr. Locke, for no other purpose but to guarantee the enjoyment of our natural property, fulfilled its commission? Does labour now obtain and own whatever it produces? Is every man's right to have and enjoy whatever he creates or obtains by honest exertions protected by the law? Is it that splendid achievement described. Are the natural consequences of every man's conduct allowed to come freely home to him under the guarantee of the law? Let us look at these subjects a little closer; and I shall do so with-

out answering the questions regularly, but by describing that right of property which the law does guarantee and protect. At present I sign myself, with much diminished respect.

A Labourer.

LETTER THE THIRD.

THE LEGAL RIGHT OF PROPERTY.

What is the law?—Who are the law makers?—The law is a great scheme of rules intended to preserve the power of government, secure the wealth of the landowner, the priest, and the capitalist, but never to secure his produce to the labourer.—The law-maker is never a labourer, and has no natural right to any wealth.—He takes no notice of the natural right of property.—Manifold miseries which result from his appropriating the produce of labour, and from the legal right of property being in opposition to the natural.

TO H. BROUGHAM, ESQ. M.P. F.R.S,, &C.

Sir,

When we inquire, casting aside all theories and suppositions, into the end kept in view by legislators, or examine any existing laws, we find that the first and chief object proposed is to preserve the unconstrained dominion of the law over the minds and bodies of mankind. It may be simplicity in me, but I protest that I see no anxiety to preserve the natural right of property but a great deal to enforce obedience to the legislator. No misery indeed is deemed too high a price to pay for his supremacy, and for the quiet submission of the people. To attain this end many individuals, and even nations, have been extirpated. Perish the peo-

ple, but let the law live, has ever been the maxim of the masters of mankind.* Cost what it may, we are

* We may find numberless illustrations of the observation in the text in every part of the history of Ireland. If an outraged peasantry, driven to despair by ages of oppression, silently form combinations to obtain revenge—if they in secret lift their hands against the most odious, and the most meddling of their oppressors—if a magistrate be waylaid and put to death, without law, who has, by the aid of the law, slowly starved with much anguish and misery a whole generation. If a priest, whose life has been one vexatious and consistent scheme of legal plunder, fall suddenly by the hand of an assassin—the only language we hear from the conductors of the press is the necessity of supporting that instrument of tyranny—the law, by which alone the *magistrate* is enabled to tyrannize, and the priest to vex and harass his fellow men. I do not comprehend that philosophy which embracing a long chain of events, rigorously connected as cause and effect, bestows all its indignation on the burning desire of vengeance in the oppressed, and on its consequence, assassination, while it has nothing but praise, or at most a feeble sentiment of half censure, for the numberless acts of oppression of which the desire of vengeance is the necessary consequence. Or rather I do comprehend the base passions which, clothed in the garb of reason, or I should say of reasoning, are palmed on the world as philosophy. The law and the oppression are the work of the same hand; and the indignation expressed by the mouth-piece of the law-makers, and by the class of society for whose behoof laws are made, is the indignation of tyrants, when they find their career of oppression hemmed in; and their desire of wealth and power thwarted by their own fears of the vengeance of the oppressed. The law is the creature of their passions, and they rightly endeavour, according to their own views, to substitute it for the violence which is the offspring of the passions of other people. If, when laws were made, all sentiment of right could have been clean swept out of the heart of man, their career would have been unchecked; the priest might have exacted his tithe, and the landlord might have *driven* the cows and the pigs of the cottagers for rent, without the least restraint; but as their power does not tend to extinguish this sentiment, law must be brought to conform to the sentiments of both parties; and he, whether priest or gentile, who wants to enjoy his *own* in security, must respect the own of others, or the natural in preference to the legal rights, of mankind.

continually told, the dominion of the law, not the natural right of property, must be upheld. Every writer, in our newspapers, whether he writes about a rebellion in Ireland, or killing partridges, loudly and continually repeats this maxim of our masters.* Society, it is said, will fall into anarchy, the human race will first relapse into barbarism, and then pass out of existence if law be not obeyed. By a most ridiculous analogy—the precept of self preservation, the dictate of the holy and delightful impulse by which we cherish our happy animal existence, is transferred to the institutions of barbarous men. Self preservation is said to be the first duty of corporate bodies, as of individual animals, as if the ignorant contrivances of men less instructed than we are, deserved the veneration justly due to the works of the Almighty.

We are on this principle, singularly enough, continually called on to preserve the institutions of the legislator by violating the principle from which the analogy is derived. In many cases, the corporate existence decreed by the legislator can only be maintained by putting individuals out of existence, and men are massacred that governments may be upheld. Looking at this question practically, let us coolly inquire what is this said law, before which every thing, whether it be that which is holy in affection, or ought to be held sacred among men, and before which even the laws of nature must quail, and wither and perish?

The law, to preserve which is said to be the first duty of communities, as to preserve life is that of individuals, is a set of rules and practices laid down and established, partly by the legislator, partly by custom,

* January 1832. This is well exemplified by the late debates on Irish tithes, which the sapient Commons, particularly Mr. John Weyland, insisted on the propriety, whatever might be the cost, of preserving the paramount dominion of the law.

and partly by the judges, supported and enforced by all the power of the government, and intended as far as our subject is concerned, to secure the appropriation of the whole annual produce of labour. Nominally these rules and practices are said to have for their object to secure property in land; to appropriate tithes, and to procure a revenue for the government; actually and in fact they are intended to appropriate to the law-makers the produce of those who cultivate the soil, prepare clothing, or distribute what is produced among the different classes, and among different communities. Such is law.

It is a not less important question, *who* is the law-maker, who made, who makes, who enforces obedience to these rules and practices? Can he show a title bestowed upon him by nature, derived from the laws of his organization, and the constitution of the universe, to have and to own, and to appropriate all the wealth that is created? Now it is an important fact, but it is so obvious that one is sneered at for drawing a deduction from it, that the law has always been, and is at present made, by men who are not labourers. It is actually made by those who derive from nature no title whatever to any wealth. But as law in fact is only a general name for the will of the law-maker, being, the expression of his desire to have wealth, and retain power and dominion, it is clear that in making laws for the appropriation of property, he will not, consistently with nature, give to every one what he produces. This object always has been, and now is, so to dispose of the annual produce as will best tend to preserve his power. Nature rewards industry and skill, the legislator be he who he may, is utterly regardless of the connection between industry and plenty. Let us look closer at who is the legislator, and what is his object in making laws.

In some countries the power of making laws is vested

in a king; in others in an aristocracy; and in others, though they are few, the great body of the community has a direct share in legislation. Some times a particular class of men, as the ministers of religion, has made regulations for the whole society. In no part of Europe, however, which is the main fact for our consideration, had the producers of wealth, in any form or shape, any direct share in legislation for many ages Nor have they yet as such any direct share. Our own country does not differ in this respect, at least not in principle, from most of the countries of Europe. One man has a right to assist in making laws, because he is a king, another because he is a peer, a third because he is a bishop, a fourth because he legally owns a large estate, and a fifth because he served his time to a particular tradesman in a particular place, or because he was born there of parents who were born there before him; but no man merely because he is a producer of wealth, has any right to assist in making the laws which appropriate, or attempt to appropriate, the whole of his produce.

Laws being made by others than the labourer, and being always intended to preserve the power of those who make them, their great and chief aim for many ages, was, and still is, to enable those who are not labourers to appropriate wealth to themselves. In other words, the great object of law and of government has been and is, to establish and protect a violation of that natural right of property they are described in theory as being intended to guarantee. This chief purpose and principle of legislation is the parent crime, from which continually flow all the theft and fraud, all the vanity and chicanery, which torment mankind worse than pestilence and famine. They only, but kindly and speedily, destroy them. The first and chief violation of the right of property, which pervades and disturbs all the natural relations of ownership, confusing, an per-

plexing the ideas of all men as to the source of the right of property, and what is their own, of which so many actions stigmatized by the law as crimes, are the necessary consequences, and the natural corrections,—the parent theft from which flow all other thefts, is that of the legislator, who, not being a labourer, can make no disposition of any property whatever, without appropriating what does not naturally belong to him.

Those who make laws, appropriate wealth in order to secure power. All the legislative classes, and all the classes whose possessions depend not on nature, but on the law, perceiving that *law* alone guarantees and secures their possessions, and perceiving that government as the instrument for enforcing obedience to the law, and thus for preserving their power and possessions, is indispensable, unite one and all, heart and soul to uphold it, and, as the means of upholding it, to place at its disposal a large part of the annual produce of labour. One of the first objects then of the law, subordinate to the great principle of preserving its unconstrained dominion over our minds and bodies, is to bestow a sufficient revenue on the government. Who can enumerate the statutes imposing and exacting taxes? Who can describe the disgusting servility with which all classes submit to be fleeced by the demands of the tax-gatherer, on all sorts of false pretences, when his demands cannot be fraudulently evaded? Who is acquainted with all the restrictions placed on honest and praiseworthy enterprise; the penalties inflicted on upright and honourable exertions;—what pen is equal to the task of accurately describing all the vexations, and the continual misery, heaped on all the industrious classes of the community, under the pretext that it is necessary to raise a revenue for the government? "The miseries inflicted upon individuals and families by fiscal prosecutions, founded on excise laws, stamp laws, post-office laws, &c. are equal to those

arising from some of the most extensive natural calamities."* Perhaps they are far greater. Nature may annihilate, but she never tortures. Equally benevolent and wise, she warns us by pain against injury; so she instructs her children; and whenever she finds either the race or the individual incorrigible,—when pain ceases to be useful,—she mercifully puts an end to existence. Not so the legislator. He has inflicted on mankind for ages the miseries of revenue laws,—greater than those of pestilence and famine, and sometimes producing both these calamities, without our learning the lesson which nature seems to have intended to teach, viz. the means of avoiding this perpetual calamity. Revenue laws meet us at every turn. They embitter our meals, and disturb our sleep. They excite dishonesty, and check enterprize. They impede division of labour, and create division of interest. They sow strife and enmity amongst townsmen and brethren; and they frequently lead to murders, that are not the less atrocious because they are committed in battle with smugglers, or consummated on the gallows. The preservation of government, it is said, must be purchased at whatever sacrifice; and it is impossible to enumerate the vexatious statutes and cruel penalties, by which its preservation is sought to be attained. Government, as such, produces nothing, and all its revenues are exacted by violating the natural right of property. This I put down as the first point aimed at by all laws. That all this misery is gratuitously inflicted; that the power of the government is not preserved according to the wish of the legislator, by means of the revenue raised, is perhaps a trifle in the account, but it is one which I shall hereafter attempt to render important, shewing that the folly

* Constitution of Man, by George Combe, page 221.

of making and of submitting to revenue laws, is just equal to the pain they inflict.

Among the legislative classes embodied into, and constituting the government, we must place the landed aristocracy. In fact, the landed aristocracy and the government are one—the latter being nothing more than the organized means of preserving the power and privileges of the former. After securing a revenue for the government,—the landed aristocracy sacrificing to this even a part of their private property, or rather taking a portion from rent, which they appropriate as taxes, transferring their cash from one hand to the other,—after securing a revenue to the state, the laws have been made with a view to guarantee the possessions and the wealth of the landowners. Numberless are the statutes and the decisions at common law, having the force of statutes, intended solely to secure their rights and privileges. Subject to supporting the government—the instrument for protecting their privileges—they may do what they please with the land. In some countries also, by the transmitted remnant of an ancient practice, founded on the fact that the labourers belonged like cattle to the landowners, the latter are obliged to maintain all the people born on their land; otherwise they might quarter their sick and destitute slaves on other landowners. With these exceptions, the landowner may leave his land uncultivated, or he may let it on what conditions he pleases, and the law is always ready to support him with its powerful aid. His right to possess the land, not to possess the produce of his own labour, is as admirably protected as can be effected by the law. Another must not even walk on it, and all the wild animals and fruit it bears are said by the law to be his. Nature makes it a condition of man having land, that he must occupy and cultivate it, or it will yield nothing. The instant he ceases his labour, she decks it with flowers, and

stocks it with the birds and animals which she delights to clothe and feed; exacting no payment but their happiness. The mere landowner is not a labourer, and he never has been even fed but by violating the natural right of property. Patiently and perseveringly, however, has the law endeavoured to maintain his privileges, power, and wealth. To support the government the aristocracy has sometimes made laws trenching on its own privileges, but after enforcing submission to government, the next object of the law has been to preserve the dominion and power of the aristocracy over the land.

In most countries the ministers of religion support the government, and inculcate obedience to the law. For this they receive a share of legislation, and of the annual produce of labour. The laws, at least of this country, after providing a revenue for the government, and securing the wealth of the aristocracy, seek to bestow a liberal allowance on the priesthood. We can neither eat nor drink, be neither legally born nor buried, neither married nor enter into the community of our fellows, without paying the parson. He who objects to comply with his demands, and to give him what the *law*,—not what nature, or the free-will of the labourer, bestows on him,—must suffer under denunciations of future punishment; and, what is more compulsory he is scourged through ecclesiastical and other courts, till he be turned naked and flayed upon the world. Such is the charity of those whose office it is to preach meekness and forbearance. The law grants tithes, and enforces the payment of them. It gives the soil, and a power to exact rent to the landlord, and a revenue to the government; but in all these, the great and leading objects of law, I see no protection for the natural right of property. On the contrary, not one of them can be thought of without trenching on this natural right.

At present, besides the government, the aristocracy, and the church, the law also protects, to a certain extent, the property of the capitalist, of whom there is somewhat more difficulty to speak correctly than of the priest, the landowner, and the administerer of the law, because the capitalist is very often also a labourer. The capitalist as such, however, whether he be a holder of East India stock, or of a part of the national debt, a discounter of bills, or a buyer of annuities, has no natural right to the large share of the annual produce the law secures to him. There is sometimes a conflict between him and the landowner, sometimes one obtains a triumph, and sometimes the other; both however willingly support the government and the church; and both side against the labourer to oppress him; one lending his aid to enforce combination laws, while the other upholds game laws, and both enforce the exaction of tithes and of the revenue. Capitalists have in general formed a most intimate union with the landowners, and except when the interest of these classes clash, as in the case of the corn laws, the law is extremely punctilious in defending the claims and exactions of the capitalist.

In all these circumstances which in relation to the right of property may be considered as the leading objects of legislation, I see no guarantee or protection of the natural right of property. The end for which men are said by Mr. Locke to unite into commonwealths, and put themselves under government, is in practice unknown to the law. The natural right of property far from being protected, is systematically violated, and both government and law seem to exist chiefly or solely, in order to protect and organize the most efficacious means of protecting the violation. On the men who produce a bushel of malt, nature bestows it every grain; the law instead of guaranteeing to them its full use and enjoyment, takes three-fourths

of it from them. To those by whose combined labour the ground is cultivated, and the harvest gathered in, nature gives every sheaf and every stalk which they choose to collect; the law, however, takes almost the whole of it away. Under the false pretence of protecting them in the use and enjoyment of the produce of their labour, it takes so large a portion of it for those who make and administer the law, that what it leaves, did it secure that, would scarcely be worth having; but the system, for administering which payment is demanded, is so completely one of extortion, that the actual labourer is only allowed to retain for his own use as small a portion as possible of the munificent gift with which nature rewards his exertions. Under one miserable pretext or another, the *wisdom* of politicians continually thwarts the decrees of the Almighty. To ensure a national superiority, or the welfare of men's souls, are maxims equally efficacious in their eyes to justify violating the natural right of property.

When we look at the great number of laws restricting industry, and at the great number intended to exact a revenue for the government, rent for the landowner, tithes for the priests, and profit for the capitalist, we feel more surprised that industry should have survived the immense burdens laid on it, than that a few thieves should prefer living by open plunder, risking the punishment of the laws, to a life of unrewarded labour. That men yet labour at all, is an admirable contradiction of the law-makers' base assertion, I say base, because it is made for a base purpose—that men are naturally averse from labour. The legislator has been careful to punish combinations of workmen, careful to compel the labourer to work, careful to enforce the payment of tithes and taxes, but, I protest that I never yet heard of a law which had for its object to secure to the labourer

the undisturbed, unfettered, unlimited enjoyment of the gifts which nature bestows on him, and him alone. I do not believe, indeed, that any law can effect this for every law effecting appropriation is, in principle, an alteration or a violation of the natural right.*

The important and yet perhaps trite fact to which I wish by these remarks to direct your attention is, that law and governments are intended, and always have been intended, to establish and protect a right of property, different from that which, in common with Mr. Locke, I say is ordained by nature. The right of property created and protected by the law, is the artificial or legal right of property, as contra-distinguished from the natural right of property. It may be the theory that government ought to protect the natural right; in practice, government seems to exist only to violate it. Never has the law employed any means whatever to protect the property nature bestows on individuals; on the contrary, it is a great system of means devised to appropriate in a peculiar and unjust

* I have just been carefully looking over the reports of the proceedings of the legislature for some years past, and I find in them nothing to contradict the statements of the text. It has been busily engaged, session after session, in making laws to augment the revenue,—strenuously resisting every effort even to circumscribe its exactions;—in passing acts to amend corn laws and keep up rents, to build new churches, and to provide greater emoluments for the clergy; in creating jobs of all kinds for the behoof of the aristocracy; in short, continually engaged in devising means to preserve its own power, and secure wealth to those who disdain every employment that creates the objects of their cupidity. When I find the legislature continually so occupied, not merely for getting or overlooking that which is said by Mr. Locke to be the motive for men uniting into a commonwealth, but acting in direct opposition thereto, I must come to one of two conclusions, *viz.* either all philosophy is arrant nonsense, and nature is a cheat, or your annual legislation is the vilest imposition that ever was tolerated by the too easy credulity of mankind.

manner the gifts of nature. It exacts a revenue for the government,—it compels the payment of rent,—it enforces the giving of tithes, but it does not ensure to labour its produce and its reward.

In saying this I wish to be understood as stating a fact, not expressing censure. I am more interested in describing and in accounting for social misery, than in condemning past faults, or in proposing schemes to change the constitution of the country, or the habits of mankind. I must at the same time, in solemn earnest aver, that to the violation of the natural right of property, effected by the law, we owe most of our social miseries. If, overlooking the commands of nature to walk upon our feet, to use hands for fabricating instruments, and to live together, men were mad enough to crawl like the serpent with their bellies on the ground, seeking for no food but what their mouths could thus find, and were to live separate and apart from one another like beasts of prey, we, who are sensible of those commands, should attribute the want, ignorance, and destitution which must on this supposition be their lot, even if they could preserve their existence, to their disobedience. But surely no commands are more plain and certain, than those establishing ownership, and a right of property in the things which each individual makes; and therefore we are entitled at once to conclude, that the continual violation by the law-maker of the natural right of property, must be a prolific source of social misery. It is demonstrated, from the structure of the body, that man was intended to walk erect, and the fact that nature bestows all wealth on industry, is a demonstration that she intended only industry to be wealthy. We have overlooked her intention, and suffer accordingly as much misery as if we had followed Rousseau s advice, and walked on our hands and feet.

If there be one command of that Power which created and sustains the universe, and which brings about all the consequences of man's actions more clear than another—and infinitely clearer than any commands that were delivered, as is said on Mount Sinai, or propagated at any time in the past-away kingdom of Jerusalem, it is that which bestows on each individual whatever his hands can catch, can fashion or create; Nature or God, whichever the reader pleases, for the two words signify the same everliving First Cause, commands, and always has commanded, that industry should be followed by wealth, and idleness by destitution. But political society is formed on the principle of violating this command. Those who pretend to teach and enforce the commands of the Deity, the priest and the law-maker, go about continually to violate them. Nay, it may be stated that their very existence, prescribing conduct, and exacting the wealth of others, to support their power of prescribing conduct, is a violation of the commands of God. Away, then, with that delusion, with that hypocrisy which, pretending to explain to us these commands, and to enforce them, begins by denying that one amongst them which is the most certain, the most clearly expressed, the most easily understood, and the most universally recognized. Laws and constitutions—political organisation altogether, being founded on a violation of the natural right of property, is the source of most, if not all the evils, moral and physical, which yet afflict our race; but which, I verily believe, we are speedily destined to get rid of, substituting the government of God for the rule of ignorant perverse men.

The stale pretext that nature has not established any right of property, and the stale excuses for violating the natural right, continually made by unthinking persons, deserve only to be met by contempt. Na-

ture regulates and determines all things, including those sufferings which follow from violating her decrees. When the principles of good government are universally recognized, we may perhaps believe that raising an immense revenue for their support is necessary to the happiness of all. When no example shall be found of a virtuous man not priest-ridden, we may assert that tithes are beneficial. When it is demonstrated that nobles and capitalists are more essential to the existence of society than labourers, we shall be justified in honouring the vaunted merits of an aristocracy. But, till all these things are established, men may be excused for believing that nature is a better judge of what is suitable to society than law-makers, and that those institutions, if they can only be maintained by violating the natural right of property, ought to be swept away. When the wisdom of man shall surpass the wisdom of God, we may suppose that there is some reason in the false pretexts continually put forth by priests, and kings, and their agents.

The words, laws of nature, decrees of nature, which I so freely use, are certainly imposing phrases, and when we speak of such decrees in the material world, we mean an irresistible power which man can neither change nor influence. It appears therefore at first somewhat ridiculous to speak of such decrees in the moral world, and in the same breath to speak of their violation. If we look closer at the matter, the ludicrousness will vanish. The decrees of nature concerning the moral world are as unchangeable as the laws of matter; and I should join in the laugh against myself, if the decrees I have mentioned did not unchangeably exist. When, Sir, was it known, that wants could be supplied without labour? When has man, when has society, existed. for ever so short a period, but on the fruits of industry? I should concede to those who deny that

nature establishes a right of property, the correctness of their opinions, did she suffer the right, which I say she establishes, to be ever infringed, much less abrogated, with impunity. Mark, with impunity is the important consideration, because we can trespass on physical laws, but not with impunity. Both in the material and moral world the commands of nature are only known to us through our own pleasures and pains. If we run our head against a post, she warns us by the pain that it is harder than our skull, and commands us to make use of our eyes; if we throw ourselves from a height she breaks our bones, as a punishment, or puts an end to the existence, which would become unbearable from our own carelessness or folly. When we examine the question of property, we shall in like manner find that much misery is caused by our opposing the natural right of property. Nature warns us against that by pain, in the same manner as she warns us to respect the laws of gravity.

We shall also find on examination that the artificial right of property is continually modified by the natural right. Nature therefore suffers us not to abrogate her decrees in the moral world; and she suffers us not to violate them with impunity. She only permits us at our own cost to inflict pain on ourselves, or do wrong for a season, which we can do, as well by violating physical as by violating moral laws. Protesting continually against our rebellion, and warning us continually by its evil consequences, she ultimately, in her own good time, reasserts her authority. She is as absolute in the moral, as in the physical world; governing and regulating every part of it with the most thorough mastery, but kindly compassionate to the infancy of her children, she allows them a long probation to learn her commands. The least knowledge of history is sufficient to satisfy us that her decrees as to property, have always been in operation, are now overthrowing every conflicting in-

stitution, and are gradually restoring what the ignorance of man, rather than his malevolence, has vainly endeavoured to set aside.

All the efforts made by the legislator to maintain his artificial right of property, are transient, and by-going facts; the principles which establish the natural right of property are eternal. Their operation is constant though silent, and they are leading forward a very different, if not a better futurity, than what the legislator contemplates. His system has been and will be overruled by them. To show in what manner his decrees as to property have been set aside by the natural laws which establish a right of property, we must advert to the circumstances under which a right of property in land was established in Europe. The changes in man's condition, have made that right which perhaps was sanctioned by reason when it was founded, unsuitable and injurious at present. The right of property in land, however, from its importance, and its peculiarity, deserves to be separately treated of, and I shall postpone my remarks on it to my next communication. At present I rest,

Yours, &c.

A Labourer.

LETTER THE FOURTH.

ON THE RIGHT OF PROPERTY IN LAND.

Origin of the right of property in land.—Changes which it is undergoing.—The quantity of land required to raise subsistence gradually diminishes.—Important principle overlooked by Mr. Malthus and his followers.—Appropriation of land in Europe.

TO H. BROUGHAM, ESQ., M. P. F.R.S, &C.

Sir,

The right of property in land is now to be briefly examined, and you will readily believe that I reject no conclusions because they militate, as the very principle I shall borrow from Mr. Locke, seems to militate against the power assumed by modern governments, over the soil. He says accurately, "as much land as a man tills, plants, and improves, cultivates, and can use, the product of so much is his property."—"This is the measure of property in land, which nature has well set by the extent of man's labour, and the conveniences of life; no man's labour could subdue or appropriate all, nor could his enjoyment consume more than a small

part, so that it would be impossible in this way to intrench on the right of another, or acquire to himself a property to the injury of his neighbours.* Unfortunately, however, this admirable principle has not the smallest influence over legislators in dealing out that which, by the bye, is not theirs, the land of new colonies. It is merely an harmonious agreement, remarked by this excellent philosopher, between the physical powers of man and the principles of justice, which the most depraved acknowledge even when they violate them; but except in the very infancy of society it has seldom been acted on. It is rather a principle which, in the long run, will guide the conduct of mankind, rather the prophetic announcement, as it were, of a future fact, than the exact description of a fact which has already existed, or of a principle on which men have already acted.

