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ART. I.—THE THREE IDEAS.

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EVER since the time of Plato, at least, the three so-called ideas of the True, the Beautiful, the Good, have found free expression in the literature of the civilized world. The language of common life, as well as that of the schools, has recognized them, and has stamped them with its richest, best, most significant characters. No terms in any language speak more expressively to the intelligence and the feelings of men than those which denote these ideas.

That these terms in universal language are not meaningless symbols, denoting mere zeros of thought or phantoms of fancy, that they are on the contrary signs of actual verities, not a doubt seems to have arisen. The recognition and acceptance of the ideas as such verities have been unhesitating as they have been universal.

That these ideas, further, stand in some vital relationship to one another has also been accepted with a kind of spontaneous, instinctive faith. Universally has it been believed that the perfectly good must be in beauty and according to truth; that pure beauty must be in like conformity to truth and goodness; and that the true must of its own native tendency go forth in beauty and also be a blessing. In some respects it has been supposed they must be one and the same, while yet in some other respects they must be diverse; although the precise character of this identity and diversity may have escaped recogni-

wisdom, has been very generally recognized as the preëminent endowment of the human spirit, as its *essential* attribute. It is, according to the grand sentiment of Pascal, because man *knows* that he dies, that he is more noble than the universe that crushes him.

We are forced thus to recognize the three functions of the mind as true coördinates, as we have found them to be the sole complementary and coëssential functions. The mind, the spirit, simple and indivisible in itself, possesses this three-fold endowment; and while in the ceaseless revolutions of its experience, it brings before our view sometimes one and sometimes another of the three, no one of them ever drops entirely out of its active nature, but each enters as indispensable requisite into every form of its experience, every phase of its life, every determination of its activity.

ART. II.—CRIMES OF PASSION AND CRIMES OF REFLECTION.

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Sin is the primal cause of lawlessness, but in its covert state is not amenable to society. When it becomes overt, it passes into crime, and is thenceforth responsible to human laws. The essence of sin is selfishness, in its various forms of self-indulgence, self-gratification, self-seeking and self-aggrandizement. Hence every crime takes one or other of these abnormal forms of self. The moral character of the crime is always determinable from the animus of the perpetrator. This animus is measured by the two factors,—passion and reflection. These factors moreover are variable. Reflection varies in degree; passion both in kind and degree. Under the impulse and direction of these factors originates every species of crime, from the slightest misdemeanor to the gravest felony. As to their number, crimes are countless; as to their variety, infinite. Every application of the common law which repairs an old barrier, and every statute which erects a new one, provokes the spirit of lawlessness to a fresh attempt at assault or evasion. The more justice explicates itself in legislation, the more selfishness re-

finds itself in cunning. Proteus did not more cleverly assume a new guise, or more deftly slip a manacle, than does the "tricksy spirit" of evil. The history of criminal jurisprudence is the history of competition between crime evading justice, and justice forestalling crime.

Crime is punishable because it includes in itself injury to society. The law of self-preservation is put on the defensive, and proceeds against the criminal, because he is noxious. The degrees of this hurtfulness must determine the character of the criminal legislation; and the ultimate safety of the state, the nature of the penal treatment. In order that the subject of crime may be treated with more exactness, and lead to some practical results, it will be necessary to make such a division of the field of misdemeanor, as shall throw light on the path of the law-maker and the penologist. Blackstone, in his admirable Commentaries on the laws of England, has distributed the whole domain of law into four parts. The rights of persons, and the rights of things; private wrongs, and public wrongs. The fourth division treats of crimes, and is the only one that concerns us. The several classes of crimes which he enumerates, and under which he treats the whole subject of "public wrongs," are: (1.) Crimes against God and Religion. (2.) Crimes against the Law of Nations. (3.) Crimes against the King and Government. (4.) The Commonwealth. (5.) Private individuals. There is no one word, or single term, that covers the whole scale of offences, from the lowest punishable misdemeanor, to the highest felony. Count Sollohub very earnestly questions whether, instead of the two classes—Misdemeanor and Felony, we should not have three classes, Misdemeanor, Crime, Felony; while of the last term, J. Stuart Mill affirms, that "there is no lawyer who would undertake to tell what a felony is, otherwise than by enumerating the various kinds of offenses which are so called." Blackstone says, that "crimes and misdemeanors, properly speaking, are merely synonymous terms." These differing divisions of the domain of crime may be passed by, as unimportant in this discussion. For my present purpose, I have chosen to divide all crimes into two classes only,—*Crimes of Passion, and Crimes of Reflection.*

