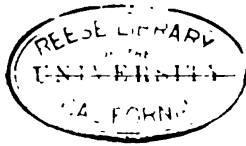


MISCELLANIES,
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ESSAYS, TRACTS OR ADDRESSES
POLITICAL AND SOCIAL.

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M.DCCC.LXXXIX.

STEALTHY AND FRAUDULENT LEGISLATION.

*Address on the Inauguration of the Vigilance Society,
November 14, 1871.*

PROFESSOR NEWMAN, in moving the adoption of the report, said:—I cannot rise to speak on this occasion without expressing thanks and admiration for the energy, promptitude, and judgment with which a few ladies, with little aid from men, in the year past have carried on the action of this committee, without a society or funds to fall back upon. I have heard it called the Vigilance Committee; a very proper name. It seems in the printed paper to take the name, "The Committee for amending the law where unjust to women." That is, I fear, a vast topic. It is not my desire to advance any suggestion concerning the best name, or any legal question. Having no technical knowledge of law, I cannot speak as a lawyer. I speak as an English citizen only. Without trying to define the prudent limits of action, I ask leave to dwell on the state of things which urgently calls for vigilance.

The conduct of English legislation is deplorable,—disastrous to the nation and disgraceful to our high pretensions. I say this with deliberation and long forethought. I have discerned it for twenty years as a fact; but how intense and dreadful a fact, I have felt in the two last years only. A truly feeble company are we who now assemble. Nevertheless, I feel it to be a solemn occasion, at which we ought to send forth an earnest and urgent protest to all who have ears to hear.

Of all things human and secular National Law is the most sacred. At the bidding of law we are expected to lay down our own lives, or, upon occasion, to take the lives of others. Patriotism depends on reverence and love for the native law. If the laws of a country be made unjust and foul, what reason will remain for love of country? What else will the people become but unjust and foul?

Where religion and law are identified, as in many ancient nations, if the religion be a noble one, it will gradually raise the

people to a certain eminence. But because every national religion is imperfect, the time comes at which changes are needed ; yet the religion resists change. Hence, after a time, the law ceases to have life, institutions are ossified, and the nation decays. For this reason the more modern idea of a State in which law is not stereotyped for ever by religion, but change is provided for organically, is esteemed more fruitful of ultimate benefit. But evidently all depends on the wisdom with which change of law is conducted, and on the earnest gravity of the process. In all well-ordered national institutions which allow of change in the law, discrimination is made between the more and the less important, and indeed, generally, the public enactments are graduated under different names ; as the constitution, statutes, ordinances, decrees, resolutions. The utmost solemnity of forms, to give notice and full time for deliberation, are insisted on, if change be asked in the higher and more sacred law. Moreover, every lower law is treated as essentially null and void, if it be against a higher law. To vote without full deliberation is felt to be an injustice to the minority.

The first state known to us in history which achieved constitutional morality (the celebrated city of Athens) punished by outlawry and severe fine the offence of bringing in a bill for a statute against fundamental law. If the people unawares passed the bill, that did not bring indemnity to the proposer. It was his business to discover the unlawfulness before assuming the responsibility of bringing in the bill. The only right course was, first, to move the abolition or modification of the fundamental law, before proposing his new statute.

In the United States of North America, the most democratic country in the world, the constitution is sharply separated from the congressional law. Even a unanimous Congress cannot vote away one tittle of the constitution. It can only recommend a change ; in which case the matter is considered over the whole country and voted for by prescribed forms. If Congress unawares passes an Act against the constitution, the Supreme Court of Law will disregard the Act of Congress side by side with the constitution, whenever the matter comes before it in a practical shape. So in the separate States, the judges follow the constitution and not the statutes passed in the State legislatures, if by accident they have come into conflict.

These Anglo-Americans have only followed out and developed the wisdom of our common forefathers, men eminently punctilious

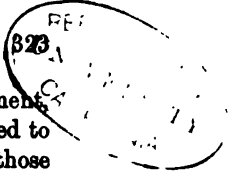
as to the processes of law and of law-making. In old days the English Parliament and its great constitutional lawyers regarded England as the inheritor of precious and sacred principles older than Parliament, out of which Parliament and its power had sprung; also those rights which the nation had with difficulty enforced against its kings, were treated as much higher than the statutes, which Parliament might enact in one year and repeal in another. Declaratory Law was the weapon by which they fought; asserting rights as having existed prior to statute; rights which no king might invade. The right of trial by jury, which had come down from unknown antiquity, ages before the modern parliament existed, was regarded as pre-eminently sacred. It so happens that the best educated and most law-loving community in the world, the State of Massachusetts, was put to a very severe test twenty-years ago, when Congress passed a statute called the Fugitive Slave Law, which deprived every dark-skinned man or woman in Massachusetts of the right of jury trial, and made such citizens liable to be carried off to the south as slaves, without appeal to a jury, who might have established that they were freeborn. Massachusetts did not abandon them for being her weakest citizens; but passed laws of her own to defeat the law of Congress, and justified it by the plain declaration, that to overthrow the jury-law was beyond the power of Congress, and if persisted in by violence would justify political secession—that is to say, revolution. Our forefathers felt and talked in the very same way, if a king tried to overthrow jury trial, or to imprison citizens by the mere power of the executive. Nothing but imminent public danger and supreme necessity have been held to justify the suspension of even Habeas Corpus, a much later enactment. It is only in quite recent days that, under cover of the doctrine that Parliament is omnipotent, men daringly sweep away all the sacredness of Constitutional Law, give summary powers to petty officers, magistrates, and surgeons, and equalize our most sacred rights and liberties with the most trivial matters. The late Royal Commission coolly assumes, that women who are not innocent (by which they mean, are not chaste) have no right to constitutional processes and barriers against illegality and injustice. If a profligate nobleman, or a nobleman believed by a policeman to be profligate, were seized and carried to a hospital prison and made to do rude housework—were forced to swallow mercury, and were burnt with caustic and confined in a stone cell—what