There are many things about the right of property in land, which those who study it only in codes of human laws, never can comprehend, but which ought to be deeply meditated by those who, like you, aspire to influence the opinions and the destinies of their fellow men. You must be sensible, for example, that the quantity of land necessary for each individual, according to the principle just quoted from Mr. Locke, must vary with the qualities and situation of the soil with the skill and knowledge of the people; and, in short, with the successive changes in the condition of mankind. It is a fact of some importance in this inquiry, that the same power which has established a right of property in what individuals create or produce, has also provided for the continual multiplication of the species, which multiplication affects the right of property in land. It is plain and obvious,

* Of Civil Government, sec. 36, book ii.

that a species of appropriation (suitable to the period when only a few human beings wandered over the earth) must be injurious when every part of it is crowded with our fellow creatures. In fact, the sort of appropriation adapted to a nation of hunters, would be impossible in a nation of manufacturers and agriculturists. What sort of a subsistence, for example, could a hunter obtain within twelve miles of St. Paul's? In the multiplication of mankind, therefore, in improvements in skill and knowledge, as well as in diversities of soil and climate, we find principles which continually modify the appropriation of land, and alter the quantity to which a man can properly devote his labour. They extend their influence over the future, as well as over the past. The manner in which the multiplication of mankind thus makes a species of appropriation, once sanctioned by their circumstances and condition, now injurious to their welfare, is deserving the serious attention of the legislator.

In the earliest known periods mankind were few in numbers, and equally ignorant and destitute. From the beginning of history to the present day,—from Mount Ararat to Melville Island, the first known condition of society is that of scattered and wandering savages; destitute of arts, of knowledge, and of skill Man was everywhere originally, if ancient history, and modern voyages are to be credited, a wild hunter, or fisher, contending with beasts as ferocious as himself, for a scanty subsistence.* He had no fixed habitation, and wherever he was driven by his necessities, or tempted by the probability of obtaining the means of subsistence, thither he wandered. When the earth was thinly inhabited, each

* For the condition of mankind in the earliest periods of the world, consult Goguet, Origin of Laws, &c., Vol. I.: For the condition of the seal-hunting Esquimaux, see Captain Parry's voyages.

individual, or each tribe, like the Esquimaux, and other savages, at present, or like Abraham and Lot, when one drove his flocks to the right hand, and the other to the left,—might travel over many square leagues of land, using the whole of its produce, if he did not till and plant it, without encountering any other individual or tribe, and of course without infringing on any other person's rights. Under such circumstances, though no individual could possibly care much for any particular spot of ground, yet to each one it must have appeared, —and in fact it was,—necessary to have an extensive district, wherefrom to obtain wild animals, or wild fruits. In the early stages of society, all men must have found, just as the Indians of America now find, that hunting grounds, which we know to be large enough to subsist many thousand agriculturists, were necessary to supply a few hunters with the means of subsistence; and, like the Indians, being in a similar condition of society, they might appropriate, as theirs, all the land over which they roamed and hunted. A right of property in land, on the principle of each individual having as much as he can use the product of, must then have been very differently modified, as it was dictated by very different circumstances, from such a right at present. Each individual would then require more square acres than he now requires square feet.

From rude and savage hunters, men became shepherds, feeding flocks and herds which they had previously tamed; but even in this condition they required extensive territories, though not equal to those required by the hunters, to nourish their cattle and themselves. They accordingly roamed over such districts, each of which was limited by some almost impassable mountain, ocean, or desart: but like the Tartars of our own time, they did not fix their habitation in any one spot within their impassable boundaries. The German tribes, at the time when history first records their

appearance, living in moveable houses or wagons, will undoubtedly recur to you as an illustration. In this state of society, the right of property in land would not be limited by the quantity which a man could dig and cultivate, but by the quantity necessary for the pasturage of his cattle, including a large portion to lie continually fallow, and recover its natural herbage.

Subsequently men became agriculturists, and then a comparatively small space sufficed to supply each one with the means of subsistence. They fixed their habitations, and around them they fixed landmarks, each one appropriating as much land as he was able consistently with the rudeness of original agriculture, to till, plant, and cultivate, and as he deemed necessary to supply his family with food. Of course, the agriculturist not only required a less spot of ground than the shepherd, or the hunter, but, in order to prosecute his art, he was obliged to remain in one spot. That spot, within which he limited his labours; that small spot, which he and his family cultivated, he called his; and then the right of property over land, became more absolute as it was more restricted, than when men were hunters or shepherds. Each individual found a decreasing extent of surface suffice to supply his wants, as the condition of mankind was changed from that of hunters to shepherds, and from that of shepherds to agriculturists. No person can deny the almost universality of these great and successive changes in the condition of our species; and, looked at in this comprehensive manner,—extending our view over many ages and countries,—we learn this most important truth; namely, that as the condition of man changed from a shepherd to a hunter, and from that to an agriculturist so the quantity of land required to supply him with the means of subsistence, became less and less.

But it is also obvious, that skilful agriculture

obtains more produce from a given space than rude agriculture. Thus, as agriculture is improved, the quantity of land necessary to supply each individual with the means of subsistence diminishes. As mankind have multiplied, and as time has flowed on, knowledge has been extended, and the arts improved. Agriculture sharing the general fate, has also been improved, and is continually improving; so that a less and less quantity of land gradually suffices for the maintenance of individuals. The same process, then, after the introduction of agriculture, goes on as before, and the same principle is found continually to operate, it being dependant on the increase of mankind.

I need not inform you, in corroboration of this statement, that the population of all Europe has, continually increased since the beginning of history; and that the population of the countries in which improvements in agriculture have of late been most conspicuous, has also much augmented. Formerly, much ground was allowed to remain fallow every third year, which is now regularly tilled, and sowed with some green crop. The tillage of the third year is a third more labour vested in any particular spot. This is a specimen of the manner in which, as knowledge is extended, and as men become skilful agriculturists, and as the quantity of land which each one requires to provide him with the means of subsistence is gradually diminished, so more labour is gradually required for any given space. Agricultural processes are, however gradually simplified; man performs his task with less muscular exertion; the instruments he uses are improved; but the increase of his skill, which enables him to labour more effectually, and to produce more within a given space, also compels him to restrict his operations to a narrowing surface. As he requires a less space to supply him with food, he will naturally and necessarily confine his labours to that, and the right of

each individual to own land, on Mr. Locke's principle, ought to be gradually limited to an ever narrowing, ever decreasing space.

Perhaps you may suppose, that the collecting of many small farms into the hands of one farmer,—a process which for some years was going on in this country, though it appears now to have stopped,— is an exception to these remarks. I am speaking, however, of the quantity of land from which increasing skill obtains a sufficient quantity of subsistence, and of the decreasing surface to which, as labour becomes skilful, it will be necessarily confined, not of the quantity of land which *a capitalist*, or farmer, commanding the service of any given number of labourers, finds it at present most convenient to hire. The size farms ought to be of, in the present condition of society, is quite a distinct question from the quantity of land necessary to supply an individual with the means of subsistence, and therefore determining the natural right of property in land; but, I apprehend, that even the same rule will hold with regard to farms. As more labour is required for any given surface, it becomes necessary that the persons having farms should limit their business of inspection and management to diminishing spaces. Where skill is carried to a great extent, as in horticulture, and much labour is required, as in the neighbourhood of large towns—wherever the population is dense, and garden cultivation introduced, and such a cultivation is gradually extending itself from every town throughout this country, aye, and throughout the continent, the quantity of land which each master-gardener can conveniently manage, is small, compared to the quantity a man may with propriety farm in a remote part of Northumberland. A few hundred acres, at the utmost, and very generally much less than a hundred, (most gardens not being above five or ten acres), is the extent of any gardener's, or nurseryman's possession, in the

neighbourhood of the metropolis; but farms of one, two, three, or four thousand acres are not unknown in parts of the country distant from the metropolis.

As mankind have, in general passed, or are passing, through the stages of hunters and shepherds, and have become agriculturists—as agriculture, wherever we know any thing of it—that is, throughout Europe, has been gradually improved, and is continually improving; and as European knowledge of all kinds, with all the arts of Europe, including agriculture, are extending themselves over the globe, giving us reason to believe that the same process of improvement will be everywhere gone through, it may be supposed that Nature, with her wonted benevolence, has provided, that, as men are multiplied, and knowledge and skill increase, which take place universally, and conjointly, a less and less quantity of land shall suffice to supply each individual with the means of subsistence.

Adopting Mr. Locke's rule, then, for the appropriation of land,—"the extent of man's labour, and the conveniences of life," it may also be inferred, that the property of each individual in land, will, by the laws of nature, be gradually contracted within a diminishing surface. That seems to be the natural rule of appropriation. It is effected on a great scale in America, where a few Indians are making way for millions of the descendants of Europeans, and on a smaller scale in all Europe, where property in land is continually subdivided. The legal appropriation and division of land have not, indeed, taken place, on Mr. Locke's principle, or the natural rule; on the contrary, the object of the law, generally speaking, has been, and is, to prevent the natural principles from which the rule of appropriation is deduced, from coming into full operation. For example, the lawgiver has continually tried by the law of primogeniture, to prevent the division of land. In relation, however, to the prevalent doctrines concerning

population, and also in relation to every law regulating the right of property in land, I take the general rule inferred on a large scale, from the successive changes in the condition of mankind, and the successive improvements in agriculture, viz. that a diminishing surface suffices to supply man with food as population multiplies, to be one of the most important to which society can have its attention directed.*

It ought to be remembered in conjunction with the rule just mentioned, being also of great importance, that when the land of Europe was appropriated, many of the facts from which I have inferred the rule, had not been called into existence, and could not possibly be known. There was an incipient species of agriculture in the Roman empire, but the then prevalent existence of slavery prevented those continual improvements in agriculture, which form one great element of the deduction. It should also be recollected that the rude tribes, who, on the destruction of the Roman empire, overran and appropriated Europe, knew much less of agriculture than the Romans; they were ignorant too of the successive changes which had previously taken place in the condition of man, and they could not possibly have had

* Are not the complaints, which are now continually made by political economists, and which are not unfrequently heard in the legislature, of the subdivision of land in Ireland, directed against a part of the inevitable and beneficial progress mentioned in the text? If the subdivision in Ireland is vicious, that is easily accounted for by the whole structure of political society in that country being vicious. I would also ask, if the outcry of landlords and political economists against the subdivision of land, is not an example of that condemnation of every novelty in society, which does not grow directly from the will of the legislator, to which allusion is made in page 39. Is it not rather a blind prejudiced attachment to things that are past, instead of a just appreciation of the present and the future? This remark may show the reader, however abstract the principle stated in the text may appear, that it is not destitute of practical application.

any knowledge of the important rule for the appropriation of land, to which I have alluded. Knowing very little of agriculture, their ideas of property in land were derived, from a state of society in which men were hunters or shepherds, and when each man required a comparatively large quantity of land to provide the means of subsistence.

Dr. Smith remarks, "that laws,"—and we may extend his remark to customs—"are continued long after the circumstances which first gave occasion to them, and could render them reasonable, are no more." The rule, concerning the appropriation of land, just mentioned, not only could not possibly have been known when the land of Europe was appropriated, but those northern and wandering tribes, who appropriated it successively, from the first to the tenth century, must have acted on a rule that was borrowed from a previous state of society in which agriculture was scarcely in existence. Land was accordingly appropriated on the principles and habits of their wandering shepherd ancestors. Even at this day this rule is not generally acknowledged, nor are its consequences attended to. The mind is slow in getting rid of the habits of thought dictated by any pre-existing circumstances, and an opinion derived from times when men were hunters and shepherds, viz. that a considerable quantity of land is a great benefit, and necessary to enable each man to provide himself with the means of subsistence, even now dictates our conduct. Be all these things, however, as they may, it necessarily happened, because there could not be cultivation without appropriation, that the land of Europe was all appropriated when agriculture was in its infancy, and when the great truth I have just brought under your notice had not been developed to the understanding.

Accordingly, "when the German and Scythian nations overran the western provinces of the Roman empire, the chiefs and principal leaders of those

nations acquired or usurped to themselves the greater part of the land of those countries. A great part of them was uncultivated, but no part of them, whether cultivated or uncultivated, was left without a proprietor."* Can it be supposed that these barbarians followed a rule in appropriating the land that was consistent with the present state of agriculture and of society? And must we tenaciously adhere to the rules which they in their ignorance did follow? They appropriated the land by a rule borrowed from previous habits of life; that is, in large portions, not at all adapted to the present state of population, of the arts, and of knowledge; and not at all adapted to the present state of society, but admirably adapted to the wild life they and their ancestors had led. Accustomed to hunting, first as a means of obtaining subsistence, and afterwards keeping up the custom as an amusement, each head of a family needed a large tract, that he might not come into hostile conflict with other members of his own tribe. Deriving their chief nourishment from herds of cattle, and from swine, each chief required a large space to supply himself and his family and followers with food. Accordingly all Europe was parcelled out by the German tribes, in what are now become princely portions. The followers of Alboin in Italy, of Theodoric in Spain, of Clovis in France, of Hengist in England, and subsequently of William the Conqueror, appropriated the land, not according to what quantity each man could dig by his hand, but rather according to the quantity his horse could gallop round.† The appropriation of the

* Wealth of Nations, book iii, chap. 2.

† As a specimen of what is stated in the text, I transcribe an extract from Smollett's History of England, relative to the appropriation of our country by William the Conqueror. "He bestowed upon his uterine brother Robert, the county of Cornwall, comprehending 288 manors, besides 558 which he

land in such large portions was, for our subject the original sin; but I do not accuse the appropriators of meditating evil. If they had known the rule above alluded to, they would not have encumbered their descendants with so much superfluous care. If they had foreseen the great change which has now taken place, they would undoubtedly have been more anxious to make them mortgagees than mortgagors of the land, and would at once have given them, after the fashion of the long-sighted clergy, a claim on a certain definite proportion of the annual produce, as a more efficacious instrument of power, than land. If they had been endowed with prescience, they would probably have selected, as even better than tithes, a large share of the taxes, and made them holders of a national debt. They wished to obtain wealth, and secure power, and the rule they acted on to accomplish their wish, was dictated by the habits of a previous pastoral, and rude state of existence.

The persons who thus appropriated the soil of Europe, did so by a right of conquest. They did not lay

possessed in other provinces. The next brother Odo, was created count palatine of Kent, and high justiciary of England, with above 400 fiefs in different provinces. William Fitzosborne's services were compensated with the whole county of Hereford. William's nephew, Hugh Loup, was presented with the county palatine of Chester, to be held with all the rights of regality, as independent of the crown. His son-in-law, Alaiu Fergeant, Duke of Bretagne, was put in possession of all the estates formerly belonging to Count Morcar, with the same right of regality. To Roger de Montgomery, he gave, first of all, the towns of Arundel and Chichester, and afterwards the county of Salop. Walter Giffard obtained the county of Buckingham, and that of Surrey fell to the share of William Warren. Eudes, Count of Blois, received the lordship of Holderness. Raoul de Guair, of Bretagne, was created count, or Earl of Norfolk and Suffolk, and Lord of Norwich. Henry de Ferrieres was complimented with the castle of Tutbury. And Geoffry, bishop of Coutance, justiciary of England, possessed 280 manors, which he bequeathed at his death to his nephew Robert de Mowbray." Vol. i. page 409.

down the sword the instant they had overrun the land, they kept it drawn in their hand, and engraved with it laws for the conquered. The countries they overran had been previously cultivated by slaves in a rude manner. In appropriating the soil, they appropriated its inhabitants, reduced some to slavery, and continued the slavery of others. Power so acquired, and privileges so established, were the basis of the present *political and legal*, not social, edifice of Europe. These conquerors were the first legislators. By an almost uninterrupted succession, the power of legislation has continued in the hands of their descendants to the present day. If other conquerors have on some occasions overcome them, it has only been to succeed to their places. Whatever names, Danes, Normans, or Saxons, they may have borne, is not of the slightest consequence,—the principle is the same; on conquest all the legislation of Europe is founded, and conquerors and their descendants have been the law-makers.

"Almost all governments," Hume correctly observes, "which exist at present, or of which there remains any record, have been founded originally on usurpation or conquest, or both."* "The laws," says a writer in the *Quarterly Review*, "in relation to the inferior classes of society, were throughout all European governments, made by the strong against the weak, the natural consequence of government founded on oppression."† "The first materials," it is stated in the *Edinburgh Review*, "of the laws of England, were little more than the schemes of avarice and aggrandizement, or the ebullitions of revenge. The text, though written often upon sand, was written with the sword. The practice, indeed, afforded an evil commentary, but THE LAW ITSELF WAS THE PARENT CRIME."‡ And this law, founded

* Essays. Of the original contract. † No. 74.

‡ For May, 1826. "Government, to define it *de facto* according to modern prudence) is an art whereby some man,

on oppression, upheld by force and fraud, intended solely to preserve ill-gotten power, or ill-gotten wealth, to maintain the dominion of an aristocracy, and the supremacy of a priesthood, to perpetuate the slavery, ignorance, and poverty of the great body of the people, the political writers of our day, call on all mankind to obey, as the only means of social salvation. Obedience to such law is the master-folly of mankind; and this folly is inculcated with as much pertinacity by those who have apparently no interest in making men fools and slaves, as if their own bread, and their own breath, hung on the doctrine.

The great and important fact, which it is necessary to promulgate far and wide then is, that all European legislation was originally founded on oppression. But the oppressors and their descendants have never ceased to be in possession of the power of legislation. The authors I have just quoted may wish to except from the general principles they lay down the legislation of their own age and country, but I can make no such exception. Seeing that conquerors have always been the legislators, and knowing that they have always endeavoured to preserve their own power, I cannot avoid concluding, that the law has always been made with a view to preserve, as much as possible, that appropriation of the soil, that artificial right of property, and that system of government, which the northern barbarians, under the blind impulse of previous habits, utterly ignorant of the form society was destined to assume, and utterly ignorant of that rule for the appropriation of land. I have quoted from Mr. Locke, and illustrated by a brief view of the changes of our condition,—originally estab-

or some few men, subject a city, or a nation, and rule it according to his or their private interest; which, because the laws in such cases are made according to the interest of a man, or of some few families, may be said to be the empire of men and not of laws."—*Oceana*. The *Preliminaries*, &c.

lished. It is not for me to condemn habits which were too general, not to be the result of natural general laws. Neither is it for me to enquire into what good purpose those habits were ultimately destined to promote; but as they were general, I cannot refuse to believe that they were necessary parts of the great scheme of creation, and intended finally to subserve the happiness of our species. I am less anxious to investigate final causes, than to state general facts; and it is such a fact, that all the laws of Europe have been made with a view to maintain and preserve by force an artificial right of property, a scheme of appropriating the land, and a system of political power, all of which were originally established by the sword. It is another such fact, that the laws have not accomplished this object. This fact, however, is not so plain and palpable as the former; and to make it evident with a view of shewing how nugatory and how vain have been the efforts to set aside the natural right of property, is one of the principal objects I have in view. I shall postpone pursuing it to another letter; and at present remain,

Your obedient servant,

A Labourer.

LETTER THE FIFTH.

THE LEGAL RIGHT OF PROPERTY IS UNDERGOING SUBVERSION BY THE NATURAL RIGHT OF PROPERTY.

False pretexts and real objects of the legislator.—Proofs that his real object of preserving his power, has not been attained. —He has failed to secure the superiority of the landlords, and the legal rights of the clergy.—The revenue of the state. —The abolition of slavery, and the rise and progress of the middle classes, contrary to the legislator's will.—Illustration of the usury laws.—Alteration in the right of property.

TO H. BROUGHAM, ESQ. M. P. F. R. S. &C.

Sir,

I explained, in my third letter, what appears to me to have been the great object of the legislator as to property; in my last letter I called your attention to the origin of the present appropriation of the land of Europe; and I am now to shew you that the acts of the legislator have not been less inefficacious to obtain his own object, than mischievous to society. If I can make it clear by adverting, in some detail, to the history of property, that he has failed most signally to accomplish the object he has proposed to himself, even as to property, which seems a measurable substance, and some-

what within the grasp of legislation, I shall do something, I apprehend, to make it doubtful whether he can comprehend, or is likely to attain the more abstruse and recondite objects of preventing crime and promoting virtue.

The great object contemplated by the legislator, I observed, was to preserve his own power, and the dominion of the law, and with that view to keep in the possession of the landed aristocracy, and the clergy, and the government, all the wealth of society; and we are going coolly to examine if the legislator has succeeded in these objects.

Allow me, first of all, to notice that the pretexts which the legislator puts forth, about preserving social order, and promoting public good, must not be confounded with his real objects. The public good is not cognizable by human faculties; and he who pretends that his actions are guided by a view to that, is an impostor, who looks only to his own interest and ambition. To make that the pretended motive for action, is so obviously a mere pretext, as to need no further refutation. Nor is the pretext that he promotes social order better founded. Social order is the mutual dependence of all those who contribute to the subsistence and welfare of society. It includes the manner in which they assist and protect each other, and provide for their mutual wants by the interchange of their respective products. If by social order be meant the great scheme of social production, mutual dependance, and mutual service, which grows out of the division of labour, that scheme I will boldly assert the legislator frequently contravenes, but never promotes—that grows from the laws of man's being, and precedes all the plans of the legislator, to regulate or preserve it. In fact, his attempts to keep in one state what is continually in progress are mischievous. We must then set aside as mere pretexts the assertions of the legis-

lator, that he intends to preserve social order, and promote the public welfare; and we must deal with legislation as solely intended to preserve the power and privileges of the legislator.

Has he preserved that power? Is the authority of the legislator undiminished? Is it not rather questioned on every side? Look at thrones overturned! and laws established; by the legislator? No; but by the great body of the people. Look at every one of his acts questioned by the press, and by the press set aside, or confirmed; the dominion which it has now acquired, and which it exercises throughout Europe, being a full and complete refutation of the opinion that the legislator has preserved his power.

If then it be admitted, that the legislation of all Europe was originally founded in conquest, and that the great object of the legislator has, and must have been at every moment to maintain his own power,—and if it be plain that he has every where lost, or is fast losing his power, it must also be plain, on a great scale, whatever persons may suppose to the contrary in detail, that the great object kept in view by legislators has not been attained. It is only necessary to compare the past political condition of Europe, with which you are well acquainted, with its present political condition—to notice how the power of kings, nobles, and priests has gradually decayed, while the legislator has always endeavoured to maintain their powers and privileges—to become immediately sensible of his conspicuous and complete failure. When we contemplate long periods, the truth that society has a course of its own, which legislation does not foresee and cannot regulate, and which has gradually carried it away from the controul of successive generations of lawgivers, becomes clearly evident.

I might without difficulty draw numerous illus-

trations of this important truth from the history of the last twenty years; but I shall content myself with referring to scenes in which you have taken a part, and which are fresh in every man's recollection. What, for example, produced your own motion on the subject of law reform, but a conviction of the discrepancy between the present state of the law, and the state of society which created an overruling necessity to alter the law? Was it the legislator's inclination, or a similar necessity which compelled him unwillingly to alter the Navigation Laws, to introduce the New Police, to abolish the Test and Corporation Acts, and to emancipate the Catholics? I can now add, having lived to see you Lord Chancellor, was it the will of the legislator, or an overruling necessity for a change in the laws, and for an improvement in the system of government, which forced you and your party into office, and compelled the House of Commons to set about reforming itself? Was it your will also, and the will of your colleagues, or your unwilling task, to undertake the settlement of the tithe question in Ireland? Have you not, my lord, been forced against your inclinations, to propose some modification in the tithe laws of that country, and do you not feel that that important question is already practically settled by the conduct of the people. Deceive yourself, my lord, and others no longer, but learn, from the history of the last few years, to study the laws, which impose on the legislator a necessity of obeying them. Since the time when I first began to take notice of public events, the conduct of the legislator, not merely in England, but in almost every country of Europe, has been dictated by a tardy and unwilling, and in his case, a disgraceful obedience to the dictates of public opinion. His power, my lord, has every where passed into decrepitude, and is merging in that possessed by the press, as the representative of the public reason.

I may confirm these observations by a more general view. None but demons would voluntarily work mischief, and we only class legislators in the same species as ourselves, when we assert that they have been generally disposed to promote the happiness of the people. At least they have so professed, and so have the people believed, or their power could not have lasted a single day. But what is the fact? Happiness being a very indefinite term, let us substitute for it prosperity, or wealth; and then we see that those countries in which the power of the legislator has been greatest, and he has exercised it most, restricting every branch of trade, and providing as he thinks for the conduct and welfare of the people in the most minute particulars, such as France under the old and under the imperial regime, Spain, Germany, &c. have not made an equal progress, in wealth and prosperity, to Holland, England, and the United States, where the power of the legislator has been less and much less called into exercise. I admit that the legislator has wished to promote the happiness of nations, but I affirm that where he has interfered most, prosperity has been least, and I conclude on this general view, that he has every where failed in his object.

Let me further ask you, what is the main principle of those doctrines of free trade, which you and almost all other enlightened men now advocate? Is it not that trade,—that human industry thrives most when restrictions are removed; in other words, when legislation does not interfere with it? The doctrines of free trade, then, must convince all who believe in them, that legislation has not promoted, and cannot promote national wealth, or national happiness, which are correlative terms. Supposing national welfare to be the object of legislation, those doctrines must satisfy every man that legislation generally has as completely failed

in effecting what it lyingly and boastingly promises to mankind, as it has especially failed to secure, as I shall now show you, the power of the classes it has aimed to uphold.

To look, then, at the failure of the legislator more particularly in relation to the right of property. You admit, I hope, as the landowner and the legislator have been one and the same person, that his great object has been, as I stated in my third letter, to preserve his dominion over the soil, and to secure large revenues to the landowners, to the clergy, and to the government, as a means of protecting the possessions of these two classes. Let us first ascertain what has happened with regard to the landowners of our own country.