This division is effective, because it brings clearly before us the criminal as the efficient agent of the wrong done, and there-

fore the proper subject of the penalty to be inflicted, of the restitution to be made, and of the reformation sought. It has the further advantage of accurately distinguishing passion, as the motive power to crime, from reflection, which is only its directing and guiding force. If the line here indicated shall be found clearly to divide the class of wrong-doers, the legislator, no less than the penologist, will be put in possession of a very important principle. For no one would for a moment contend that the criminal, who is the victim of sudden passion, should be dealt with in the same manner as the criminal of patient reflection; or that crimes of malign and of non-malign passion are on a par. All will admit, as an axiom, that knowledge is the first element of responsibility, and as such the chief factor in crime. Intelligence is the inventing and contriving faculty. It may be stimulated by the passions, but it is in directing them that it is criminal. Mere passion is as blind as the weapon which it uses, but when reflection points the way, the poniard becomes as sharp-sighted as the lynx, and killing grows to murder. It may seem like uttering a barren truism, to speak of knowledge as the chief element of responsibility in crime; but I shall use it rather for the purpose of classifying criminals, and for suggesting appropriate penal legislation and treatment, than with reference to a basis of moral responsibility. But, further, when intelligence is spoken of as a factor in crime, it is not the absolute amount of knowledge which the man possesses that determines his criminality, but the amount of deliberate intention directed towards committing the offense. How much of his knowledge did he turn to account? A murderer may have much less intelligence than one guilty of manslaughter, but he turns more of his knowledge to a criminal account. He "nurses his wrath to keep it warm," and but for such thoughtful tending the baleful fire would have gone out. The sentiment of the community towards these two classes of criminals is very different. Feeling is most active towards crimes of passion, whereas towards crimes of reflection principle is most operative. In these two kinds of antagonism we see reflected the leading features of the two classes of criminals:

The following schedule, if not rigidly scientific, will place the two great classes of crimes clearly before the eye :

CRIMES.

In which are considered ;

I. CRIMES OF PASSION.

1. Crimes of malign passion.

1. *Crimes of malign passion against persons.*

1. Murder (manslaughter).

2. Mayhem.

3. Slander (libel).

2. *Crimes of malign passion against property.*

1. Malicious mischief (arson, poisoning cattle, &c.)

2. Crimes of non-malign passion (passing over into).

II. CRIMES OF REFLECTION.

1. *Crimes against religion. (?)*

1. Blasphemy.

2. Profanity.

2. *Crimes against nature.*

1. Bestiality.

2. Sodomy.

3. *Crimes against chastity.*

1. Rape.

2. Adultery.

3. Fornication.

4. Seduction.

5. Obscenity.

4. *Crimes against property.*

1. Robbery.

2. Burglary.

3. Larceny.

4. Counterfeiting.

5. Forgery.

6. Defaulting.

7. Embezzling.

8. Adulterating food (shoddy, &c.)

9. Short weight, measure.

5. *Crimes against liberty.*

1. Perjury.

2. Bribery.

3. Ballot-stuffing.

4. Treason.

6. *Crimes of conditional responsibility.*

1. Drunkenness (drunkard-making).
2. Gambling (lotteries, gift enterprises, betting, &c.)
3. Prostitution.

If now we classify these crimes, according to the quality of the passions that incited to them, we shall find only four of them caused by vindictive feelings. One against life—Murder ; one against limb—Mayhem ; one against property—Malicious Mischief ; and one against reputation—Slander. These crimes are among the highest on the criminal scale, as being aimed at the person, and as combining in their turpitude the elements of malignant passion and reflection. With these few exceptions, all the remaining ones in the schedule are more properly designated crimes of reflection, reflection guiding passion, and not passion blinding reflection. There is one exception—rape: on the criminal scale, it stands by itself. So far as it is a crime of passion, having in it nothing vindictive or malign, it would seem excusable, but so far as it is a crime of reflection, and perpetrated by violence against the highest sanctity of the sex, it is of exceptional enormity, and so society has ever regarded and punished it.

In estimating the enormity of an offense, it must further be borne in mind, that every crime is measured by its nearness to, or remoteness from, the person. Personality—personal worth, is the *milliarium aureum* set in the forum of the world, from which all offenses are measured. Civilians, for the sake of convenience, divide offenses into crimes against persons, and crimes against things, but the gravamen of every offence is its oppugnancy to the person. Murder is the capital offence, because it attacks the life, which is the citadel of the person. Next comes chastity, then reputation, and then honor ; then limbs and members, especially those the loss of which dishonors, disfigures, or disables. When we reach the domain of property, the house comes first, as being the man's castle—the home of his affections, his honors and his privacy: Arson and burglary, as invasions of this domicile of the man, are crimes of rankest smell. When we come to detached property, the robber and the pick-pocket are criminals of special abhorrence, because they touch the person the closest. In Greece and Rome, *saccularii*—cut-purses, were punished with exceptional severity. This jealousy

of man's individuality lies at the basis of order. We instinctively resent being forgotten, or unrecognized, or mistaken for another; and consider nothing which concerns the Ego foreign to ourselves.

When we place before our minds murder and rape, the two most passionate crimes, we are at once conscious of a very great difference in the feelings which they respectively excite. We regard both of them with such instinctive reprobation that our first impulse is, to thrust the perpetrators out of the world. Yet the two crimes move from almost opposite poles. Murder springs from a malign passion—a passion that, in every one of its degrees, is criminal; while rape originates in a natural and lawful passion, and one that is only criminal in its excess and misdirection. Now does this feeling of retributive justice toward these two kinds of criminals arise from our sense of public justice? Are we so intolerant of these crimes, because, in their consequences to society they are equally destructive, and in their nature, equally heinous? Doubtless this is the truth, as respects our feelings toward the criminals, but it gives us no criterion by which we distinguish one kind of passionate crime from another kind.