would be thought of defending such treatment by saying, "Oh, he is not chaste." That the commission should dare to treat women as outlaws because they are (or are supposed) unchaste, and should not understand that this must bring down upon them the bitter indignation of the uncorrupt millions, is to me a startling proof how ignorant they are of their countrymen, and how great is our danger from the ascendancy of such men.

It would be bad enough if rights over the body were treated as of no greater importance than some new and strange tax. We might then hope that all would be done in open day; that the country would be informed;—that the matter would be universally discussed; that time would be given to object; that a full house would attend, and mature deliberation be secured. But alas! when legislation has been concocted in some corner of the War Office or Admiralty, or by medical officers who have fixed places, any Government which is too weak to resist the pressure of the permanent office-holders can pass through Parliament anything, provided that those only are affected by the legislation who have no influence over Parliamentary elections—that is, most peculiarly, poor women. Any one who has attended a wearisome committee in which opposite opinions are very strong, where several persons talk incessantly and waste time, while some decision is urgently needed, must be aware how at last all become impatient and despairing, and almost ready to vote anything that appears somehow practical, rather than go on talking for ever. If upon this comes new and new business, what calm and sagacious consideration of it is to be expected? A legislature which sits up to midnight, or two hours after midnight, can only give the dregs of its mind to the consideration of topics however grave.

In such case nothing is commoner than to ask information of an eminent official. The minister replies as with authority, and generally decides doubtful votes; but he speaks as instructed by his subordinates, not always with truth. In the debate of 1866, concerning the Contagious Diseases Acts, Mr Gladstone assured the House (as I read) that the new Bill involved no new principle, but only facilitated the working out of the Act of 1864. He must have been deceived by one of the permanent officeholders; yet his speech can hardly have failed to exercise great weight on the House, though it was the blind leading the blind to immolate the English constitution.

Listen to the statements recently made by a cabinet minister.



He said : "Towards the end of the last session of Parliament when, in the small hours of the morning the reporters refused to put down any longer the half-sleepy words which many of those who were sitting up endeavoured to utter—during those small hours of the morning it was my fortune to pass the Bill which abolished the Poor-Law Board, and constitute in its place that which is now the Local Government Board." So spoke to his constituents at Halifax the Right Hon. James Stansfeld. What a picture does he hold up! Let us grant that the measure on which he congratulates himself and the country was in itself wise and good ; but what of the mode of carrying it? The abolition of a very important board, the Poor-law Board, is effected towards the end of the session, while the legislators present are half-asleep, and endeavouring to utter words, but so incoherently that the reporters scorn to record them!! What avail then all the barriers against hasty and fraudulent legislation erected by our ancestors? Full notice of bills, three readings, two houses of legislation? An overworked Parliament is as helpless as an infant, and becomes the mere tool of scheming men. A series of detailed propositions, occupying many folio pages, is not truly a law, but an edict : yet of such kind are the modern Acts of Parliament. The inordinate fatigue of constructing detailed edicts for thirty millions of persons, besides the duty of controuling the Executive Government in its domestic and foreign action, and listening to interminable talk, thoroughly wears out a vast majority of the House. After midnight, how many remain? If out of 640 members there are forty present—that is grandly legitimate,—but should there be only twenty, and these twenty have stayed at the especial desire of the Government, there is nothing to compel the counting-out of the House. The vote of twenty or ten may deprive poor women of jury-trial, or enact that we shall be forcibly inoculated with any loathsome disease that may be the medical fancy of the day.

That it should be possible to pass penal law at all with a miserable fraction of the legislature (no one knows how many), is in itself utterly monstrous. To undertake so grave a duty, with wearied brain, cannot be approved in any case ; but to vote away, in a thin house, all the constitutional safeguards against the unjust and precipitate action of the Executive, and that while enacting unheard-of inflictions on the bodies of women, might have seemed a malversation, a treason, impossible in England. What is the House for, if not to save us from the despotism of the Executive?