The whole soil of Europe was engrossed in large masses, as I mentioned in my former letter, by successive conquerors, and with the land the conquerors engrossed all the wealth of the country. "The original engrossing of uncultivated lands," says Dr. Smith, speaking of the act of the northern barbarians, already alluded to, "though a great, might have been but a transitory, evil. They might soon have been divided again, and broke into small parcels, either by succession or alienation. The *law* of primogeniture hindered them from being divided by succession, the introduction of entails prevented their being broke into small parcels by alienation."* Primogeniture and entails, cherished by all the legislating classes of Europe, were intended to preserve landed estates entire; Have these devices succeeded? Is the theory, that land will be divided into smaller portions, as agricultural skill increases, and as population multiplies, contradicted by facts? Are the nobility of Europe now in possession of such vast domains, as the leaders

* Wealth of Nations, book iii. chap. 2.

of the German hordes occupied when they overran Europe?

Opulent as many of the nobles of Great Britain now are, none of them are masters of such extensive districts as belonged to the immediate followers of William the Conqueror. The Earl of Grosvenor and the Duke of Bedford have very ample possessions, but they do not, I believe, quite equal in extent of surface the 846 manors possessed by the brother of that invader. They are probably much richer than that king himself was, but they do not own so much of the surface of the country as many of his followers did. Throughout Europe it is manifest, when we extend our view over long periods, that the quantity of land in the possession of individuals has been gradually lessened. The effect of the increase of population, when all the members of the same family have equal shares, in dividing and breaking into small parcels all landed property, has of late been too often complained of, not to be familiarly known. But this increase has been going on for ages, and has had its effects even over those princely properties that were once the patrimonies of the Montmorencies, the Percies, the Guises, and the Mowbrays. Without inquiring further into the immediate causes of the breaking up of the great estates, which once were in possession of the nobility of Europe, though it has been much too general to be justly attributed to a cunning king, or a contriving minister, I am content to state, as a fact illustrative of my argument, that the land of Europe has been gradually divided, since it was first appropriated by the northern barbarians into smaller portions than they seized on, notwithstanding the attempts to prevent such a division, by the *laws* of primogeniture and entail.

In many cases, the domains which the conquerors of Europe appropriated, such as those of the dukedoms

of Normandy and Brittany in France, and of Lancaster and York in England, merged in the crown; but the crown now possesses comparatively few domains in either of these countries, these estates having subsequently been sold or given away in an almost infinite number of small portions. None of them remain undivided. None of the districts appropriated by the Norman barons have descended unbroken to their present heirs. They have all been divided and sub-divided, and the portions have generally passed into the hands of bankers, clothiers, stock-brokers, merchants, money-scriveners, and their descendants. Cut down and divided, however, as the land of the country comparatively is, even these small portions are no longer the actual property of those who are their nominal owners. Sir James Graham says, "that not less than nine out of ten" of the little pieces into which the estates of our great barons have been split, "are encumbered with mortgages."* Each estate probably is encumbered

* Corn and currency, page 75. At the very moment that this sheet is going through the press, a brief debate takes place in the House of Commons (February 14) on a motion of Mr. Baring's, for leave to bring in a bill, to limit the privilege of Members of Parliament. That motion shews, in one sense, how careful the legislature has been to protect the landlords; and the remarkable, or as it has been called, *naïve* speech of Mr. Lambert on the occasion, shews how completely your laws have failed to keep the wealth of the country in the hands of the landowners. I take his speech from the *Morning Herald*, remarking that all the other papers concur in substance with that journal. A man in debt half his nominal income, is in fact only the owner of half his so called estate.

"Mr. Lambert rose at this early stage, merely to protest against depriving members of parliament of the privilege of arrest. *There was scarcely a landed proprietor in the kingdom, whose property was not liable to judgment debts*; and under the bill now introduced, those debts might be purchased, and a member arrested from political or other improper motives. Under these circumstances he, for one, could not consent to taking away the privilege of freedom from arrest."

with several; so that, in fact, the absolute property even of these fragments of princely domains, does not belong to the nominal owner. Without including the national debt, which is so well known to be an immense mortgage on the land, divided among a great many persons, that it has been proposed to pay it off, by making over portions of the land to these mortgagees, it is plain, that the nominal land-owner is only the receiver for two, three, four, or perhaps half a dozen creditors. The great object, therefore, at which the legislating land-owners have always aimed, to attain which they have inflicted a great deal of misery on the majority of society—for which they have not hesitated to wage war, and punish people with death, has been completely frustrated. They have not succeeded in keeping estates undivided, and in securing the possession of them in their own families. Through the greater part of Europe, not only has the land been divided into diminishing portions, but it has passed from the descendants of warlike barons, and come into the possession of the children of their once much-despised vassals and slaves.

So much for the landlords. Have the clergy preserved the share which the law allotted to them? Where are now the prince bishops, the spiritual sovereigns, who formerly taught the nobility arrogance by their example, and enforced obedience by their cunning? Look, however, at what is actually taking place in England and Ireland as to tithes. The present Bishop of Bath and Wells some time ago made the following observation, in a charge which was published and inserted in the newspapers, in reference to England. "This unjust clamour against our church has been not inconsiderably augmented by the unpopularity which has attached itself to the payment of tithes; on this point, however, the public mind has been grossly misled. No body of men in general could have been

more moderate in the exaction of their legal dues than the clergy of the established church. The average of the payments received by them has seldom amounted to two-thirds of what was fairly due; whilst it has, for the most part, fallen very considerably below this proportion." So that the clergy cannot even at present obtain two-thirds of that small pittance of the national wealth, which the law, after appropriating their numerous abbeys and fat lands to the nobility, still endeavours to secure to them. In other words, my lord, the legal right of the clergy to church property, is at least in part an empty name. A somewhat similar state of things, but even more confirmatory of my proposition, exists in Ireland. The legislature decrees, that the Irish shall pay tithes; they continually refuse to obey, or continually evade the law, and for many years past the clergy have never been able to obtain above a half, or even a fourth of their legal dues. Now, however, the business is carried further,—the people have in several counties refused to pay tithes; the ordinary legal force of the government is not sufficient to enforce the clergyman's claims; and what does the legislature? Does it say that the payment of tithes shall and must be enforced? Does it affirm that the rights it ordains shall be observed? Does it now dream of declaring, that the right of the clergy to church property is as good as the right of the peasant to the fruit of his labour? Oh, no. It appoints committees to find out the best way of making its obsolete laws conform to the determination of the Irish people, and to their notions of property. Have its decrees, though so much, so strongly enforced, begotten in the minds of the Irish a complete, a thorough conviction that the clergy have as good a right to tithes as the farmer has to the pigs and horned cattle he rears? No such thing. The utmost power of the legislature has been unable to beget any such notion; its decrees are set aside by the higher power of conscience, and

should it attempt to enforce them, it will most probably now, and certainly, hereafter, be triumphantly resisted and overcome by the physical force of those who have both conscience and right on their side. The present state of church property, both in England and Ireland, demonstrates the two principles for which I contend, namely, that the natural right of property,—for it is the conviction in the bosom of the Irish peasant, that he ought to own what he produces, which is at the bottom of his resistance to the claims of the church,—is even now rapidly subverting the legal right of property, and that the decrees of the lawgiver do not establish the rights of the people.

You may perhaps at first think, that my proposition does not hold good as to government, and that the enormous revenue it levies on the people is a proof that its power of appropriation is not decayed. A closer examination may teach you a different lesson; two-thirds of that revenue belongs to the holders of the national debt, and the government, in point of fact, is only the agent for distributing nearly thirty millions sterling annually among the middle classes of the people. But even that sum it can with difficulty raise. Within the last few years it has been compelled to remit taxes to the amount of several millions; other reductions are called for, and other reductions it will be compelled to make. Great, therefore, as the revenue is, which the government levies, it does not possess an unrestricted control over the pockets of the people, and it must, ere long, abolish those laws, by which it now exacts a considerable sum more than the people think its services merit, and than they are willing to pay.

But I come to a circumstance, which I regard as a still more conclusive evidence, of a change in the right of property, not willed by the legislator; I allude to the gradual decay of slavery, and the gradual rise of the middle classes in Europe. The right of property es-

tablished by the northern barbarians, when they overran Europe, between the fifth and the tenth centuries, was established by the sword. By virtue of that they claimed the land, and every thing that could be made by its help. All the men who dwelt on it were appropriated with it, and were compelled to serve and obey them. Their vassals and serfs had to supply them with food, or to labour at their bidding. They were free themselves, but they reduced other men to slavery. Being the masters, they were of course the legislators. Their great object was, as far as that could be effected by legislation, to preserve their power over their slaves. Did they succeed? Where then are now the thralls of England? There are certainly thralls; the labourers are yet unhappily thralls; but they are less the thralls of the landlord than the capitalist. So completely alien to our present habits and thoughts is this principle of slavery, that he who should act on it, would be speedily convinced, that other men had rights which he could not violate with impunity. The power of the sword, which established the wrong of slavery, has obviously passed away, and with that all the means of making men slaves. We now so abhor slavery, that we compel those who are dependant on us to emancipate their slaves. The nation, on this principle, put an end to the slave trade. Even the practices of war, though not regulated by legislation, do not now authorize the appropriation of the soil, and of the persons and property of other men, as was done by the northern barbarians. Those who should imitate their practices would be universally resisted. The only exception I know of to this rule, is the disgraceful and barbarous practice of impressment, by which some men are still forcibly appropriated by others, under the miserable pretext of its promoting the public good, that is, the good of the men so appropriated. We may be sure, then, of this fact. The original *legal* right of property,

established by our progenitors, was a principle of slavery, but that principle has been gradually subverted, and is no longer acted on in any part of Europe.

Has this great alteration been brought about by the legislator, or in spite of him? The warriors, who, as I have mentioned, overran and appropriated extensive territories, could not possibly cultivate them. Their business was war, love, and legislation, and the land was cultivated by serfs. That they appropriated the people as well as the soil, and compelled them to labour for the advantage of a master, is so well known as not to need any illustration. That personal slavery was established throughout Europe at a former period, and that some men, like cattle, were the property of others, are facts so familiar, that I need not refer to the pages of Turner, Robertson, Hallam, or any other historian, to satisfy you of the correctness of the statement. That one great object of the law was, in the first instance, to keep the slaves obedient to their masters, and after they became emancipated, to keep them, as labourers, poor and dependant, is an admitted fact. If you require any proof of it, I refer you to the statute of labourers, passed in 1350, as Mr. Malthus says, "for the most unjust and impolitic purpose, of preventing the price of labour from rising, after the great pestilence,"*—to our several other statutes and regulations "to fix the price of labour, which are generally intended to prevent it from rising,"† and to the numberless regulations against the combination of workmen, which disgraced both the statute and common law of the nation for many ages.

That our people are not still in a state of vassalage like the serfs of Russia and Hungary, we are indebted, according to Dr. Smith, not to legislation, but, after

* Principles of Political Economy, p. 271. † Ibid, p. 270.

natural laws, "to the most childish, the meanest, and the most sordid of all vanities," to gratify which, the ancient feudal lords "gradually bartered their whole power and authority." "All for ourselves, and nothing for other people, seems in every age of the world to have been the vile maxim of the masters of mankind." Consistently with that maxim the legislating landowners of Europe did what they could to perpetuate personal slavery, and but for the "silent and insensible operation of commerce and manufactures,"* which the legislator has at every period tried to check and restrain, the people of Great Britain would to this day have continued in the same state of vassalage as in the twelfth century. It is plain, from the contemptuous manner in which the working classes ever have been treated by the law—the possession of land or capital being essential to secure even in this country, a share of the common political advantages of the social union, that the legislator always was, and still is, disposed to keep in thraldom and servitude all the descendants of his ancient vassals. But he has not succeeded, and through a great part of Europe, in spite of the legislator, personal slavery has been abolished. The claim of some men to possess others as their property is now universally scouted. This great and beneficial change in the right of property has not been effected by the lawgiver, who has always endeavoured, and is now endeavouring, to keep the slave-descended labourer poor and dependant.

For my view, it is of much importance to remember, that the legislator always endeavours, as a rule, to preserve institutions. He rarely leads the way in reform, and only reforms to save some remnant of his original errors. From the time when William the

* See for all these brief extracts, The Wealth of Nations, book iv. chap. 4.

First established the curfew Bell, till Lord Eldon's stout resistance against the Catholics, the legislator has sought to preserve principles of government previously acted upon. A state of things, however, directly adverse to his views has continually arisen, and continually compelled him to forego his most cherished views.

If the change I have noticed were not brought about, in despite of the legislator, by which of his enactments was it accomplished? What law decreed that bondsmen should be free before they had emancipated themselves? By what act of the legislator was it first settled that they should no longer be property, and should possess as their own whatever they could make or earn? I am not acquainted with our statute books; you perhaps know in which, of the many hundred volumes they consist of, this divine decree of the owners of bondmen is to be found. I know, however, that it is vain to look for any such gem of humanity, in that monstrous catalogue of follies and cruelties; and I therefore shall content myself with the authority of those who have traced philosophically, rather than by the route of laws, the progress of society. On that I assert that the right of the serf to personal freedom,and his right to own what he could earn, were not recognised either by the common or written law, till he had obtained freedom and wealth, and with them the power to defend his new rights against his former master.

I may not be able to confirm this assertion by the authority of those who lived at the time the alteration occurred, because it was not noticed in any of the chronicles of that period, history having been, as it seems to me, confined to recording the follies of mankind. The progress of civilization is so slow and gradual, that its successive movements are never seen as they take place. Society, like the human body, is continually changing; but we must carry back our thoughts for a

long period to learn this important fact. Like the hour-hand of a watch, we do not see it moving, but we are convinced that it moves. The chief cause of alterations in its condition, is the increase of population leading to inventions in the arts, discoveries in science, and to the creation of new wealth. In general, historians have not considered physical changes in connection with changes in our moral condition, as if the effects of mechanical improvement were limited to bodily ease and comfort. This is an oversight,—for discoveries in science, and improvements in art, have wrought the greatest changes in our political condition; and almost all the changes in modern times may be traced up to the influence of that mechanical invention, which is called by the comprehensive name of the press. Though we may not be able to foresee the moral effects of the splendid mechanical inventions of modern times, yet we may be sure that they are the harbingers of a more extensive change in the moral condition of society, than was ever effected by political institutions.*

* Hume, in his Essay "On the Populousness of Ancient Nations" has noticed the effects of the invention of gunpowder in abating the cruelties of war, and meliorating the character of man. After that invention, war necessarily ceased to be a personal combat. Individuals could not fight with mortars or sixty-eight pounders, consequently that invention tended to put an end to personal feuds, and to extinguish throughout society personal feelings of hatred, and the desire of vengeance. Before writing was invented, all acts which required to be authenticated were performed in public. Brides, who were then generally obtained after a contest, were led along the street. Marriages were celebrated as it were before those who had lost the game; and victory in a contest before a civil magistrate, was made known by a triumphal procession. The invention of writing, by putting an end to the necessity for such public exhibitions, did a great deal to meliorate all the bad passions. An explanation of the effects of mechanical improvement over our moral condition is yet wanted, and would form both an amusing and an instructive book.

I may perhaps add here, that I look upon the increase of people

Of such important changes there can be no contemporary notice, for they are silent and unobtrusive, not observed at the time, and they can only be ascertained by men who live posterior to the occurrences. Adam Smith, one of our most acute investigators of past events, has satisfactorily proved that the emancipation of villeins, the growth of towns, the rise of the commercial and manufacturing interests, the formation of an influential middle class, and the comparative decay of the landed aristocracy throughout Europe, altering the legal right of property, and altering the political relations of all classes, were brought about in spite of the law. They were the results of natural circumstances, and chiefly of the respect for the natural right of property, which the law has tried in vain to extinguish. Had the abolition of villenage been the result of a positive enactment, there could have been no doubt as to the date of the occurrence.

"The time and manner, however," says Adam Smith, " in which so important a revolution was brought about, is one of the most obscure points of modern history. The church of Rome claims great merit in it; and it is certain that so early as the twelfth century, Alexander III. published a bull for the general *emancipation of slaves.* It seems, however, to have been rather a pious exhortation, than a law to which exact obedience was required from the faithful. *Slavery continued to take place almost universally for several centuries afterwards, till it was gradually abolished by the joint operation of the two interests above men-*

as the great physical cause of all the moral changes in society. The several causes, therefore, subsequently mentioned in the text, as leading forward improvement, such as inventions in the arts, discoveries of science, the rise and growth of the middle classes, the influence of the press, are all subordinate to, and dependant upon, the increase of population.

tioned, that of the proprietor on the one hand, and that of the sovereign on the other."*

Allow me to direct your attention also to this brief passage of Mr. Millar's work on the English Government. If I do not quote many other authors, it is not from inability, but from disinclination to waste your time. "While the influence and power of the great lords was gradually extended, by the *multiplication of their vassals, their authority over each particular vassal was necessarily reduced, and they were obliged to exercise it with greater moderation,*† as well as to endeavour, by the arts of popularity, and even sometimes by pecuniary rewards and advantages, to gain the effectual support of their followers."

"The improvements made in agriculture (not in the law) produced alterations of no less importance in the state of the peasants or churles. The peasants, as has been formerly observed, were originally bondmen, or slaves. But as from the *nature of their employment*, and from their living at such a distance as to be beyond the reach of their master's inspection (you will recollect the gradual change by which these masters, for the sake of amusement, came to reside in towns) it was found expedient to excite their industry by bestowing on them successive gratuities and privileges: many of them were enabled at an early period to acquire considerable property, and some of them were advanced to the condition of tenants, entrusted by the master with a discretionary management of their farms. In the

* Wealth of Nations, book iii., chap. 2.

† I have distinguished a passage in the text by italics, because it displays clearly the mode in which the *multiplication* of vassals produced moderation in their masters, and thus points out the natural source of that gradual abatement in violent passions, which is one of the distinctions, and the great blessing of civilized Europe.

natural course of things these tenants were afterwards raised to a still better situation."*

"The first artificers were villeins, or servants of the greater thanes, who happening to discover some ingenuity in the common mechanical arts, were employed by the master in those branches of manufacture which he found requisite for his accommodation. The possession of these farms, according to the rude manner in which agriculture was then practised, did not hinder them from exercising this collateral employment. When these people began to be emancipated from their ancient bondage, they were at liberty to work, not only for their former master, but for any person who chose to employ them, and by working for hire, they drew a regular profit for their labour."†

My argument is, that those great changes which the law did not ordain, were effected in spite of the law. The law-maker, instead of facilitating the emancipation of villeins, did what he could to prevent it, but his ambition and his greed were overpowered by the beneficent operation of natural laws. Improvements in art and science, the introduction of commerce and manufactures, consequent upon multiplication of the species,—to all of which, except perhaps the last, which he has opposed indirectly by mis-appropriating the produce of industry, the law-maker has in general been excessively hostile, brought about the abolition of personal slavery.

Accompanying the gradual abolition of personal slavery, and arising from it the middle class, the *tiers etat* gradually have arisen, and have attained much influence in the most civilized parts of Europe. To the ancient lawgiver—the lawgiver antecedent to Alfred's

* An historical view of the English government, &c., by John Millar, Esq. vol. i. p. 313.

† Ibid. p. 316.

time, they, and consequently all their rights, including their right of property, were quite unknown; but to them, and to their continual growth in wealth, power, and intelligence, as a secondary cause, all the revolutions in Europe, whether religious or political, since the tenth century, must be chiefly ascribed. The multiplication of traders, manufacturers, and artizans, and generally of the inhabitants of towns, has worked a most conspicuous alteration in all the moral relations of society, gradually mastering the landed aristocracy, and gradually tending to extinguish it. As men multiplied, new businesses and new arts came into existence; new wants were formed, and new luxuries found to gratify them; new classes of men arose; wealth new in form, and different in kind from any thing our ancestors were acquainted with, was created, and new rights of property to the new wealth were continually developed. The idea of property seems formerly to have been limited to land, or what the gentlemen of your profession still call real property. In fact, even yet, much confusion exists from many persons still speaking of property as if there were only real property. Because the soil is appropriated by one class of men, the labourers have a claim on them for relief; and this was formerly confounded with the appropriation of property. At present the idea of property is much more extensive, and the labour employed about land supplies but a part of the wealth of the community. The right, however, to the new property which is continually created, is now generally held to be as sacred as the right of the landowner to his estate. The growth of a middle class in European society, founded on the gradual recognition of a right of property to this new wealth, and the establishment of that right, are conspicuous alterations in its condition, compared to the time when it consisted only of masters and slaves, and when no other property was recognised but

that in land. Now the important questions for your consideration are these. Is the growth of this middle class, and the respect for their right of property, the results of the will of the law-maker, or have they taken place in spite of his will?

Need I further ask, if the feudal law-maker, the warlike baron, the armour-cased knight, or the battle-axe-wielding king, willed the rise and growth, and increase in wealth of, those pedlars and traders, whose quiet and peaceful, and humble occupations, as they have spread through society, have gradually extinguished all the regretted glories of chivalry, and have equally subdued the belligerent propensities of the knight, and the predatory habits of the baron? No fact seems more certain, than that the inhabitants of towns, the middle classes of Europe, grew into influence and power, altering all the political relations of individuals and of states, in spite of the land-owners, who were the legislators of Europe. I shall content myself with the following pithy sentence, as the authority for my assertion. "The *lords despised the burghers, whom they considered not only as a different order, but as a parcel of emancipated slaves, almost of a different species from themselves.* The wealth of the burghers never failed to provoke their envy and indignation, and they plundered them upon every occasion, without mercy or remorse."* When the burghers, the

* Wealth of Nations, book iii. chap. 3. The reader may consult this book and chapter for the proofs of many of the assertions of the text. He may also look at Mr. Hallam's work on the Middle Ages, vol. iii. chap. 8. part 3. This author places first among the causes which contributed to the improvement of the four last centuries of the middle ages, "the gradual elevation of those whom *unjust systems of polity* had long depressed," though he does not seem fully aware of the causes of the elevation. With a too antiquarian spirit, he looks more at records and parchment rolls, than at the laws of human nature. See particularly vol. iii. p. 459.

inhabitants of towns, the slaves who had emancipated themselves in spite of the legislating landowning lords, had struggled into existence and strength, they had to fight their way to security and influence against the sword-bearing law-maker. For ages, that is, at least from the eighth to the sixteenth century, the contest was carried on till it issued, as we fortunately experience, in the establishing the supremacy of the middle classes. The feudal lawgiver was every where the enemy of that trade which gradually subverted his power. He was slow and unwilling even to acknowledge the rights of his emancipated slaves. When they had congregated in towns, and were able to enforce their claims, a sort of compromise ensued, and the legislator or sovereign ceased his hostility in exchange for a tribute. The inhabitants of towns purchased of the feudal law-maker an exemption from his vexatious oppressions; though his continual and ever frustrated aim was to maintain them in submission and slavery. Those who were hostile to the middle classes, and who plundered them upon every occasion, could not have established and protected their right of property. They acknowledged it indeed when the others became powerful enough to compel them; but they did not establish it.

Formerly, the labourers, and with them all the wealth of the country, were the property of the legislating landowners; now it is in the possession of the descendants of emancipated slaves. The landowners are neither the most important, nor the most opulent portion of this community. They are far surpassed in numbers and in wealth by the capitalists. The great mass of the original landowners' families are extinct, or the land has passed from their descendants for some pecuniary consideration; so that in fact the property of the present landowner is derived from, or represents, capital. The

landowner, as such, derives his right to that share of the produce of labour he receives, under the name of rent, from being the descendant of those who forcibly appropriated, not merely the land, but the labourer; or he possesses the remains of the power of those who did so appropriate the land; and his annual income now represents the compensation given to him by the good sense of society, in its progress for the emancipation of bondmen and serfs. At present, all the wealth of society goes first into the possession of the capitalist, and even most of the land has been purchased by him; he pays the landowner his rent, the labourer his wages, the tax and the tithe gatherer their claims, and keeps a large, indeed the largest, and a continually augmenting share, of the annual produce of labour for himself. The capitalist may now be said to be the first owner of all the wealth of the community; though no law has conferred on him the right to this property.*

The capitalist was originally a labourer, or the descendant of a villein, and he obtained profit on what he was able to save from the produce of his own labour, after he had wrested his liberty from his masters, because he was then able to make them respect his right to use the produce of his own industry. But

* In page 31, of "*Labour Defended against Capital*" I have demonstrated that this change has been effected by the taking of interest on capital, and by the process of compound interest; and it is not a little curious, that all the lawgivers of Europe endeavoured to prevent this by statutes, viz. statutes against usury, compound interest being, I believe, even now forbidden. The change indicated in the text is still in progress, and though the Reform Bill is said by its supporters to be intended to preserve the influence of the landed interest, it will do no such thing. You cannot, however, read the debates on the Bill, without becoming sensible how very much our legislators have it at heart to preserve the superiority of that interest; and you cannot look upon society without being convinced that their exertions have not been successful.

what he then received, and now receives, under the name of profit, is a portion of the wealth annually created by labour. In fact, the capitalist has obtained the whole of the landlord's power, and his right to have profit is a right to receive a portion of the produce of the landlord's slaves. His right to share this power, or receive this produce was never conferred on him directly by any law. It has grown up, however, gradually, in all the countries of Europe, being the moral result of the homage men pay to that great natural principle, the foundation of all property, that each individual has a right to the free use of his own limbs, and to the produce of his own labour; which right led first gradually to emancipate the slave, and then induced the landowner to *buy* from him, by giving him a share of his power over labour, the loan or use of the new property the slave had the skill to create, and the economy to spare; and which the landowner, as the emancipated slaves increased in numbers and wealth, did not dare to take. In the case of the emancipated slave, the landlord, and those who were the interpreters of his will, were gradually forced to respect the right of each man to possess, and use what he makes or produces; and out of the respect for this natural right of property, implanted in the hearts of all, though greed, may and does frequently overstep it, it being the great moral or sentimental basis of all justice,—has grown up in Europe that new order of society of which the distinguishing feature, as far as my subject is concerned, is the power and the wealth of the capitalist.