Passions are of two kinds—malign and non-malign. The former are always criminal in their manifestations, the latter are only criminal in their excess and exorbitancy. The malign passions are, by their very nature, objective in their tendency. Injury of another is their ultimatum. The suffering of the victim is more sought than the gratification of the avenger. In truth, he is only satisfied when the injury has been inflicted, and by the infliction. The other's pain is his pleasure. This objectivity is the characteristic of all crimes flowing from the malign passions. It is this quality that carries this class of offenders out of themselves. It follows that this class of criminals always aim at the individual. They only attack the man's reputation or property, because through these he is vulnerable, or because their cowardice is greater than their malignity.

The non-malign passions act in the reverse order. Their current runs inward; they are subjective and retractive; self-gratification is the main end. The thief does not steal out of hatred to his neighbor, but only out of love to himself. The thief steals, because he loves himself; the murderer kills, because he

hates his neighbor. The malign passions are always personal, the non-malign, impersonal. It matters not to the horse thief, whose horse he steals; but to the man bent on malicious mischief, the owner of the horse is everything and the horse nothing. It is therefore not passion as such that is sought to be punished, but the malign element in it, that which poisons the body politic, and threatens to destroy it.

Where the passion itself is non-malign, as in petit larceny, robbery or rape, and the injury results from its action, out of degree or place, there the guilt arises from the reflective element, which is supposed to have entered into the offense, and from every circumstance fitted to excite reflection, or lead to deliberation. For example, in stealing from the field, there is less to excite thought in the thief, than in pilfering from the house; and in the latter case, still less than in picking a pocket. The stimulus to thought increases as you approach the person, the standard, as we have seen, of all proprietary rights. When therefore the criminal proceeds to robbery, or to burglary, and in the presence of his victim, violates the privacy of his home, or ignores the sanctity of his personality—preferring the man's purse to his person; when he sets at naught all the thoughts that crowd upon him, and all the stimulants to thought, it argues a high and dangerous degree of selfishness. Here knowledge is the criminal element, and deliberation the damning thing. Now, in rape, more than in any other crime of non-malignant passion, reflection is most excited. Impure thoughts have long been accumulating the fuel for some great burning. Nor is it the mere drift-wood of a roving imagination, but stuff deliberately laid up, and the large fire, which a little matter kindleth, does not so much come from the fierce passion, as from the much fuel. There is much to give him pause. It is not only the citadel of the person which he assaults, but the sanctuary of the sex which he rifles. It is these sanctities that cry against the deep damnation of his purpose. He is prompted to think far and fast, before he lays hands on his victim. A thousand voices call to him to desist—weakness and innocence plead as for their life. Now, if lust wrought, like revenge, outward only, entreaty and resistance would be provocatives; but it works inward too. Obstacles cool, rather than inflame it. Time too, abates subjective passions, making more and more room for reflection.

Thought crowds into all these vacant places ; the man ceases to be blinded by his passion. "The phantasm or hideous dream," as Shakespeare terms the interim—

" Between the acting of a dreadful thing
And the first motion,"

fades into wakefulness, as "the filthy dreamer" approaches his purpose. "The first motion" is the dawn of passion, but the acting of this "dreadful thing" is in the clear light of knowledge ; and because he chooses to break through all the defences which do hedge her divinity, to commit this sacrilege, the verdict of society is : "Let him die the death, it is not fit that such an one should live."

Leaving the field of speculation, let us see what criminal statistics teach. Every penologist knows that a philosophical, uniform and accurate registry of crimes and criminals, is the chief desideratum in the field of penal reform. We must have facts before we can deduce principles, and it is therefore with much diffidence that the following tables and their suggestions are submitted. The institutions, whose reports are tabulated, are the Penitentiaries of Sing-Sing, Auburn, Clinton and Albany, the Western Penitentiary of Penn., the Ohio Penitentiary, Liverpool Borough prison, N. Y. county prisons, N. Y. city prisons, Blackwell's Island, and the Detroit House of Correction. These reports extend over nine years, from 1863 to 1871. This period includes the years of our civil war. This fact may need mention, in order to account for the large general percentage of crimes of violence. The whole number of commitments, to these different institutions, during these years, was 224,161 ; but leaving out those where the tables are not uniform, and further deducting the large number of "misdemeanors" and "disorderlies," and limiting ourselves to the graver offenses against persons and property, we have 18,509 criminal cases. Taking this number as our criminal basis, and arranging the several offenses in the order of their numbers, they range as follows : petit larceny, 10,548 ; grand larceny, 4,781 ; burglary, 1,791 ; robbery, 552 ; forgery, 380 ; rape, 278 ; murder, 219 ; arson, 176 ; manslaughter, 140 ; counterfeiting, 104. These numbers give 577 crimes against persons, and 17,932 offences against property. If we compare the number of crimes instigated by passion, with those in which

reflection is the main element, we shall have 653 of the former, and 17,756 of the latter.

We see, at a glance, how small a part passion plays in the perpetration of crime. If now we discriminate the crimes which are the result of malign passions, from those which come from the non-malign passions, we shall get the following figures:—Murder, 219; manslaughter, 140; arson, 176:—total, 535. Again, subtracting arson, as directed against property, we have 359 malign crimes against the person—supposing all the cases of manslaughter to have been malicious, which it is certain they were not,—leaving 17,950 non-malign crimes against persons and things out of the whole number of crimes, 18,509; being less than one in fifty. Thus we see that crimes of passion are mainly directed against persons; but their relative number is small, while, of the large number of crimes against property, most are non-malign. Comparing crimes of pure passion with crimes of pure reflection, the figures are still more disproportionate.