The Roman Senate forbade and esteemed invalid any resolution made after sunset, and a thin house was a thing unknown. Every senator could be punished with fines practically unlimited, if he absented himself from a meeting without leave; yet the resolutions or decrees of the Senate were not laws until ratified by the people. What a contrast to our slovenly way of treating the most sacred rights of the poorest and feeblest—young women and girls of fourteen or twelve years of age, whom, most of all, it is a sacred duty to protect. It is enough to make one ashamed of one's country.

The American Congress is often spoken of with contempt by our aristocratic classes: but at least it tries to hinder its members from legislating with heads disordered by wine. It does not permit a single glass of wine to be served in its own dining hall. But in the English Parliament, unless we are grossly deceived, many members exhibit symptoms, which, though mildly ascribed to "heated imagination," are universally understood to be the effect of wine. Who can wonder that we have Acts to amend Acts, and cries to repeal Acts? We are not even allowed to appeal from Philip drunk to Philip sober: for we cannot be sure of ever catching Philip sober. An Act once stealthily passed, even if possibly by a weary, empty, half-sleepy, half-conscious House, requires countless martyrdom and years of agitation to repeal it, if it was passed in the interest of the permanent services, and set up a number of place-holders.

But the terrible thing is, that we see only the beginning of this infamous system of voting away the national liberties. A certain medical school has got the ear of Ministers, and exercises immense influence over Parliament. M.P.'s calmly profess to follow the advice of experts in all medical subjects. These experts do not even fairly represent the whole medical body. Again and again their favourite projects have been outvoted in fair and open discussion. But this school has its own fanaticism, and that is all in the direction of multiplying places and salaries for itself. It never proposes to remove the causes of evil, such as to keep away inflaming drink from the soldiery or the people, but only to bring medical appliances when too late. Hospitals without end it will approve, but not prevention. It must be observed that though the Royal Commission was appointed to give the Ministry something to follow, yet, when it recommended that which would have superseded the work of a number of surgeons, the Ministry postponed action.

The continued violation of poor girls is made of far less importance than the salaries of the surgeons. The Right Hon. Mr Gladstone has hereby revealed that other minds, less sensitive and scrupulous than his, will decide what is to be presented to us for law next session. Under the pretence of stopping infanticide, what monstrosities may not be introduced.

There are other alarming symptoms. It is hard to disbelieve the report that a very eminent member of the Cabinet has declared that "even the British constitution must give way to the exigencies of modern civilization." This means that the necessity of furnishing profligate men with safe indulgence of lust is so intense, that women's constitutional rights are to go for nothing. The late Royal Commission disgracefully apologizes for the sin of fornication in men, while severely condemning the helpless girls who, at a tender age, have been entrapped or bought for the practice of which they are the victims. The advocates of this foul despotism are not ashamed nor dismayed (much less penitent) in face of the public, but are still confident in their power over Parliament and the Cabinet. These who believe they know what is behind the scenes, tell us that only two members of the Cabinet are firm on our side. And what avails their firmness in the closet, if, when out-voted by their colleagues, they publicly side with immorality, tyranny, and the overthrow of constitutional law? Unhappily, the Prime Minister, from whose moral and religious sentiment we were justified in expecting so much quickness of conscientious discernment, has warned us not to trust his new assurances recently made at Greenwich. I remember with great pain, but I cannot forget, and I think none of us ought to forget, what Mr Stansfeld told his constituents in the name of the Prime Minister, that the Royal Commission was appointed to inquire into the moral tendency of the Contagious Diseases Act. If any one does not see by his own purity of heart, that such a disgusting mode of providing security for profligates tends to public immorality, how can we in future trust him to legislate about women at all? Members of Parliament hate medical questions, not unjustly, and refuse to study them. This is a sufficient reason why no medical creed or medical operation ought to be enforced by Parliamentary enactment. But the Prime Minister appears resolved, not to repeal the evil Acts but to replace them by new Acts. He wants to compromise between the placeholders and the religious sentiment of the

nation. There is very great danger that party-influences may enable him to gratify those whom he dares not to offend. No one can say what new bill medical ambition is concocting. Therefore, the call is strong and urgent on all with whom domestic purity, the rights of the poor, and the sacredness of the constitution are inexpressibly more precious than party-interests, to bring their funds in aid of those, who have so nobly thrown themselves into the van of battle. I do not say in what form we ought to come to their aid, whether by a new society or by reinforcing some organization which exists. This is a matter for mature consideration. But some new agency or other ought to be devised, which shall relieve them from this very unfair task, so disproportioned to their strength and means. All men who have a heart ought to join ; for without sacredness of legal process, no poor woman's virtue is safe. England will hardly pass successfully through this most dangerous crisis, in which our nominal rulers have set over our necks the reckless despotism of a medical school—the pander to widespread profligacy, — unless the religious of all sects cordially unite with the masses of the poorer, on whom the tyrannical pressure falls first and heaviest.