But the power of the capitalist over all the wealth of the country, is a complete change in the right of property, and by what law, or series of laws, was it effected? Was it by all those laws which you have of late complained of, and which you and other members of parliament have tried to get repealed; such as the laws for protecting real property

from the claims of creditors, the obvious intention of which was to defeat the right of the monied interest, to recover from the landowner the sums the latter might borrow, or even steal from the former!* You cannot answer in the affirmative. The law, till the legislator could not help himself, was opposed to the claims of the capitalist.

We have a good illustration of the conduct of the legislator in this respect, in the usury laws. He declared it to be a crime to take usury or interest at all. When the advantages of doing so had become manifest, and when the practice had become prevalent, the law following as usual in the wake of a custom, permitted a certain rate of interest to be taken; but the rate fixed by the law being below the average or market rate, the law was continually violated. It never determined in any case the rate of interest or usury. That, owing to various *natural* circumstances, or circumstances quite independent of laws, underwent successive alterations in every part of Europe; and the law subsequent to those alterations was gradually and necessarily altered, but was always inoperative, whenever the legal rate of interest differed from the market rate. It was only operative when it precisely copied the practices of the people and the prices of the market. Finally, when it seems probable that the market rate of interest will remain permanently below the rate fixed by the law, which has rendered it altogether inoperative, according to the intention of the law-maker, it is in a fair way of being repealed. The great object of the usury laws was

* See Mr. Brougham's speech, p. 107, authentic edition, and the present Solicitor-general's (then Mr. Sugden) speech, in the House of Commons, Tuesday, May 6th. "It was," said the learned gentleman, "the original law of the land, that if a person were indebted to another, *his land could not be seized by the creditor*, though the annual profit might be." Mirror of Parliament, 1828, p. 1334.

to keep down the monied interest. The right to take interest and to have profit, with a right to have usance, which are rights of property, as well as the right to an estate, have been continually denied, or vainly attempted to be limited by the law. There was for many ages a contest between the monied and the landed interests, the latter dictating the laws for its own advantage. In spite, however, of country gentlemen, that respect for the natural right of property which has been felt by the law-maker, even when he has endeavoured partially to set it aside,—of which the right to have as much interest as a capitalist can get, is a part—has gradually altered, not merely the legal right of property, but all the political relations of Europe.

The changes which I have briefly brought under your notice, form an important part of the history of civilization, and when we examine that we find it quite distinct from the history of law. Subsequent to the period when the latter was written with the sword, and men were appropriated by the right of conquest, the serf gradually outgrew his bondage, ceased to be the property of the warrior noble, and acquired a right of property in what he created acknowledged by his master. The capitalist then emerged into notice, and, obtaining from the landlord interest or profit on his property, shared his power. Now we find, in consequence of the respect for the natural right of property, that a large middle class, completely emancipated from the bondage and destitution which the law, by fixing the rate both of wages and interest, sought to perpetuate, has grown up in every part of Europe, uniting in their own persons the character both of labourers and capitalists. They are fast increasing in numbers; and we may hope, as the beautiful inventions of art gradually supersede unskilled labour, that they, reducing the whole society to equal and free men, will gradually extinguish all that yet remains of slavery and oppression.

All these changes have been effected in spite of the law; and the equally benevolent changes now in progress, will be unnoticed by it till they can no longer be controuled. And by what could these mighty changes be accomplished, if not by a Power greater than that of the law-giver? They have been brought about, I contend, by the moral laws implanted in our hearts, such as that mutual respect for the rights of each other, and the mutual fear of each others equal power, with which Nature inspires all our race, and of which the natural right of property is a portion and a part. The natural right, existing at all times, gradually supersedes the law of the land, and effectually secures those new rights belonging to individuals, which, as men multiply, are continually created. That each individual has a natural right of property in his own limbs, and in what they create, is a principle unremitting in its influence, and it teaches even those who are most greedy of dominion to pronounce—as, in making laws against its violation,—a severe condemnation on their own conduct. Through our moral sentiments, then, they being as far as property is concerned, the offspring of palpable physical circumstances, Nature is even now gradually overthrowing unjust appropriation, and gradually restoring that virtuous freedom, and healthy equality of possession, which being the original condition of mankind, are equally consistent with the highest degree of productive power, and the unbounded affluence of a civilized community, and with the naked destitution of the savage.*

All these alterations are sometimes attributed to the discovery of America, to the first voyage round the Cape of Good Hope, to the sagacity of some individual King, to the intellect of some philosophers, to the

* Laws of entail and primogeniture, inform us of the constraint which is, and must be, used to prevent the progress indicated in the text.

invention of printing, or to any thing rather than acknowledge the Divine government of the moral world. But it is plain, that the changes I have brought under your notice, were going on long before America was discovered, which was in fact a consequence of the spread of people and knowledge in Europe, and probably necessary to their further progress. National wars, and national debts, have undoubtedly contributed to these changes: but directly in opposition to the will of those who contracted the latter to carry on the former. To me it is pleasant to see the bad passions of warriors leading them to mortgage their land, and from that to see arising the universal equality which conquest destroyed. The events to which historians, each of them partially selecting one, ascribe these alterations, are undoubtedly links in the great chain of causation; but only the dull materialist, overlooking the moral laws of man's being, will ascribe to those events the merit of social improvement.

I am well aware that this statement of facts is decidedly adverse to the prevalent theories on the subject of legislation, and the continual practices of legislators. We are generally taught, that the constitution and the laws of the country determine all the rights of the people; and legislators continually act as if every right that exists in society were the offspring of their kindly care. I have already quoted passages from Messrs. Bentham's and Mill's writings, to shew that they describe the great business of government and law to be the determining what each man is to possess, and to guarantee that in his possession. On the contrary, if the observations I have made be correct, the right of property is determined by natural laws, and that right, gradually overturning the laws of man, to which it is opposed, cannot be said to be guaranteed by them. What the law did not foresee and create, what it opposed when called into existence, what it only sanctioned when the legislator

could no longer shew hostility with advantage, it can in no sense be said to have established and guaranteed. But if this be true, it may be supposed that there are no guarantees for any rights. If legislation as to property be as I represent it, inefficient and incapable of securing respect for its own decrees; how, it may be asked, could society exist? Before I shew how the natural right of property is guaranteed, I wish therefore to direct your attention to several important rights and privileges, which have grown up in society unwilled by the legislator, and which he has only guaranteed when he could no longer oppose them. Such facts, when properly understood, are in truth, of great practical importance. If any thing can abate the present rage for law making, and for multiplying regulations for every part of society, the fact to be learnt by an attentive consideration of history, that laws have little or no beneficial influence over the fate of mankind, is well calculated to produce so desirable a result. I shall therefore, in another communication, illustrate this statement both by principles and facts.

Your obedient servant,

A Labourer.

LETTER THE SIXTH.

THE LAW-MAKER DOES NOT ESTABLISH RIGHTS: HE ONLY COPIES USAGES.

Identity of Lord Bacon and Mr. Locke's philosophy.—Law-makers in establishing a right of property only copy a previous usage.—Examples of the test acts and Catholic emancipation.—The press.—Last act of legislation.—Examples of Peter the Great and Joseph II.—Of the middle ages—Of forgery.—An example in the time of Athelstan—In modern Mexico.—Attempts to abolish villeinage on the continent.—The French revolution.

TO H. BROUGHAM, ESQ. M.P. F.R.S., &C.

Sir,

It seems to me that the leading principles of Lord Bacon's, and of Mr. Locke's philosophy, which when properly understood are identical, viz. that "man is but the interpreter of Nature," and that "all our knowledge of the external world is obtained by means of our senses," or, "is a copy of that world;" though these principles have been overlooked by writers on legislation, and on the progress of civilization, throw a clear and steady light on many social

phenomena. The deductions we may draw from them, or rather from it, for in substance the foundations of all knowledge, as laid down by these illustrious men are, I repeat, identical, will confirm the inference already drawn from history, and prove that the legislator neither could, nor did, originate and establish, or even modify to any extent, a right of property. Like the philosopher, he is at best but an incorrect interpreter of a part of Nature. Where, I ask, did he get *his idea* of a right of property? He is one of us; the laws which regulate our knowledge domineer also over him, and his notion of that relation we call property, must at all times have been derived from what he saw. It was copied from an external fact previously called into existence. The right of property existed, the relation between man and the work of his hands—to compel a respect for which is the pretended object of laws—existed before he thought of supporting the right by threats or promises. Not only did the right exist, it had been violated; the legislator had violated it himself before he undertook to preserve it from future infraction. The species of appropriation he has confirmed, existed prior to his decrees. The notions of mine and thine, and the relation of man to what he fashions or produces, were antecedent to all law; and in strict conformity with the great principles taught by Bacon and Locke, I affirm that law-makers only set the seal of their authority to the rights established, or the wrongs practised, by mankind. The appropriation of the land was made by the sword, not by the law; but what the sword acquired, the law afterwards endeavoured to preserve.

The flatterers of kings and of law-makers, and youth hot from the study of the first French class-book, seduced by the eloquence of the amiable Fenelon, may fancy that the legislator marks out the rights and duties of the several classes of his subjects, and apportions to

each one, like Idomeneus, or the revered Manco Capac, or the not less revered jesuits of Paraguay, his task and his reward. But the mature men of this age, who have enquired into the progress of society, and are acquainted with the manner in which the inhabitants of Europe, as Mr. Hallam says, have purchased from their governments privilege after privilege, toleration after toleration, or won them out of the iron clench of the legislator, cannot for one moment suppose that he ever has established the rights, or prescribed the duties of his subjects. That every blessing of freedom we enjoy, from Magna Charta down to the abolition of the Corporation and Test acts, and the admission of the Catholics to share the civil rights of the rest of the community,—that every civil and religious privilege of which the people now boast — that freedom of trade, and freedom of the press, and freedom of judgment (imperfect as they yet are), that protection against the *sword of majesty*, against the injustice of the judge, and against the plunder of the noble—that our security, partial and incomplete in this respect though it yet be, for we are still a prey to the procrastination and fiction of the law administerer, and the despotism of the law-maker,—that all the blessings of freedom, and that all our civil rights, have been gradually and slowly gained by the exertions of the people, by their gradual increase in wealth and numbers, giving force to the gradual increase of their knowledge, and making the *general reason*, as contrasted to the *caprice of individuals*, the rule of our lives,—are truths of which no reader of history can for one moment doubt. When the people, as they have become powerful and wise, have compelled the legislator to make laws consistent with the rights which gradually come into existence, it has then been very flatteringly asserted, that he has conferred these rights on them, and guaranteed their enjoyment—an assertion which he has sought to make the general creed of mankind—but

which can only be true if the parliament of England bestowed that physical power on the Catholics, and confirmed it in their possession, by which they have at length, in spite of its continual opposition, compelled that parliament to give them full religious freedom.

Not to go beyond circumstances well known to every man, to confirm this view I shall merely remind you, that the question of the repeal of the Test and Corporation Acts was settled out of parliament before it received the legislature's sanction. The government resisted the repeal of these Acts as long as it could, but when the general knowledge of the age made intolerance hateful, and the wealth and power of the dissenters enabled them to enforce their claims, the legislature was obliged to give them a specific sanction.* Hereafter, and even at present, we may hear praises chaunted forth on the toleration of the government, on account of the protection and guarantee it affords to the rights of Dissenters; but the same power which compelled the legislature to affix its seal to these rights, *viz.* public opinion modelled by circumstances, at all times guarantees and preserves them.

* "With respect to the object of the motion," said Lord John Russell, in the debate on the Corporation and Test acts, "I am sure that though its opponents may for a time retard it, they never will be able to prevent its final accomplishment. Of this I am fully convinced, that any attempt which may be made to thwart the spirit of liberality and intelligence, which is daily increasing in this country, will be perfectly fruitless. Whatever kings or cabinets may think of the power they possess, I can assure them that the country governs them quite as much as they govern the country." This power, that the opponents of the measure cannot ultimately resist, which renders attempts to thwart it fruitless, and which governs cabinets more than they govern countries, is the power which actually governs all our affairs, and guarantees all our rights. Language has no meaning, if the terms of constraint continually applied to the actions of government do not signify a power superior to its decrees. If that power did not preserve social order, governments, which are subordinate to it, would be impotent to do so.

At length, also, the Catholics have been placed almost on a level with the rest of the people. Their numbers their wealth, and their power, manifested in various associations and acts of display, having alarmed such of the Protestants as dreaded a civil war, and were not previously conscience stricken at the effects of their own injustice, the legislature and the church of England, however unwilling, have been compelled to cease from persecuting the Catholics.* Those who are in love with law, which I am not, may tell us that the constitution or the legislature guarantees and secures the rights of the Catholics, but to me it appears that the strength of the Catholic arm, or the apprehensions of that strength, or whatever else determined the legislature to concede emancipation against its frequently declared will, is the power which guarantees and secures toleration. I have seen too much of the process of manufacturing acts of parliament, to attribute any great virtue to a few speeches, in which as much is said for, as against an opinion—to the hocus pocus of a man in a large wig, putting a question which an obsequious

* It is hardly necessary to quote any authorities, to satisfy the reader that the Catholics have grown into wealth and power, in spite of the law; but the following eloquent passage in Lord F. Leveson Gower's speech, on Thursday, May 9th, is so appropriate, that I am induced to quote it. "Much had been said of the power of the Catholic clergy in Ireland: What was the lesson to be drawn from the history of its rise and progress? The same lesson that is blazoned on the page of every other history: that, if you wish to deal with the nascent energies of religious opinion, you have no choice but extirpation or toleration. The former course has been tried with success in Spain. With shame I confess that it has been tried; but, thank God, with far different success in Ireland. Yes, the evils of that country I deplore; the power and principles of the Catholic religion I deprecate; but I had rather have Ireland as she is, than see her near to us by position, dear to us as she ought to be, and as she is, by every tie that can bind sister countries together, the living witness that the sword of Cromwell, or the statutes of Anne had succeeded to the full extent of their sanguinary and unrighteous aims."

majority answers as the minister bids, and to a clerk of a parliament reading a few words in Norman French ;— I have seen, I say, too much of your proceedings to join in the opinion, that an act of parliament establishes and protects rights. I can attribute no such miraculous effects to the ridiculous ceremonies and mummeries practised at Westminster. I put them aside as wholly extrinsic, extraneous, and unnecessary to the great scheme of society, and then I see that the living power of public opinion which compels the legislature, as yet respecting its existence—to go through these mummeries, is in fact the power which at all times secures all the rights of every member of the community.*

The freedom now enjoyed by the press, the true church of England, as it has been called, is a still more

* The following brief quotation, sets in a clear light the force of public opinion, which it is obvious the legislature has not voluntarily called into existence. The writer of the article from which it is taken is only wrong in throwing doubts on the utility of this species of fatalism or mechanism. He has only to recollect that the external world, or if he so pleases, the Divinity himself, ultimately corrects all our opinions—for all men, in the long run, appeal to facts to justify every opinion—and all our opinions may therefore be said to be formed by facts, or by emanations of the Deity;—he has only to be aware that the mind is, as Lord Bacon says, when most correct, only a copy of Nature, or of God, to reverence as I do that fatalism or mechanism he now denounces. "We stand leashed together," this writer correctly and eloquently remarks, "uniform in dress and movement, like the rowers of some boundless galley. This and that may be right and true; but we must not do it. Wonderful " force of public opinion." We must act and walk in all points as it prescribes; follow the traffic it bids us; realise the sum of money, the degree of 'influence' it offers, or we shall be lightly esteemed; certain mouthfuls of articulate wind will be blown at us: and this what mortal courage can front! Thus while civil liberty is more and more secured to us, moral liberty is all but lost. Practically considered, our creed is fatalism; and free in hand and foot, we are shackled in heart and soul with far straiter than feudal chains." See Edinburgh Review for June, 1829, p. 457.

striking example of the same fact; because imperfect as that freedom is, it has not yet received the positive sanction of the legislature. The press grew into influence and power in spite of Star-chamber fines and imprisonment; it is increasing in respectability, in influence, and in magnitude in spite of the libel-law; it wafts to every corner of the globe, in spite of the privileges of either House of Parliament, which are gladly waived to connive at its bold aspirings, an account of their proceedings; and representing the general reason, it rules both over the throne and the legislature. By what law have these most important rights and privilege, been conferred? By no law whatever; they are exercised and acknowledged in direct opposition to the law, because all classes and conditions of men are sensible that they are necessary for the welfare of all. Public opinion, not the judges, conferred on the press its rights and privileges; and public opinion, against the inclination of the judges, continually maintains and extends them. An inquirer into the laws of vegetation is not satisfied with describing the appearances of plants, he dissects them, and traces the sap-vessels drawing nourishment from the earth, and carrying the living juices to every branch and every bud, where, by the combined agencies of the sun and the air, and the assimilating powers of the plant it is formed into new matter, constituting the growth, the flowering, or the fructifying of vegetables. In like manner, the inquirer into political science is not content to record the views of a legislature or a judge, and he looks for the source of their altered opinions and improved conduct. When he finds the legislature and the judge gradually, but tacitly, recognizing the power of the press; gradually but silently abstaining to enforce against it the rigorous laws which are yet in existence; and when he traces this forbearance to the power of an improved and concentrated public opinion, when he detects in it the cause

for greater humanity in the judge, and greater caution in the law-maker, he ascribes them to the altered circumstances of mankind, not to the better laws, and the better administration of them, which gradually come to prevail. The mind and opinions of the lawgiver, or the law administerer, are not unaccountable and miraculous; like the mind and opinions of a chemist, which are formed by the chemical knowledge of the age in which he lives, they are the result of what is seen, or felt, or known to be the state of society at the time. The circumstances which dictate the opinions, and create the mind and temper of the lawgiver and the judge, of which the chief is public opinion,—and not the technical expression of those circumstances put forth by the legislator or the judge, are the actual guarantees, and the actual means of protecting the rights of mankind.

The influence of the press in controlling or overruling the enactments of the lawgiver, and the decrees of the judge, the press being a power neither acknowledged nor avowedly obeyed by either of these functionaries, is an illustration of the manner in which both of them have their minds reduced to an accordance with the prevalent opinions and practices of society. Neither of these functionaries can dictate the opinions of society, but those opinions publicly expressed dictate their actions. In the long run, the material world is sure to correct, if it do not inspire, all opinions. The mind, in fact, is a copy of that world, more or less complete and accurate. Thus we go to the fountain head, when we seek to ascertain those material circumstances, such as changes in the numbers and wealth, and social relations of mankind, which determine first, the general opinions of society; and secondly, the actions of the legislator and the judge.

In these examples of our right freely to speak truth of and to the legislator himself, and of our right to worship as we please, it is evident that the legislator has

only confirmed by his declaration, or acknowledged by his forbearance, rights that have grown into existence without his permission, and frequently in opposition to his will. When the legislature fulfils its functions in the best possible manner, it only embodies the customs of the community in a legal and precise form of words, lending the sanction of its clear and delightful phraseology to the opinions and rights already existing among its subjects. "To follow, not to force, the public inclination," is the accurate definition of legislation, given by Mr. Burke, "to give a direction, a form, a technical dress, and a specific sanction to the general sense of the community, is the true end of legislature. When it goes beyond this, its authority will be precarious, let its rights be what they will." "Those who will stand at the head of affairs, must follow and obey the general sentiment,"* is a truth which his wisdom frequently enforces.

Such a description of your presumed high duties, is rather true than flattering. A king, by those who

* Letter to the sheriff of Bristol, on the affairs of America. The observations in the text were written many months ago, and the conclusion drawn, *viz.* that it is wiser to look to the overruling circumstances, than to the overruled will of the legislator, for the causes which have promoted, and for the means which will promote, the welfare of society, may not be enforced by the following remark; but as a proof that those who most strenuously insist on holding fast by legislative authority, are not insensible to the manner in which society is governed and regulated independently of them, is not unworthy of attention. "When gentlemen talk of the dangers of innovation," says Mr. Huskisson, "they ought to remember, with Lord Bacon, that Time is the great innovator; Time has raised these great interests and populous towns, and it is the business of a statesman to move onward with the new combinations which have grown about him. In advance of that great innovator I have never been. If I do not put myself in advance, however, I ought to follow Time, with a cautious and prudent, but a steady step. For my part, I have always endeavoured to modify, not to force, the pressure of these circumstances."—Mr. Huskisson's speech on the motion for disfranchising East Retford, May 5th, 1829.

only learn from the court-crier that all justice is administered in his name, is supposed to possess great power; in fact, however, whatever luxuries he may enjoy, in relation to the power of the nation, he is a mere instrument for affixing the sign manual to the business his ministers bring before him. His ministers in turn are supposed to govern both him and the nation, but the fear of that nation is continually in their minds; their responsibility weighs on them, and they conform to its wishes, as they are expressed by its representatives. In like manner, the representatives, or parliament altogether may be considered as only a sort of mechanical stamper, which puts a seal to the general decisions. It has certified and registered the decree, releasing the Dissenters and Catholics from the disabilities former times imposed on them; and were the Jews, or even a body of Atheists as numerous as the Catholics, and as rich as the Dissenters, to form a part of the community, the legislature would be compelled to grant them all the civil rights enjoyed by the rest of the people. What else it may have to register, is in the womb of Time; but the last decree to which its seal will be affixed, will, from that time forward, give validity to the public sentiments without the necessity of its *visa*. Its power is now derived from echoing those sentiments, and when men perceive this truth, that power will be for ever annihilated.

If I have not entered, and shall not enter into any examination, as most writers do, of the gradual alterations made in the law relative to the *tenures* of land, attributing to these alterations that great change in the right of property, which cannot be denied; if I do not inquire into the stratagems and cunning contrivances by which, at various times, the judges are said to have sought occasionally to prevent the accumulation of land in the hands of individuals and corporations, it is because the object I have in view lies beyond all such

verbal copies of pre-existing rights. I look chiefly at the alterations in those rights to which the judge and the lawgiver have been gradually compelled to make their decisions and enactments conform. Persons fond of prying into law books may inform us, that at one period the lawgiver did this, and the judges did that; but the more rational enquiry is into the circumstances, or natural laws which compelled the judge to do this, and the law-maker to do that; or which brought about the altered opinions which have gradually prevailed amongst legislators and judges. The lawgiver was originally called on to protect a pre-existing right of property; and in the great majority of cases the law was only subsequently altered, to make it conform to alterations previously made in that right. Now, as the latter alterations have in former times determined the mind of the legislature and the judge, and as we may be sure that such alterations will, hereafter determine his mind, it seems to me of more importance to inquire into the determining circumstances, than into the flecting thoughts, though embodied into somewhat permanent decrees of past legislators and judges. Generally speaking, our antiquaries and historians have looked only at the letter of the law, and have neglected to notice those successive changes of which the law was a copy. They have been so desperately in love with the sentences put together by the lawgiver, so besottedly attached to a form of words, that they have ascribed to language every thing good and valuable in society, as well as all the alterations which have taken place. They have never looked further than the parchment decrees. Holding to the principle of Locke and Bacon's philosophy in all times and places, and regarding it as applicable to all things, I have passed over the decrees of the law-maker, to inquire into some of the great alterations in society, of which they were the imperfect copies.

The power as well as the utility of legislators, seems to me therefore to be in general rated much too high, and a few more illustrations of their inability to do more than sanction customs, usages, and rights already established, may not be thrown away. M. Dumont and Mr. Bentham have explained at some length the difficulty, or even the impossibility, of transplanting laws, however excellent, from one country to another; but whether the law be borrowed from another country, or be born of the fancy of a native lawgiver, can make no difference as to the difficulty of bringing it into practice, if it be at variance with the customs of a people. If it accord not with their customs, it can only be made the rule of their conduct by force of arms. The individual law-maker soon runs his course, his successor has whims of his own, and cares not to employ his military power to enforce obedience to some whim of his predecessor. The new law consequently ceases to be enforced and obeyed. Peter the Great was enabled, by the power of his guards, and the fears of individuals living in a community composed of different and hostile tribes, to compel some of his Boyars to shear their chins; but since his death the Russians have returned to the venerable custom of wearing beards. From the hereditary respect which the inhabitants of the Netherlands bore to the house of Hapsburgh, the chief protectors of the Catholic religion, Joseph II., was able to effect a trifling reform in the church of that country, but his power was unequal to his wishes, and he had the vexation even to see his plans rendered abortive. His failure broke his heart. The legislator may will good or evil, but whatever he wills, his power is very circumscribed. If a despotic sovereign, like Peter or Joseph, cannot effect any great alteration in the customs and conduct of his people, cannot establish new rights, and impose new duties, are publican or representative government, existing more im-

mediately under the controul of opinion, cannot possibly attempt even to introduce laws not sanctioned by the customs of its subjects.

I might multiply, without any other difficulty than seeking in a few books, instances of laws failing to effect any alteration or improvement in the morals or manners of a people; but the fact seems so obvious, that I shall only briefly notice such as my memory will supply me with, neglecting to quote the volume and page in which documentary proofs of the assertions may be found.