In the next place, let us see how these different crimes stand related to the question of recommitments. To what class of criminals do the recidivists belong?

	Whole No. Committed.	1st. Com.	2d. Com.	3d. Com.
Blackwell's Island, 1864,	921	618	140	55
Liverp. Bor. Prison, 1864-65,	17,390	7,800	3,077	1,224
Ohio Penitentiary, 1870,	386	340	32	11
Western Penit., Pa., 1869-71,	1,195	1,024	85	14

The high rate of recommitments in the New York and Liverpool prisons is quite noticeable, but as New York and Liverpool are both large commercial cities, and are the temporary home of many foreigners and strangers, and the rendezvous of criminals, it is natural that the prisons of both places should become the abode of many "repeaters." It is in the centres of population, and along the main thoroughfares of travel and trade, that professional criminals "do most congregate." If we take the whole number of commitments to the Western Penitentiary of Pa., during 1869-70-71, we find 86 per cent. are first convictions, 7 per cent. second convictions, and 1 per cent. third convictions. These figures represent the several percentages in the criminal reserve. Applying the same measure to the discharged convicts of 1870, the percentage of the respective convictions is: for the first, 84 per cent.; for the second, 11.75 per

cent.; for the third conviction, 1.75 per cent. This is the rate in the outflowing current. As the statistics of this institution are very carefully tabulated, the figures, which mark the inflowing current of crime, are the best ones from which to determine the ratios of reconviotions. Taking therefore the years 1869-70-71, the percentages are : first convictions, 87 per cent, second 8, third 1.67. After deducting all those who may have changed their place of operations ; taking out all those who may have denied any previous conviction, and all who may have eluded justice, this rapidly diminishing scale of per cent. shows how precipitately criminals fall off.

But a far more interesting question for our present purpose is this one : What is the order of the crimes in which the recidivists stand ? Or what class of criminals appear most frequently at our prison doors ? Numerically commitments were found to be in the following order : petit larceny, grand larceny, burglary, robbery, forgery, rape, murder, arson, manslaughter, counterfeiting ; and their percentages thus : petit larceny 57 per cent. ; grand larceny, 25 ; burglary, 9 ; robbery, 3 ; forgery, 2 ; rape, 1.5 ; murder, 1.18 ; arson, 95 ; manslaughter, 75 ; counterfeiting, 56 per cent. If we take 537 as the normal figure, that being the number of commitments to the Western Penitentiary of Penn., we have : larceny, 213 ; burglaries, 30 ; robberies, 27 ; murders, 27 ; horse-stealing, 24 ; felonious assaults, 22 ; rapes, 20 ; arson, 14 ; counterfeiting, 14 ; forgeries, 13. The recommitments in 213 larcenies were 46 ; in the 30 burglaries, were 6 ; in the 27 robberies, 3 ; in 27 horse-stealings, 7 ; in 22 felonious assaults, 6 ; in 13 forgeries, 3 ; in the 20 rapes, 2 ; in the 14 arsons and 14 counterfeitings, none ; and in 27 murders, 5 ; but the recommitments for murder were for the second degree of that crime.

The order of the per cent. of recommitments is : felonious assault, 27 per cent. ; horse-stealing, 26 ; forgery, 23 ; grand larceny, 21 ; burglary, 20 ; robbery, 15 ; rape, 10 per cent.

The general truth, that convictions fall off very precipitately, has already been evinced. But what is the ratio of decrease, in crimes of reflection, as compared with crimes of passion ? Or, which of these two classes of criminals come back most frequently — thus betokening the most inveterate criminality ? Out of 335 of the great crimes against property, 20 per cent. are

recommitted; and of the great crimes against persons nearly the same per cent. Of the criminals in respect to property, the thief is the most inveterate, and in the following order: grand larceny, horse stealing, burglary, robbery and forgery. In crimes of passion, this is the order: felonious assaults, rape, murder. According to Quatelet, the order of attracting force in crimes is as follows: Theft, rape, assault with violence, murder, manslaughter, poisoning, frauds. In this problem there are two factors: The first one is the order of crimes, as to their number, *i. e.* the frequency of their perpetration; the second is the order of crimes, as to their repetition by the same person, *i. e.* the tendency to repetition by the same person. Our tables show that the graver crimes of passion do not tend to repetition, while repetition is a characteristic of all classes of reflective crimes. Forgery, burglary, robbery and seduction are professional and recurrent crimes; but murder, manslaughter and rape are occasional and exceptional. Mr. Lucky, chaplain of Sing Sing, from an observation of ten or twelve years, concluded that the commitments amounted to about 12 per cent.