The whole history of the middle ages, embracing several centuries, and almost all the countries of Europe, seems to me little more than a contest between laws and customs. The clergy denounced and excommunicated feuds and maraudings; the sovereigns, as soon as they acquired power, fulminated decrees against those who prosecuted their revenge, or carved out their own fortunes with their own swords, after a fashion of their own; but as both the sovereign and the clergy acted on the very principles they condemned, their efforts were quite unavailing, and the whole of Europe was one great scene of reciprocal contention, plunder and war. Even after the inhabitants of towns, prosecuting their own peaceful pursuits, had grown into importance, and had both taught the principles of mutual service, on which all trade is founded, to the clergy and to the sovereign, and had strengthened their power, baronial excursions to prosecute a feud, or to commit plunder, were still practised in spite of the law. In fact, such customs continued in our own country almost to our own time. A century has yet scarcely elapsed since the chiefs of the Scotch highlands kept in their own hands the power of administering justice after their own manner, on their own estates; and within the same period they were in the habit of making excursions to levy black mail, &c. on the inhabitants of the lowlands; while among the

clans private feuds continued, and led frequently to bloodshed and murder. The decrees of the law-maker were inoperative during the period I have referred to, and failed completely to make men respect each other's rights, till the extension of trade, the invention of new arts, and the importation of new luxuries, slowly brought a new class of men into existence, introduced into the community other tastes, supplied passions with less mischievous gratifications, beat down individual power, and spread through the land those principles of order and reciprocal service, which are the basis of all mutual exchange.*

For many years the law has been sharply directed in this country against forgery and fraud of every description; but it is the custom of the people, from high to low, from the monarch to the peasant, to obtain splendid luxuries, or the mere means of subsistence, on false pretences. One deludes the nation, or his ministers delude it in his name; the other deceives the parish officers; and of this universal custom, illegal fraud and forgery are but the rankest shoots. The decrees against them, promulgated by a palace-loving king, solemnly sanctioned by salary and place-hunting nobles and squires, and enforced by a large fee-exacting or salaried judge, have been powerless, in this instance, to abate a practice which is consistent with their own every day behaviour, and the general customs of society. The general disposition to plunder which prevails, is probably a habit of action transmitted from those ages of predatory warfare, and universal plunder I have just alluded

* The reader will find numberless examples of the truth stated in the text, in the philosophical work of Mr. Hallam, on the middle ages. It is, however, to be regretted, that in acknowledging many natural causes for the continual increase of civilization, he should have overlooked, as almost all authors have done, the continual increase of mankind, which is the most marked part of all the material social phenomena. Hardly any of its consequences, I believe, have yet been accurately traced.

to, the industrious classes having too closely followed the fashions, and aped the manners of their idle and worthless masters; and the laws will only seem to effect an alteration in the general disposition, when the power of making them shall have fallen into the hands of those who live by the produce of their own labour.

Here is a precise and specific example of laws failing to influence customs. "We find," says Mr. Miller, "that by a statute in the reign of King Athelstane, a churle who had purchased an estate consisting of a few hides of land, with certain appendages usually possessed by gentlemen of that fortune, was declared to have a right to all the privileges of a thane." "Such was, however, the original inferiority of the peasants, and so strong were the habits connected with their primitive condition, that though they had been raised to independent circumstances, it was with some difficulty that they were permitted to hold the rank of gentlemen, and procured the treatment suitable to men of that superior class.* The law, therefore, even at that early period, when customs, it might be supposed, would not be more unalterable than at present, failed to procure for the opulent churle all the rights and privileges attached to the property he possessed, when in the hands of one nobly born. The same sort of thing existed only a few years ago, or even yet exists in Germany. It exists also in the western hemisphere. In those parts of the United States where slavery has been abolished, the "niggers," as they are called, are now as badly treated, as much domineered over,—their society is as much scorned as before they were emancipated.

We have a similar testimony to the impotency of laws in Mr. Ward's account of Mexico. That gentleman states, that the Indians of the capital seemed,

* An Historical View of the English Government, by John Millar, Esq., vol. i. p. 315.

when he was there, at the service of any white who chose to command them, notwithstanding they had been declared free citizens by the constitution. The custom of obedience was of course far more influential than the words of the lawgiver, and those who had declared they should be free, continued, under its influence, to treat them like slaves.*

The advantages which have accrued from the gradual conversion of villeins into free labourers in some of the countries of Europe,—the greater ingenuity, industry and skill, possessed by the latter, and the consequent more rapid increase of national wealth, have induced the sovereigns of those countries in which the conversion has not yet been fully effected, to hasten it by decrees. Both Maria Theresa and Joseph II. in Austria, and the present king of Prussia, have endeavoured to abolish feudal servitude, to change the right of property which exists among their subjects, and thus to make them wealthy, like the inhabitants of Britain or Holland. Have they succeeded? I know from personal observation, notwithstanding the number of years which have now elapsed since the first attempt was made in Austria, that a population of free labourers is yet to be called into existence in that country. I know also from personal observation, as well as from various publications, that the laws for abolishing feudal servitude in Prussia, emitted by the celebrated Prussian reformer Baron von Stein, though they were aided by a revolutionary ferment, which brought all the elements of society into new combinations, and the more cautious repetition of those decrees at a later period by Prince Hardenberg, have not accomplished their object. The peasants have rarely made any use of the power given

* See this gentleman's work on Mexico; or see the Westminster Review for April, 1828, article Mexico, for an additional and rather an amusing anecdote of a priest, which illustrates this subject.

them by the decree of 1811, to convert the farms they cultivate as serfs into their own property, on the payment of a reasonable compensation for the services they are now bound to perform. Partly they have been accustomed to hold their lands on these conditions, and never formed a wish to change them; and partly there is among them a deficiency of means to make the compensation required. It would be plainly impossible for the law-maker to carry such an alteration into effect, without compensating the landowner; and in that part of Prussia where personal servitude prevails, none of that new wealth has yet been created or introduced, which in past times effected the emancipation of villeins in other parts of Europe.*

Perhaps the French revolution affords even a more striking example of the inefficacy of laws in altering established rights. At an early period in its progress, equality was decreed. The old proprietors were banished, and the people were invited to divide the spoil equally amongst them. The particular disposition such laws encourage is thought to be so strong, that in general legislators have done all in their power to repress it; yet those laws did not produce equality in France, though they were seconded by several years of revolutionary confusion, and did not eradicate from the hearts of the people the respect in which they had been nurtured for their ancient masters. The laws of confiscation, a national sale, and the quiet possession of the land for several years under the emperor, were found insufficient, on the return of the Bourbons and the emigrants, to make the new owners satisfied with their

* It may probably strike you, Sir, that the failure of the law in Prussia to effect the object contemplated by the legislator, when so many circumstances were favourable, is a proof that the gradual emancipation of the slaves throughout Europe, was not effected by laws. That it has failed, See also Mr. Jacob's First Report on the Agriculture of the North of Europe.

titles. Conscientious apprehensions were felt, and were followed by alarm throughout the country. Some of the emigrants were quietly reinstated in the possessions of their ancestors; to some of them a voluntary surrender of purchased rights was made; to others money was offered if they would sign a renunciation of what they had never possessed; and all of them found that being the heir to the person dispossessed, enabled them to obtain what had been his property, on easier terms than other persons.

Thirty millions sterling were voted by the French parliament in 1826, almost without opposition, and paid almost without a murmur by the people, to put an end to these claims, and obtain a conscientious right to the land they now hold. If any doubt should be entertained of the single facts I have alluded to, for I do not pretend to hunt up any other authority than memory for them, no doubt can be entertained that the decrees establishing equality, which for years terrified all the opulent people of this country, and perhaps of all Europe, failed completely in their intended effect, and there is at present very little more equality in France, either as to possessions or persons, than there was prior to the revolution. The people only transferred their affections. They had long worshipped the old monarchy, and they fell down before the idol of the republic to lift up their eyes in adoration of the empire. The glories of their old dynasty were for a time obscured by the fresher splendour of Buonaparte's victories; but the longing after some human idol, and the sentiment of worship were the same. The law changed names and forms, but it did not change the customs and opinions of the people. It is of no consequence, therefore, to my argument, whether the laws be decreed by a wild democracy, or an arch despot; unless they accord with the feelings and habits of the people, or are copied from their customs, they will be inoperative and powerless.

This principle of the inefficacy of laws applies to reforming the laws; and nothing is better known than the fact that bad laws are retained long after it is ascertained that they are bad, because they are closely and intimately connected with the habits of a people. A written decree is in fact originally the offspring of a single mind; and no one mind has much influence over a whole nation. No single reformer who precedes can ever represent the general sentiments. Bad laws therefore should not be swept away by new laws, but be suffered to fall into desuetude, which is for all parties a gradual and safe extinction of evil. The reform of laws, which it is now desirable to promote, is not to introduce a body of new enactments, but to bring legislation into contempt. In all questions of reform, the happiness of the reformer himself ought not to be lost sight of, and in general reformers are so much annoyed, that when they perceive the safer path I have just indicated, they will not be anxious to encounter popular odium by substituting new laws for old ones. We know, indeed, that one self-sufficient secretary, who plumes himself on adopting the wisdom of others, has been enabled to transmit his name to posterity on some acts of parliament; but his reforms were so gentle, and had been so long demanded, that he encountered no other opposition than a few professional frowns. Another secretary, however, (Mr. Huskisson) who acted with greater boldness than Sir Robert Peel, was driven from office, and was publicly insulted, for carrying into execution reforms which, in principle, have long received the sanction of every enquirer, but are not yet recognized by the mass of society. Very few reformers are held in honour, and there is neither patriotism nor humanity in sacrificing one's self to obtain only the execration of our fellow citizens.

I conclude from these statements, that laws are copied from rights existing in practice, not rights

created by laws. There is a close connection between them; but a vulgar materialism, which must have a tangible foundation for belief, commits the mistake of substituting the piece of parchment for its immaterial cause, the opinions of society. With very few exceptions, such as the artificial community of Sparta, of which we know but little, and some religious communities, the law-maker, whether he be an emperor, a king, a prophet, an archon, a consul, a baron, a provost, a mayor, or a burgomaster, has only endeavoured by his enactments to enforce the customs, and maintain the rights of the people for whom he legislated. The people, from respecting the legislator too much, may have endeavoured to preserve his laws, and to act on them long after they had ceased to represent the circumstances of society; and he by endeavouring also to fix at some one point what nature has made progressive, may have modified rights as they came into existence, and have had a considerable influence over the formation of rights subsequent to his enactments; but in general, the law has only expressed in words, and endeavoured to enforce by penalties, the practices, whether right or wrong, which previously prevailed among, and were generally approved of by, the people for whom the law was intended.

The boasting lawmaker then, like the theoretical philosopher, does not get one step beyond what he sees. When he glories in his profound schemes, he ought to be reminded that they are mere copies of some absurdities already carried into execution. Our Bank Restriction Act, and our Police Law, conforming in some measure to our peculiar circumstances, to take two examples, have both of them existing prototypes. Among the despots of the continent, it was a common trick to make their subjects take their paper as money, before the despotic Mr. Pitt recommended us to follow their example. Police systems, somewhat similar

to that Mr. Peel (now Sir Robert) is at present promoting, have existed for years on the continent, in all the perfection unlimited political power can give them; and, judging from the atrocious crimes still continually committed in France, where the police is organized in the best manner, they are just as ineffectual in preventing crimes as the old watchmen of London.* If we were curious on such subjects, we might perhaps trace these pleasant devices up to their very sources, in the acts of some blood-stained and ferocious soldier, seizing the provisions of the industrious peasant, promising by a sort of tally, if he could not write, and by a bit of paper if he could, to pay for them at a future time, and when that time came, postponing the payment by his own lawless will, to a more convenient opportunity,—or establishing some rigid system of surveillance over the peasantry, whom he had first plundered of all they possessed, and then appropriated them as he had previously done their cattle. Deeds of this description are the monads, the first little nervous threads in the life of such laws, as the Bank Restriction Act, and of such schemes as those you dignify by the name of police. Most of your boasted enactments are found, when examined, to represent the barbarous customs of a barbarous people, and to have no better origin than acts of outrage, or systems of plunder.

I have already shewn you that the right of property is not an exception to the general rule. It does

* It is a well ascertained fact, that crimes against the person, violent crimes of all descriptions, are much more numerous in France, where there is such an admirable police, than in England, where there is comparatively none. See the report of the Keeper of the Seals to the French king in 1826 and 1827; the report of the committee of the House of Commons of 1828, for enquiring into the increase of crimes, and the work of M. Lucas, *Sur le Système Penal.*

not spring from the brain of the lawgiver, and is not modified by him. It arises from physical circumstances, and as they modify the customs of men, the law-maker alters his decrees. Such as it now is, it had its origin in the actions of mankind; their customs have ever since modified it, and have gradually altered the right of property, which the laws, always copied from, and always representing the customs of a past age, have vainly endeavoured to maintain. We have seen that the power of the landowner has been gradually overthrown, and that an alteration in the right of property has accompanied the ruin of his power. What may be called the practical deduction from these facts, the deduction that ought immediately to influence the conduct of legislators, is obvious. As the laws have not in times past, when the legislator had more power than at present, and when there was no public opinion to controul the career of the governing class, saved the landowner from comparative decay, it is the height of folly in you legislators now to make laws with such an object in view, when all the causes which formerly conspired to weaken the power of the landowners now exist in tenfold force. The principles which have already produced the changes noticed, are still in active operation, and still tend to the same results. The gradual and continued declension of the landed interest throughout Europe since conquest ceased, the gradual rise of the monied and the commercial interests, were produced by natural causes; and that declension is still in progress, and cannot be arrested by human contrivances. Those who live on rent have shared in the general prosperity, they possess more conveniences than their ancestors, but they have every where declined in power and splendour, compared to the other classes, who a few centuries ago had nothing but what the owners of land pleased to give them. "The usurer being," as Lord Bacon expresses it, "at certainties, and the others at uncertainties, at the end

of the game the money will be in his box." The land-owner has been overshadowed and stifled by the luxuriant growth of commercial and manufacturing wealth.*

The pertinacity with which he resists the abrogation of the Corn Laws is dictated by despair. It is one of the last attempts to preserve by legislation the superiority established by the sword, to which nature has decreed a termination; and his short-sighted obstinacy by which, bringing on himself contempt and hatred, he hastens his fall, is only to be equalled by the patient ignorance with which the rest of the community suffer him for a season to inflict comparative poverty and comparative famine on the whole.

By some of those authors, who are fond of attributing even the very existence of society, and every beneficial change in it to the law, it seems to be supposed that the adoption of the Roman laws, and the influence they gave to those who interpreted them, were the causes of the alterations and improvements I have brought under your notice; but this opinion, to say nothing of the barbarous nature of the laws themselves, is disproved by those alterations and improvements not having borne any proportion to the influence of those laws, which has been least, as in England, where the improvement has been greatest. It is plain, from our law relative to property being partly unwritten, we not having adopted the Roman law, and from our judges having worked out a system, by deciding cases as they were brought before them, partly following previous

* For an explanation of this circumstance, see Popular Political Economy, page 147, and the note. When the land-owners were mighty there was no other wealth in existence, but the rude produce of agricultural skill; at present that produce forms but a portion of the whole wealth of society. As the other descriptions of wealth have come into existence, the comparative power of the landlords, who can be the owners of nothing more than the produce of agriculture, has declined.

decisions, and partly straining them to meet, according to their ideas, the equity of each particular case, as wel as from the other circumstances I have mentioned, *that our laws have not created* the right of property such as it is, which now exists among us; they have followed, and followed with a very lingering pace, and at a great distance, the various slow and successive improvements which intervened between the first appropriation of the land, and our present right of property.

I need not recommend, however, such arguments to your attention, because the gist of that part of your celebrated speech which relates to our law concerning property is, that new property and new rights of property, have gradually arisen, to which, according to you, the laws are not yet adapted. The facts, or the rights, of which the law was originally only an imperfect copy, have been changed, while the law being nearly unaltered, enables the diligent antiquary to trace the history of man's delusions, but no more settles our ideas of mine and thine, and no more secures us in the possession of our rights than the Talmud or the Koran.

That at present there are many discrepancies between the law relative to property, particularly as to property in land, and the actual right of property, is generally acknowledged. That these discrepancies have been caused by gradual alterations in the *right*, and not by alterations in the law, for such as have been made, have approximated it more nearly to the right, cannot be doubted. But under these circumstances, no man pretends that the right must be altered and carried back to the old law. On the contrary, it is generally demanded that the law should be altered, and be made to conform to existing rights, and how this may be best accomplished, is the object of the numberless commissions and committees which have of late inquired into the state of the law. All the remarks I have made, are confirmed by the fact that the alteration demanded in

the law, is such as will make it conform to the rights the people already possess or guarantee to each other by their mutual opinion, or think they ought to possess, and therefore are willing to guarantee. On this principle I affirm, that it would be more rational for your commissioners, first of all to enquire into the rights which now exist, not in law books, but among the people, and to ascertain, from the alterations which have taken place in past times, what the future alterations are likely to be; and finally, to try and adapt the law, so as to make it oppose as few impediments as possible, to the bringing about the results ordained by nature, in gradually restoring the natural right of property.

If these observations be correct, if it be historically true, and in principle well founded, that the law neither establishes nor guarantees, nor maintains the rights of individuals, those who assert that social order, and the existence of society, depend on the law, must look for nothing but confusion and anarchy. Let them, however be reassured. That power which in past times has continually overruled the decrees of the legislator, has always established and preserved a social order of its own, far superior to any thing he ever contemplated. I might exp tiate on the subject at great length, but I shall content myself with shewing in what manner the law has not, and in what manner natural circumstances have, guaranteed that right of property which they have continually introduced. I shall reserve this, however, for another epistle, and in the mean time rest from my task.

A Labourer.

LETTER THE SEVENTH.

REAL GUARANTEE OF THE RIGHT OF PROPERTY.

The existing right of property is guaranteed by opinion, not by law.—Source of the opposite mistake.—Protection afforded by law against governments.—Illustration of Turkey and Britain.—Illustrations of opinion guaranteeing rights, not laws.—Tenants at will in England and Italy.—Property of traders.—Domestic rights.—All rights are guaranteed by opinion.

TO H. BROUGHAM, ESQ., M.P. F.R.S, &c.

Sir,

It is very generally said, that there is no guarantee for property but what the law affords; and that the security of property guaranteed by it, has been of the greatest use in promoting national welfare. These assertions are contradicted by the facts I have brought before you. The origin of the mistake seems to be this:

History informs us that the governing and legislating classes of society have very generally sought to restrain, limit, or regulate the natural right of property. Having violated or destroyed it, for even inter-

ference is violation, all other men require some guarantee against them. Considering laws for the protection of property as promises made by the legislative and ruling powers of society, that they will not to a certain extent interfere with the natural persuasion that we shall be permitted by them to enjoy what we produce, they may be called, I admit, guarantees. They are declarations on the part of some original wrong doers and their descendants, who have been by the silent and insensible operation of natural laws approximated to humanity and justice, that they will, within certain limits, respect the natural right of property. A security against their oppressions, a guarantee against the repetition of their flagrant outrages, was needed by the released serfs, and emancipated inhabitants of towns, and such a security and guarantee may have been found in laws, but they were only wrung from the legislator by the dread of that growing power in the people he had not been able to annihilate. The theory of those who say laws create rights, is copied from this single fact. The authors of it have been duly sensible of the necessity, that the natural right of property should be defended against the exactions of the legislating classes, and they have extended this fact to all the classes of society. With a strange oversight or inconsistency they found on the circumstance of the ruling classes having violated the natural right of property, a necessity for these ruling classes to retain a power to regulate their own unjust appropriation. The butcher-wolf has seized a lamb, and is tearing it to pieces; and Mr. Bentham and his followers, the pretended watch-dogs of the flock, bark aloud—To make him desist? NO! but to sanction his proceedings, and encourage him to do his work orderly, decently, and with decorum.

They bestow great praise on security of property, as conducing to the prosperity of a people. They ap-

peal to Turkey and to Britain, to shew the effects of wanting and possessing such security; but the greater security which exists in the latter than in the former, and which is described as the foundation of our greater industry, and superior national wealth, is not a security of the property of labourers against plunder, and against fraud, for it may well be doubted, looking at our criminal returns, and at the frauds which are daily practised, if private depredations are greater in Turkey than in Britain; it is security against the cadis, pachas, muftis, and sultans of our society. A regular compact has here been entered into between the peaceable flock and the wolves, and the latter receiving a stated, and as large a quantity of the whole as they can possibly exact, promise to allow the remainder to fatten in peace and tranquillity. At least they have ceased making open war on the flock, and only privately in the guise of shepherds, take as much as they can without terrifying and revolting the peaceable industrious people. In this country we have been enabled by a series of circumstances, to limit the exactions of our law-makers by some certain rules; industry here pays regular and stated tribute to pompous profligate idleness; there the tribute is still levied by the sword, in the same manner as it was first exacted by the warlike prophet and his immediate descendants. We have been able to subject our feudal masters to a certain regular rule, and we can only preserve them in this reasonable species of obedience by our intelligence. In the restraints thus imposed on the avarice and exactions of our Divan consists that security of property so much and justly vaunted in Britain. It is a security, not procured by the legislature for the people against each other, but obtained by them against the imposer of taxes; it is security against the rapaciousness of government, not against the unjust exactions, the secret thieving or open plunder of individuals. Considering laws for the

protection of property as limits placed to the unbounded, indefinite and capricious plunder of the ruling classes—the former conquerors of the soil—they cannot be too much praised; under any other view they appear intended only to protect oppression.

That a law does not give us security against each other, is evident by considering what it is—a piece of parchment, containing a declaration of the opinion of those who drew it up. It has of itself no power whatever, and can only be carried into execution by the resolves of living men. Any law, therefore, relative to a right of property, can only be a declaration that such a right exists, or ought to exist, supported by the opinion of the people, and determination to enforce that opinion at any given moment. Our persuasion that we shall be permitted to enjoy, and the actual guarantee of enjoyment, is not derived from the material parchment, or the significant black marks within it; a fact which cannot be doubted in this country, where the people are even more ignorant than the judges what are the provisions of the law,—but from our knowledge of the opinions and moral character of our fellow men. Our sense of security, as far as that original and natural, or instinctive, expectation is confirmed by experience, is founded on the effects of those principles of respect for mutual rights, the natural origin of which I have pointed out, and which are extended through all the relations of life, as society increases in numbers and civilization. An act of parliament derives all its force from the sentiments of the people, and it is quite consistent with all the opinions already advanced for me to state, that all men do, and must, ultimately rely for the security of their possessions on the mutual respect they have for each other's rights.

The actual right of property, as it is gradually created or altered, by the natural right of property modifying the artificial right, is secured by the consequences

of those laws which call it into existence. The Benevolent Power which has gradually broken the iron fetters of the landowner, has never liberated man from the silken and flowery bands of duty and happiness. The assertion that a right of property is created by human laws, is contradicted by every part of history, in every page of which you find evidence that the power, whether it was that of the Catholic or the Dissenter, of the emancipated serf, or the opulent burgher, which inspired the legislator with respect for his rights actually guaranteed them against all other men. The legislator, being the descendant of our conquerors, was more powerful than any other individual, and therefore we may be sure that the principles which compelled his obedience, must have been of paramount influence over the rest of the world. The right of the labourer to personal freedom, however long it was overlooked, is obviously founded in the common principles of our nature. When he, from the multiplication of his class, was able to claim that right, and not till then, it was respected; in like manner the right of the free labourer to own what he produces, is obviously founded on the natural principle of the right of property; he could never do otherwise than recognize it himself; and when he was able within the walls of his own place of refuge to protect that right, it was recognized and acknowledged by others. In like manner his right to receive interest for the loan of that property, or to obtain a profit by employing it, was respected when the use of that property was desired by others, and they were unable to force it from him. Thus, as new wealth was created, and as a new right of property came into existence, the circumstances, that nature gives all wealth to the labourer, and then gives him, as a capitalist, the power to defend it, begot in all other men motives to respect his right. The actual labourer deeply respecting, or not yet possessing a sufficient power to resist the united

claims of the landlord, the capitalist, the priest, and the law-maker, finds in fact that his right is neither acknowledged nor protected. The right of property, such as it is therefore, is continually guaranteed by the same circumstances as create it. The persuasion that we shall be permitted to enjoy what we make is natural and necessary, and inspiring us with anger and indignation when it is disappointed by the conduct of another, and rousing us to exertion, inspires that other with apprehension, and compels him to be just. In the progress of society, the apprehension begets a habit of acting justly. The painful fear ceases, when the habit is established, and men respect the rights of each other after the application of personal strength to protect them has ceased to be made, and ceased to be dreaded. A sort of sufferance, or, if you please, of mutual forbearance, which constitutes a mutual guarantee, arises among men, and this sufferance and forbearance, not the law, protects the rights and enjoyments of all.

Those who distinguish between sufferance and right, the latter being sufferance put into a particular form, do not seem to me to be very accurate observers. Such a distinction forms the basis of many an eloquent parliamentary oration, and is the theme for learned speeches at debating clubs. Beardless youths, and grey-headed statesmen have largely dilated on the security of law, and the insecurity of depending on the consciences of our fellow men. When such a distinction is analyzed, no difference between right and sufferance can be discovered. The laws themselves exist by sufferance. They depend on our will; they are suffered to remain by us; they are kept up and preserved by our moral sentiments, and cannot possibly have any greater power, or give any greater security than those sentiments from which their force is derived. If you will but put aside the statute-book, and the legislator and the judge, and look into society, you will see, that the

greater parts of the rights of men and of women, of neighbours and friends, of parents and children, of common acquaintance, and even of those who live in hostility, for they have rights, you will see that most of our domestic and civil rights, the dearest and the best, are not guaranteed by any law, and have no other security but the mutual respect of man for man, or the moral feelings of individuals.