It must be apparent, from the facts just considered, that our criminals are of two distinct orders, the deliberate and the passionial; that these classes differ very much in size, the crimes of passion being comparatively few, while those of reflection are very numerous; that they differ in their inveteracy, crimes of passion quickly burning out, while those of reflection readily renew and perpetuate themselves. Crimes of passion, moreover, spend themselves on individuals and on the instant; crimes of reflection assault the community, and bear their purpose about them continually. Crimes of reflection imply and often demand accomplices. The instruments with which they work, as well as the offences which they commit, require time, skill and capital, in a word, organization. Crimes of reflection presuppose haunts of crimes, and schools of crime. When this class of offenders have offspring, it is not by accident but by education that they too become criminals. Further, in crimes of passion it is rarely possible to have accomplices, in crimes of simple passion, absolutely impossible; but in crimes of reflection accomplices are almost a necessity. There is another particular which places these two classes of offenders in a totally different position before the community. Crimes of passion, being unpremeditated, are

generally committed in the presence of witnesses, whereas crimes of reflection, whether of fraud or violence, are perpetrated in secret. What Job said three thousand years ago of their secrecy and cowardice, is true to-day :

They are of those that rebel against the light ;
 They know not the ways thereof,
 Nor abide in the paths thereof.
 The murderer rising with the light, killeth the poor and needy,
 And in the night is as a thief.
 The eye of the adulterer waiteth for the twilight, saying :
 No eye shall see me, and disguiseth his face.
 In the dark they dig through houses, which they had marked for themselves in the day-time :
 They know not the light,
 For the morning is to them even as the shadow of death :
 If one know them, they are in the terrors of the shadow of death.
 xxiv. 14-17.

The habitat of the two classes differs. The city is the chosen dwelling place of the professional criminal. He seeks the company of like-minded persons. He gravitates toward the centres of population, and is to be found along the great thoroughfares. The criminal who is the victim of passion has no habitat ; he is where his passion overtakes him, and that is anywhere. If he becomes a "professional," it is not unfrequently caused by his penal treatment. How often this result may follow, it is painful to contemplate. The last report of the Prison Association of New York, shows that "her county jails are filled with petty offenders, pimps, prostitutes and vagrants." The jails being the public caravansaries along the highways and by-ways of crime, this motley crowd of villains and vagabonds become his company. They entertain, instruct and often pervert him.

If the distinction made between these two classes of criminals be valid, it follows that criminal legislation and penal treatment should have regard to it. Touching the character of criminal legislation, we may start with this remark, that deterrent laws are of little avail against crimes of passion. Passion does not think of consequences. It would not be passion if it did. It is therefore not politic to seek to forestall this class of crimes by any special severity, singularity or horribleness of punishment. The Roman law against parricide was of this exceptional character : "After being scourged, the delinquent was sewed up in

a leathern sack, with a live dog, a cock, a viper, and an ape, and so cast into the sea." The statute of Henry VIII. against poisoning, sought to deter from this crime "by boiling the murderer to death." It was repealed after a few years. This horrible punishment was probably suggested by the accident of its victim having been a bishop's cook, and having poisoned the episcopal broth. Geo. III.'s statute against treason punished it with drawing, hanging, beheading and quartering. Blowing the Indian mutineers from the guns was of the same exceptionable character. Such penalties stir the imagination and fill it with horror, but when seen they excite either pity or revenge. It was the sentiment of natural pity that extemporized the hurdle in cases of drawing for treason. The artificial nature of such punishments is at variance with the spirit of justice. Justice is a stern sentiment, but it abhors finesse, cruelty or brutality. Nor is it consistent with the best results of penal treatment, either by parade or publicity, to make the victim a hero or a martyr. Spectacular executions appeal to the vanity of the criminal and the brutality of the crowd.

Preventive legislation is of special efficiency in repressing and forestalling this class of crimes. Idleness, ignorance, and a low grade of living, are fruitful sources of crimes of all sorts, but in particular of crimes of passion. Government must realize its duty of furnishing opportunities and stimulus to this class of citizens for bettering their condition. Work is a necessary condition of human life, and, like all necessary conditions, is beneficent; but it cannot be beneficent when the opportunity is not free to all, as against trades unions; nor when it is underpaid, as against capital; nor when it is arbitrarily taxed, as against monopolies. Employment that is honorable and remunerative cultivates the physical, intellectual and moral powers, and elevates and moderates the passions. Occupation, while it forestalls idleness, promotes self-respect. Next to affording honorable and remunerative employment for all who seek it, government owes an adequate education to all its prospective citizens. When the child has no living or interested parents or guardians to secure this quota of knowledge, let the state constitute itself the guardian. The child that is born to citizenship is entitled to all the prerequisites of citizenship. In no legitimate government can it be possible that ignorance

should be a better qualification than knowledge for citizenship. Knowledge is power, because it gives a wider scope to man's ideas, employments and sentiments; and as you raise him in the scale of intelligence, you raise him in the control of his passions. The third kind of preventive legislation which the state should enforce, is that which regulates our animal passions.

Sumptuary laws are neither new nor popular, yet it is a fair question whether the principle of such legislation is wrong; or whether it is not the modes and degrees of its application that have brought it into such bad order. The rich sneer at it, because it seeks to restrain their prodigality and luxury; the poor rebel against it, because it would put a restraint upon their low appetites; and all resent it, because it seems an invasion of private rights. But the abuse of a principle is not valid against its use—unless the use itself is the abuse. Can the state proceed against drinking-houses and drunkards; against stews and the visitors of stews; against gambling-houses and the patrons of such houses? We answer, yes: First, because in all offenses which admit of accomplices, the law recognizes the guilt of accomplices. The law does not recognize property in a burglar's kit, or a gambler's tools—because crime can have no legal status, and the implements of crime no sanctity as property. In all classes of amusements and indulgences, where the place and the patrons are correlates, the guilt of the one factor is the guilt of the other—because the wrong is the resultant of coöperating agents. Public drunkenness is a misdemeanor everywhere, so are public prostitution and gambling. Now, so long as a man violates the laws of moderation, chastity or justice, in private, no civil law can or should molest him. He is amenable to moral law only. But the line that separates the private from the public act, divides between the sin and the crime. Outside of that line lies the public domain, into which the citizen has no more right to intrude private sins, than the state has the right to intrude public statutes into the citizen's privacy. He may commit sins—that is his, and not the state's concern; he may not commit crime—that is the state's concern, and no man's right. The two mutually limit and exclude each other, and become equally transgressions when they reciprocally pass that line. It is the Rubicon between Cæsar and Rome.

Prostitution has probably been the subject of legislative re-

strictions for a longer period than any other moral offense. As a crime, it is as old and as wide-spread as unbridled sexual passion; and though the penalties inflicted have been the most severe, certain and inexorable, it has maintained itself in every community. Because of this prevalence and tenacity, law-makers have grown discouraged, and have sought to license what they could not abolish. But the best moral sense will never be reconciled to regulate crime. When the drunkard has accomplished his debauch, he returns again to himself and a quasi standing in society. But prostitution does not admit of degrees. Where it is known, the moral status of one of the parties—(would it were both!) is instantly and irrevocably fixed. It is venal enough to be carried on, when the orgasm is over; to be carried on under the public ban; to be carried on despite the most repulsive police regulations; to be carried on under every guise and disguise, and by every ruse. It is an occupation chosen and premeditated. Drunkenness too is a passionate vice, yet are there no drunkards who make drunkard-making a business. Prostitution is a business. It preys on the innocent to gratify the guilty. In its cold-bloodedness, it is more nearly allied to gambling than to drunkenness. The latter may be a solitary vice, gambling and prostitution of necessity have accomplices.

With respect to these three notorious crimes and sources of crime, it is admitted that they are voluntary, and that their patrons are voluntary patrons. Drunkenness, so far as it is criminal, is a voluntary crime. Prostitution is a voluntary crime. Gambling is a voluntary crime—as really such as burglary, rape, or murder. It is admitted that they are public evils, and, as such, amenable to public justice. If drunkenness is a crime, then the drunkard-maker, as *particeps criminis*, is a criminal too. But, on the other hand, it is admitted that drinking is not a crime, nor can it have accomplices. It is further admitted, that a drinking-house in itself is not unlawful. Hence it follows that though the drinking-house is lawful and licensable, if it becomes the means of drunkenness, the drinking-house keeper may, and should, be held responsible for the excess, and for the damages and crimes arising from the excess. The right of the state to proceed penally against these three classes of crimes, rests on the right of self-preservation, and the duty to protect the weak and the unwary. If it is said that no legislation has ever been

able to abolish prostitution, gambling and drunkenness, we reply: No state has ever been able to abolish murder, rape or robbery. What cannot be suppressed may be repressed.

Turning to crimes of reflection:—we have less hope of preventing them by means of equitable legislation in respect to capital and labor, compulsory education, and legal restraints of a sumptuary nature, though no doubt, with reference to crimes of reflection, such legislation would be indirectly preventive. This class of offenses is mainly directed against property. Hence the person is only an incident. Crimes of reflection, when not malicious, are purely subjective, and absolutely selfish. This class of criminals, instead of being diminished by education, often exist as educated criminals. Forgery, counterfeiting, adulteration, and bribery are crimes of knowledge, not of ignorance; of deliberation, not passion. Education may keep some men from entering on these modes of life, but it may also turn some men into these ways. Intellectual knowledge is indifferent to right or wrong. Moral convictions, principles and habits are the only forces that lead to the doing of right, because it is right. Hence preventive legislation has little scope here. We must seek it in deterrent laws. The reflective criminal is a speculator in chances. He is not impelled by passion, nor sustained by courage. He is cool-headed and a coward. He fears detection first of all. The vigilant and honest policeman is his peculiar dread. The establishment of a good police is the first and greatest desideratum, in legislating against crimes of reflection.

When this species of crime has been committed, a perpetual dread of being apprehended hangs over the perpetrator—for freedom is his highest boon. The prison has special horrors for all this class of offenders. Hence short and swift execution of the law is of peculiar efficacy in deterring. He counts only risks, and sudden judgments multiply the risks a hundredfold to his haunted soul. It is a compensation in this field of criminal reform that where criminals most abound, there police administration is most easily and effectively organized. As the prison is to be the penal home of the criminal of passion, and also the home as well as the chief dread of the deliberative criminal, we will proceed to the next division of the subject. What should be our penal treatment of these two classes?

What shall we lay down as the ultimate canon of punishment?

Is is death, or imprisonment? Is life, or liberty, the highest privilege? As life is the possibility of all franchises, if we make life the highest boon, then death, as the impossibility of any privileges, is the supremest penalty. If liberty is the chief good, then deprivation and its logical consequences would be the ultimate infliction. If we say that life cannot be forfeited, then we shut ourselves out from war and self-defence, no less than from capital punishment. I think the death penalty should stand. A well-defined basis seems to be laid for it in the sense of horror excited by certain outrages, and in the feeling of relief which we have when some great criminal has been overtaken by swift and mortal judgment. I believe it, however, to be neither politic nor competent for the state to annex the death penalty to any given crime. It should be left optional with the jury. The field of restraint must be the chief field of punishment, as it is the only field of criminal reform. Restriction as to place, restriction as to locomotion, restriction as to diet, restriction as to idleness; privation of luxuries, privation of company, privation of pastime, privation of light. Within this wide range of restraints and privations, are all the elements of punitive treatment. In coming up the scale of prison liberties, from its nadir to its zenith, the prisoner should be met by all the inducements to reformation, and all the appliances of reform. Each higher degree of freedom must be the logical result of the prisoner having met all the requirements of the preceding stage.