Here is a picture of a large portion of society living for years, for centuries, in the secure enjoyment of a right of property, not guaranteed by the law. "In that state of society," says Mr. Miller, "which determined allodial proprietors to shelter themselves under the protection of a feudal superior, and by which the number of military retainers was therefore gradually augmented, the privileges belonging to this order of men were *naturally* increased, and their condition was rendered more secure and comfortable. The original vassals of any person were the members of his own family, who, from *natural affection, and from ancient habits*, were strongly attached to his interest; and upon whom, from a reciprocal regard, as well as from the consideration of expediency, when they became too numerous to live in his own house, he voluntarily bestowed the possession of land for their maintenance. As the superior had *no reason to suspect* that these men would ever be deficient in fidelity, or seek to withdraw their allegiance, so *they entertained no apprehension* that while they were willing to fulfil their duty, they should ever be dispossessed of their lands." "The intimate connection between the parties, and the simplicity of their manners, made *them place a mutual confidence in each other*, and prevented their being apprehensive of any future disputes, so that neither the superior required any specification of the services to be performed, nor the vassal any express stipulation with respect to the duration, or the terms of his possession.

Thus the original vassals, though in fact their land was commonly permitted to remain with them and their posterity, were properly no more than *tenants at will, and therefore entirely dependant upon the superior.**

Sir, I need not remind you that this mutual regard for rights between landlords and tenants, descended to our own times; and that in many parts of England, up to comparatively a recent period, and even to this day, tenants at will cultivate their farms as secure in their possessions, as if their leases were enrolled and registered in Chancery, having all the army of its black myrmidons to enforce them. The proprietors, for centuries, would as soon have thought of stealing poultry, or snuff-boxes, as Mr. Wyndham once said of them, as of disturbing these mere customary tenants in their possessions. Here then, I say, we have evidence of the whole frame-work of society, and all customary tenures fall under this description, existing through long periods without any of the tyers, and rafters, and wall-plates, and king-posts of positive enactments.

Here is another example of the same fact in a distant land and a different age. "The peasants of this province (Bologna) are not proprietors, they have not even a lease of their farms, but retain possession by a sort of tacit *understanding, deemed as binding as any written engagement could be; generation succeeds generation without a change of tenure; children marry, and their children after them on the same;* and it is not uncommon to meet with families composed of thirty or forty individuals, all under the same roof, and acknowledging a chief or head, who is alone accountable to the proprietor of the soil.†

The same understanding generally prevails between landlord and tenant; for the latter gets in his harvest,

* Historical View, &c., vol. i. p. 303.

† A Tour in Italy and Sicily, by J. Simond, London, 1828, page 79.

threshes his corn, and shells his maize, without being overlooked by the landlord, who comes only to choose one out of two heaps of grain, or one out of two parcels of hemp ready prepared for the purpose. The same confidence is shown as to the produce of the vineyard; for every other tubfull of mashed grapes is sent to the landlord, without his deeming it necessary to inpect those which the tenant keeps for himself. All this security constitutes a state of things to which few other countries offer a parallel."*

Has this state of mutual confidence passed away? Are there now no examples of men relying implicitly on each other in this country? The examples already quoted were found among the land-owners: look now at the commercial part of the community. The master principle of all modern production is division of labour, or mutual co-operation; and under the influence of this principle, men on the other side of the globe, fully relying on having their wants supplied by those who live here, devote themselves to one species of industry. Is this mutual confidence, which is the very soul of all trade, is the reliance of one class of men on another for subsistence, the work of your alehouse-licensing, game-selling, pewter-pot regulating enactments? Is it the work even of any human being? It is not. It is a blind instinctive confidence, the result of circumstances, or rather of the reciprocal laws of matter and of mind; and the cotton-spinner of Manchester may be utterly ignorant even of the existence of the Polish serf or Irish peasant, by whose labour he is fed. Out of this mutual co-operation of different tribes and nations, out of this instinctive confidence, new rights of property continually arise which cannot be protected by laws, because the influence and power of laws are limited to a district, and these rights are relations esta-

* Ibid.

blished between men living in one place and commodities that are then in another. Those relations of property, which are created or acquired by men living under different governments, and to commodities in places where they dwell not, cannot possibly be provided for by the enactments of any one state. In how many cases must men engaged in trade entrust their property to other men, over whom they have not the smallest controul, but what is derived from a sense of moral obligation?* In how many cases does the idea of one man, having produced or purchased a commodity, make his right to use or dispose of it respected over half the globe, and in places where no laws can reach? I quote from an eloquent preacher an exquisite picture of this mutual confidence.

"The commercial man," (who neither reads his bible nor goes to church, according to Dr. Chalmers, and who we may consider therefore to be little under the influence of the priests, and not standing much in awe of the lawmaker, has, he says,) "a *natural* principle of integrity; and under its impulse he may be carried forward to such fine exhibitions of himself as are worthy of all admiration. It is very noble when the single utterance of his

* If the most striking inconsistencies in the writings of theoretical men had not long since ceased to surprise me, the existence of the two following passages in the same page of M. Dumont's work would certainly have had such an effect. "Une pièce d'etoffe, qui est actuellement aux Indes peut m'appartenir tandis que l'habit que je porte peut n'etre pas à moi." This relation of a man to a piece of cloth in India, being a beautiful illustration of the natural right of property, is said to be the work of law, but whether of the legislator in India or France is not added. "Pour mieux sentir le bienfait de la loi, cherchons, à nous faire une idée nette de la propriété. Nous verrons qu'il n'ya point de *propriété* naturelle qu'elle est uniquement l'ouvrage des lois."—Traités de Legislation, etc. Par Et. Dumont, 2 ed. premiere partie, chap. 8.

To me it seems quite certain, that this right to own the cloth in India is conferred neither by the legislator in India, who does not know any thing of M. Dumont, nor the legislator in France, who has no power in India.

word carries as much security with it, as if he had accompanied that utterance by the signatures, the securities, and the legal obligations which are required of other men. It might tempt one to be proud of his species, when he looks at the faith that is put in him by a distant correspondent, who, without one other hold of him than his honour, consigns to him the wealth of a whole flotilla, and sleeps in the confidence that it is safe. It is, indeed, an animating thought, when we behold the credit which one man puts in another, though separated by oceans and by continents, when he fixes the anchor of a sure and steady dependance on the reported honesty of one whom he never saw: when, with all his fears for the treachery of the varied elements through which his property has to pass, he knows, that should it only arrive at the door of its destined agent, all his fears, and all his suspicions may be at an end. We know nothing finer than such an act of homage from one human being to another, when perhaps the diameter of the globe is between them. Nor do we think, that either the renown of her victories, or the wisdom of her councils, so signalise the country in which we live, as does the honourable dealing of her merchants; that all the glory of British policy and British valour, are far eclipsed by the moral splendour which British faith has thrown over the name and character of our nation; nor has she gathered so proud a distinction from all the tributaries of her power, as she has done from the *awarded confidence of those men of all tribes and colours and languages,* who look to our agency for the most faithful of all management, and to our keeping for the most inviolable of all custody." *

* Discourses on the application of Christianity to the commercial and ordinary affairs of life, p. 31. There is some reason, unfortunately, to believe, that this high character is no longer deserved, but that the confidence existed cannot be doubted.

It is somewhat remarkable, that this principle of integrity, and this mutual confidence among the merchants of different countries, has not been promoted by laws. In the early stages of European society, the laws were any thing but friendly to commerce, and only sometimes, as a matter of special grace and favour, guaranteed to the alien his life and property, on paying a heavy tribute, in the shape of double and treble duties. Independently of those breaches of faith—profligately scorning all moral principle, committed by all the governments of Europe, in seizing the property of foreign merchants at the breaking out of war—that great anomaly which the hired butchers of their fellow men dignify with every honourable appellation: independently, Sir, of these breaches of faith, which, by the force of example, are enough to weaken the integrity of every merchant, the law in almost all Europe, during the time that trade was silently struggling into importance, refused protection to the property of aliens. Those who received it were often obliged to do so secretly. If the law, therefore, had any effect on the merchants, it was not to strengthen their respect for the property of a man living on the other side of the globe. Till they had become as powerful as plundering barons, and were able to protect the new rights their industry had created, the law was made by those who despised them, and despised all trade as mean and grovelling, calling merchants pedlars, and treating the foreign trader as only fit to be plundered.*

* At a period when every town was a walled fortress, and every man, not a burgess, an enemy, there was some reason to be jealous of aliens. The laws, however, to which that jealousy gave rise, were continued and extended by those who did not comprehend the reason of the enactment, when the circumstances which justified it had passed away. There are proofs in the oldest books, of different laws prevailing in different countries in the most ancient times, for natives and foreigners. See among others the Bible, Leviticus, chap. 24th.

If the reader require any authority for the statement of the text,

In addition to the mutual respect of landlords and tenants for their reciprocal rights, which, though in no wise the offspring of any positive institution, formerly prevailed through the larger part of society, I shall now quote an illustration of a similar respect pervading our domestic relations at present. Do parents and children, do wives and husbands, look to the laws to guarantee to them their individual possessions against each other? Have they no sense of security but what the lawmaker supplies? My little experience bids me answer these questions in the negative. Except large possessions, jointures, and lands be concerned, husbands and wives, parents and children, rarely appeal to the

I shall beg leave to refer him, among others, to Mr. Hallam's work on the "Middle Ages," vol. iii. page 400, et seq. where we learn, that it was only in the reign of Edward II. that the privilege of English subjects, under the statute of Westminster, were extended to foreigners; and that before that time, resident foreigners were liable, both in their goods and their persons, to answer for the debts and delinquencies of their non-resident countrymen. By Magna Charta, the same author says, freedom of trade was guaranteed to alien merchants, which merely means, I presume, that they might bring their commodities here, not without the payment of exorbitant duties, but without being despoiled and plundered. As Mr. Hallam says in another place, the law from that time permitted no rapine but its own. Long after that period, however, they were confined, as I read in Anderson's History of Commerce, to their own vessels, to sell their own goods; and even so late as the reign of Henry VI., a law was passed which contained the following enactment.

"No merchant alien shall sell any merchandise in England to another merchant alien upon pain of forfeiture thereof. The mayor, bailiff, or other chief officer of the city, borough, or town whither any merchant alien shall repair, shall assign to every such alien a host or surveyor, who shall survey all his buyings and sellings, and register them in a book, and certify them unto the Exchequer, and shall have 2d. in the pound for all merchandise by him bought or sold. The same alien shall sell all his merchandise for other money, and therewith buy English merchandise within eight months of his arrival, upon pain of forfeiture thereof.—18th Henry VI. cap. 4.—Anderson's Commerce, p. 460, vol. i. By an act of Richard III. they were prohibited to be master tradesmen, ibid page 515.

law. The great majority of the middle classes have a sense of security, and a persuasion that each will be permitted to enjoy what is his or hers, unassailed by any rival claims of members of the same family, without the law being ever present to the mind. They may look, indeed, to the law for protection against strangers whom they mistrust, because they do not know them, but against their relations and friends and neighbours, in the great majority of cases, and in most of the transactions of life, they never think of what the *law* prescribes. If we find this sense of security pervading every house in the country, if it extend to all our domestic relations, if the conduct of parents and children, of husbands and wives, be determined without any reference whatever to law, how much of the actual possessions of each, I ask, does the law guarantee? It guarantees the rights of the land-owner as far as it can, it protects the possessions of the clergy, it gives the tax-eater his bread, but that it protects or guarantees the possessions and enjoyments of the industrious classes, is only true if it be found prescribing our domestic duties and protecting all our individual possessions.

One great part of the business of life consists in parents providing for their children. In the middle classes, when the latter arrive at a certain age, they are frequently launched into the world, provided with a small capital to commence business. The prudent parent, till his son gives proof of his capacity and integrity, rather lends than gives the necessary stock, and very often retains a right of property over that wealth he entrusts to his child. The law would support the father in resuming the possession, and we should therefore expect that the child, deriving no security from the law, would have no motive for exerting himself. In fact, however, he does not need its assurances; he has a confident expectation that his parent will allow him to retain what he acquires by the use of the property en-

trusted to him—will, if he deserve it, leave him in full possession of that property, and he does not cease to be industrious, because the law is not on his side. Those young people who remain dependant on their parents till they have proved themselves worthy to be trusted, are the staple of all that is honourable and industrious among the tradesmen of the country. On the contrary, those who are secured in the possession of a certain property by the law, like the heirs to entailed estates, too frequently turn out idle, dissipated, and worthless. They seldom or never render themselves of any use to the public, till, from some circumstance or other, they become dependant on its good opinion. Thus, where we can distinctly trace the operation of the law guaranteeing the possession of property, we find its effects any thing but virtue; and where we trace the total absence of law, as in our domestic relations, we find a strong sense of security giving birth to manly exertions. The persuasion that we shall enjoy what we produce, and the industrious habits consequent on that persuasion are not, in these cases, it is plain, the produce of the law—for that, let it never be forgotten, does not guarantee to each man what he produces—but of the mutual respect for claims and rights which naturally grows up among individuals, and extends, as they multiply, through all their complicated relations to one another.

Being willing to believe that the natural right of property, the foundation of which is so palpable, extends its influence, from the evident relation of the savage to the first rude products of his untutored skill, over all the ramifications of civilized life, in the same manner as the properties of the precious metals, and of other commodities, determine their relative value and all the minute phenomena of trade, of money and of credit, consequent thereupon, I may borrow from the few facts I have here brought under your notice, a conviction,

which they will be far from generating in those who deny the existence of any natural right of property, and who contend that such a right is the proudest work of human art. To me they seem satisfactorily to prove, that the same natural law which induces the savage to call that his, which he seizes on or makes, and induces all men, on account of its being at all times more difficult to take from one another, than for each to make for himself, to respect their mutual rights, operates at all times and places, and as it modifies and changes the right of property sought to be maintained by the legislator, so it continually protects the new right of property industry calls into existence. If these observations be correct, the right of property now actually in existence, like the right to and the enjoyment of religious toleration, and like the freedom of the press, is neither created nor guaranteed by the law, but by the moral principles of our being.*

* Many of the opinions of the foregoing pages are similar to those professed by Dr. Paley on this subject. "The true reward of industry," he says, "is in the price and sale of the produce. The exclusive right to the produce is the only incitement which acts constantly and universally, the only spring which keeps human labour in motion. All therefore that the laws can do is to secure this right to the occupier of the ground; that is, to constitute such a system of tenure, that the full and entire advantage of every improvement go to the benefit of the improver: that every man work for himself and not for another, and that no man share in the profit, who does not assist in the production." (*) The only question or difference between our opinions on this subject is, as to the fact, whether or not the laws do secure this right; and I am thoroughly persuaded, although Dr. Paley has not said as much, that he was of opinion that they do not. The admirable descriptions he has given of our legal right to property,† and of the folly of political obedience in some cases,‡ convince me that he was aware that our laws do not

* Moral Philosophy, b. 4, ch. xi.

† See the commencement of the chap. "Of property."

‡ See the chapter "How subjection to civil government is maintained."

I have yet a few concluding observations to append, by way of summary, but I shall devote to them a distinct though a short epistle.

A LABOURER.

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secure to every man the right, "that he work for himself and not for another." Being unfortunately, for his reputation, and more unfortunately for the world, which his talents were admirably adapted to enlighten, *ex-officio*, the defender of laws, he is obliged to say, that by "occupier," he does not mean "the person *who performs the work*," but "he *who procures the labour*."* Miserable contradiction! Despicable subterfuge! The slave-owner in the West Indies does this. Dr. Paley is guilty of poor and pitiable quibbling, in order to defend an injustice of which he was sensible, but dared not condemn. He recognises the natural right of property, he sees that it bestows the best possible reward on labour, but seeing that the legal right of property does not accord with the natural right, that it diminishes the reward of industry and the encouragement and stimulus to labour, by bestowing its produce on those who perform no work, an erroneous view of his own interest led him to forego the vast glory that was within his reach, of being the most persuasive and powerful reformer that ever contributed by his pen to the happiness of his species.

* Ibid.

LETTER THE EIGHTH.

EVILS OF THE ARTIFICIAL RIGHT OF PROPERTY.

Not intended to go deeply into this subject.—The sufferings and crimes of the oppressed labourer overlooked. The pains and penalties suffered, by the oppressors only adverted to—Mr. Combe's description of the present state of society.—Fraud, forgery, and overtrading, all result from an artificial right of property.—No legislative remedy suggested for these evils, because legislation has no influence over natural laws.—Society a natural phenomenon.—Conclusion.

TO H. BROUGHAM, ESQ. M. P. F. R. S. &c.

The purpose of my former communications has been to make you acquainted with my opinions as to the origin of a natural and an artificial right of property, to shew you that the latter is continually changed and subverted by the former, and that the real guarantee of all our rights is not, as commonly said, the law of the land, but the opinions and habits of mankind, which are continually corrected, if not formed, by external circumstances. Were I disposed to philosophise deeply on the subject, I might, perhaps, go on to demonstrate, that these circumstances are the immediate creation of the Deity, even if they may not be called, consistently with a sublime but not popular theory, emana-

tions from, or a revelation of the Deity himself; and thus also to demonstrate that the government of the whole moral world, even to its minutest part, is carefully regulated by Divine Providence. This, however, might lead me to subjects that lie more out of the common tract than the every-day evils of society, and therefore I shall confine myself to traceing the connection between some of them and the legislative attempt to maintain an artificial right of property.

Nature willing the happiness of our species, has given us a facility to accommodate ourselves to circumstances, so that the real social misery—the actual pain which exists, is perhaps not so great as the common lamentations of certain classes would lead us to believe. At least I am not disposed to exaggerate it, but enough of privation and pain may be perceived and traced to the legal right of property, to warrant us in ascribing to it most of the misery which exists in the world.

I put out of view the sufferings of the more than half-starved, toil-worn, and degraded labourers, with all their families and persons dependant on them, though I believe they sometimes reach the extremity of human endurance, and are all plainly to be referred to that right of property which does not allow them to own the produce of their own labour. I put them out of view, because I address myself, through you, to a different class of persons, whom I wish to make sensible that their interest and happiness are not promoted by this right; and I have no wish, by expatiating on the privations and sufferings of the poor, to rouse in them the slumbering feelings of hatred and revenge. At the same time, the fact of the great mass of the labouring classes in this country being in a state of comparative pauperism and destitution, which is at the bottom of most of the apprehensions, and many of the sufferings of the rich, must on no account be forgotten or overlooked. As these people are very industrious and very skilful, very

frugal and very economical—as their labour pays taxes, tithes, rent, and profit—it cannot be for one moment doubted, whatever the final cause may be, which induces them to submit to law; whether it be their prejudice in its favour, their ignorance, their bad passions, their fear of each other, or the undue proportion of their numbers to their capacity to obtain subsistence from nature,—it cannot be doubted, I say, that the immediate and proximate cause of their poverty and destitution, seeing how much they labour, and how many people their labour nourishes in opulence, is the law which appropriates their produce, in the shape of revenue, rent, tithes, and profit.

I also pass by the manner in which the legal right of property operates in checking all improvement, because to elucidate that fully, would take up too much time. It is, however, evident, that the labour which would be amply rewarded in cultivating all our waste lands, till every foot of the country became like the garden grounds about London, were all the produce of labour on those lands to be the reward of the labourer, cannot obtain from them a sufficiency to pay profit, tithes, rent, and taxes. Although the land itself should be exempt from those charges, they fall on every thing the labourer uses or consumes in bringing them under cultivation, and thus the artificial right of property, with the exactions of government, are the real causes why there is, in the nineteenth century, a single acre of uncultivated land in the country. There seems no reason why society should be clogged in its progress. It is not like a machine made by man, which friction speedily brings to a still stand. On the contrary, the longer it continues the more are the means multiplied for its rapid advancement.* It is more easy to cultivate land in the

* The statement of the text may be briefly illustrated by a reference to the history of England. From the time that Cæsar first

neighbourhood of previous cultivation, where both skill and instruments are ready prepared, than in the wilds of America; and much of the land not yet cultivated in Europe, is as fit for cultivation as the forests of that country. It is generally said, that capital is the great means of promoting improvement, but with this theory I am unable to reconcile the fact, that in Europe capital has greatly accumulated, and here improvement is nearly at a stand, while in America there is comparatively little capital, and there improvement is most rapid. The fact is, that improvement is checked, in Europe, by the exactions of the capitalist, the landlord, the clergy, and the government; all of which must and do fall on industry, rendering it barren and unproductive to the labourer.

In the same manner as the cultivation of waste lands is checked, so are commercial enterprise and manufacturing industry arrested. Infinite are the undertakings which would amply reward the labour necessary for their success, but which will not pay the additional sums required for rent, profits, tithes, and taxes. These, and no want of soil, no want of adequate means for industry to employ itself, are the causes which impede

landed in Britain, till the era of William the Conqueror, nearly eleven centuries elapsed, and this country, during that long period, hardly made any sensible progress in wealth and population. If the inhabitants doubled their numbers in these eleven centuries, they did no more. Subsequent to the conquest the people doubled their numbers, probably in about 400 years. Between the termination of the war of the Roses and the Revolution of 1688, a period of two hundred years, the people more than doubled themselves. During the last century, the average of the increase was a doubling in 80 years, and now, that is, since the beginning of this century, they have been doubling, in most places, at the rate of 40 years. This proves that the progress of society takes place in an accelerating ratio. Instead of its being clogged, or getting out of order in the course of time, like your Courts of Law and Parliaments, it only moves the faster the longer it continues, and only acquires a greater degree of excellence.

the exertions of the labourer and clog the progress of society. But though I pass over this important branch of the subject, it is proper to make you aware, that the general want of profitable employment for industry, which produces all those miseries and crimes, always resulting as experience has demonstrated, from a stagnating condition of society, are primarily caused by the law supporting an unjust appropriation of wealth. Industry is without a motive, and enterprise without means, when neither can obtain its appropriate reward.

The way in which we learn that we have violated a command of nature, is through the suffering which ensues. Thus we say, that nature prohibits us to mutilate the body, because doing so inflicts pain. Are the opulent people then of this and other countries not continually warned, that they violate some of the laws of nature. Is the weariness, the loathing of life, the hurrying about from place to place, as if mere motion could carry them away from themselves, is that "leafless desart of the mind" for which they are generally distinguished, is that want of an aim and an object to steady their exertions, which makes life a burthensome blank to them, and all of which are obviously caused by their living on the produce of other men's labour—violating the natural right of property—are all these no evils? Is the perpetual hunt in which they are engaged after health, and the perpetual apprehension they are under of losing it, which never exists when men are engaged in providing the means of subsistence, not evils? Does it cause an exquisite feeling of delight in our opulent people, to see themselves surrounded by a mass of labourers, in the lowest state of destitution, and to be continually apprehensive of meeting in them thieves or foes? Is it gratifying to be conscious that you have no security for your highly-prized possessions, but the dread of the gaol and the gallows and to perceive that the gaol is even sought as a place of refuge, and that the gallows

has lost all its terror? If the opulent suffer no evil from the destitution of the labourers, why are there so many fears, and why is such eagerness manifested to provide for the famishing and the dreaded multitude? Why are emigration and the poor laws, or military law and extermination, proposed for Ireland, as men are humane or sanguinary, if the poor excite no terror in the rich? The fact of the existence of a multitude of poor cannot be denied, and that multitude is a source of never-dying uneasiness to those who live by the produce of their labour. Men generally love mirth, and music, and dancing; as their taste gets refined, they love literature and science, and the arts; love to walk abroad amidst the beauties of creation, and to admire the mimic wonders of the artist's skill; some of them are then content "to minister to their wants by their own hands;" but whatever may be their taste and acquirements, no one can suppose that police officers and night watchmen, gaols and magistrates, complicated laws and procrastinating courts, which only serve to keep in order the oppressed labourers, promote happiness. None of these things seem to me suitable either to the dignity of the intellectual being, or adapted to ensure animal gratification, and as they all, at least impede positive enjoyment if they do not inflict positive evil, we must look on them as so many admonitions to the idle and opulent part of society, not to lend themselves to the violation of the natural right of property.*

* That the opulent classes and the poor look on each other as enemies, is a fact which cannot be doubted, and which I find asserted in the following passage of a weekly newspaper. "Our rich and our poor are almost equally ignorant, and equally enslaved by prejudice. The one class have their minds occupied with notions of fashion, ancestry, power, distinction, and separation from the rest of mankind, whom they look upon, not as intellectual and moral beings, but as a sort of inheritance, to be turned, like their estates, to their own account; while the other look upon all above

As you may doubt the picture I am disposed to draw of the state of society, here is a sketch by another hand. "This island exhibits the spectacle of millions of men toiled to the extremity of human endurance, for a pittance scarcely sufficient to sustain life; weavers labouring for fourteen or sixteen hours a-day for eightpence, frequently unable to procure work even on these terms: other artizans exhausted almost to death by laborious drudgery, who, if better recompensed, seek compensa-

them, not as the holders of capital, or accumulated labour, without which there would be no useful employment beyond that of picking up the few natural productions of the soil—which could support only a handful of individuals—but as a sort of natural enemies—as persons leagued together to enslave and coerce all below them." With my opinions, I cannot believe with this author, that in the poor, understanding by that term labourers, this hatred is a prejudice. It is unfortunately too well founded to be unlearnt, till the league of the *laws* is dissolved. To me it is a matter of great and bitter regret, to see the brightest intellect obscured by interest, leading it to adopt such nonsensical phrases as capital being accumulated labour; talk of accumulated knowledge, accumulated skill, and it may be understood, but then we shall see that this accumulated knowledge and skill, as far as the creation of wealth is concerned, cannot be separated from the arm of the labourer. Of all the current phrases now employed to soothe conscience and gloze over wrong, none is more absurd than the phrase, "capital is accumulated labour."

Since the observations of the text were written, the industrious, but pauper and unhappily ignorant peasantry of the south of England, have been in a state of insurrection. Their little plunder of those who daily and hourly, and largely plunder them, was met and repressed by an armed force, and by the gallows; but revenge sought its dark and dismal gratification in incendiarism. Is it, my Lord, a comfortable state of society, for the farmer and the landowner—that neither can ever lay his head on his pillow, without an apprehension that he may be roused in the night by the burning of his barns or even of his dwelling? This unhappy state of things is too fresh in every man's recollection, too deeply imprinted on the minds of the sufferers, to require more from me than the brief mention of it. I have only to remark, that it is an illustration of the benefits conferred on society by your legal rights of property, and your bloody laws to uphold it.

tion and enjoyment in the grossest sensual debauchery, drunkenness and gluttony, master traders and manufacturers anxiously labouring for wealth, now gay in the fond hope that all their expectations will be realized, then sunk in deep despair by the breath of ruin having passed over them; landlords and tenants now reaping unmeasured returns from their properties, then pining in penury amidst an overflow of every species of produce; the government cramped by an overwhelming debt, and the prevalence of ignorance and selfishness on every side, so that it is impossible for it to follow with a bold step, the most obvious dictates of reason and justice, owing to the countless prejudices and imaginary interests which every where obstruct the path of improvement. This resembles much more punishment for transgression than reward for obedience to the divine institutions."*

The law of nature is, that industry shall be rewarded by wealth, and idleness be punished by destitution; the law of the land is to give wealth to idleness, and fleece industry till it be destitute. As far as the law can, therefore, it encourages idleness, and does what is in its power to destroy "the only spring which keeps human labour in motion." The idle classes also occupy the highest stations of society, and are looked up to with respect and reverence. Whatever they do is necessarily imitated. As all their natural wants are supplied, they have nothing to do but fancy "low unreal" wants. Their imaginations are racked to hunt up new gratifications. They indulge in all sorts of expensive vanities; and setting the fashion, what they indulge in out of idleness and whim, is also sought after by all beneath them. Thus we may trace to our artificial right of property, by neither a long nor a circuitous route, that vanity,—that excessive love of expense, in all

* *The Constitution of Man*, by George Combe, p. 250.

classes, which makes prostitutes of our women and fraudulent knaves of our men, and plunges all classes in vices and crimes. We may trace all the fraud and forgery in society, all the evils, in short, which call forth the exertions of vindictive law, and are embraced by the comprehensive term crime, up to the system of our artificial right of property, which severs the natural connection between labour and its rewards.

The wants of individuals which labour is intended to gratify, are the natural guide to their exertions. The instant they are compelled to labour for others, this guide forsakes them, and their exertions are dictated by the greed and avarice, and false hopes of their masters. The wants springing from our organization, and accompanying the power to labour, being created by the same hand which creates and fashions the whole universe, including the course of the seasons, and what the earth brings forth, it is fair to suppose that they would at all times guide the exertions of the labourer, so as fully to ensure a supply of necessaries and conveniences, and nothing more. They have, as it were, a prototype in nature, agreeing with other phenomena, but the avarice and greed of masters have no such prototype. They stand isolated and apart from all the great phenomena of the universe. They were originally crimes condemned by our moral sentiments, and still have their source in our crime-begotten political systems. Nature disowns them as a guide to action, and punishes us for following them. By this system the hand is dissevered from the mouth, and labour is put in motion to gratify vanity and ambition, not the natural wants of animal existence. When we look at the commercial history of our country, and see the false hopes of our merchants and manufacturers leading to periodical commercial convulsions, we are compelled to conclude, that they have not the same source as the regular and harmonious external world. Capitalists have no guide to their exertions,

because nature rejects and opposes their dominion over labour. Starts of national prosperity, followed by bankruptcy and ruin, have the same source then as fraud and forgery. To our legal right of property we are indebted for those gleams of false wealth and real panic, which, within the last fifty years, have so frequently shook, to its centre, the whole trading world.

Founded, Sir, on our mutual respect for mutual rights, for the lawgiver has dexterously endeavoured to turn both our vices and our virtues to his own account, but quite distinct from that right of property which arises from the physical and moral laws of the universe, and is coextensive with our race, is the legal right of property, ordained and enforced, but neither secured, settled, nor protected by the laws of every political society. In almost all ages and nations—from the first dawn of history to the present moment, from the mountains of the East, the cradle of the human race, to the Savannahs of the West, where mankind seems destined to grow to maturity, in the Bible, and in the last Colonial Gazette, from Chaldea to Kentucky, ambition and greed, open force and covert plunder—both being condemned by our moral sentiments, have unjustly appropriated man as well as the soil he must till for his subsistence.

The preservation of the power of the unjust appropriators has been called social order, and mankind have believed the assertion. To maintain their dominion is the object and aim of all human legislation. The great mass of the two hundred and odd statutes, which, up to a recent period, inflicted death on our people, had no other object than to enforce obedience to an unjust scheme of appropriation. That government is a great evil,—that laws to model and uphold it, imposing restraints on thought and commerce, on the press and locomotion, that taxes to pay its expenses, kings and judges to administer it, and armies and hangmen to carry their blood-stained decrees into execution—that Aristocra-

cies dazzling us with the display of gaudy magnificence, and hierarchies imposing on our senses by more solemn delusions—both intended to cheat us into admiration of their tinsel shew to which substantial happiness is sacrificed; that gaols and gibbets, and tread-mills, the instruments of legislative wrath, and the signs of its dominion, that they all inflict sharp pain in their first operation, and spread misery through society, is universally admitted; that I have convinced you of the unholiness of their origin, or their inability to answer the end proposed, I cannot assert; but I must express my sincere conviction, that the apparent necessity for maintaining them is altogether a consequence of our artificial and unjust right of property. Whether or not there be a natural right of property which would be generally respected, though no law guaranteed it, may be doubted; but it is nevertheless proper to make men aware that the price they pay for attempting to uphold the artificial right of property, is nothing less than the enormous sum of misery inflicted in the name of law and government.

All the misery arising from brutal hangman laws, from judicial murders, which the wise and good have for a long time reprobated, has been, and this is a striking fact, gratuitously inflicted. It has not preserved the artificial right of property, it has not secured power to the landowner, it has not seated the legislator more firmly in our veneration, it has not saved his authority from being overthrown by the general reason, as expressed by the Press, and it has, therefore, as completely failed in attaining the great object proposed, as the laws against fraud and forgery have failed in putting a stop to these offences. The lawgiver, Sir, has been unable, notwithstanding the terror he has employed, to invest his artificial right of property with the sanctity of a moral obligation. He is as imbecile as he is wicked. Whatever he may decree, depredation, the violation of his

right of property, from the highest to the lowest, from the king on the throne, who exacts the property of his subjects on numberless false pretences, through all classes of nobles, archbishops and bishops, placemen, jobbing members of parliament, professional men, traders, buyers and sellers, one demanding more than his due, and the other not paying his just debts; whatever may be the law, depredation, I assert, is the practice of the people. The lawgiver can no more excite, even among the most virtuous and well educated classes, a respect for his artificial right of property, than he can create for that right of property, which exists in the West Indies, a sanction in the bosom of the Negro. The laws, according not with our moral sentiments, are, in fact, inoperative. They inflict pain, but they produce no amendment, and impose no salutary controul. What is generally beneficial, what is commanded by Nature, needs not to be enforced by laws; what is intended for the benefit of a sect or a class and not agreeable to her commands, men seek to maintain by terror and pain.* Behold, at once, the origin of all our brutal penal enactments for the protection of an artificial right of property, and of their complete inefficacy. Behold too the source of ignorance, poverty, and misery. By those very laws, by the pain we continually inflict on one another under the prostituted name of justice, by all the social evils arising from inequality of wealth, from boundless profusion encouraging every apeing extravagance, and from

* We have an illustration of what is stated in the text, in the words of judge Blackstone. "Tithes and estates," he says, "are equally freehold property." The former we are now fully satisfied never would be paid, if the law did not compel the payment. If rent have the same origin, the judge would appear to have pushed his zeal for the church further than our landowners can approve of. To me he appears eminently correct. Rent and tithes have the same origin, both are created and bestowed by the laws, and neither would be paid if the legislating landowner did not compel the payment.

complete destitution, making men reckless and criminal, Nature, whatever kings and lawgivers may foolishly teach, continually vindicates her decrees, and continually informs us, by almost every variety of suffering, that we have violated them, and that they cannot be violated with impunity. I have shown you, Sir, that the artificial right of property is not and cannot be preserved. Nature marks the violation of the natural right, by pain, at every stage, but after that has been inflicted and suffered, she permits not that the unrighteous aim should be accomplished.

If this view be correct, no benefit can be anticipated from alterations in the laws, but such as tend gradually to remove them. A multitude of schemes are, I know, weekly promulgated out of parliament, and yearly discussed within its walls, to relieve our social difficulties. On the one hand we have deportation, and on the other confinement in gaols and workhouses. Extermination, and a liberal provision for the poor, have both been recommended. In none of these have I any faith. No legislative scheme whatever can be carried into execution without trespassing on the natural right of property. For human beings, for society at large, when it exercises its healthy common sense, for mankind universally, whatever may be their temporary distresses and privations, there is much, nay unbounded hope; but that any one of their distresses, even the most trivial, can be permanently relieved by any laws, recommended or dictated by those who have, and can have nothing else in view, even in those schemes which are decked out with the brightest attributes of benevolence, but to preserve their power and the artificial right of property, I do not believe. Those who propose these schemes, all imagine that law creates social order and preserves social happiness. With a view to their opinions, I have shown the insufficiency of law to create and preserve even the right of property it has

sought to preserve, the most important and the most cher shed by the legislator of all rights, and the basis of all political power.

Without entering into a full description of the social order, which is established in spite of the law, gradually sweeping it out of existence, and extending to all the nations of the globe, I have contented myself with endeavouring to explain the manner in which the natural right of property, as it has gradually subverted the law-made right of property, has always supplied a guarantee for the new rights gradually called into existence. To meet their false hopes I add, that though our present system is wrong, I am not bound, in order to satisfy their unholy craving to regulate what no individual does or can comprehend, viz. *society*, for it is yet in progress, or is not yet fully created, all its phenomena not being yet unfolded to our understanding; I am not bound, though present legislation be bad, to suggest some legislation which would be better. Society is a natural phenomenon, and I inquire into the laws which regulate it, as I would inquire into the laws which regulate the course of the seasons To suppose that the controul of them is given into our hands has been set down as madness by one of our greatest moralists. To those who having, century after century, tried in vain to regulate society and determine its course, who, foreseeing none of the great changes which have occurred in personal rights, and in the right of property, have been gradually compelled to make their legislation conform to the circumstances of society, I willingly leave the task, as they of course foresee its future condition, of projecting schemes and prescribing laws for its welfare. I only aim at ascertaining natural laws, and seeing that with them legislation is in conflict, I reject it, trusting the welfare of society, which I do not comprehend, to the same benevolent Power which overruling, in past times, the decrees of the lawmaker, has

ever established and upheld order, and has conducted mankind so far on the glorious career, which, judging from past changes, we may hope they have yet to run.

Legislation, according to my view, was originally founded in conquest, and it has ever since been continued in utter ignorance of its results. As was the primitive act, so are all its consequences hostile to the course of nature. As long as mankind obey principles flowing from that primitive aggression, so long will they be tormented by open theft and secret fraud, which tending to destroy confidence, and making each man act as much as possible for himself, instead of all mutually exchanging their services, check division of labour far more even than restrictions on trade. As long as political society is based on mutual oppression and plunder, so long shall we all suffer from that profligate scorn of natural right, which, dictating the conduct of those in high places, corrupts others by its example; so long also shall we be tormented by courts of law, and customs, and excise duties, and visits from the taxgatherer; which prevent every man from knowing what accurately belongs to himself, and making him hold even food, drink, and clothing, by the insecure tenor of the tax-inflictor's conscience, and the lawyer's mystic interpretation of almost incomprehensible decrees, convert our naturally happy existence into a long scene of contention, uncertainty, and dread. As long as we cherish the mistrust of each other avowed by legislation, though contrary to the mutual reliance continually taught and continually extended by nature, as division of labour is extended, and all the families of mankind are knit by the common bond of commerce into one, so long shall we be the victims of those vices and crimes which pollute all our domestic relations, arming man against man, and nation against nation, till the face of the whole earth is stained with the blood of private assassinations and public murders. As long as we, thus mistrusting each other, are guilty

of these atrocities, so long will the greed and the ambition of the priesthood be fattened by our apprehensions and remorse, and so long will they, for the sake of base lucre, invest our benevolent God with their own vile characteristics, filling the mind with horrid phantoms by their furious denunciations, turning religion, from being a consolation, into a plague and a curse, and by corrupting thought at its source, make all mankind feel as if the barb of death were ever rankling in their hearts. We like to go far about to seek for the causes of our misery, but they may all be found in those unholy political institutions, which, originally founded by the sword, have ever since been maintained by the sword, breathing nothing but hatred, discord, and bloodshed. Duly to appreciate and remove, by casting aside our veneration for the human lawgiver, these obvious causes of social misery is a species of wisdom we shall be, I am afraid, slow to acquire; to assist in making this acquisition, though in ever so slight a degree, would be an unspeakable gratification to him, who now concludes, by signing himself,*

A Labourer.

* The doctrines of the text are opposed to some circulated by your Society for the Diffusion of Useful Knowledge. In its Companion to the Almanack for 1828, it is written, "capital, money, and property (land), are no more than the savings made from the produce of labour beyond the portion which was required for the preservation of the individuals who have worked to raise it. Upon these grounds the rich" (Princes, Archbishops and Bishops, Landowners, Bank and India Directors, *et hoc genus omne*) "are as justly entitled to their large possessions as the cottager to his cottage," p. 107. If you had added *by law*, which is made by the rich, I should have made no objection to the passage. The law is extremely anxious to secure the possessions of archbishops; all history is a lie, if it have ever yet been scrupulous about the poor man's cottage. If you are bound by the chains of a somewhat despicable ambition, and the hope of the woolsack, to reverence the privileges and opinions of our barbarian-aristocracy, you may have the grace not to inculcate those opinions in others. If you dare

not speak truth, you can at least abstain from propagating untruth. To assert that those, who never in their whole lives did a hand's turn of productive labour, are as *justly* entitled to receive a large share of the annual produce as a labourer is, to obtain the tenth of what he has created, argues in you either an extraordinary degree of credulity, or a monstrous expectation of finding a huge fund of gullibility in other men. The statement being in a book intended for the people is quite unpardonable; in a treatise on real property, at a Whig dinner, or in a selling Review, it might have been tolerated. Addressed to the people, it must be stigmatised as only intended to assist in mystifying them, and to keep up the grand system of political humbug.

POSTSCRIPT.

TO LORD BROUGHAM AND VAUX,

LORD HIGH CHANCELLOR OF ENGLAND, &c. &c.

Change in the situation of the Lord Chancellor—Reasons for believing that his former liberality of sentiment was assumed.—The Lord Chancellor's attack upon the author.—Changes in Europe.—As they have not led to social happiness, men will and necessarily must inquire into the Right of Property.—Other proofs of this necessity.—Answer to the statement, that these doctrines lead to no legal improvement.—It has been shewn that property is not regulated by human laws, and therefore society is not.—The power which has regulated it in past times must be trusted in future.—Source of the alarm as to property, and reasons for believing it unfounded.—Conclusion.

My Lord,

I certainly did not dream, when I began these letters, that before they saw the light, you would be Lord Chancellor of England. I cannot, however, congratulate you on your elevation, for since you have occupied the woolsack, you have forfeited the chief title you had to my respect. When you boasted, soon after your accession to power, of sending forth the sword of the law to smite the poor unhappy victims of the system of misgovernment which you had long denounced, and when you took the jurors of London to task, on Sept. 8, 1831, for violating, not an oath, but a form of words, rather than be the ministers for executing what is called our sanguinary criminal code, which means the cruel orders of men, long since dead, who were even more cruel than

modern lawgivers, you convinced me that your love of liberty and humanity, when out of office, had served as a stepping stone to public confidence and political power; and that in heart and mind, in argument and speech, you are a mere lawyer, setting up, high above the principles of justice, the maxims of that abominable system of fictions, absurdities, and cruelties, at the head of which you are now placed. The respect I had for you, as a lover of the best interests of the human race, has accordingly vanished, and I have only to regret that I ever believed the professions of a lawyer, all his life accustomed to look at words as usurers look at money, only to be lent out at large and profitable interest. To such a general and public motive for changing my opinion, I have to add, a special and private one. A particular circumstance has made me suspect, that your love of literature, your professions of liberality, and your often expressed wishes to educate the people, meaning to drill them to your own, or to Whig purposes, were all, like your love of humanity, displayed to the public as a mountebank tells his audience coarse jokes, in order to amuse them while he is taking them in. Having now attained the height of your ambition, you have no repugnance to propagate error and delusion, upholding them by persecuting, as far as the present usages of society will allow, those who do not agree with you in dogma and in doctrine.

I am pleased that I am able to remind you, that the last observation, in my last letter, written upwards of two years ago, was a comment on some errors put forth by your society, commonly called "The Society for the Diffusion of *Useful* Knowledge," because that observation shows, that I was then attentive to its proceedings, and prepared to expose some of its undeserved claims to public respect, before I had a personal motive for pointing my remarks. Since then, your society has published a book, entitled, "*The Rights of Industry, Capital*

and Labour," one great object of which is, to refute, and failing to refute, to decry my little work, called, "*Labour Defended against the Claims of Capital.*" In your book, for you are the avowed patron and protector of the society, and for aught I know, the author of this very work, the present legal right of property is held up to the admiration of the people, through a whole chapter, and the impugners of that right, myself among the number, are stigmatized as "bitter enemies of the people," as "blind guides," as "ministers of desolation," as "destroyers,"* and as possessing, many other ugly antisocial characteristics. Pretending to be the instructors of the people, though the works of your society have ever been distinguished for the incorrectness of their logic and the meagreness of their knowledge, here we find you and it defending a natural wrong, because it is a legal right; and like a set of religious bigots, whose language and conduct are as intolerant as those of Mr. J. E. Gordon, we find you, the Lord Chancellor, the man whom we once honoured as Henry Brougham, we find you and your pretended liberal society, pronouncing all the anathemas that can be heaped on crime, against a mere difference of opinion. Is not to think, then, as you and your fellow scribblers think, worthy of the severest punishment? I am taught by this, my lord, that you only want the power, not the wish, to be as great a tyrant as was Castlereagh, and I conclude, that the love of truth and good has no abiding place in your lordship's bosom, or it is stifled and suppressed by the individual love of power. For the proceedings of your society I hold you responsible, and detesting any species of persecution for opinion's sake, and as the individual unhandsomely attacked, I must take you to task for supporting, like other champions of error, what is wrong, by as much violence as the hu-

* See pages 212, 213, etc. of the work referred to.

mane temper of the present age will permit you to employ. The man pretending to be a friend to literature and to education, who either abuses those who differ from him in opinion, or countenances its being done by others, has no claim to my respect, even though he sit on the king's right hand, and be the keeper of the king's conscience.*

For you to countenance illiberal abuse, on account of a difference of opinion, excites my astonishment, because you hold that belief is involuntary,† and can have, therefore, no more pretence for abusing those who disbelieve either political or religious dogmas, than you have for abusing the immense variety of minerals, plants, and animals, with which the world is not more adorned, than it is by an immense variety in the shades of human thought. Your society, by drawing attention to the crippled and decaying legal right of property, while it shews the importance of the subject, can only hasten its ruin. Personally I thank you for the interference, for it gives a weight to my opinions, which, unnoticed by you, they would never have obtained. It must be hoped, however, that you defend other principles on better grounds than your society defends the

* I observe, my lord, that under the superintendence of the Society for the Diffusion of Useful Knowledge, a Penny Magazine is published. Does the Lord High Chancellor still lend his name to a scheme which has been seized hold of by a contriving bookseller, who had no hand in its concoction, to beat his competitors out of the market? Is the Penny Magazine to be a loyal Whig publication, which may shield the minds and eyes of the people from the contamination of radical doctrines, or is it a mere tradesman's trick to command the market, by the help of a once-honoured name? Be it what it may, the trick will not do, for the name of the society stinks in the nostrils of the people.

† The proof of this is to be found in a discourse delivered by you, when you were elected Lord Rector of the University of Glasgow, I forget the year, and know not where the discourse is to be found. Other persons may require this information, but you can hardly need such a refresher for your memory.

legal right of property, or woe be to those who trust you! What you and your society have done is this; you have taken up a vulgar prejudice without investigation, and you boldly and crudely defend an error, because it exists, and because you fancy it is your interest to maintain it. Like the priests of Ephesus, you and your fellow craftsmen cry aloud, because your craft is endangered. You and your society labour like the boroughmongers, like the Tory press, like the bishops, like all the offspring of error and the spawn of corruption, to uphold our present mischievous system, and the obvious motive you now have for cherishing the delusion, ought to deprive you of all the confidence of the people. Those who defend the legal right of property, seek to perpetuate misgovernment, and the misery and degradation of the industrious classes. Seeing you so engaged, being convinced by your late conduct, that you place the law above justice, though I could quote a speech of yours, when you were Mr. Brougham, in which you exalt natural rights far above legal wrongs,*—seeing that since

"*But that renowned profession (the law) has taught me another lesson also; it has imprinted on my mind the doctrine, which all men, the learned and the unlearned, feel to be congenial with the human mind, and to gather strength with its growth, that by a law above and prior to all the laws of human lawgivers, for it is the law of God—there are some things which cannot be holden in property, and above every thing else that man hath no property in his fellow creature. But I willingly avoid those heights of moral argument, where, if we go in search of first principles, we see eternal fogs reign, and find no end, in wandering mazes lost. I had rather seek the humbler regions, and approach the level plain—where all men see clear, where their judgments agree, and common feelings unite their hearts together; and standing on that general level, I ask what is the right which one man claims over the person of another, as if he were a chattel, and one of the beasts which perish? Is this that kind of property which claims universal respect, and is it clothed in the hearts of all, with that sanctity which makes it inviolable? I resist the claim, I deny the title: As a lawyer, I demur to the declaration of the right; as a man, I set up a law superior in point of antiquity, higher in point of authority, than any which men

you have been in power, you have embraced and acted on nearly all the principles of those who preceded you in office, I cannot, I repeat, congratulate you on the conversion of the liberal-minded patriot, to whom my letters were addressed, into the arrogant politician and dogmatic inquisitor, to whom I have now to direct this postcript.

If the change be great in you, my lord, since these letters were begun, the changes in society have been even still more astounding. Three years ago Europe was in a state of internal tranquillity, and remained so till some time after these letters were finished. The practised eye might possibly foresee that some great changes were preparing, but Charles the Tenth then seemed firmly seated on the throne of France, Belgium was closely united with Holland, and the demand for Reform had almost died away in England. But even then, misery existed to a considerable extent in all the countries of Europe, and voices were heard exclaiming against the right of property, such complaints being no transient

have framed, the law of nature (what will your friend, Mr. Bentham say to this?) and if you appeal from that, I set up the law of the Christian dispensation, which holds all men equal, and commands that you treat every man as a brother. Talk not to me of such monstrous pretensions being decreed by acts of parliament." (Speech of Mr. Brougham, July 13, 1830. Hansard's Parliamentary Debates, New Series, vol. xxv. p. 1176.) The Irish, I fancy, will echo this language, and say, speaking of the claims of the Protestant clergy. "Talk not to us of such monstrous pretensions being decreed by act of parliament." The English will retort this on you, when you again claim for the property of the church the same sanctity as for the fruits of industry. Is that "clothed in the hearts of all with that sanctity which makes it inviolable." Such language, however, is much more convenient to hold in relation to the negro, who will not act upon it, than to the Irish and English who will. The sympathies of lawgivers are properly awakened for the suffering slaves of other people: for those who are the slaves of their own decrees, such as the Irish peasant and the English labourer, they have only whips, fetters, the gallows, and the smiting sword.

theme, the consequence of temporary excitement, produced by the contrivances of an intriguing party, and destined to be forgotten when the prime agitator disappears, or is provided for; but a permanent and enduring subject of controversy. Even then, when the demand for reform was unheard, when the voice of sedition was every where still, when rebellion had not shook thrones, and perplexed the monarchs whose thrones it did not reach, the Saint Simonians had risen up, and were extending themselves in France; and even in America,* where men have scarcely any political evils to complain of, the legal right of property was called in question and denounced. That right is now a subject of almost universal controversy, and be assured this controversy will never pass away, till that right be securely based by all men acknowledging the eternal decrees of justice.