It will not be necessary to argue at length, that as punishment is itself a product of justice, it must itself be just. The whole atmosphere of the prison must be an atmosphere of justice, since this only makes it possible to become the atmosphere of reform. The prison must be pervaded by the same spirit that we feel must pervade the court-room. The jailor is as really a minister of justice as the judge. Because it is true, it may not be amiss to say, that, until within a few years the theory of jail-justice has been very crude, and its practice often barbarous and brutal. The criminal had no rights which a jailor felt bound to respect. Society did not believe that a criminal had rights, and most of his treatment was determined by the keeper's consciousness of power. Now, to outrage justice in the name and place of justice, is at once the highest injustice, and the greatest obstacle to the prisoner's improvement, if not his

strongest provocation to revenge. The prisoner must feel that the daily discipline of the prison, no less than his sentence, is just. This discipline must come commended to him by the conduct of the officers, by the kind and degree of labor imposed, and in all the regulations affecting his interests. Penal and degrading labor can only harden and degrade. The saving property in free labor is its honorableness and profitableness. These characteristics must attach to prison labor; and as the prisoner promotes himself by good conduct, he should partake in the avails of his work; and that in proportion to his exemplariness. As you appeal, by commutation of time and over-work, to his self-interest, so by promotion to larger privileges of space, locomotion and intercourse, you appeal to his self-respect. The prisoner should be expected to make restitution. The thief should be made to feel that the more he steals the more he must make up. Restitution is the criminal's duty towards society, as restoration is the duty of society towards him.

In all punishment we should aim to carry the prisoner's conscience with us. This is necessary not only with regard to the kind and degree of punishment inflicted on him, but also with respect to that which is inflicted on his fellow prisoners. If it be said that this is to be over-punctilious, I reply, that punishment is the language of justice, and justice must be punctilious, or it ceases to be justice. If the criminal is supposed not to know that language, he ceases to be a proper subject for the prison, and should be removed to the asylum. It is because the criminal knows what is justice, as well as what justice is, that you punish him. It is on his sense of justice that you base your hopes of punishing, as well as of reforming him. "Sour bread" excited a riot in Sing Sing in 1863, and in the Western Penitentiary of Pa. in 1870. Sour bread would tend to excite a riot among any set of men, and should, because it is a piece of injustice. It was rather a hopeful sign. It showed that the sense of justice was still alive, and gave hope that men, who respected their own rights, were not beyond the reach of being taught to respect the rights of others. It follows, therefore, that to treat a professional criminal as you would a casual criminal, is to violate justice in respect to both. Classification of convicts, and classification of penalties, necessarily follow from a proper classification of crimes. When knowledge is the handmaid of crime, the penal-

ty should be on the outer verge of severity. Our sense of property wrongs is much less active than our sense of personal wrongs, and hence there is a disposition to treat the former with undue leniency, and the latter with perhaps undue rigor. To inflict a just sentence, we must introduce, into our estimate, the penal force of reflection. Hence, when a crime is done by calculation, as in larceny and forgery, the penalty must rise with the amount of reflection. When such crimes are wide-spread in their injurious effects,—like counterfeiting, the adulteration of food, or short weight or measure,—and fall particularly on the ignorant and the poor, the penalty should be still more severe; and when this class of crimes touches on the sanctity of man's person, or the privacy of his domicile, as in pocket-picking and robbery, burglary and rape; or annuls the franchises of the citizen, as in bribery and ballot-box stuffing, there the highest grade of punishment is demanded. This class of reflective crimes is specially frequent, because our sense of public justice is sluggish; yet it belongs to the larger justice to visit them with exemplary punishment, because government is the divinely constituted guardian of the poor and the ignorant, and those who have no helper. A penal legislation, which does not promptly, rigorously, and cheaply punish this kind of crimes, is not yet above the level of barbarism. This class of criminals is the product of civilization, presupposing a high degree of intelligence, cunning and general malice, in the capitalists of crime, as well as a good degree of similar qualifications in their confederates. These crimes of reflection must be put under the ban, because they belong to that sort of wrong-doing which educates to crime. Crimes of passion beget crimes, by provoking retaliation; but crimes of reflection promote crime, by appeals to self-interest. The former, by raising up a prosecutor in the outraged community, seldom go unpunished; the latter, because the victims are simply wronged but not outraged, seldom lead to prosecution. There is only one grade of crimes that rises above these in their iniquity and guilt; namely, the crimes which add revenge to deliberation—reflection guiding revenge, and revenge inflaming reflection. From this evil alliance come acts of malicious mischief; such as cutting fruit trees, poisoning springs and cattle, arson, obstructing railroads, mayhem and murder.

What are the means of reform, and what the relative degrees of hopefulness, as to the reformation of these two classes of criminals? Penal laws are of very little efficacy against crimes of passion. These, as their name imports, are committed in hot blood. To diminish this class, we must raise the tone of living and feeling; abate coarse pastimes, and remove debasing temptations. This is the work of sumptuary laws, of education, and of religion. But on the other hand, crimes of reflection are little affected by mere intelligence. They are chiefly amenable to law, and the efficacy of law is only limited by the ignorance of the legislator, and the indifference of the executive. Crimes of reflection being under the surveillance of law, it is possible to adjust legislation with reference to them; it is not so with crimes of passion. They can not be anticipated by the law-giver, because they are not foreseen by even the perpetrator.

In the matter of punishment, the two classes occupy equally distinct ground. Passion is the phenomenon of a moment, and as soon as the passion subsides, the victim comes under the influence of his better nature. He is in a reformable attitude. He was the demoniac of Gadara—but the evil spirit has gone out of him, and he is sitting clothed, and in his right mind. He is responsive to moral and rational appeals and appliances. Crimes of reflection, on the other hand, instead of producing a moral revulsion, stimulate to further crime. Success encourages the offender to their recommittal. If caught, he is not open to conviction—he has simply been baffled, defeated and possibly provoked. He is fit material for a recidivist; and figures show that from this class it is that our prison ranks are kept full. Here are found the real, because inveterate, enemies of society. They deliberately break down the dykes of civilization, and give over the hard won accumulations of industry, economy and order, a prey to the wild waves of lawlessness. The bands and ligatures of the body politic, whose surest influences guide the national life and secure our prosperity and peace, they loose, leaving us to disorder and ruin.

Crimes of reflection, are, as a class, more wide-reaching in their hurtfulness than crimes of passion. The counterfeit infects the whole fiscal body. He spreads his contagion everywhere. The adulterator of food, and his cousins-german, the short-weight and short-measure men, levy black-mail on all

honest traders, and make the whole body of consumers their victims. Like other epidemics, these distempers live on the most needy. The briber and ballot-stuffer commit high treason against the first principles of republican government. This class of offenders pit themselves against the wit and vigilance of the lawmaker. Each new law that the wisdom of man puts on the statute-book, the wiles of this adversary seeks to elude by some new fetch or invention. It is always an educated class, it may not be in book-learning, though that is possessed by many of them. This is the class that is most open to repression, because of their keen appreciation of freedom, and their dread of restraint. Not frequent but long sentences are the proper regimen for such patients. Short and frequent sentences are the bane of our police courts. Of this class, too, it is most easy to keep criminal registers. Such a book would be to them a book of doom.

When, as in this class of crimes, crime tends to repetition, sentences should rise by rapid degrees in length and severity. The hope of reformation is slight, as the penalty must be deterrent rather than preventive. Exact justice must be the governing motive. First offenders in crimes of passion should be leniently dealt with; but not so in crimes of reflection; *obsta in principis*, when a man has contemplated crime. In sentencing recidivists, it should be considered how much time has intervened between his successive offences, because a certain proximity of time is necessary to constitute a professional criminal. If his honest intervals have been long, justice must be gentle.

Summary of Principles.

1. There is a recognized distinction between crimes of passion, and crimes of reflection.
2. Except in vindictive crimes, passion and reflection are in inverse ratio to each other. The more passion the less reflection, and *vice versa*.
3. Person is the most sacred right. The turpitude of all crimes is measured from it.
4. Crimes of passion are malign and non-malign.
5. Malign crimes are few, objective, directed only at the person, affect individuals, and aim to inflict pain.
6. Non-malign crimes are numerous, subjective, directed to-

ward property, affect the community, but seek only self-gratification.

7. Crimes of passion do not tend to repetition; crimes of reflection do. Reccommitments are from the latter class. They are the professional criminals.

8. Crimes of reflection tend to organization, localization, and are sensitive to deterrent laws. Crimes of passion yield more to preventive legislation.

9. Punishment that does not reform, hardens. To reform, justice must be just throughout. Penalties to be deterrent must be just, and to be just, they must not be horrible, brutal, vindictive or spectacular. Penalties to reform must be just, and to be just they must not be degrading, debasing or discouraging.

10. First offenses in crimes of reflection, should be dealt with sharply; in crimes of passion, leniently.

11. Sumptuary legislation is valid against vice only where vice becomes public.

12. Crimes are not licensable. Where they cannot be abolished, they must be punishable.

ART. III.—THE IMMEDIATE CAUSE OF THE DEATH OF CHRIST.*

By Rev. WILLIAM M. K. LMBRIE Jersey City, New Jersey.

The republication in this country of Stroud's *Physical Cause of the Death of Christ* has once more turned the attention of students to that subject.

Physical, in such a connection, is opposed to ethical, and of course implies that theological opinions are not directly involved. That is to say, the question to be considered has in itself nothing to do with the doctrine of the atonement, or with any of the doctrines connected therewith. As far as this sub-

* *The Physical Cause of the Death of Christ.* By Wm. Stroud, M.D. New York: D. Appleton & Co. 1871.

The Life of Our Lord. By Wm. Hanna, D D., LL.D. New York: Robert Carter & Brothers. 1870.

The Life of Our Lord upon the Earth. By S. J. Andrews New York: Chas Scribner & Co 1868.

Cyclopædia of Biblical, Theological, and Ecclesiastical Literature. M'Clintock & Strong. New York: Harper & Brothers. 1867.