The political agitation which began, or rather was first made manifest, even to careless observers, by the expulsion of Charles X., the unquietness which, from that, spread over Europe, destroying forms of government, and changing political institutions, without leading to the diminution of public charges, or relieving individual poverty, has given to inquiries into the right of property, an extensiveness and an intensity, which must speedily lead to a general and a thorough reform. As those political changes have not effected, and cannot effect the expected benefits, men will necessarily turn away from political alterations as unproductive of good, and inquire into the sources of evil, and means of drying them up. They must come to that great source, the opposition between the legal and the natural right of property, and which of these two rights they will choose, and which they will cling to, you have told us in the

* See Cooper's Lectures on the Elements of Political Economy, Columbia, p. 352, et sup.

speech I have just quoted. They will cling to that "ancient law, which is of higher authority than the law of the land," in which "their judgments agree, and which unite their hearts together."

As a proof of the necessity of you politicians instituting inquiries into the right of property, before you meddle with several subjects, I may mention, that the whole doctrines of the distribution of wealth, embracing all that can be said about rent, profit, and wages, depend altogether on the right of property. I defy any man to explain either of those without assuming, as the basis of his argument, the present legal right of property, and I am sure that no man can be acquainted with the modern doctrines on these subjects, without being thoroughly sensible, that, by assuming the present legal right of property to be the natural right, the whole of those doctrines are founded on a false basis, and give a false notion of the natural laws which regulate the progress of society. They do a most bitter injustice to nature, they cast unworthy and even impious reflections on God, by representing him as placing those limits to human welfare, which are laid down by the ignorant legislator. These errors, however, are now beginning to be seen through; discussions on the right of property are connected with the science of political economy; and at least one gentleman, Mr. Reid, has had the honesty to avow, even in embracing and defending the legal right, that the laws of distribution and the natural limits to the progress of society, can only be correctly studied, in conjunction with the established right of property.

At present public attention is directed to the Reform Bill, but while its opponents loudly assert, that it will give the people no relief whatever, its advocates only claim for it, a capability of ultimately effecting that by improving the government and lessening the burden of taxation. Experience, however, warrants me in assert-

ing, that changes of government more frequently lead to derange trade, and to augment that burden, than to diminish it. Thus, my lord, it is probable, indeed, in its immediate effects, it is certain, that the Reform Bill will and must disappoint any hope of relief which people have formed from it. If you look, however, at the intense suffering of the children of our manufacturing districts, if you look at the derangement to which trade is already liable, if you are at all sensible that farmers can no longer obtain any profit, and that even their capital has been melting away, while the peasantry are almost starving,* you must conclude, that these great and pressing evils are too violent, too extensive, and the pangs of hunger are too sharp, to wait for relief by the slow progress of improving the government through the means of the Reform Bill. But what can you, my lord, or what can your colleagues in the ministry, expect will be the result of exciting the hopes of a long suffering people, only to disappoint them? Be assured, my lord, and prepare yourself for this consequence, that the disappointed desire for relief, will infallibly turn back the attention of mankind, with tenfold force, on the first principles of government and of property, and the institutions of society will only be preserved, as far as they are founded in reason. Why not put an end, at once then, to this paltering with the hopes of mankind, this juggling with the public reason; and why not at once say, that political change will not give relief from poverty? Why, my lord, will you hasten the overthrow of the present system, by directing all the natural discontent of mankind to the deluding institutions of the politician?

To relieve this distress, only one of two things can

* Several accounts have lately appeared in the paper, of parishes, particularly in Berkshire, being unable to raise money to pay the weekly allowances of the paupers.

possibly be done; either the quantity of wealth must be augmented, or it must be better and differently distributed. But the quantity of wealth, and this is a very singular circumstance, is at present too great. What is meant, my lord, by "those gluts" of which we have heard so much, both in parliament and in the public at large, for the last fifteen years? What is meant by "labourers being too numerous," by "machinery being too extensively employed," of which we now continually hear, but that the productive power of the country has been too much augmented? I shall, as I have already stated, not inquire into the cause of production actually exceeding the wants of the owners, nor into the absence of all principle regulating the production of wealth, from which arise gluts and commercial revulsions, I shall content myself with observing, that the complaint of the farmer is, that he cannot get a remunerating price for his corn, and he, therefore, will not consent to food being imported; that the complaint of the manufacturer is, that he is overwhelmed with the cheap-made produce of other countries, and finds no sufficient sale for what he is able to produce; that the labourer complains that there is no market for labour, and that wages are too low; that all classes of producers, in short, complain that they can find no sufficient vent for their commodities; that there is too much of them; that prices are too low; and all agree in complaining, that each has more of his own peculiar produce, or useful commodity, than he knows what to do with. It is a plain matter of fact, notwithstanding the theory of Mr. Malthus, that more wealth is now produced, or can be produced, than can find a market, and that consequently the great remedy for all the evils of society, as far as poverty and wealth are concerned, must be found not in augmenting the quantity of wealth, but in altering its distribution. In other words, my lord, the right of ownership or property must be im-

proved. The present condition, then, of all classes, as well as the attacks every where making on the right of property, give to the subject of this inquiry a pre-eminent importance.

Consider too, my lord, the difficulties in which, persisting in upholding the legal right of property, now involves all the discussions of the legislature, and all the actions of different classes. Look, for example, at the question of tithes, the legislature labouring by threats of fine and imprisonment to enforce the legal right, while the people, grounding their resistance on the natural right, are, in this country, calling for the amendment, and in Ireland compelling, by force, the abolition of the legal right. Can any process of legislation reconcile these two conflicting rights? If it cannot, my lord, if the legal right must, as I have shown you, come to an end, is it wise, is it commonly expedient, is it decent, is it humane, is it even honest, for you and your colleagues to pass laws for the purpose of enforcing, at the expense of fine, imprisonment, riots, and bloodshed, the legal right? Look too at the disputes, as to whether these tithes be the property of the state or not, and whether they ought and will go into the pockets of the landlords. My lord, they are the property, the natural property of those who produce the pigs and poultry, the potatoes and the milk, which the parsons unjustly claim, and the legislature as unjustly attempts to appropriate to their use. What right have you, or what right has any man, or any set of men, whatever may be their names or titles, to take away from the Irish peasant the produce of his labour, and confer it on the priest. Neither the state nor the priests own this property, and the state has no more business with it than have the South Americans. The state, in fact, is now only another name for boroughmongers, and what have they to do with the property of the people? Only to plunder it. Be assured, my lord, that you and the whole

gang of legislators are exceeding your power, and that until you learn to respect the laws of nature, there will be a continuance of those crimes which you pretend to deplore.

But admitting, my lord, the necessity of making inquiries, you may taunt me by saying, that my inquiries lead to nothing, that my conclusions are all vague and unprofitable, that I propose no schemes for relieving distress, no measures for reforming the state, that I look only to futurity, and counsel men, who are on the verge of starvation, to live upon hope; that I propose nothing, that I advise, even in these stirring times of reform, to leave things alone, and that my doctrines will please neither the great vulgar, who fancy they can confer happiness by making laws, nor the little vulgar who, unfortunately, trust only to the law-maker for restoring prosperity. But am I to blame, or are those laws of nature to blame, which I humbly, but zealously endeavour to interpret? All my remarks are directed against legislation, and you cannot expect me to be so inconsistent, as to propose to redress wrongs by inflicting them. My object has been to show, that even the distribution of property is regulated by natural laws, and if that be the case with property, which is tangible and measurable, and seems to come within the grasp of legislation,—if those natural laws have set aside human laws, is it not clear, is it not certain, that every other part of society,—from the trade to South America to the daily huckstering at our own doors,—from the propagation and increase of the species, the very source of society, to the invention of the minutest art, the steel pen with which I write,—from the growth of nations in wealth to the decay and falling to ruin of individuals,—is it not certain, that every part of society is also regulated, as well as the right of property; and can you expect me to be so mad as to propose regulations for any part of that, all of which, I believe to be regulated by the highest wis-

dom? No, my lord, I am not so mad. I aim at establishing no system; I recommend no plans; I advise only inquiry, patient inquiry, and confidence in the power which has hitherto subverted your laws and preserved the order of society.

To me, indeed, it is abundantly strange, after so long an experience of the inefficacy of laws to attain the objects proposed by them, all the systems devised by man for the government of society, having been gradually swept out of existence, that the good and the wise, as well as the depraved and the ignorant, should yet place their hopes on the decrees of such a motley assembly as that which collects at St. Stephen's. Not attempting to account for the mistrust in the passions and desires of human nature, which is so general, nor for the confidence in some of their effects, in the shape of systems of government, neither attributing it to the sinister influence of priests, nor the ambition of legislators, nor ascribing it to any peculiarity in man himself,—I may, nevertheless, remark, that it is singular to see the most pious men, even those

> "Who see God in clouds, and hear him in the storm,"

those who find

> "Tongues in trees, books in the running brooks,
> Sermons in stones, and good in every thing,"

even those can not find God in the mind and thoughts of man; they treat the human being, not including themselves, as altogether evil. They never allow his passions to be worthy of having a tongue. The voice of trees, the mute sermons of stones, the impressive lessons of the the insect world, are all listened to as speaking of the goodness of the deity, but the desires and passions of man, his heart and mind are regarded as outcasts from the great system of creation, as the offspring of the devil, and as continually needing the correction of priests and legislators. I am content, my lord, to trust to these

despised passions, guided and enlightened as they may, must, and will be, by the recorded knowledge of their consequences.

My main object has been to show, that even as to property, some power constantly over-rules the decrees of the legislator, which being, however, generally admitted as an abstract truth, the delay in making the universal and thorough application of it to society, in all its details, is more to be wondered at, than that it should now be insisted on. But so much in love with their systems are our vain and blundering politicians, whether they be actual legislators, or only aspirants to this dignity, that they even condemn any observations as mischievous, which are opposed to their own systems. According to them, the observations of a Cobbett, or of a Paine, who merely speaks of the things he beholds, are the causes of the overthrow of their systems, just as they attribute the rebellion of the slaves in the West Indies to the preaching of some missionaries Such nonsense implies, that neither political oppression, political plunder, nor slavery, is, of itself, an abomination hated of God, hated of men, and quite diabolical enough to generate continually, in its victims, the desire of vengeance; but that it is only made hateful by the eloquence of an individual. When tory newspaper writers and members of parliament declaim against those as incendiaries, who merely use their tongues, or their pens, in expounding truth, do they take counsel from their own experience? Have the speeches of the gentlemen of St. Stephen's, though wafted by every journal to every corner of the empire, have the loyal comments of learned editors, have the admonitions and instructions to obey the law, which all parties continually put forth, have the ever weekly-renewed admonitions of the parsons to honour the king and respect the tithes, have they all had the desired effect? All the eloquence of the senate, of the bar, and of the press, has not saved the dominion

of the law from being questioned and overturned. When hired scribblers, and hired pleaders, and hired priests, denounce the observers of social phenomena as mischievous, when authors abuse and legislators persecute, for the sake of some falling systems, they are worse than that philosopher, described by Dr. Johnson, who refused to see the experiments by which his theory was overturned. The facts noticed by those who interpret nature, are the proofs of the wickedness of these systems, and to repress the voice of the interpreter, is wilfully to close the ears to information. To point out the inevitable consequences of erring systems of policy, whether they be intended to secure the dominion of the whites over the blacks, or of the landlords of England over their former slaves, whether they be intended to preserve superstition erect, and men groveling in political slavery, is, or ought to be, as far as society is concerned, the one great and only duty of observers, whether they assume the character of political or religious missionaries.* To recommend regulations is quite proper in those who expect to make something by carrying them into effect, and by those who set the wisdom "of the critic fly, whose vision scarce exceeds the expanse of an inch," deciding against the work of a Wren, above the wisdom of the architect of St. Paul's, though this is a feeble comparison of those "critic flies," who not merely decide against nature in constructing society, but attempt to correct her errors.

When conceited politicians ask me what I would substitute for their systems, my answer is, that I propose no substitute. My argument is, that individual man does not make society, and that man cannot organize it.

* The comparative little influence of eloquence, noticed in the text, ought to be a sufficient reason why no class of men should be afraid of the press. In fact, those who controul and restrict the press, are conscience-stricken criminals.

Society is the offspring of the instincts of the human animal, not of his will, and it cannot be modelled by an individual as he makes a watch or a steam engine. My answer, my lord, to all your fears, on which you found restrictions and criminal laws, is, that you have not brought society to its present state; that laws do not hasten on improvement, but follow in its wake; and that I trust to that great power, call it Nature, or call it God, which has brought society forth out of the wilderness, to provide for its future welfare. When you ask me for plans and schemes, my reply is, trust in that power, do justice, and fear not. It is certain, my lord, that nine-tenths of the crimes which the laws punish, are mere violations of the legal and unjust right of property. Men revolt against it, and inflict misery on themselves and others, in their blind efforts to correct wrong. You know, my lord, from the criminal returns of both France and England, that the number of crimes of personal violence has diminished in both countries; that murder, except from cupidity, is rarely or never heard of in England, and only very rarely in France; while murder, from a desire of gain is unhappily, as witness the Burkers, yet too frequent amongst us. Jealousy, as a frantic passion, is almost unknown in England, and a bloody desire of vengeance is no where preserved but in the statute book. When I am asked then what I propose, to prevent crimes, I answer, "Amend the laws as to property; for all the crimes which afflict society grow from them." The law itself is the parent of those crimes which the law attempts to stifle or repress by severe penalties, in addition. Sin, struggling with her own death-begotten offspring, is the apt type and resemblance of our cruel penal laws for the protection of legal property.

This, my lord, opens to our view a delightful prospect for our posterity, and from contemplating which, we even now may derive considerable enjoyment. I have shown you that the legal right of property is undergoing

subversion, and that no earthly power can stop it. I have now remarked, that this legal right, and the laws made to uphold it, are the sources of almost all crimes; and, therefore, when fearful, timid, mistrustful politicians tell me, that society would fall into anarchy if their hold of it were to be relaxed, and if the incubus of their regulations were removed, I answer them, and I answer all such schemes, and all such apprehensions, by pointing to these facts, and calling on them to believe that the God of nature has appointed a means, not merely for the repression, but for the extinction of crime.

The general change adverted to in my former letters, consisting of the growth and extension of the middle classes, is to me another ground of consolation and hope. The utility of mechanical inventions is too often supposed to consist only in the physical results, and the moral effects are entirely overlooked. But the moral effects are as important as the physical. Now one of the distinguishing circumstances of this age is the great extent of mechanical improvements, and one of the moral consequences, least noticed, is the prodigious, comparative, multiplication of the middle classes; that is, of men who labour a little, by, or in conjunction with, this machinery, who are at once labourers and capitalists, who do not suffer from the stigma which is cast on ordinary or long practised labour, because that was done formerly by slaves,—new occupations, as they arise in society, being exempt from that stigma,—and who, without being relieved from the necessity of labouring, are placed far above the condition of the great majority of slave-labourers and their descendants. On that class of men, who have something to lose by change, and nothing to gain by the continuance of the tax-gatherers and tithe-gatherers exactions, I place my best hopes. That class has multiplied amazingly within the last fifty years, that class must multiply still more extensively, with new occupations and new machinery, and that class must gra-

dually extinguish both the mere slave-labourer and the mere idle slothful dolts, who live on the rent of land or the interest of money.

Politicians, my lord, of your description, object to stirring the important subject of property. You are already conscience-stricken, and you know that inquiry must end in the discomfiture and overthrow of your political systems. Hence you, in the House of Lords, put forth such unsound doctrines, as that "the property of the church rests on the same foundation as other property," and hence your diffusion society praises the legal right, and endeavours to consign those to infamy who question it. From a bad conscience also arises that great alarm which exists among all the wealthy classes, and amongst all those who are made rich by means of the extortionate and unjust law, and they cry out with vehemence on every occasion, that the only object of the poor is to appropriate to themselves the wealth which the upper classes love and desire so much. Allow me to make one or two remarks on the subject of the apprehension and the alarm.

The alarm is first generated in the minds of those who possess property without having any natural right to it; the alarm is, founded on the consciousness of injustice committed on the labouring classes, who, though they create all property, are allowed to possess none; and this alarm is then sought to be spread as to all property, and to those who possess it by a good natural title. But is it to be believed, that the great mass of men are inimical to that which they produce, and to that for which they strive and struggle? No. They are only inimical to its unjust appropriation. What, however, must we think of the legal right of property, when it is supposed, by those who derive enjoyment from it, to make the labourer hate the ingenious work of his own hands? What too can you think of a *right*, which those who possess it, fancy must be the *source of hatred*

in other men, to them and to their possessions? A right producing hatred." Above all, what can you think will be the result to society of different classes and conditions being animated with such deadly and destructive feelings? Life, skill, talents, affections, &c. are possessions we each and all derive from nature, are they like the legal right of property, the bitter sources of hatred, fear, and a thirst for vengeance? Do we hate beauty and strength? Do we hate ingenious contrivance, splendid eloquence, and a cultivated taste? No. How then should men come to hate the objects and possessions they are calculated to obtain? When they are isolated and strangers to each other, speaking different languages, clothed after different fashions, neither buying nor selling, they may dislike, despise, contemn, or hate each other; but to say that the inhabitants of the same community, those who associate together, whose labours are mutual, who must work into each other's hands, to produce food and raiment, whose dresses and diversions are similar, whose speech is identical, to say that they hate or dislike, or dread each other, is contradicted by the whole frame and structure of modern society.

You, my lord, are not insensible to the advantages derived to all classes from the great scheme of division of labour, which would perhaps be better called combined exertions. Of this scheme one great consequence is, that no single labourer completes, by himself, any one article necessary to subsistence. The very instant this scheme comes into operation,—and in what state of society is it not in operation? for where does not the man perform one task, and the woman a separate and distinct task, equally necessary to the subsistence of themselves and families?—the very instant this scheme comes into operation, and wherever it exists, men become dependant on one another, and as it is extended, so the more dependant does each individual become on the combined

exertions of all the rest. To talk of mutually dependant labourers, who cannot live without each other's assistance, hating each other,—of the hunter hating the man who makes him his bow; of the weaver hating the loom-maker; of the merchant hating the cotton grower, or the shipbuilder, is like saying, that the right hand hates the left. No, my lord, the weaver cannot hate the spinner, the spinner cannot be the enemy of the engine maker, the engine maker cannot dread the iron founder, nor can any one of them be the foe of the farmer, and the baker, and the butcher. The division of labour, then, which is now so extensive in every part of society, must appear to every reflecting man a complete and perfect guarantee, that the great mass of the labourers who constitute, in fact, the whole useful community, cannot and dare not quarrel with each other. The supposition is absurd, because the thing supposed is impossible.

But, besides the labourers, besides all those, who, by their mutual and dependant exertions, contribute to clothe and feed, and preserve the whole society, there are classes who do not labour, who live by the produce of the labour of others, and who make or uphold laws to dispose of what does not belong to them; besides the weavers and the spinners, the engine makers and the farmers, the merchants and the ship builders, the butchers and the bakers, &c. &c. there are also, the law makers, the land owners, the mere capitalists, the clergy, &c. &c. who have no other security for their incomes,—their receipts growing from no natural cause, like that which confers on industry the fish it catches, or the game it kills,—than the law of the land. All these legally fed men may hate the working classes, and may justly dread them; but to suppose that the different classes of industrious men, whether living in the same or in different countries who trade or labour together—to suppose that they should hate and dread each other,

is a monstrous error, not to be surpassed by any creation of the wildest fancy. Such a sentiment may be, and unfortunately is attributed to them by the law-makers, who, borrow it from their own schemes and acts of injustice and oppression; but it exists not in the minds of the labourers themselves. Its prototype is the wrong done in the olden times by these upper classes, and now continued by the laws; and the labouring classes are only to be blamed for suffering this wrong-born idea of their masters to sway, in any degree, their thoughts, theories, and practices. If they, at any time, look upon each other with mistrust, if the farmer dreads the shopkeeper, and the merchant the ship-owner, it is because they have been taught to do so by the law-maker. Such mistrust is not the natural result of their mutual dependance, which in practice teaches only mutual confidence—but of the system established by their oppressors, of which the labourers are, one and all, the victims.

As for the particular property possessed by the rich, of which they suppose the poor to be so envious, let me ask what use the laborious and honest artizan, or the hard-worked and half starved peasant could make of your sumptuous palaces? He would feel distressed by their finery, and would be only anxious to escape back to his cottage, or his hovel, to his bench at the ale-house, and to his pipe, and to his usual habits and usual companions. Of what service would your fine bound books be to him? What would he care for your pier glasses, your chandeliers, your ottomans, and your rose-wood tables? He might like, from that unnatural hatred against the misappropriated work of his own hands, which you have nourished in him, to make a bonfire of them, but use them he could not and would not. What would he do with your carriages? He would pine to death when pent up in them, deprived of the use of his limbs. What use could he make of your horses, for he has never learnt to ride? Would he desire your high-

priced wines? Alas, no; his taste is corrupted by the deleterious spirits, your commercial restrictions, your excise laws, your duties on malt and hops, and on foreign wines, have brought him acquainted with, and made his only drink. Do you think he would need gold to buy the smiles of the high-priced courtezan, who solaces the hours and empties the pockets of the wealthy stripling? She would be too much of a lady for him, and he would willingly leave her to do her proper work of corrupting and debasing his oppressors. It is idle then, and even monstrously absurd, to be afraid of the poor man desiring your wealth, except to destroy it. What he desires is to enjoy the fruits of his own labour, and to have plenty of that bread, and meat, and clothing, he makes both for himself and his oppressors, though small be the share which he now receives.

But I would beg leave to remind you, that the poor and the labourers are like all the rest of mankind, the children of habit. They could not be tempted, therefore, by any arts, to use your fine clothes, fine houses, fine pictures, fine books, fine wines, fine women, and costly statues. To them the habit of labour is a second nature, and with that is conjoined the habit of obedience. Dreadful then must be the outrages committed upon them, when they break through these habits, and so far violate their own feelings, as to attack that property they can never use, and seize that power they are the next moment ready to resign. The dread which some people entertain of the great body of the people violating the natural right of property, is the mere idle coinage of the brain, and has no foundation in the laws of nature.

But though there can be no rational dread of the people doing more than breaking out into temporary fits of violence, let the legislator beware how he goes on in his present career of outraging and plundering the labourers; let him beware how he nourishes that hatred he

already dreads; let him beware how he violates by taxes and tithes, that right of property he obtains power to protect, and professes to respect,—let him beware how he seeks to perpetuate oppression by "the sword of the law;" for be assured, falling, as the law is, into contempt, decaying as the class of legislators is in public esteem, any attempt to preserve your power and its authority by violence, will only call a counteracting violence into life, which may for ever extinguish, in blood, your political systems.

But, my lord, I must stop, I have not, perhaps, entered as fully as I ought, and certainly not as fully as I might, into the advantages which would arise from the legislator recognizing and acting on the natural right of property, and into all the disadvantages which do actually flow from his continual struggles to uphold an unjust right of property. I have not contrasted, as I might have done, the works of nature and man. Not that I am one of those ascetics, who think man can effect nothing good within his proper sphere, his works are noble, and no person admires, more than I do, his manifold and wondrous achievements in every branch of art. But, my lord, the regulation of society is as much beyond individual skill, as reining in the storm. My disparagement of the lawgiver's labours, therefore, arises not from the religious dogma, "that all man's works are evil," but from a conviction that, in attempting to regulate society, he has miscalculated his power; and I beg to be understood as treating with the most complete scorn, those who preach the doctrine that all men are weak and sinful creatures, and yet act with as much arrogance and presumption as if they were thoroughly exempt from the general weaknesses. If I have not contrasted the advantages of the natural principle with the disadvantages of the legal error, if I have not dwelt on the one hand at length on the independence of equality, on the fearless boldness which results from man

not having a master, on the blessedness of comfortable competence being universal, on the total absence of all temptation to theft, where all are nearly alike, of the impossibility of crimes existing against property, where the natural right of property is respected by the law; and if I have not dwelt, on the other hand, on the miserable dependance of rich and poor, on the debasing timidity which distinguishes both the master and the slave, on the arrogance of the one and the brutal servility of the other, on the miserable idleness, "the waste of feelings unemployed," which result from one class having all their wants supplied without exertion, and on the excessive, wearisome, unbroken toil which that imposes on another class, on the excessive misery which the latter feel from extreme poverty, and the former feel from the dread of losing their excessive opulence,—if I have not contrasted, as I might have done, the blessings of the natural right of property, and the horrors of the legal right, that has been, I assure you, from no disposition to depreciate, like our blaspheming priesthood, the mind of man and the work of man's hands, but from a want of time and opportunity. But whatever may be my conviction of the advantages of observing the natural right of property, they cannot be made manifest to others, because they have, in fact, never existed; and though the principle may warrant me in deducing them, my adversaries may and will deride the deduction as the work of my own imagination. I do not deny that it would be, but I know not why one moral or social fact, or principle, being given, the imagination may not deduce as complete and logical consequences from that, as the mathematician deduces from any one quality of space. I am not persuaded that the universe within the mind is not as perfect and harmonious as the solar system, and not convinced that one part being known, we may not with undoubted accuracy infer all the other parts. I will not, however, enter

into such topics, which are I am afraid, equally, remote from the studies of both classes of the vulgar, who are at the extremes of the political scale. Our successors, my lord, who will see more of the social system developed than we see, will be able to describe it better, and contrast more forcibly than I can do, the effects of the natural and the legal systems of society. To them I must leave this important task, conceiving myself fortunate in having been allowed to go so far; and contented, at present, with being suffered thus to complete the little I have undertaken.

A Labourer.